CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application Nos.137/2012, 361/2012, 362/102, 20/2012, 21/2012, 22/2012 29/2012, 210/2011 211/2011, 408/2011 and 294/2012 with MA No.148/2012.

Date of decision: 13-9-2012

CORAM

HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

1. OA No.137/2012

R.S. Rehdu S/o Shri Harphool Singh, aged about 61 years, R/o-H.No.III/5, Dak Colony, Kamla Nehru Nagar, Jodhpur (Office Address: Worked as Sorting Assistant at RMS Jodhpur.

....Applicant

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. Union of India, through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi-110 001.
3. The Director Postal Services (HQ), O/o Chief Postmaster General, Rajasthan Circle, Jaipur-302 007.
4. Director of Accounts, Accounts (Postal), Jaipur.
5. Superintendent RMS 'ST' Division, Jodhpur.

....Respondents

2. OA No.361/2012

T.C. Vyas S/o Late Shri Girdhari Lal Vyas, aged about 61 years, by caste Brahman, R/o village Salwakhurd, Post Office Pipar Road, District Jodhpur (Office Address: Post Office Pipar, worked as SPM (Postal Department).

...Applicant

3. OA No.362/2012

Balu Singh S/o Late Shri Tej Singh, aged about 60 years, by caste Rajput, R/o village Salwakhurd, Post Pipar Road, District Jodhpur (Office Address: worked as SPM Nandanban, Jodhpur (Postal Department).

...Applicant

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi-110 001.
3. The Director Postal Services (HQ), O/o Chief Postmaster General, Rajasthan Circle, Jaipur-302 007.

4. Director of Accounts, Accounts (Postal), Jaipur.

5. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

.....Respondents in OA No.361 & 362/2012

4. OA No.20/2012

Pukhraj Sharma S/o Shri Ratan Lal Sharma, aged about 52 years, R/o H.No.233, Near Ganesh Temple, Ward No.29, Suratgarh, District Sri Ganganagar (Office Address: Working as Mailguard at SRM, ST Division, Jodhpur.)

....Applicant

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi-110 001.

2. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.

3. The Director Postal Services (HQ), O/o Chief Postmaster General, Rajasthan Circle, Jaipur-302 007.

4. The Director, Post Master General, Western Region, Jodhpur.

5. Superintendent Rail Mail Services, ST Division, Jodhpur.

...Respondents

5. OA No.21/2012

Ram Chandra Guru S/o Shri Puna Ramji, aged about 52 years, R/o Maderna Colony, Krishi Mandi, Mandor Road, Jodhpur, District Jodhpur (Office Address: Working as PA at Jodhpur HO, Postal Department.

6. OA No.22/2012

Sohan Lal Verma S/o Shri Rameshwar Lal, aged about 53 years, R/o H.No.6/3, Dak Colony, Kamla Neharu Nagar, Jodhpur (Office Address: Working as Postal Assistant at HO Jodhpur).

.....Applicant

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi-110 001.

2. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.

3. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.

4. The Director, Post Master General, Western Region, Jodhpur.

5. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

.... Respondents in OAs No.21 & 22/2012

7. OA No.29/2012

Dana Ram Jat S/o Shri Nathu Ram Jat, aged about 50 years, R/o village & Post Naranghar, District Churu (Office Address: Working as Postman at Sujangarh Post Office, Sujangarh.)

....Applicant

Vs.

1. The Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi-110 001.
2. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
4. The Director, O/o Post Master General, Western Region, Jodhpur.
5. Superintendent of Post Offices, Churu Division, Churu.

.... Respondents

8. OA No.210/2011

Mohan Lal Rankawat S/o Shri Balu Ram, aged about 53 years, R/o H.No.K-55, Jyoti Nagar, Chandana Bhakat, Post Sursagar, District Jodhpur (Office Address: working as SPM at Sursagar Post Office).

...Applicant

9. OA No.211/2011

Deen Dayal S/o Shri Kheta Ram, aged about 54 years, by caste Meghwal (SC), R/o Jagdamab Colony, Meghwal Basti, Post Shastrinagar, District Jodhpur. (Office Address: working as Postman at post office KUM Jodhpur.

.....Applicant

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
3. The Director, O/o Post Master General, Western Region, Jodhpur.
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur

.... Respondents in OA Nos.210 & 211/2012

10. OA No.408/2011

Sua Lal Sharma S/o Shri Shiv Charan, aged about 52 years, R/o Near Chand Pole, Jodhpur, District Jodhpur. (Office Address: Working as Sorting Assistant at SRM, ST Division, Jodhpur).

....Applicant

Vs.

1. Union of India through the Secretary, Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training New Delhi-110 001.
2. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.

4. The Director Postal Services (HQ), O/o Chief Postmaster General, Rajasthan Circle, Jaipur-302007.

5. The Director O/o Postmaster General, Western Region, Jodhpur.

6. Superintendent Rail Mail Services ST Division, Jodhpur.

.....Respondents

11. OA No.294/2012 with MA No.148/2012

Teja Ram Nawal s/o Late Shri Jeeta Ram, aged about 54 years, by caste Jatial, R/o H.No.46B, Mandir Mahalla, Bhadwasia, District Jodhpur (Office Address:- Kachhari Post Office, working as Postal Assistant).

...Applicant

(Mr. S.P.Singh, counsel for applicants in all these OAs).

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.

2. Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training New Delhi-110 001.

3. The Chief Post Master General, Rajasthan Circle, Jaipur.

4. The Director Postal Services O/o Postmaster General, Western Region, Jodhpur.

5. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

.....Respondents

(Mr.Vinit Mathur & Mr. Ankur Mathur, counsel for respondents in all these OAs).

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ORDER

Per : Hon'ble Mr. B.K. Sinha, Administrative Member

The above OAs arise from a common cause of action, have prayed for common relief and the facts of this case being the same, they are being disposed of by a common order. OA 137/2012, however, is being considered as the leading case and the facts of this case are being mentioned particular in the instant order as representative of the remaining. The case of the applicant, briefly stated, is that he was initially appointed as Mailman on 15.11.1972 and he, subsequently, appeared in the examination for the post of Sorting Assistant wherein he was declared successful. Significantly, none of the criteria of promotion, such as select list, seniority, merit-cum-suitability, selection on the basis of character roll, DPC etc. were adhered to and marks

secured in the examination constituted the sole basis of selection. Following his selection the applicant was made to undergo training and was posted in RMS as Sorting Assistant. The applicant was further granted his first financial upgradation taking his joining as the Sorting Assistant as the entry grade on completion of 16 years of service in the same cadre. The applicant submits that the respondents did not count his service as Mailman as the entry grade and had to complete the required period of 16 years from his entry as Sorting Assistant for grant of the first financial upgradation. Thereafter, the applicant was granted the financial upgradation under the BCR on completion of 26 years of service in the cadre from the date of entry in the cadre as Sorting Assistant and MACP III in the year 2008 with a Grade Pay of Rs. 4600/-, as is evident from the salary statement. After having enjoyed the benefits of MACP III for approximately 2 years the applicant was issued a notice:

> ***"Whereas Shri R.S. Rehdu, SA SRM ST Division, Jodhpur was conferred financial upgradation erroneously under MACP-III on completion of 30 years service in SA cadre w.e.f. 01.09.2004 vide memo No.staff/10-24/MACP-III/RMS/2010 dated 25.01.2010 in PB-2 (Rs.9300-34800) with grade pay Rs.4600/-.***
>
> ***Whereas said Shri R.S.Rehdu was promoted from Mailman to SA cadre on 29.08.1976. Shri R.S. Rehdu has got TBOP on completion of 16 years service in SA cadre w.e.f. 01.09.1992 and thereafter he was granted BCR on completion 26 years service in SA cadre w.e.f.01.07.2002.***
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> ***As such the promotion of Shri R.S. Rehdu from Mailman to SA cadre was reckoned as 1st Financial Up-gradation and on completion 16 years service in SA cadre, his financial up-gradation under TBOP scheme was equal to 2nd financial up-gradation and his placement under BCR on completion 26 years service was 3rd financial up-gradation in accordance to Directorate letter No.4-7/(MACPS)/2009-PCC dated 18.10.2010. As such he has already availed three financial up-gradations from his entry grade.***
>
> ***Therefore, 3rd MACP granted to him in the Pay Band-2 (9300-24800) with grad pay Rs.4600/- was erroneous.***
>
> ***Now therefore undersigned propose to withdraw his 3rd financial up-gradation in the PB-2 (9300-34800) with grade pay Rs.4600/- allowed him under MACP scheme erroneously.***
>
> ***Accordingly, the said Shri R.S. Rehdu is hereby given an opportunity to submit his representation, if any, against the proposal to withdraw the 3rd financial upgradation in PB-2 (9300-34800) with grade pay Rs.4600/- within 15 days to the undersigned otherwise the said financial up-gradation will be withdrawn without further reminder.***

2. The applicant, accordingly, submitted his explanation that the respondents had considered his entry into service with his joining as a Sorting Assistant and not as a Mailman and that the post of Sorting Assistant is not a

promotion post but ex-cadre. The applicant relied upon a clarification made in this regard by the Department of Posts, Ministry of Communication and TI vide their OM cated 25.4.2011 [A/4] which provides "Doubts & Clarification". However, the respondent authority did not accept the plea of the applicant and held vide the OM dated 18.1.2012:

> ***"1. Shri R.S. Rehdu SA SRM ST Division Jodhpur was given a Show Cause Notice vide CO Memo. Of even no. dated 29.03.2011, through that notice he was informed that he was conferred financial up-gradation erroneously under MACP-III on completion of 30 years service in SA cadre w.e.f. 01.09.2008 vide memo no.Staff/10-24/MACP-III/RMS/2010 dated 25.01.2010 in PB-2 (Rs.9300-34800) with grade pay Rs.4600/-.***
>
> ***2. Said Shri R.S. Rehdu was promoted from Mailman to SA cadre on 29.08.1976. Shri R.S. Rehdu has got TBOP on completion of 16 years service in SA cadre w.e.f. 01.09.1992 and thereafter he was granted BCR on completion 26 years service in SA cadre w.e.f 01.07.2002.***
>
> ***3. The promotion of Shri R.S. Rehdu from Mailman to SA cadre was reckoned as 1st Financial Up-gradation and on completion 16 years service in SA cadre, his financial upgradation under BCR on completion 26 years service was 3rd financial up-gradation in accordance to Directorate Letter No.4-7/(MACPS) 2009-PCC dated 18.10.2010. As such he has already availed three financial up-gradations from his entry grade. Therefore, 3rd MACP granted to him in the Pay Band-2 (Rs.9300-34800) with grade pay Rs.4600/- was erroneous.***
>
> ***4. was proposed to withdraw his 3rd financial upgradation in PB-2 (Rs.9300-34800) with grade pay Rs.4600/- allowed to him under MACP Scheme erroneously. Accordingly, the said Shri R.S. Rehdu was given an opportunity to submit his representation, if any, against the proposal to withdraw the 3rd financial upgradation in PB-2 (9300-34800) with grade pay Rs.4600/- within 15 days to the undersigned.***
>
> ***5. Shri R.S. Rehdu received the above Show Cause Notice and in response he has submitted his representation dated 15.04.2011 in which he has requested to allow the financial upgradation under MACP Scheme from SA cadre.***
>
> ***6. I have gone through the case in the light of Directorate Letter No.4-7/(MACPS)/2009-PCC dated 18.10.2010 and relevant record of the case and observe that promotion of Shri R.S. Rehdu from Mailman to SA cadre was 1st Financial Up-gradation and on completion of 16 yeas service in SA cadre, his financial up-gradation under TBOP scheme was equal to 2nd financial upgradation and his placement under BCR on completion 26 years service was 3rd financial upgradation. As such he has already availed three financial up-gradations from his entry grade. Therefore, 3rd MACP granted to him in the Pay Band-2 (Rs.9300-34800) with grade pay Rs.4600/-.***
>
> ***7. Therefore, I hereby order to withdraw the 3rd Financial upgradation which was conferred vide memo No.Staff/10-24/MACP-III/RMS/2010 dated 25.01.2010 in PB-2 (Rs.9300-34800) with grade pay Rs.4600/- w.e.f 01.09.2008."***

3. It would appear from the above that there are two kinds of cases being dealt with vide the instant order: (i) where the III MACP was granted and has been withdrawn on the ground that the entry grade is not Sorting Assistant/Postal Assistant/ Postmen etc.; and (ii) where II MACP was granted

and has been withdrawn on identical grounds. The relative position is clarified in the table below:-

OAs No	Applicant's Name	Date of initial joining & Post	Date of joining on the post (Substantive/ promoted/ direct recruitment	Date of granting TBOP benefits	Date of granting BCR benefits	Date of granting III MACP benefits	Date of withdrawing order
137/2012	R.S Rehdu	Mailman (15.11.1972)	Sorting Assistant 29.08.1976	01.09.1992	01.07.2002	25.01.2008	18.01.2012
361/2012	T C Vyas	Postman 1974	Postal Assistant 29.08.1978	02.09.1994	01.01.2005	16.09.2008	30.01.2012
362/2012	Balu Singh	Postman 1974	Postal Assistant 08.11.1978	11.11.1994	01.01.2005	22.11.2008	30.01.2012
20/2012	Pukhraj Sharma	Mailman 01.03.1976	Mailguard 14.07.1979	23.01.1996	01.07.2006	02.02.2010	30.03.2011
21/2012	Ram Chandra Guru	Group 'D' 22.06.1979	Postal Assistant 03.08.1983	07.08.1999	01.09.2008	--	25.11.2011
22/2012	Sohan Lal Verma	Mailman 10.11.1979	Postal Assistant 10.08.1983	15.08.1999	01.09.2008	--	25.11.2011
29/2012	Dana Ram Jat	Group 'D' 30.05.1981	Postman cadre 30.05.1985	18.06.2001	01.09.2008	--	10.08.2011
210/2011	Mohan Lal Rankawat	Postman 22.04.1982	Postal Assistant 25.10.1989	13.11.2005	12.11.2009	--	05.04.2011
211/2011	Deen Dayal	Group 'D' 20.09.1983	Postman cadre 14.05.1987	28.05.2003	01.09.2008	--	13.04.2011
408/2011	Sua Lal Sharma	Mailman 25.01.1974	Sorting Assistant 15.10.1979	28.10.1995	01.01.2006	08.11.2009	17.08.2011
294/2012	Teja Ram Nawal	Postman 16.05.1980	Postal Assistant 16.10.1989	02.08.2005	30.10.2009	--	15.04.2011

4. The Learned Counsel for the applicant argued that the respondent organization did not count the service of entry date as Mailman for grant of TBOP, BCR and MACP. However, after two years of granting MACP III upgradation has been withdrawn in an arbitrary manner. The requirement for grant of MACP is 10 years of continuous service in the same cadre. The applicant has completed more than 13 years of service in the cadre from the entry grade as Sorting Assistant. The period of regular service for grant of benefit under the scheme is to be counted from the grade in which an employee has been appointed under direct recruitment. The applicant submits that he was appointed as direct recruit Postal Assistant by selection process without any criteria of promotion. The applicant further submits that a Mailman/Mail Peon can become a Mail Guard/Postman and a Mailman/Mailpeon by the virtue of being higher in merit than a Mailguard/Postman in the examination for recruitment of Postal Assistant /Sorting Assistant as it constitutes recruitment for the ex-cadre higher posts. The change of entry grade from lower to higher scale neither the same cadre is promotion but as

per the Recruitment Rules of Postmen/Mailguard cadre, PA/SA cadre change from one cadre to another cadre are not promotions but fresh recruitments and appointments to higher cadre outside the line of promotions/hierarchies available in a particular cadre. The lower ex-cadre service cannot be counted from higher cadre service for the purpose of MACP. Further, no clarification has been taken from the DoPT, authority competent to clarify this issue.

Case of the respondents

5. The Learned Counsel for the respondents has vehemently opposed the OA and has submitted that the applicant had been initially appointed in the Department as Group 'D', and subsequently on having passed the examination, he was promoted as Sorting Assistant w.e.f.29.08.1976. He was granted the benefit of TBOP and BCR financial upgradation in the higher scale on completion of 16 and 26 years of service w.e.f. 01.09.1992 and 01.07.2002 respectively, these two claims having been in existence prior to the MACP coming into force. The applicant was granted the benefit of MACP III as the letter of dated 28.09.2009 [A-8] had been incorrectly interpreted by the competent authority that the benefit of III upgradations under the scheme are to be granted on completion of 30 years regular service in the same grade as had beer the case prior to the introduction of the MACP Scheme. The applicant has already been granted 3 financial upgradations from the date of entry in the Department as a Mailman and grant of MACP III was an inadvertent error arsing from this incorrect interpretation of the MACP Scheme. A show cause notice was, accordingly issued to the applicant and the order has been rightly withdrawn on completion of the due formalities. The Learned Counsel for the respondents strongly opposed the plea that the elevation of the applicant from Mailman to the cadre of Sorting Assistant was direct recruitment. He submitted that as per the Recruitment Rules for Sorting Assistant, 50% of the recruitment is made by promotion and the other 50% by through direct recruitment. There are two examinations taken, one for those

undergoing the promotion process and other for direct recruits. Hence, the applicant has been granted promotion to the post of Sorting Assistant and as such he is only entitled to two other benefits which have already been granted to him, TBOP and in form of BCR. Hence, the applicant had been incorrectly granted the benefits of MACP III and it stands rightly withdrawn. The Learned Counsel for the respondents has also referred the judgment delivered by this Tribunal on 22.05.2012, passed in OA Nos. 382/2011 and others, in the case of ***Bhanwar Lal Regar & Ors vs. Union of India & Ors,*** and submitted that the Hon'ble Member in that case had not made any reference to the Recruitment Rules for Sorting Assistant. Hence, this judgment inadequately covered the subject judgment and no reliance could be placed upon it.

6. Having heard the Learned Counsel for both the parties and having gone through their pleadings and other documents adduced by them, the following issues emerge for consideration:

(i) Whether the applicant was promoted to the post of Sorting Assistant or it shall be deemed to be a case of direct recruitment?

(ii) Whether the order of the respondent organization in granting III MACP in pay band of Rs.9300-34800 with grade pay of Rs.4600 vide the impugned order dated 18.10.2010 was erroneous?

(iii) What relief, if any, could be granted to the applicant?

Whether the applicant was promoted to the post of Sorting Assistant or it shall be deemed to be a case of direct recruitment?

7. So far as the first issue is concerned, the principal contention of the respondents is that the Department of Post (Postal Assistant/Sorting Assistant) Recruitment Rules, 2002, provide that 50% of the recruitment, the vacancy in the cadre, Sorting Assistant, will be done through direct recruitment and the other 50% were to be done to the promotion, the mode of entry being undergoing a selection examination. On being pointedly asked that whether the selection examination was the same both for those getting

promoted and for getting directly recruited, the Learned Counsel for the respondents was emphatic that it was different. In the case of two categories including the question papers and the mode of examination, the two respective positions of the contending party could be explained with the help of the chart below:-

Year	Number of years as per the applicant	Entitlement of benefits as per the Applicant	No. of years as per the respondents	Entitlement of benefits as per the respondents
1972	--	-	0	-
1976	0	-	4	1st (Promotion)
1992	16	1st	20	2nd (TBOP)
2002	26	BCR (2nd)	30	3rd (BCR)
2008	32	MACP (3rd)	-	--

8. The Learned Counsel for the respondents has produced a Photostat copy of the letter No.10/6/86 PCC/SPB-I dated 25th September, 1987 on the subject of recruitment to the cadre of Postmen/Village Postmen/ Mail Guards-Implementation of recommendations of Fourth Central Pay Commission. This prescribes as under:

> ***"At present recruitment to the cadre of Postmen/Village Postmen and Mail Guard is carried put through an examination stipulating the following main conditions:-***
>
> ***(a) Age: - Between 18 and 25 years.***
>
> ***(b) Educational Qualifications:- Middle School pass from a recognised Board.***
>
> ***(c) Method of recruitment (Postmen/Village Postmen): 50% by direct recruitment 50% by promotion, failing which by direct recruitment.***
>
> ***1.(i) Where as for direct recruits, educational qualification is applicable, this is not prescribed for promotees. It is also provided that against vacancies reserved for direct recruits EDAs are to be tried first and those of the EDAs who have put in at least 3 years regular service and are within 35 (40 for ST/SC) years of age provided they have been recruited through employment exchange should be recruited first against such vacancies. In case number of EDAs qualified is less than the number of vacancies notified action is taken to request the Employment Exchange to sponsor candidates.***
>
> ***1 (ii) For the Mail Guards whereas the other conditions regarding age and educational qualifications are the same only 25% of the vacancies are to be filled up by direct recruits and the remaining 75% by promotion, failing which direct recruits. As in the case of Postmen/Village Postmen against the vacancies reserved for direct recruits of Mail Guards the EDAs are considered first before throwing open the vacancies to the outsider candidates through Employment Exchanges.***

9. The above letter, further provides for a common paper and syllabi for promotion as well as direct recruitment and a common process. The letter dated 07.04.1989 reiterates and supplements the earlier guidelines, as under:-

> ***"(i) The existing method of recruitment to 50% of vacancies in the cadre of Postmen/Village Postmen by promotion of Group 'D' officials, who qualify in the test will continue.***
>
> ***9. From among the 50% of the vacancies reserved for outsiders, one half will be filled in from amongst EDAs on merit and another half will be filled in from amongst ED Agents on the basis of length of service. Therefore, one roster of 100 points will be maintained. The reserved points should also be divided equally between the quota of length of service and that on merit. The add figure should be added to the quota for these based on length of service. If that vacancy is not filled in on the basis of length of service, the vacancy will go to the quota meant for those selected on merit.***
>
> ***12. The above instructions and the revised procedure will not be applicable in the case of recruitment to the cadre of Group 'D', but only for recruitment to Postmen/ Village Postmen/ Mail Guards. The other conditions prescribed for filling up vacancies and conducting of examination not mentioned in the amendments as above, will remain unaffected.***

10. The applicant was selected for the post of Sorting Assistant in the year 1976 and it has not been possible to ascertain the guidelines in vogue at that point of time. However, it appears that there was continued practice of direct recruitment to the PA cadre of Sorting Assistant in which the Group D employees were also allowed to participate. In this regard, it is to be noted the critical determinants for a promotion are (i) qualifying length of service, (ii) constitution of DPC; (iii) formulation of promotion criteria; (iv) elevation from one level to another; and (v) a promotion process as distinct from a direct recruitment process. Though the Learned Counsel for the respondents has asserted that all these processes are in place but has not been able to adduce evidence to that effect, in absence of which, it has to be taken for granted that the process of examination was one for both the groups. Admittedly, the TBOP was not in vogue in the year 1976 when the applicant had been appointed as Sorting Assistant and it came into existence in the year 1993. It is relevant to quote the Annexure-A/5 office memorandum, which is as under:

> ***"The Department has introduced time bound one promotion scheme and BCR scheme since 1983 and 1991 respectively. These scheme aim at upgradation of pay for the employees who were otherwise facing problems of stagnation in their career progression. In the course of time such upgradations have been***

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constructed in same quartors as, promotion against the regular supervisory parts available in the Department. Upgradation under TBOPBCR schemes and promotion to ISG/HSG-II as per provisions of recruitment Rules are two distinct matters. Therefore to clarity the position for all concerned it has been decided that the status of operative officials at various point of their career should be indicated by the following designations/ nomanclature as applicable:-

i. upto 16 years	*PA/SA*
ii. After 16 years service	*PA/SA (TBOP)*
iii. Those who have got promotion to LSG	*LSG*
iv. After 26 years of service if the LSG official has not be promoted to LSG-II	*BCR*
v. Those who are not LSG but have crossed 26 years of service	*PA/SA/(BCR)*
vi. Those who are promoted to HSG-IY	*HSG-II*
vii. Those who are promoted to HSG-I	*HSG-I*

2. *Specific care should be taken to ensure that there is no deviation from these designation in any circumstances.*

3. *It is also retreated that circles should old DPC at regular intervals at least once a year, to fill up all the vacancies in HSG II & HSG-I to ensure operational efficiency at these level.*

11. The Modified Assured Career Progression Scheme was introduced by the Memo of the Government dated 18.09.2009, with the following objectives and directives:

"The Sixth Central Pay Commission vide para 6.1.15 of its report has recommended Modified Assured Career Progression Scheme (MACPS). The Government has considered the recommendations of the Sixth Pay Commission on the Assured Career Progression and accepted the same with further modification to grant three financial upgradations under the revised Scheme of intervals of 10, 20 and 30 years of continuous regular service and issued orders vide Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) OM No.35034/3/2008-Estt.(D) dated 19th may, 2009. The Scheme is known as "MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES" and which has come into operation w.e.f. 01.09.2008.

2. This scheme is in supersession of previous ACP Scheme and clarifications issued there under. The scheme shall be applicable to all regularly appointed Group "A", "B", "C" Central Government Civilian Employees except officers of the Organised Group "A" Service. The status of Group D employees would cease and be treated as Group C Multi-Skilled employees n their completion of prescribed training. Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adoc or contract basis shall not qualify for benefits under the aforesaid Scheme.

3. Department of Posts has its own scheme of Time Bound One Promotion (TBOP)/ Biennial Cadre Review (BCR) for its employees. Time Bound One promotion was introduced w.e.f. 30.11.1983 vide letter No.31-26/83-PE.I dated 17.12.1983. Biennial Cadre Review was introduced w.e.f. 01.10.1991 vide Directorate Memo No.22-1/89P.E.1 dated 11.10.1991. The scheme was further extended to certain other categories of employees from different dates.

12. In this regard the clarification submitted by the applicant, in response to a query, illuminates point as under:-

"No mailman/ mail peon can become a Mail Guard/Postman by seniority only. No Mail Guard/Postman can become a PA/Sorting Assistant by

virtue of seniority only. Similarly no PA/SA can become an Inspector posts by seniority. Different cadre employees can compete for posts filled through the limited departmental examinations conducted for recruitment to higher ex cadre posts. Even outsiders-GD also compete in those competitive examinations. A Mailman/ Mail peon can be higher in merit than a mail guard/postman in the examination for recruitment to PA/Sorting Assistant because it is examination for recruitment to ex cadre higher posts."

13. The identical issue has been dealt with in the case of ***Bhanwar Lal Regar & Ors.*** (supra), the relevant para 16, 17, 18 and 19 are being reproduced as under:-

> ***"16. It is obvious that appointment from the civil post of EDA to a regular Government employment as Group-D is a fresh appointment, and that has not been disputed by the respondents either. Thereafter when, as Group-D employees, these three applicants faced a process of selection, and were appointed as Postmen, such selection cannot be called a promotion, as it was not done in the course of natural progression through seniority. Any advancement in career which is based on a process of selection especially undertaken for that purpose cannot be called as a promotion. A promotion has to be in higher category in the same cadre, or service, or though a prescribed avenue of promotion, but without an element of a process of selection, through tests or examinations etc..***
>
> ***17. The meaning of the word "promotion" was considered by the Hon'ble Apex Court in the case of Director General, Rice Research Institute, Cuttack & Anr. V. Khetra Mohan Das, 1994 (5) SLR 728, and it was held as follows:-***
>
> > ***"A promotion is different from fitment by way of rationalisation and initial adjustment. Promotion, as is generally understood, means; the appointment of a person of any category or grade of a service or a class of service to a higher category or Grade or such service or class. In C.C. Padmanabhan v. Director of Public Instructions, 1980 (Supp) SCC 668: (AIR 1981 SC 64) this Court observed that "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class."***
>
> ***18. Further, in the case of State of Rajasthan v. Fatehchand Soni, 1996) 1 SCC 562, at p. 567: 1995 (7) Scale 168: 1995 (9) JT 523: 1996 SCC (L&S) 340: 1996 (1) SLR 1, the Hon'ble Apex court findings can be paraphrased and summarized as follows:-***
>
> > ***"In the literal sense the word 'promote means' to advise to a higher position, grade, or honour. So also 'promotion' means "Advancement or preferment in honour, dignity, rank, or grade". (See :Webster's Comprehensive Dictionary, International Edn., P.1009) 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post."***
>
> ***19. In a similar manner, while being Postmen, the three applicants in these three OAs faced the Limited Departmental Competitive Examination (LDCE, in short) and qualified to become Postal Assistants. Their joining as Postal Assistants was not in the nature of promotion in their earlier existing service or cadre, but was a career advancement though a process of selection. Therefore, for the purpose of grant of TBOP/BCR financial upgradations earlier, and MACP financial upgradation now, the only dates which are relevant to be taken into account for the purpose of counting the periods of their stagnation is the period spent by the applicants as Postal Assistant. In that sense, the clarification issued by the Pay Commission Cell of the Department of Posts, Ministry of Commissions & IT on 25.04.2011 through file No.4-***

7/MACPS/2009/PCC, as cited in para 8 above, is correct. The only problem with that clarification is that it stopped at the point of clarifying that when the GDS first joined in a Group-D post, and was later declared as successful in the Postman examination, the regular service for the purpose of MACP would be deemed to commence from the date of his joining as a Postman in the main cadre on direct recruit bases. But it is obvious that the corollary would follow, and when the Postman appears at the LDCE, and gets selected to a new Cadre as a Postal Assistant, then it is start of a new innings for him, and for the purpose of counting his stagnation, if any, the date of his joining as Postal Assistant alone would be relevant, and his previous career advancements cannot be called to be promotions within the definition of the word 'promotion', as is required for the grant of TBOP/ BCR benefit consideration, and for consideration for eligibility for financial upgradation on account of stagnation under the MACP Scheme.

14. It is true that in the order of the ***Bhanwar Lal Regar & Ors.*** (supra), the Recruitment Rules have not been specifically referred. The basic contention of the Department of Post (Postal Assistant/Sorting Assistant) Recruitment Rules, 2002, had already been covered under the order. For the sake of further clarification, it is to be provided that the applicant was granted the benefit of TBOP,BCR and MACP III, starting with the year 1976 when he joined the cadre of Sorting Assistant. It is against established legal norms to now revise this assumption with retrospective effect. The impugned order serves to create two classes of the Sorting Assistants- one recruited from the open market and those recruited departmentally. The main issue relating to the inter se seniority etc. have also to be determined and covered by the orders in the case of ***Bhanwar Lal Regar*** (supra). It may be stated clearly that had this been the intention of the department instructions to that effect would have been issued at that point of time itself.

Whether the order of the respondent organization in granting III MACP in pay band of Rs.9300-34800 with grade pay of Rs.4600 vide the impugned order dated 18.10.2010 was erroneous?

15. So far as this issue is concerned, the discussion in respect of the first issue partly answers the question. We have already looked at the provisions of the MACP having been circulated earlier. The fundamental purpose of this scheme was to greater benefits to the employees who had stagnated in a cadre and one has to agree with the submission of the applicant that it was not to curtail the benefits which already been extended through the

instrumentality of the Pay Commission. The matter could have been referred to the DoPT for clarification on the subject as provided in the scheme but we find no evidence of such consultation having taken place. Even assuming for a moment that the contention of the respondents are correct still the fact cannot be ignored 30 years have lapsed without the applicant having earning promotion. Here one has to turn to the clarification issued by the DoPT that Financial Upgradation becomes admissible "***whenever a person has been 10 years continuously in the same grade pay.***" Here we are compelled to recall the decision in the case of ***Bhanwar Lal Regar & Ors*** (supra), to hold para 9 and 20 of the said judgment, as under:

> ***"9. He further submitted that similar selection for the post of Postal Assistant by appearing at the relevant examination cannot also be called to be promotion. Therefore, it was reiterated by him that it cannot be held that he had received three promotions, because appointment to an ex-cadre post cannot be considered as promotion, when it is not that one can claim promotion to that post in the hierarchical line of promotion to that post from the earlier post, and the department does not permit promotion from Group-D to Postman, and from Postman to Postal Assistant, and from Postal Assistant to Inspector of Posts, by way of promotion itself. It was further reiterated that any selection, recruitment, appointment or absorption in an ex-cadre post has to be treated as a separate entry into a fresh grade for the purpose of ACP/MACP / Financial upgradations, and also for TBOP/BCR financial benefits. It was submitted that the respondents cannot be allowed to approbate and reprobate at the same time when they have themselves admitted that appointment from Group-D to Postman, and from Postman to Postal Assistant, was done through a process of section. In the result, it was prayed that the OA be allowed and the impugned order Annexure-A-1 be quashed. In support of his contention, the applicant had cited the letter dated 18.10.2010 issued by the Pay Commission Cell of the Department of Posts, Ministry of Communication & IT, clarifying the doubt regarding eligibility of MACP Scheme benefit as follows:-***

Sl. No.	*Point on which clarification sought*	***Status Position***
	Eligibility of MACPS to a direct recruited Postal Assistant conferred with TBOP- *It has been represented that in some Circles the directly recruited Postal Assistants who were accorded financial upgradation under one time bound promotion scheme on completion of 16 years of satisfactory service are not being given the 2nd MACPS on the ground that the officials have not completed 10 years of service TBOP Scale/Grade with grade pay of Rs.2800.*	***Attention is drawn to Para No.28 of Annexure-I to this office OM dated 18.09.2009. It is stated that a directly recruited Postal Assistant who got one financial upgradation under TBOP Scheme after rendering 16 years of service before 01.09.2008, will become eligible to 2nd MACP on completion of 20 years of continuous service from date of entry in Government service or 10 years in TBOP grade pay or scale or combination of both , whichever is earlier. However, financial upgradation under MACPS cannot be conferred from the date prior to 01.09.2008 and such 2nd financial upgradation for the above referred category of officials has to be given from 01.09.2008. They will also become eligible for 3rd MACP on completion of 30 years of service or after rendering 10 years service in 2nd MACP, whichever is earlier.***

20. It is, therefore, clear that Para-2 of the impugned order in all these three OAs at Annexure A1 dated 10.08.2011, passed by the Supdt. Of Post Office, Churu Division, Churu was incorrect, and the eligibility of these three applicants for the grant of TBOP/BCR benefits earlier and MACP benefits thereafter, has to be counted only from the date they were substantively appointed as Postal Assistants. Therefore, the impugned Annexure-A/1 dated 10.08.2011 in all the three OAs are set aside, and the grant of MACP benefit correctly granted to the three applicants earlier through the order dated 31.03.2010 is upheld. The applicants shall be accordingly entitled to all the arrears, with interest at the GPF rate of interest being payable on the arrears of the financial upgradation benefits admissible to the applicants, correctly granted earlier on 31.03.2010."

We see that there are no grounds to disagree with the same.

What relief, if any, could be granted to the applicant?

16. So far as this issue is concerned, the answers emerge from the discussion in the first 2 issues. Having held that the transition from Mailman to Sorting Assistant is not a promotion in absence of the essential attributes attaining promotion and overwhelming pointers being a case of direct recruitment, it is not possible to go back on the situation, particularly when the position has been ample clarified by the Government that the "***'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment"*** (Para 9 of Salient Features of includes to communication dated 18.07.2009) and the illustrations that ***"if a Government servant (LDC) in PB-I in the grade pay of is.1900 gets his first regular promotion (UDC) in the PB-I in the grade pay of Rs.2400 on completion of 8 years and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years)".*** In this regard the clarification if the Sixth Pay Commission, is also worth quoting as under:

Recommendation of the Sixth Pay Commission	*Decision of the Government*
iv) Financial Upgradation under the scheme will be available whenever a person has spent 12 years continuously in the same grade. However, not more than two financial upgradations shall be given in the earlier career as was provided in the extant scheme.	***Modified to the extent that the financial upgradation will be available whenever a person has spent 10 years continuously in the***

The scheme with aforesaid modifications shall be called modified ACPS and will ensure suitable progression uniformly to all the employees in Central Government.	***same grade. Further, three upgradations after 20 and 30 years of service will be allowed.***

17. It is evident from the above that the impugned order of the respondents (Annexure-A/1) is bad under law from both the points stated above that (i) being treating the passage from Mailman to Sorting Assistant as promotion, and (ii) not appreciating MACP as inferred from the own circulars of the Government. MACP is a liberal scheme allowing financial upgradation to those who have not been able to earned promotion in the regular promotion. It, hence, needs to be liberally understood. Hence, all the above mentioned OAs are allowed and the impugned orders are quashed and set aside with there being no order as to costs.

-Sd-
[B.K Sinha]
Administrative Member

-Sd-
[G. George Paracken]
Judicial Member

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated 14.9.2012

D.K. Sharma
अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर
Jodhpur Bench, Jodhpur