

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 127 of 2012

Original Application No. 142 of 2012

Original Application No. 702 of 2012

Wednesday, this the 7th day of August, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. **Original Application No. 127 of 2012** -

S. Santhamma, Postal Assistant, Attingal Head Post Office,
 Attingal, Thiruvananthapuram – 695 101, Residing at
 Souparnika, Kuzhimukku, Thottavaram Road,
 Attingal, Thiruvananthapuram – 695 101.

Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Senior Superintendent of Post Offices,
 Thiruvananthapuram North Postal Division,
 Thiruvananthapuram – 695 001.

2. The Chief Postmaster General, Department of Posts,
 Kerala Circle, Thiruvananthapuram – 695 033.

3. Union of India, represented by Director General,
 Department of Posts, Dak Bhavan,
 New Delhi – 110 001.

Respondents

(By Advocate – Mr. S. Jamal, ACGSC)

2. **Original Application No. 142 of 2012** -

C. Prasad, Retired Sub Postmaster,
 Residing at Kamal, Sathyam Nagar,
 Industrial Estate P.O., Thiruvananthapuram-695 019.

Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram – 695 036.
2. The Chief Postmaster General, Department of Posts,
Kerala Circle, Thiruvananthapuram – 695 033.
3. Union of India, represented by Director General,
Department of Posts, Dak Bhavan,
New Delhi – 110 001. **Respondents**

(By Advocate – Mrs. Deepthi Mary Varghese, ACGSC)

3. **Original Application No. 702 of 2012 -**

K. Sivadasan Nair, aged 55, S/o. Raman Nair,
Sorting Assistant, HRO, Calicut RMS,
Residing at Kallakandi House, Tharakulathur PO,
Kozhikode-673 311. **Applicant**

(By Advocate – Mrs. Jagada Bai)

V e r s u s

1. Union of India, represented by the Secretary,
Department of Posts, New Delhi – 110 001.
2. Director General (Posts), Dak Bhavan, New Delhi-110 001.
3. The Post Master General, Northern Region,
Kerala Circle, Kozhikode – 673 011.
4. The Superintendent Railway Mail Service,
'CT' Division, Kozhikode – 673 032.
5. P.V. Rajendran, aged 50, (Father's name not available),
Sorting Assistant, Head Record Office,
Kasaragod – 671 101. **Respondents**

(By Advocate – Mrs. Deepthi Mary Varghese, ACGSC)

These applications having been heard on 26.07.2013, the Tribunal on

7.8.13 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member-

As the issue involved in the above three cases is identical all the applications are dealt with together and this common order passed. For the purpose of reference however, OA No. 702 of 2012 is taken as a leading case.

2. The applicant in OA No. 702 of 2012 was appointed as Mail Man in 1980; subsequently as Mail Guard in September, 1983. In December, 1983 a scheme called TBOP scheme in the Department of Posts was introduced. The applicant participated in the competitive examination for promotion to the cadre of Sorting Assistant and was posted in that capacity with effect from 20.5.1985. Construing his date of appointment as Sorting Assistant from the above date, the applicant was offered the financial upgradation under the TBOP scheme after completion of 16 years of service with effect from 9.6.2001. A second financial upgradation by name Biennial Cadre Review (BCR in short) was introduced with effect from 1.10.1991 according to which on completion of satisfactory qualifying service of 26 years in a grade persons should be entitled to the financial upgradation under BCR scheme. According to the same the applicant was to be considered for financial upgradation under the said BCR scheme effective from 9.6.2011. However, in the meantime Modified Assured Career Progression Scheme (MACP for short) was introduced and the same has replaced the earlier TBOP and BCR schemes. According to the MACP scheme on completion of 10 years, 20

years and 30 years of service subject to no promotions being made, an individual will be entitled to the 1st, 2nd and 3rd financial upgradations. The earlier financial upgradation would also be counted under the scheme. Thus, the applicant having got one financial upgradation under TBOP was entitled to the 2nd financial upgradation effective from 1.9.2008. This has not been granted to her. The applicant approached the respondents. The reply given was that the applicant had entered the service as Mailman in 1980, got promotion as Mail Guard in 1983 and again as Sorting Assistant in 1985 and the financial upgradation under TBOP scheme from June, 2011. In view of the above the applicant is not entitled to any further financial upgradations. Annexure A4 refers. The applicant has challenged some of the provisions of MACP scheme, Annexure A3 and the provisions challenged are as under:-

“4. The schemes of Time Bound One Promotion introduced with effect from 30.11.1983 and the Biennial Cadre Review introduced with effect from 1.10.1991 and extended to other categories of staff on subsequent dates shall stand withdrawn with effect from 1.9.2008.

13. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme.”

3. The reliefs claimed are as under:-

“1. Call for the service records of the Applicant and the Respondent No. 5.

2. Quash Clause 4 and Clause 13 of Annexure A3, Annexure A4 and Annexure A5, and declare that the applicant is entitled for financial upgradation to MACP-II with effect from 1.9.2008, the date from which the respondent No. 5 who is junior to him was granted the benefit, with all consequential benefits.

3. To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case.”

4. In so far as OA No. 127 of 2012 is concerned the applicant entered the

service as GDS in 1973; appointed as Postman in 1982; and is functioning as Postal Assistant since 7.11.1988. Vide Annexure A2 order dated 13.9.2010 some individuals were granted financial upgradation under the MACP scheme but the applicant was not granted the same even though she had completed 20 years of service as on 7.1.2008. Hence, she made a representation vide Annexure A3 dated 16.10.2010. This was followed by another representation dated 11.11.2012 in which the applicant pointed out that her junior Mrs. Zeenath at serial No. 151 in the seniority list and who joined as Postal Assistant in January, 1989 was drawing more salary than the applicant. No action has been taken against the same. Hence, the applicant has filed this OA seeking the following reliefs:-

1. Direct the respondents to step up the pay of the applicant on par with that of her junior Smt. Zeenath S.
2. Direct the 2nd respondent to consider and pass orders on Annexure A3 representation of the applicant forthwith.
3. Direct the respondents to consider granting financial upgradation under second MACP to the applicant.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings."

5. In so far as OA No. 142 of 2012 is concerned the applicant who joined service as GDS was posted as Postman in February, 1981 and later on appointed as Postal Assistant, on the basis of examination for promotion of LG officials and thus from 8.1.1988 he was functioning as Postal Assistant. The applicant superannuated in September, 2009. His grievance is that though he had completed 20 years of service on 8.1.2008 he was not granted the 2nd MACP. Vide Annexure A5 communication dated 21.7.2010 the

respondents have stated that the applicant entered the service as Postman in 1981 and promoted to the cadre of Postal Assistant in 1988 and was also placed under TBOP scheme on 4.2.2004 after completion of 16 years in PA cadre. Thus, he having been granted two promotions and not having completed 30 years of service he is not entitled to any further financial upgradation under MACP scheme. The applicant moved this application from a different point of view namely his junior one Thanammal has been given higher pay than him and as such he is entitled to the stepping up of pay. The reliefs sought by the applicant is as under:-

- “1. Direct the respondents to step up the pay of the applicant on par with that of his junior Smt. Thanammal.
2. Direct the 2nd respondent to consider and pass orders on Annexure A6 representation of the applicant forthwith.
3. Direct the respondents to consider granting financial upgradation under MACP to the applicant.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings.”

6. Respondents have contested the O.A. In respect of OA No. 702 of 2012, they have submitted as under:-

The MACP scheme assures three financial upgradations to a Government servant on completion of 10, 20 and 30 years of service from the entry cadre. In the case of the applicant, the entry cadre is as the Mail Man with effect from 7.1.1980. The applicant was also promoted to the cadre of Mail Guard with effect from 21.9.1983. That was the first regular promotion of the applicant. Again, the applicant was promoted to the cadre of SA with effect from 20.5.1985. This is the

second financial upgradation of the applicant. On completion of the 16 years of service, the applicant was placed in TBOP with effect from 9.6.2001. This was the third financial upgradation of the applicant.

7. The respondents further submitted that in so far as the fifth respondent is concerned, he had entered the department as a direct Recruit in the post of Sorting Assistant whereas the applicant was a promotee to that post. As such, these two cannot be compared.
8. In addition, the respondents referred to Annexure A-7 order of the Madras Bench in OA No. 1075 of 2010 relied upon by the applicant and stated that the same does not apply to the facts of this case.
9. In respect of OA No. 127 of 2012, the contention of the respondents is that comparison of the case of the applicant with that of one Smt. Zeenath for stepping up of pay is without keeping in mind that the said Zeenath was a direct recruit PA, while the applicant entered the service as Postman and his appointment as PA is by way of promotion from Postman cadre. Such promotion disables the applicant from claiming ACP or MACP as the said financial upgradation is granted only where promotion is not granted.
10. As regards OA No. 142 of 2012, the respondents submit that the MACP Scheme is a three tier scheme under which financial upgradations are granted to employees on completion of 10/20/30 years of service. As per paragraph 4 of Annexure R-1, the schemes of Time Bound One Promotion and Biennial Cadre Review were withdrawn. Before implementing MACP Scheme, action

was taken to grant financial upgradations under TBOP and BCR Schemes to all the officials who were eligible for the same prior to 31-08-2008. The Department of Posts has issued clarifications to the effect that a direct recruit Postal Assistant who got one financial upgradation under the TBOP Scheme after rendering 16 years of service before 01-09-2008 will become eligible for the 2nd MACP on completion of 20 years of continuous service from the date of entry in Government or 10 years service in TBOP grade pay or scale or combination of both, whichever is earlier. They will also be eligible for the 3rd MACP on completion of 30 years of service or after rendering 10 years service in 2nd MACP whichever is earlier. In the case of lower grade officials promoted to Postal Assistant cadre, having got one promotion to PA cadre before completion of 10 years of continuous service it will be offset against 1st MACP and on rendering 10 years continuous service in the clerical Grade/scale or on completion of 20 years service from the date of entry, whichever is earlier, would become eligible for the 2nd MACP. In so far as comparison with Smt. Thanammal, it has been stated that the said individual was a direct recruit to the post of Postal Assistant, while the applicant came from the lower grade of postman on promotion.

11. Applicants in all the cases filed the rejoinder, reiterating their stand as contained in the OAs and in so far as Applicant in OA No. 702 of 2012, decision of Jodhpur Bench by a single member in OA No. 353 of 2011 with connected cases, vide Annexure A-8 has been relied upon.

12. Counsel for the applicant in OA No. 702 of 2012 has been extremely fair to refer to a full Bench order of this Bench in OA No. 1103 of 2011 dated 22nd March, 2013 which clearly stated that no senior could claim MACP benefits on the basis of junior having been granted the same, as the financial upgradations are granted on the basis of completion of stipulated years of service and as such, seniority has no role to play. The counsel submitted that a latitude has been given in the said Full Bench Order to the effect that though the benefit under MACP scheme cannot be granted, if the individuals could make out a case of junior drawing more pay on the basis of the principles of Stepping up of Pay, the same could be considered. The counsel has further fairly conceded that the decision in Jodhpur Case has been held to be per incuriam. The applicant has challenged the legal validity of clause 4 and 13 of Annexure A-3.

13. Clause 4 of Annexure A-3 relates to the withdrawal of the erstwhile TBOP and BCR Schemes. If this clause is held as invalid, then the same would result in the two schemes i.e. TBOP/BCR on the one hand and the MACP scheme on the other to exist simultaneously. This is incompatible. Hence, the said relief of quashing Clause 4 of Annexure A-3 cannot be granted. As regards Clause 13 of Annexure A-3, the same has the basis of paragraph 20 of the MACP Scheme and the Full Bench has clarified in this regard as under:-

"13. Arguments were heard and documents perused. First, as to the legal validity of clause 20 of the Scheme. The same reads as under:-

"20. Financial upgradation under the MACPS shall be purely personal to the employees and shall have no relevance to his

seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS. "

14. The above provision specifies that the financial upgradation under the MACPS shall be purely "**personal to the employees**". The reason is that it is subject to fulfilment of the stipulated conditions of (a) non promotion and (b) completion of stipulated years of service that the benefit of financial upgradation under the scheme is admissible. If a senior does not fulfill any of/both the conditions, obviously, the benefit under the scheme is not admissible to him. It is for this reason that the scheme stipulates that the financial upgradation has no relevance to the seniority position. Once seniority has no role to play, the question of senior claiming financial upgradation under the scheme at par with junior does not arise. Hence, the legal validity of clause 20 of the Scheme cannot be assailed. Of course, we hasten to add here that the restriction imposed under this clause is only to the extent the claim relates to financial upgradation at par with that granted to juniors under the MACP Scheme. The restriction cannot extend to any other arena, whereby, under any other specific rules or Government of India Decisions, a person not granted the financial upgradation under the MACP Scheme claims parity in pay such as stepping up of pay under FR 22 or otherwise."

14. In so far as the relief claimed on the basis of the fact that the junior is drawing more pay, albeit under the MACP Scheme, the case has to be decided on the basis of the following legal position.

(a) Whether the case of the applicants falls under any of the cases where stepping up of pay is permissible.

(b) Whether the applicants could be eligible for financial upgradation on fulfillment of the conditions attendant thereto.

15. Stepping up of pay is permissible under the following contingencies.

a) If the anomaly is due to fixation of pay in the revised scales

under Rule 7(1) of CCS (RP) Rules, 2008;

- b) In case the senior is promoted prior to 1.1.2006 vis-a-vis subsequent to that date in the revised pay structure under CCS (RP) Rules, 2008 [(see note No. 10 of rule 7 of CCS (RP) Rules, 2008);
- c) In case where two existing scales, one being a promotional scale for the other got merged and the junior, now drawing his pay at equal or lower stage in the lower scale of pay happens to draw more pay in the pay band of the revised pay structure than the pay of the senior in the existing higher scale (Rule 10);
- d) In respect of direct recruits the period of training before appointment counts for increments and this does not confer increment in the case of departmental candidates [FR-22-Government of India order (25)];
- e) In the case of stepping up of pay of directly recruited senior officers recruited through civil services examination (Government of India instruction No. 22 under FR-22).

In respect of (a) to (c) above certain conditions have also been stipulated namely i) both the senior and junior employees should belong to the same cadre and the post to which they have been promoted or appointed should be

identical under the same cadre; ii) the junior and the senior should have held identical scales in the lower post and held identical scale in higher post; iii) the anomaly should directly arise from application of relevant rule/order; iv) the stepping up of pay is admissible with reference to the 1st junior on only one occasion; if the junior concerned gets his pay stepped up at par with any of his junior then the pay of the senior may also be again stepped up; v) the junior should not have been drawing more pay than the senior from time to time in the lower post.

16. The applicants do not fall under any of the above categories.

17. In so far as (b) above is concerned, i.e. whether the applicants could be eligible for financial upgradation on fulfillment of the conditions attached thereto, in all the cases, it is to be seen whether the post held by the applicants as Sorting Assistant or Postal Assistant is one of Direct Recruit or promotion. In so far as Applicant in OA No. 702 of 2012 is concerned, he was first mailman (GLDS) and then mail guard promoted as postman and now a sorting assistant. The contention of the respondents is that the applicant's position as Mail guard is one promotion, postman is another. The recruitment rules for the post of Postal Assistant or Sorting Assistant provide for two modes of recruitment namely 50% by direct recruitment and 50% by promotion through a limited departmental competitive examination failing which the unfilled vacancies shall be offered to Gramin Dak Sevak of the recruiting divisions or units subject to certain conditions. The promotion is from the feeder grades as contained in Clause XII of the Recruitment Rules

which include Postman/Village Postman and Sorting Postman.

18. In all the cases under consideration, all the individuals have got their appointment as Postal Assistants/Sorting Assistants only under the promotion quota. ACP/MACP scheme takes into account such promotion for the purpose of working out the eligibility for financial upgradation to the scheme. As such in all the above cases notwithstanding the fact that junior is drawing more pay the applicants' case could not be brought within the parameters either for stepping up of pay or for grant of MACP. Hence, all the Original Applications are to be rejected. Ordered accordingly. No costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

✓(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”