

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

ORIGINAL APPLICATION No.294 OF 2012

TODAY, THIS THE ^{20th} DAY OF AUGUST, 2014

HON'BLE SHRI U. SARATHCHANDRAN ... MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN ... MEMBER (A)

Krishna Kumaran E, S/o late Govindan, Aged 59 years, Sub Postmaster, Othukkungal PO, Malappuram-676 528 R/at "Edapparuthy House", Kaippallikundu, Post Kottakal, Malappuram – 676503.

Applicant

(By Advocate Shri O.V. Radhakrishna, Sr. Mrs. Radhamani Amma)

Vs.

1. Superintendent of Post Offices, Tirur Division, Tirur – 676 104.
2. Postmaster General, Northern Region, Calicut – 673 011.
3. Chief Postmaster General, Kerala, Thiruvananthapuram.
4. Director General of Posts, Dak Bhavan, New Delhi – 110 001.
5. Union of India, represented by its Secretary, Ministry of Communications, New Delhi – 110 001.

... Respondents

(By Advocate Shri M.A. Aboobacker, Addl. Central Govt. Standing Counsel)

O R D E R

Hon'ble Shri Prasanna Kumar Pradhan, Member (A) :

This OA is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- i. To declare that the applicant is legally entitled to the 3rd Financial Up-gradation under the MACP Scheme on completion of 20 years service in the cadre of Sorting Assistant on and from 05.02.2011 without regard to his placement in the next higher grade on completion of 16 years under the TBOP Scheme which has to be set-off against the 2nd Financial Up-gradation under the MACP Scheme which would have been due to him on completion of 10 years of service in the cadre of Sorting Assistant with effect from 05.02.2001 as clarified in Annexure-A/6;
- ii. to issue appropriate direction or order directing the respondents to grant the applicant 3rd Financial Up-gradation in PB-II Pay Band of rs.9300-34800 with Grade Pay of rs.4200/- with effect from

05.02.2011 and to pay the arrears with interest within a time-frame;

- iii. to issue appropriate direction or order directing the respondents to grant the applicant 3rd financial upgradation in PB-II Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- w.e.f. 07.11.2008 and to pay the arrears with interest within a time-frame that may be fixed by this Tribunal;
- iv. to issue appropriate direction or order as deemed fit, just and proper in the circumstances of the case; and
- v. to allow the above OA with the cost to the applicant.

The facts of the case in brief are as follows:

2. The applicant joined the respondent organization initially in 1973 as ED Packer. Subsequently based on a departmental competitive examination, he was appointed as Postman on 04.09.1983 (Annexure-A/1). Subsequently, he appeared in the Departmental Competitive Examination for promotion as Postal Assistant and he was selected for appointment as Postal Assistant. Thereafter the applicant was deputed for training and on successful completion of training, the applicant was posted as Postal Assistant with effect from the date of successful completion of training with effect from 07.11.1988 (Annexure-A/2) as per Memo dated 05.02.1991 (Annexure-A/3). Later, on completion of 16 years service in the post of Postal Assistant the applicant was placed in the higher scale of pay of Rs.4500-125-7000 under the Time Bound One Promotion Scheme (TBOP for short) with effect from 07.12.2005 as per Memo dated 05.04.2005 of the respondent No.1 (Annexure-A/3). The applicant has been continuing as such. The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) issued OM No.35034/3/2008-Estt dated 19.05.2009 accepting the MACP Scheme with further modification to grant three Financial Up-gradations under the revised Scheme at intervals of 10,20 and 30 years of continuous regular service with effect from 01.09.2008. Thereafter, the Govt. of India, Ministry of Communications and Information Technology, Department of Posts issued Office Memorandum No.4-7/(MACPS)/2009-PCC dated 18.09.2009 withdrawing the Time Bound One Promotion Scheme introduced with effect from 30.11.1983 and the Biennial Cadre Review introduced with effect from 01.10.1991 extended to

other categories of staff from different dates with effect from 01.09.2008 and implementing the Modified Advanced Career Progression Scheme with effect from 01.09.2008 (Annexure-A/4). As per Annexure-I to Annexure-a/5, the MACP envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Bands and grade pay as given in Section 1 of Part A of the first Schedule of the Central Civil Services (Revised Pension) Rules, 208.

3. According to the applicant, he had completed 10 years service in the cadre of Postal Assistant in PB-I with Grade Pay of Rs.2400/- with effect from 07.11.1998 and therefore, he is entitled to be placed in the 2nd Financial Up-gradation in PB-I with Grade Pay of Rs.2800/- with effect from 07.11.1998 (5+10 years in the entry grade). However, the MACP Scheme is made applicable only with effect from 01.09.2008. The applicant had completed 20 years of regular service in the post of Postal Assistant with effect from 07.11.2008 (5+10+10 years in the entry grade) and therefore, he is entitled to get 3rd Financial Up-gradation in PB-II with Grade Pay of Rs.4200/- with effect from 07.11.2008. The applicant submitted a representation dated 20.03.2011 to respondent No.2 requesting to grant 3rd Financial Up-gradation on completion of 20 years of service under the Department in the cadre of Postal Assistant with effect from 07.11.2008 (Annexure-A/6). However, his claim was rejected stating that the claimant got one regular promotion and another Financial Up-gradation under the TBOP Scheme and hence, he would be eligible for the 3rd MACP on completion of 30 years from the entry grade or on completion of 10 years from the date of TBOP promotion, whichever is earlier (Annexure-A/7). According to the applicant, this is against the Scheme of MACP. The Postal employees except Drivers were brought under MACP Scheme which was made operational with effect from 01.09.2008. Therefore, the placement of the applicant under the next higher grade on completion of 16 years with effect from 07.12.2004 under the TBOP Scheme which has been withdrawn with effect from 01.09.2008 cannot be

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taken into account or considered for the purpose of granting 3rd Financial Up-gradation on completion of 20 years of service in the cadre of Postal Assistant. It has been made clear in Annexure-A/15 clarificatory letter dated 18.10.2010 that in case of a Lower Grade Official promoted to Postal Assistant cadre having got one promotion in Postal Assistant cadre before completion of 10 years of continuous service, it will be offset against one MACP and on rendering 10 years continuing service in the clerical grade/scale or on completion of 20 years of service from the date of entry would become eligible for 2nd MACP whichever date is earlier. The applicant completed 10 years from the date of promotion to cadre of Postal Assistant by 07.11.1998 and since the MACP Scheme became operational from 01.09.2008, the 2nd Financial Up-gradation under MACP Scheme was not available to the applicant. The placement of the applicant to the next higher grade under TBOP on completion of 16 years is to be offset against the 2nd Financial Up-gradation under MACP Scheme. The applicant completed 20 years from the date of promotion to the cadre of Postal Assistant by 07.11.2008 and became eligible for 3rd Financial Up-gradation under the MACP Scheme on and from that date. Therefore, the stand of respondent No.2 that the applicant would be eligible for 3rd MACP only on 04.04.2013 is totally unsustainable. Therefore, the respondents are compellable to grant 3rd Financial Up-gradation under MACP Scheme to the applicant on and from 07.11.2008 on his completing 20 years of continuous service from the post of Postal Assistant. Accordingly, he is entitled to the relief as sought for.

4. The applicant in his application has further stated that Illustration 28(A)(i) to Annexure-I to Annexure-A/4 Scheme makes it abundantly clear that if a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900/- gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400/- on completion of 8 years of service and then continues in the same grade pay for further 10 years without any promotion, then he would be eligible for 2nd Financial Up-gradation under the MACP Scheme in the PB-I in the Grade Pay of Rs.2800/-

after completion of 18 years (8+10 years). The same is the principles to be applied in the case of grant of 3rd Financial Up-gradation under the MACP Scheme. Therefore, the stand taken by the respondent No.2 in Annexure-A/7 is contrary to and collides with Annexure-A/4 Scheme. The denial of 3rd Financial Up-gradation under the MACP Scheme on completion of 20 years of continuous service in the grade of Postal Assistant is highly unreasonable, totally arbitrary and is grossly unjust. In Annexure-A/5 clarificatory letter also, the position is made clear and explicit. Therefore, the applicant cannot be denied the 3rd Financial Up-gradation under the MACP Scheme on completion of 20 years of regular service in the cadre of Postal Assistant. The applicant is subjected to hostile discrimination by denying the 3rd Financial Up-gradation under the MACP Scheme without any justifiable ground or valid reason. In the case of those persons who are not granted placement to the next higher grade under the TBOP Scheme for the reason of non-completion of 16 years service from the date of promotion as Postal Assistant prior to 01.09.2008 would get 2nd and 3rd Financial Up-gradations on completion of 10 and 20 years (10 +10+10) of service from the date of promotion as Sorting Assistant. The applicant is denied 3rd Financial Up-gradation due to him on completion of 20 years continuous service in the cadre of Postal Assistant solely for the reason that he was granted higher grade under TBOP Scheme on completion of 16 years of service in the cadre of Postal Assistant. It is discriminatory, unreasonable and is erroneous on facts and in law attracting the frown of Article 14 of the Constitution of India.

5. The respondents in their reply have admitted the fact that the applicant was initially appointed as GDS Mail Packer in 1973 and after qualifying in departmental examination was appointed as Postman with effect from 04.04.1983 which is the entry cadre in the Department of Posts. Thereafter, in the wake of examination for promotion, he was appointed as PA on 07.11.1998. Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) were the time bound promotion schemes available in the department of Posts up to



01.09.2008. In this scheme, an official completing 16 years in the cadre of Postal Assistant is placed in the next higher scale (TBOP). Accordingly, on completion of 16 years of service, the applicant was also granted the TBOP with effect from 07.12.2004. Assured Career Progression (ACP) was the time bound promotion scheme available for other Central Government servants. As the Department of Posts opted to continue the TBOP/BCR Scheme as per the demand from the staff side, the ACP Scheme was not implemented in the Department but the TBOP/BCR Scheme was in force. As such, both ACP and TBOP/BCR Schemes are to be treated as more or less the same.

6. The VI Pay Commission introduced the Modified Assured Career Progression Scheme (MACP) as the time bound promotion scheme for the Central Government servants. As per the MACP Scheme, there shall be 3 Financial Up-gradations counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial Up-gradation under this Scheme will be admissible whenever a person has spent 10 years continuously in the same grade. As the Scheme of MACP was found to be more beneficial to its employees, the Department of Posts switched over to the MACP Scheme with effect from 01.09.2008. The MACP Scheme assures 3 Financial Up-gradations to a Government servant on completion of 10, 20 and 30 years of service from the entry grade. In the case of the applicant, the entry cadre is Postman with effect from 04.04.1983. The applicant was promoted to the cadre of Postal Assistant with effect from 07.11.1988. That was the first regular promotion to the applicant. As the applicant completed 16 years in the Postal Assistant Cadre he was placed in the next scale as per the TBOP/BCR Scheme with effect from 07.12.2004. This was the second Financial Up-gradation of the applicant. Though TBOP/BCR Scheme was withdrawn and MACP was implemented in the Department also with effect from 01.09.2008 just like ACP was replaced by MACP in respect of other Central Government servants, the promotions earned under TBOP/BCR Scheme or ACP Scheme were not withdrawn. As the

applicant has already got 2 Up-gradations, he is eligible for the next Up-gradation, i.e., the 3rd Up-gradation only on completion of 30 years from the entry cadre or 10 years from the last promotion which is earlier. Accordingly the applicant would be eligible for the 3rd Up-gradation only in April, 2013, i.e., when he completes 30 years of departmental service. The applicant had submitted Annexure-A/6 representation for getting placement under MACP III on completion of 20 years of service in the SA cadre. As he was not eligible for the same as per the existing scheme, he was not considered for the next Financial Up-gradation under MACP (Annexure-A/7). As per the MACP Scheme, as clearly mentioned in Annexure-A/4, there shall be 3 Financial Up-gradations counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial Up-gradation under this Scheme will be admissible whenever a person has spent 10 years continuously in the same grade.

7. As the scheme of MACP was found to be more beneficial to its employees, the Department of Posts switched over to the MACP Scheme with effect from 01.09.2008. The applicant had completed 16 years of service as Postal Assistant and he had been placed under the TBOP on 07.12.2004 as per the scheme which was in vogue at that time. In the clarification given in Annexure-A/5 it is stated that a directly recruited Postal Assistant who got one Financial Up-gradation 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 service in TBOP grade pay or scale or combination of both, whichever is earlier. However, the Financial Up-gradation under MACPS cannot be conferred from a date prior to 01.09.2008 and such 2nd Financial Up-gradation 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. As the applicant



has already got 2 Up-gradations, he is eligible for the next Up-gradation/regular promotion or on completion of 30 years from the entry cadre whichever is earlier. Accordingly, the applicant would be eligible for the 3rd Up-gradation only in April 2013, i.e., when he completes 30 years of regular service in the department.

8. The contention of the applicant that the Up-gradation earned under TBOP/BCR Scheme should be ignored as the Scheme has been withdrawn is not at all tenable. As per the clarification under Annexure-A/4 last para, it is clarified that the Financial Up-gradation earned under ACP Scheme have to be taken into account while granting the Up-gradation under MACP. MACP is implemented replacing the ACP Scheme. In the Department of Posts, TBOP/BCR Scheme was in force in place of the ACP. The clarifications on ACP are equally applicable to TBOP/BCR Scheme also. Further, the applicant was promoted to the post of PA from 07.11.1988. On implementation of MACP Scheme, there was no relevance for TBOP/BCR Scheme. As such, the Up-gradation earned under TBOP/BCR Scheme have to be considered while granting Up-gradations under MACP. The respondents have further submitted that nowhere in the clarifications produced by the applicant that an official would be eligible for the 3rd Up-gradation on completion of 20 years of service in a particular grade. The case of the applicant is not the same as illustrated in 28(A)(i) of Annexure-A/5. In the case of the applicant, he had completed 10 years of service in the cadre of PA on 07.11.1998, i.e., prior to 01.09.2008, the date on which the MACP Scheme was implemented. Hence, the stand taken by respondent No.2 in Annexure-A/7 is in order and in full conformity with the provisions contained in Annexure-A/4. The applicant had got 2 Financial Up-gradations since his entry in the Department. Now, on completion of 30 years of continuous departmental service, he will be eligible for 3rd MACP. The contention of the applicant that he is eligible for 3rd Financial Up-gradation under MACP Scheme now is not true to the fact. The stand taken by respondent No.2 in Annexure-A/7 is not contrary to Annexure-A/4. There has not been any denial of 3rd Financial Up-gradation as



he is not eligible for the same now. The interpretation of the applicant is totally against the spirit of the MACP Scheme and the applicant is trying to mislead the Tribunal. What was clarified under Annexure-A/7 is applicable to the applicant and he would be eligible for the 3rd Up-gradation only after completion of 10 years of service from the second Up-gradation or after completion of 30 years of regular service from the entry grade whichever is earlier. The learned counsel for the respondents has further submitted that first clarification under Annexure-A/5 is applicable to officials whose entry cadre is Postal Assistant. It is true that such officials are eligible for 2nd Up-gradation on completion of 20 years of service. At the same time in the clarification, the first Up-gradation granted under TBOP Scheme has also been taken into consideration. In Para 14 of Annexure-A/4, it is clearly specified that while implementing the MACP Scheme, the difference in pay scales on account of grant of Financial Up-gradation under old ACP/TBOP/BCR Scheme of Department of Posts and under the MACP Scheme shall not be construed as anomalies. As such the stand of the applicant that Up-gradation under TBOP has to be ignored is not at all tenable. On one hand the applicant is relying on the clarification and on the other, he is refuting the same clarification. This shows the ambiguity on the part of the applicant itself.

9. The applicant submitted a rejoinder in which he submitted that he got further appointment as Postal Assistant with effect from 07.11.1988. The above appointment of the applicant as Postal Assistant is to be treated as fresh appointment for the purpose of MACP as his appointment as Postal Assistant was based on his merit in the Limited Departmental Competitive Examination and not based on his seniority in the cadre of Postman. Therefore, the entry grade of the applicant for the purpose of MACP shall be Postal Assistant and he is entitled to Financial Up-gradation on completion of 10, 20 and 30 years in the cadre of Postal Assistant. The Pay Band of Postal Assistant is PB-I with Grade Pay of Rs.2400/- . The applicant had completed 10 years of service in the cadre of Postal Assistant in the PB-I with Grade Pay of Rs.2400/- with effect from



06.11.1998 and therefore, he is entitled to be placed in the Financial Up-gradation in PB-I with Grade Pay of Rs.2800/- with effect from 06.11.2008 (10 years in the entry grade). However, the MACP Scheme is made applicable only with effect from 01.09.2008. The applicant had completed 20 years of regular service in the post of Postal Assistant with effect from 06.11.2008 (10+10 years in the entry grade) and therefore, he is entitled to get 2nd Financial Up-gradation in PB-II with Grade Pay of Rs.4200/- with effect from 06.11.2008. According to the applicant, he entered regular service as Postman with effect from 04.04.1983. The same cannot be treated as the entry cadre of the applicant for the purpose of MACP. The applicant was selected and appointed as Postal Assistant based on his merit in the Limited Departmental Competitive Examination and therefore, the appointment of the applicant as Postal Assistant cannot be treated as promotion for the purpose of MACP. The applicant submits that a similar issue has been considered by the CAT, Jodhpur Bench in OA No.382/2011 and connected cases and in its order in the above OA, the Tribunal has held that "when a Postman appears at the LDCE and gets selected as Postal Assistant, then it starts a new innings for him, and for the purpose of counting 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 Up-gradation on account of stagnation under the MACP Scheme." It has been declared in the above order that the applicants therein are entitled to TBOP/BCR and MACP benefits counting their service only from the date of their substantive appointment as Postal Assistant.

10. The respondents submitted an additional reply in which they submitted that the applicant was promoted as PA on 07.11.1988 on his being successful in the departmental examination which was his first regular promotion and not fresh appointment as stated by him. The entry cadre of the applicant is Postman with

effect from 04.04.1983 and not PA. The averment that the applicant got further appointment as PA with effect from 07.11.1988 is not true. It was a promotion with effect from 07.11.1988. On completion of 16 years of service in PA cadre, the applicant was placed in the next scale as per the TBOP Scheme with effect from 07.12.2004 which was the second Financial Up-gradation as per the relevant rules. As the applicant had already got a Financial Up-gradation, he is eligible for the next Up-gradation/regular promotion only on completion of 10 years of service from the date of 2nd Up-gradation or on completion of 30 years of service from the entry cadre whichever is earlier. The averment that the applicant is entitled to get 2nd Financial Up-gradation in PB-II with effect from 07.11.1988 is contrary to the Government of India instructions contained in Annexure-A/4 and hence denied in toto. According to the respondents, in case of MACP regular service commence from the date of joining of a post in direct entry grade on a regular basis. The date of direct entry of the official is with effect from 04.04.1983 as Postman. He was promoted as Postal Assistant on 07.11.1988. After completion of 16 years of service, he was placed in the next scale of pay under TBOP Scheme with effect from 07.12.2004 and this his 2nd Financial Up-gradation as per the extant rules. As he had already got two Financial Up-gradations, he is eligible for MACP III only after 30 years of service from the entry grade on 04.04.2013 or completion of 10 years of service from 2nd Financial Up-gradation (07.12.2014). Both these dates fall after his date of superannuation on 30.06.2012 and as such, he is not eligible for any further financial upgradation under MACP as he will no longer be in service when the 3rd MACP will be due to him.

11. The applicant has submitted a further rejoinder in which he submitted that the appointment of the applicant as Postal Assistant is to be treated as fresh appointment for the purpose of MACP as the appointment of the applicant as Postal Assistant was based on his merit in the Limited Departmental Competitive Examination and not based on his seniority in the cadre of Postman. Therefore,



the entry grade of the applicant for the purpose of MACP shall be Postal Assistant and he is entitled to Financial Up-gradation on completion of 10, 20 and 30 years in the cadre of Postal Assistant. The stand of the respondents that the entry grade of the applicant for the purpose of MACP is Mailman and the 1st MACP is to be set off as he was given promotion as Postal Assistant is against the declaration of law made by the CAT, Jodhpur Bench vide order dated 22.05.2012 in OA No.382/2011 and connected cases. The placement granted under the TBOP is not a promotion and therefore, the same cannot be treated as promotion for the purpose of MACP. Assuming without conceding even in case the appointment of the applicant as Postal Assistant is treated as promotion for the purpose of promotion, the applicant got only one promotion in his entire career and therefore, he is entitled to be granted Financial Up-gradation on completion of 20 years of service from the date of appointment as Postal Assistant.

12. Heard the learned counsel for the parties. While the learned counsel for the applicant practically highlighted the points made by him in the OA though in his subsequent rejoinder, he tried to take a different stand saying that his appointment as Postal Assistant should be taken as his initial appointment and not a promotion. However, during hearing he submitted that his Financial Up-gradation under TBOP should be set off against 2nd MACP benefit and therefore, he is entitled to get the 3rd MACP with effect from November, 2008, i.e., 20 years after his promotion as Postal Assistant.

13. The learned counsel for the respondents on the other hand, argued on the lines submitted in the reply statement and submitted that the applicant is eligible for the 3rd MACP benefit either 10 years from the date of getting the TBOP benefit or on completion of 30 years of service, whichever is earlier. Therefore, he is not entitled to the 3rd Financial Up-gradation under MACP from 2011 as he



contended, but would be eligible in 2013 only, but by that time he had retired on superannuation. Hence, he is not entitled to any benefit.

14. We have carefully considered the facts of the case and the pleadings made by the parties.

15. The applicant has taken two different stands in his application and his rejoinder. In his application, he admitted of having appeared in the LDCE for promotion as Postal Assistant, his second promotion under TBOP in 2007 and claim for the third Financial Up-gradation under the MACP by taking 20 years of regular service in the post of Postal Assistant, i.e., with effect from 07.11.2008. But subsequently, he tried to change his stand by saying that the appointment of the applicant as Postal Assistant should be treated as a fresh appointment for the purpose of MACP as his appointment was based on his merit in the LDCE and do not take into account his seniority in the cadre of Postman. Therefore, the entry grade of the applicant for the purpose of MACP should be reckoned on completion of 10, 20 and 30 years as Postal Assistant. However, it is clearly evident that he appeared for the LDCE for promotion to the cadre of PAs. Therefore, the appointment of the applicant as Postal Assistant should be considered as first promotion only. Subsequently the applicant was placed in the higher pay scale under the TBOP Scheme on completion of 16 years qualifying service in the PA cadre with effect from 07.12.2004.

16. After the MACP was introduced by the Postal Department with effect from 01.09.2008, the question therefore arises as to when the applicant is entitled to get his next Financial Up-gradation. According to the applicant, his Financial Up-gradation under the TBOP Scheme should be reckoned against the 2nd Financial Up-gradation and therefore, he should get the third Financial Up-gradation 20 years from the date his first promotion as Postal Assistant, i.e., from 07.11.2008. The respondents, on the other hand, have contended that that the applicant is entitled to the third Financial Up-gradation under MACP either on completion of

30 years of service or 10 years from the date of Financial Up-gradation under the TBOP in the present grade whichever is earlier. Therefore, he is entitled to the 3rd Financial Up-gradation only in April, 2013. But, since he retired on superannuation prior to that, he will not be eligible for any financial upgradation under MACP.

17. In this context, a reading of the MACP Scheme indicates as follows:

1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years' service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay."

In a subsequent clarification given vide OM No.22/22/209-CS.I(CR), dated 12.04.2010 in the matter of DR Assistants/stenographers it was stipulated as follows:

In supersession of this Department's O.M. of even number, dated the 12th January, 2010, the undersigned is directed to say that it has been further clarified by Establishment (D) Section of this Department that DR Assistants/DR Grade 'C' Stenographers who have got Non Functional Grade (VFG) in the grade pay of Rs.5,400/- would only be entitled for 3rd financial upgradation in the immediate higher grade pay of Rs.6,600 on completion of 30 years of continuous service or on completion of 10 years stagnation in a single grade pay, whichever is earlier. No further financial upgradation would be admissible to such officials."

18. The applicant himself has referred to clarificatory letter dated 18.10.2010 (Annexure-A/5) which is as follows:

<p>Eligibility of MACP to a promoted official to PA Cadre and having completed 10 years of service in PA cadre –</p> <p>It was stated by staff representatives that in some Circles, the officials who were promoted from the lower cadres to Postal Assistants and on completion of 10 years in the said Postal Assistant cadre are not considered for 2nd MACP on the plea that they have not completed 20 years of service from the date of entry in clerical cadre.</p>	<p>The attention of the Circles is drawn to Para No.28(A)(1) in the Annexure-I. In case of a lower grade official promoted to PA 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 continuing service in the clerical grade/scale or on completion of 20 years service from the date of entry would become eligible for 2nd MACP, whichever date is earlier. However, financial upgradation under MACPS cannot be conferred from a date prior to 01.09.2008 as the scheme became operational from this date only.</p>
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19. He has also referred to various illustrations in the MACP Scheme. But the said clarification clearly specifies that one has to get his financial upgradation under MACP on completion of 10, 20 or 30 years of regular service or from 10 years in a same grade pay without any promotion. It does not amount that only because he has got financial upgradation under TBOP after 16 years, he would be reckoned for financial upgradation after 20 years from the date of first promotion by offsetting TBOP promotion against one financial upgradation. Therefore, it is evidently clear that a person shall be entitled to 3rd financial upgradation only on completion of 30 years of continuous service or on completion of 10 years in a single grade pay whichever is earlier. Therefore, as has been contended by the respondents, the applicant is eligible to receive his 3rd financial upgradation in April 2013 taking into account his initial appointment on 04.04.1983 in the entry grade. He is not entitled to the 3rd financial upgradation in 2008 as has been contended by him in terms of the guidelines under the MACP Scheme. However, since the applicant will retire on superannuation in 2012 prior to the date when he is entitled to get the 3rd MACP benefit, no benefit will be admissible to him under MACP.

20. After careful consideration of the matter, we are of the view that the applicant has failed to establish his case and therefore, he is not entitled to any relief as sought for.

21. The OA is accordingly dismissed. No order as to costs.



(P.K. PRADHAN)
MEMBER (A)



(U. SARATHCHANDRAN)
MEMBER (J)

psp.