

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 385 of 2012

MONDAY, this the 17th day of December, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Govindan K.P.,
Aged 61, S/o.Keeran,
Sorting Assistant (Retd.),
Head Record Office, Kozhikode,
Residing at Panangottuchalil,
Chennamangallur Post,
Kozhikode : 673 602

... Applicant.

(By Advocate Ms. R. 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 Postmaster General,
Northern Region, Kerala Circle,
Kozhikode : 673 011
4. The Superintendent
Railway Mail Service, 'CT' Division,
Kozhikode : 673 032

... Respondents.

(By Advocate Mr. Suni Jacob Jose, SCGSC)

This application having been heard on 26.11.2012, the Tribunal on
17-12-12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant was appointed as Mailman on 21.01.1978. He was promoted as Mail Guard on 11.04.1980 and as Sorting Assistant (SA) on

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14.06.1983. On completion of 16 years of service as SA, he was granted financial upgradation under the Time Bound One Promotion (TBOP) Scheme on 22.06.1999. On completion of 26 years of service as SA, he was eligible for financial upgradation under the Biennial Cadre Review (BCR) Scheme. Meanwhile, the Modified Assured Career Progression (MACP) Scheme was introduced vide order dated 18.09.2009 with retrospective effect from 01.09.2008. He was granted the 3rd financial upgradation under the MACP Scheme on 01.09.2008. It was cancelled on finding that he was given 3 promotions already. His representation dated 12.01.2011 for financial upgradation under the BCR Scheme was rejected vide Annexure A-7 order dated 20.06.2011. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) Call for the service records of the applicant;
- (ii) Quash Annexure A-7 and declare that the applicant is entitled for placement under BCR Scheme with effect from his satisfactory completion of 26 years of qualifying service on 22.06.2009 with all consequential benefits including pension benefits;
- (iii) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case.

2. The applicant submitted that he was due for financial upgradation under the BCR Scheme with effect from 22.06.2009. His vested right for financial upgradation was taken away with retrospective effect from 01.09.2008 by Annexure A-3 Office Memorandum dated 18.09.2009, which is bad in law. He relied on the decision of the Hon'ble Supreme Court in *T.R. Kapur and Others vs. State of Haryana and Others*, 1986 SC 1092. The financial upgradation under the MACP Scheme was cancelled without giving notice. As per

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provisions contained in the MACP Scheme, he does not fall within its scope. But his right to be granted financial upgradation under the BCR Scheme on completion of 26 years of satisfactory service in the grade of Postal Assistant cannot be withdrawn by the respondents retrospectively with effect from 01.09.2008.

3. Per contra, the respondents submitted that granting the applicant financial upgradation under the MACP Scheme with effect from 01.09.2008 was erroneous as he had already got three financial upgradations/promotions before 01.09.2008. The BCR Scheme introduced with effect from 01.10.1991 stood withdrawn with effect from 01.09.2008 with the introduction of the MACP Scheme. Therefore, the applicant was not eligible for financial upgradation under the BCR Scheme.

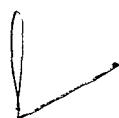
4. In his rejoinder statement, the applicant submitted that the benefit acquired under the existing rules cannot be taken away by an amendment with retrospective effect. Hence his acquired right to be considered for financial upgradation under the BCR Scheme, cannot be taken away by an Office Memorandum issued on 18.09.2009. Had the BCR Scheme been not withdrawn vide clause 4 of Annexure A-3, the applicant would have got financial upgradation under the BCR Scheme with effect from 22.06.2009. The respondents cannot deny financial upgradation under the BCR Scheme as well as the MACP Scheme to the applicant at the same time.

5. We have heard Mrs. R. Jagada Bai, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and

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perused the records.

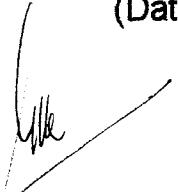
6. As per the averment of the respondents, officials completing 26 years in the cadre of Sorting Assistant were eligible for next higher scale under the BCR Scheme. The applicant had completed 26 years in the cadre of Sorting Assistant on 22.06.2009. He was eligible for financial upgradation under the BCR Scheme with effect from that date. However, the MACP Scheme was introduced meanwhile, with retrospective effect from 01.09.2008. The applicant admitted that he is not eligible for the 3rd financial upgradation under the MACP Scheme. He is aggrieved that he is not granted financial upgradation under the BCR Scheme for which he was eligible but for the introduction of the MACP Scheme. Both the BCR and the MACP Schemes are benevolent schemes. Under the BCR Scheme, he is eligible for financial upgradation. The vested right of the applicant for financial upgradation under the BCR Scheme cannot be denied on the strength of the order dated 18.09.2009 with retrospective effect from 01.09.2008 as per the ratio of the judgement of the Hon'ble Supreme Court dated 17.12.1986 in *T.R. Kapur and Others vs. State of Haryana and Others*, 1986 SC 1092. It is stated by the respondents that as the MACP Scheme was found to be more beneficial to its employees than the BCR Scheme, the Department of Posts switched over to the MACP Scheme with effect from 01.09.2008. The rationale for introducing the MACP Scheme is that it is more beneficial than the BCR Scheme. In the facts and circumstances of the instant case, the MACP Scheme simply takes away the benefit of financial upgradation available to the applicant under the BCR Scheme without giving him any benefit under the MACP Scheme, which is not the stated intention of the respondents. It is arbitrary to take away the

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existing right of the applicant in the guise of a more beneficial scheme which is not at all beneficial to him. The respondents have decided as per para 5 of the Annexure A-3, to continue the existing structured scheme for drivers as it is more beneficial to them. In the interest of justice and fairness, similar exemption is called for in the case of the applicant. Therefore, we allow this O.A as under.

7. The impugned order at Annexure A-7 dated 20.06.2011 is quashed. The respondents are directed to consider the applicant for grant of financial upgradation on completion of 26 years of service as Sorting Assistant on 22.06.2009 in the light of the above discussion and communicate the decision to the applicant by a reasoned order and take further appropriate action in the matter, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 17th December, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.