

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 04.07.2013

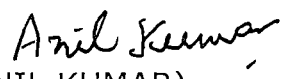
OA No. 149/2012

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Arguments heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.


(S.K. KAUSHIK)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NOS. 321/2011, 149/2012,
150/2012 & 188/2012

DATE OF ORDER: 04.07.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

(1). ORIGINAL APPLICATION NO. 321/2011

Jagdish Prasad Sharma S/o Shri Hari Shankar Sharma, aged about 57 years, R/o Near Khadi Samiti, Water Works Colony, Sikandra Road, Bandikui and presently working as Sub Post Master, Bandikui Mandi, Sub Post Office, Bandikui.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Information & Technology, Government of India, Dak Bhawan, Sansad Marg, Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Senior Superintendent of Post Offices, Jaipur (MFL) Division, Shastri Nagar, Jaipur - 302016.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(2). ORIGINAL APPLICATION NO. 149/2012

Anand Prakash Bhatnagar S/o Shri Atma Swroop Bhatnagar, aged about 61 years, R/o opposite Railway Station, Rajeev Colony, Shri Madhopur, District Sikar and retired on 30.11.2011 from the post of Sub Post Master Mandru, District Sikar.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Director, Postal Services (Head Quarter) Office of Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
4. Superintendent of Post Offices, Sikar Postal Division, Sikar - 332001.
5. Head Post Master, Srimadhapur Head Post Office, District Sikar - 332715.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(3) ORIGINAL APPLICATION NO. 150/2012

Mool Chand Kalawat S/o Shri Sona Ram, aged about 60 years, R/o C/o Tara Chand Mistri, Sed Ka Mohalla, Neem Ka Thana Town and presently working as Assistant Post Master, Neem Ka Thana Town, MDG Post Office Neem Ka Thana, District Sikar.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Director, Postal Services (Head Quarter) Office of Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
4. Superintendent of Post Offices, Sikar Postal Division, Sikar - 332001.
5. Head Post Master, Srimadhapur Head Post Office, District Sikar - 332715.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(4) ORIGINAL APPLICATION NO. 188/2012

Ram Bharoshi Sharma S/o Shri Mangi Lal Sharma, aged about 62 years, R/o Chobey Para, Karauli, and retired on 31.05.2010 as Assistant Post Master, LSG (NB), Jaipur R.S., Head Post Office, Jaipur.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Director, Postal Services (Head Quarter) Office of Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
4. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur.

... Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

The commonness of the grounds and the question law involved in all the four petitions allow us to be heard and disposed of these petitions by a common order. The facts here and there will not make difference as the question of law involved in these petitions is common. Therefore, all the Original Applications were heard together and disposed of by the common order. For the convenience, the facts of Original Application No. 321 of 2011 are taken.

2. By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act 1985, the applicant assailed the show cause notice dated 08th of June, 2011 and the order passed thereupon dated 01st July 2011 by which the benefit of second financial upgradation under MACP Scheme granted to the applicant with effect from 01.09.2008 has been withdrawn. He further sought directions in the nature of mandamus directing the respondents to comply with the memo dated 10th of June, 2010.

3. The applicant herein entered into service with the respondents as Extra Departmental Messenger. After passing prescribed examination, he was appointed as Group 'D' vide order dated 02nd of April, 1978. Thereafter, he was promoted as Postman after passing the departmental examination on 25th of May, 1981. For further promotion to the cadre of Clerk, the applicant appeared in the departmental examination and was declared passed, consequentially appointed as Clerk and posted to Alwar Postal Division vide memo dated 20th July, 1983 and later on transferred to Jaipur Division. As per the Time Bound One Promotion Scheme, the applicant was granted financial upgradation on completion of 16 years service vide memo dated 15th of November, 2002. After the recommendations of sixth Pay Commission and introduction of Modified Assured Career Progression Scheme (for brevity, MACP Scheme). Three financial upgradations are allowed to a Government employee on completion of 10, 20 and 30 years of service with effect from 01st September, 2008. On introduction of MACP Scheme, the respondent-department withdrew the earlier scheme vide memo dated 18th of September, 2009.

4. It is the case of the applicant that after his appointment in the clerical cadre as Postal Assistant in the year 1986, on completion of 16 years of service, he was granted next higher scale vide order dated 03rd November, 2002 i.e. the Pay Scale of Rs. 4500-7000. Thereafter on completion of 20 years of service in the year 2006, he become entitled for 02nd financial upgradation under the MACP Scheme and was considered rightly and granted second upgradation in the pay band of Rs. 9300-

34800 plus grade pay of Rs. 4200/- vide order dated 10th of June, 2010. The applicant was served with a show cause notice dated 08th of June, 2011 stating therein that the benefit under MACP-II allowed to the applicant was irregular and therefore the respondents proposed to withdraw the same. The applicant was granted time to file reply, which the applicant submitted on 20th of June, 2011. It is by impugned order dated 01st of July, 2011; the respondents withdrew the earlier order granting the benefit of financial upgradation to the applicant and also ordered recovery. Hence, the present Original Application.

5. Pursuant to the notice, respondents resisted the claim of the applicant by filing detailed written statement stating therein that the applicant entered into service as Group 'D' on 04th of June, 1978 and thereafter promoted as Postman with effect from 30th of May, 1981 and Postal Assistant with effect from 13th of October, 1986. He was granted benefit under the Time Bound One Promotion Scheme with effect from 03rd of November, 2002. Therefore, the applicant after his appointment as Group 'D' got two promotions and one financial upgradation, thus, he is not entitled for benefit which has wrongly been granted to him and subsequently by the impugned order, the same has been withdrawn. Para 3 and 4 of the written statement of brief facts filed by the respondents are relevant which reads as under:

"3. That the applicant was allowed 2nd MACPS on completion of 20 years service in PA cadre on 13.10.2006, w.e.f. 01.09.2008 vide memo dated 10.06.2010 (Annexure A/7), however as MACPS, he was not entitled for the same.

4. That as per Scheme of MACPS and clarification issued by the Department of Posts, vide letter No. 4-7/(MACP) 2009 PCC dated 18.10.2010 (Annexure R/1), the scheme allows only 3 financial up-gradations to the Employees including their regular promotions. The applicant had already availed three financial up-gradations prior to 01.09.2008. His first promotion was from Group 'D' to postman on 30.05.81, second from Postman to Postal Assistant on 13.10.1986 and third under Time Bound Promotion (TBOP) on 03.11.2002. Since the applicant has already availed three promotions, he was not entitled for any more financial up-gradation under MACPS. However, due to inadvertent mistake MACP-II was erroneously granted to applicant vide memo dated 10.06.2010 against provision contained under the MACPS. Photo copy of clarification dated 18.10.2010 is submitted herewith and marked as Annexure R/1."

6. The applicant has filed the rejoinder-affidavit reiterating what has been stated in the Original Application.

7. We have heard Shri C.B. Sharma, learned counsel for the applicants and Shri Mukesh Agarwal, Senior Central Government Standing Counsel, appearing on behalf of the respondents.

8. Shri Sharma, learned counsel for the applicant vehemently argued that the impugned show cause notice and subsequently final order dated 01st of July, 2011 withdrawing the benefit granted to the applicant is totally illegal, arbitrary and against the spirit of the MACP instructions issued by the Government of India, therefore, the same is liable to be set aside. To elaborate his submission, he submitted that the appointment of the applicant as Postman from Group 'D' cannot be treated as

promotion as his appointment from Group 'D' to Postman was subjected to the condition of fulfilling the eligibility and after qualifying the competitive examination, therefore, it cannot be said that he got a promotion as Postman and likewise his promotion from Postman to Postal Assistant was also cannot be termed as promotion because he was promoted as Postal Assistant after passing the competitive examination, therefore, the stand of the respondents that he got two promotions cannot be accepted. To buttress his submissions, he placed reliance upon the order passed by C.A.T., Jodhpur Bench in the case of Bhanwar Lal Regar vs. Union of India & Ors. (OA No. 382/2011) decided on 22nd of May 2012 and submitted that being identical case, the present Original Applications be also disposed of in the same terms.

9. Per contra, Shri Agarwal, learned counsel for the respondents, started from where the applicant stopped. He submitted that the order dated 22nd of May 2012 passed by C.A.T., Jodhpur Bench in the case of Bhanwar Lal Regar vs. Union of India & Ors. (OA No. 382/2011) has been stayed by the Hon'ble Rajasthan High Court at Jodhpur vide order dated 11th of January, 2013 on the Writ Petition No. 11336/2012 preferred by the Government of India, therefore, the applicant cannot be possibly taken any benefit from the said order. He further urged that the impugned order withdrawing the benefit which has wrongly been granted to the applicants is in consonance with the policy and instructions for grant of MACP benefit. Since the applicant has already got promotions, therefore, he has wrongly been granted the benefit vide memo dated 10th of June, 2010,

~~CONFIDENTIAL - NOT TO BE DISCLOSED TO THE PUBLIC~~

which was withdrawn after complying the principle of natural justice. To support his case, he also placed reliance upon the judgment dated 06th of September, 2011 passed by the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. vs. R. Santhakumar Velusamy & Ors. (Civil Appeal No. 5286-87 of 2005), reported in 2011 (3) SLJ 353, to the effect that once a person has been granted a financial upgradation though after passing a competitive examination then it will be treated as promotion. Lastly, he prayed that the Original Application be dismissed with costs.

10. We have considered the rival submissions and have gone through the pleadings available on record and the judgments cited by the learned counsel for the respective parties with their able assistance.

11. The question arises for our consideration is whether an employee who got financial upgradation / promotion after passing departmental examination is to be treated as fresh appointment and entitled for benefit under the MACP Scheme or to be treated as promotion and not entitled for further financial upgradation under the MACP Scheme. Admittedly, the applicant joined the respondent-department as Extra Departmental Messenger in the year 1974. He was appointed in Group 'D' on 04th of June, 1978. Thereafter, after passing the prescribed departmental examination, he was promoted to the post of Postman on 30th of May, 1981. Subsequently, after passing the departmental competitive examination, he was promoted from the post of Postman to the post of Postal Assistant on 13th of October, 1986. In this way, the applicant was granted two

promotions i.e. from Group 'D' to Postman and Postman to Postal Assistant. Third upgradation was granted under Time Bound One Promotion on 03rd of November, 2002. In this way, the applicant got three financial upgradations in his service career, which is admissible to a Government employee under old scheme and subsequently under the MACP scheme. The contention of the applicant is that his appointment from Group 'D' to Postman, Postman to Postal Assistant cannot be treated as promotion because he was appointed after passing the departmental competitive examination. We are afraid that this contention of the applicant can be accepted because limited departmental competitive examination is an internal policy for promotion of departmental candidate in accordance with the respective recruitment rules. Perusal of the relevant service rule makes it clear that the applicant was not appointed against the quota of direct recruitment. He was allowed to appear in the departmental competitive examination among the persons who are already in service and they were given benefit of promotion under separate quota only on the ground that if they passed the departmental examination. By no stretch of imagination, it can be held that passing the limited departmental examination for promotion is to be considered a fresh appointment on the higher post and also against quota of direct recruitment, because they are a class within a particular class, who got promotion on passing the departmental examination under relevant quota. Their appointment on passing the departmental examination is a promotion. Our view finds support from the judgment of the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs. R. Santhakumar Velusamy & Ors. (supra) where their

L

Lordships of the Hon'ble Supreme Court in para 21 has held as under: -

"21. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

- (i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.
- (ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.
- (iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense that is advancement to a higher pay scale.
- (iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a

cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though terms as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting a creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

12. Under the MACP Scheme, which was introduced with effect from 01.09.2008, a central Government employee is entitled for three financial upgradations on completion of 10, 20 and 30 years of service, which the applicant has already got. Therefore, the benefit, which was granted to the applicant vide memo dated 10th June, 2010 with effect from 01st September, 2008 has rightly been withdrawn by impugned order dated 01st of July, 2011.

13. With regard to the order passed by the C.A.T., Jodhpur Bench in the case of Bhanwar Lal Regar vs. Union of India & Ors.

(supra) relied upon by the applicant is concerned, the same has already been stayed by the Hon'ble Rajasthan High Court at Jodhpur, therefore, the applicant cannot get any benefit.

14. In the aforementioned background, we are of the considered view that the applicants fail and, accordingly, all the Original Applications are dismissed being devoid of merit. No order as to costs.


(S.K. KAUSHIK)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

kumawat

Copy given vide No. 666 to 667
dated 11-7-13

