

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 312/2012

Date of Order: 11.02.2016

CORAM

HON'BLE MR. JUSTICE M.S. SULLAR, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Prem Prakash Tiwari S/o Late Shri G.N. Tiwari aged about 61 years, resident of Ward No. 16, Jeen Mata Wali Gali, Near Subji Mandi, Shri Madhopur, District- Sikar retired on 30.06.2011 from the post of Postal Assistant, Shastri Nagar, Head Post office, Jaipur

.....Applicant

(By Advocate Mr. C.B. Sharma)

VERSUS

1. Union of India through its Secretary to the Government of Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur 302007
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur 302006

.....Respondents

(By Advocate Mr. V.D. Sharma)

ORDER

Per Hon'ble Ms. Meenakshi Hooja, Administrative Member

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 against the letter dated 09.02.2012 (Annexure A/1) issued by the Respondent No. 3 by which the applicant was informed that the competent authority has considered the representation against the non grant of financial up gradation under TBOP and BCR on after completion of 16 and 26 years of services and has been rejected on the ground that the DPC did not find him fit and further the Screening Committee did not find him fit for the benefits under the MACP Scheme, seeking the following reliefs :

“That entire record relating to the case be called for and after perusing the same respondents may be directed to allow the applicant placement in higher scales after completion of 16/26 years of service and thereafter 30 years service from the date of due i.e. 1991, 2001 and 01.09.2008 or from the date found suitable by quashing letter dated 09/02/2012 (Annexure A/1) with all consequential benefits.

That the respondents be further directed to extend benefits of revise retirement benefits after granting placement in higher scale with all consequential benefits.

2. When the case came up for consideration and hearing today, learned counsel for the applicant, submitted that the respondent Department introduced two schemes of financial up gradation namely Time Bound One Promotion (TBOP for short) and Biennial Cadre Review (BCR for short) in the year 1983 and 1991 respectively. The TBOP, as may be seen from letter dated 17.12.1983 from D.G. P&T, New Delhi (Annexure A/2) provides for financial up gradation after completion of 16 years of service. However, though the applicant completed 16 years of service on 17.02.1991 but he was denied the benefit of the same. It was further submitted that the applicant was also denied the benefits of the BCR Scheme on completion of 26 years of service as provided under the Scheme though he completed 26 years of service in the year of 2001 and no benefits of MACP Scheme which was introduced in the year 2008 have also been given though he completed the requisite 30 years of service in the year 2005 itself. In this context, counsel for the applicant submitted that the applicant was removed from service on 07.09.1992 under disciplinary proceedings but after the matter being considered in two rounds of litigation by the Central Administrative Tribunal and High Court and Apex Court, finally the Hon'ble Apex Court in Civil Appeal No. 496 of 2006 vide order dated January 13, 2006 (Annexure A/3), gave the following relief to the applicant :

“We have considered the facts of the case. In our view, it would be appropriate having regard to the facts of the case, not to subject the respondent to a further round of litigation as more than one decade has passed. In the circumstances, we direct that the respondent shall be reinstated in service within a period of four weeks from date. However, the respondent will not be entitled to any back wages. This order would meet the ends of justice.

3. In pursuance of the said order, the applicant was reinstated with immediate effect vide order dated 22/23.02.2006 (Annexure A/4) and another detailed order was thereafter issued on 20.10.2006 (Annexure A/5) by Sr. Superintendent of Post Offices, Jaipur City Division providing as under :

“Now, therefore the undersigned, keeping in view of the above, hereby orders that the suspension period from 10.05.1982 to 27.05.1982 and 20.09.1991 to 10.10.1991 be treated as his absent from duty, the principle of “No work No Pay” should be

followed in the cases and the said above period is ordered to be DIES NON, but the subsistence allowance so paid to the said Sh. Tiwari will not be recovered. So far as the intervening period from dismissal to reinstatement i.e. 25.12.92 to 25.2.2006 is concerned, it is ordered in the light of the order dated 13.1.06 of the Hon'ble Supreme Court of India that the intervening period be treated as the period spent on duty without back wages and the official should be notionally fixed in the cadre and scale without grant of actual financial benefits and further his service should be considered to be continuous for the purpose of pension and other retiral benefits."

4. Counsel for applicant contended that in view of the aforesaid order and his length of service the applicant was required to be considered for financial up gradation under TBOP Scheme after completion of 16 years of service and for BCR after 26 years of service and for MACP after completion of 30 years of service. However, as may be seen from Annexure A/13 letter dated 04.04.2011 (which is a detailed letter about the case of the applicant written by the Sr. Superintendent of Post, Jaipur City Division to the Chief P.M.G. Rajasthan Circle, Jaipur) it appears that instead of granting TBOP to applicant on completion of 16 years of service, his case was kept in sealed cover in the DPC held in Oct, 2006 and he was not granted TBOP in the DPCs held in 2008 because of pending of disciplinary case. The applicant was not given BCR because he had not been granted TBOP when his case was considered by DPC held in the year 2007, 2008 and 2009. On the other hand he further pointed out that in Annexure A/1 which is dated 09.02.2012, the applicant has been informed with regard to TBOP that the DPC considered his case in the meeting held on 13.05.1990, 10.06.1991, 01.07.1992 and further DPCs held in the year 2006-07, 2007-08 and 2008-09 which did not find him fit and accordingly, did not recommend for up gradation due to unsatisfactory service records. It has been further informed that the applicant's case was placed before the DPC held in July 2006, Jan 2007, July 2007, Jan. 2008, July 2008, Jan 2009 and July 2009 for financial up gradation under BCR Scheme on completion of 26 years of regular service but the DPC did not find him fit for financial up gradation. After introduction of MACP, the matter was placed before the Screening Committee held on 15.03.2010, 25.07.2011, 18.03.2010 and 25.07.2011 but Screening Committee did not recommend for financial up gradation. Counsel for applicant vehemently contended that this information in Annexure A/1 is contrary to the communications issued by the Department vide letter dated 03.08.2011 (Annexure A/17) and 29.08.2011 (Annexure A/18) wherein in Annexure A/17 the reasons for not granting 3rd financial up gradation under MACP has been mentioned that the TBOP and BCR (i.e. 1st and 2nd MACP) to be decided first and in order dated 29.08.2011 (Annexure A/18) wherein the

reasons for not granting 2nd MACP has been given that "the official has not been granted TBOP and BCR. The representation dated 30.12.2010 of the said official forwarded vide SSPOs Jaipur City Dn. Jaipur letter No. B 3-2/94/I/2008-09 dated 4.4.2011 is pending at Circle level. Accordingly in accordance with Directorate Posts, New Delhi letter No. 4-7/(MACPS)-2009- PCC dt. 18.09.2009 his case can be considered only after finalization of his aforesaid representations."

5. Counsel for the applicant therefore contended that the stand of the respondent is self contradictory because while in Annexure A/1 dated 09.02.2012, it has mentioned that his case for TBOP has been rejected by the DPC held earlier on 31.05.1990, 10.06.1991, 01.07.1992 and for DPCs held for 2006-07, 2007-08, 2008-09. Communication dated 03.08.2011 (Annexure A/17) and 29.08.2011 (Annexure A/18) clearly mention that the same are yet to be decided and on that basis he has not been granted the 3rd MACP. Moreover, as per A/13, and as admitted in the reply the case of the applicant for TBOP was kept in sealed cover by the DPC held in Oct, 2006 but this has also not been mentioned in Annexure A/1. He further submitted that no orders of DPCs pertaining to rejection of TBOP and BCR have been made available to him or placed on record and the Annexure A/1 dated 09.02.2012 being contrary to Annexure A/17 and A/18, the same deserve to be quashed and set aside and as his case has not been properly considered under the above three Schemes it requires to be reconsidered from the date of completion of his services of 16, 26 and 30 years under the TBOP, BCR and MACP Schemes respectively and prayed for the OA to be allowed.

6. Per contra Ld. Counsel for the respondents contended that the case of applicant has been duly considered by the DPCs for TBOP and BCR Scheme as mentioned in the communication dated 09.02.2012 (Annexure A/1). Further, as brought out in the reply the applicant was not found fit for TBOP by the DPC held on 01.05.1990 and 01.07.1992 and further his case was again considered by the DPC held during the month of October, 2006 but its decision was kept in sealed cover as applicant was under suspension w.e.f. 14.08.2006 to 23.01.2007. The case of the applicant was also considered for BCR together with officials of PA cadre who had completed 26 years of service during the period of 01.01.2006 to 30.05.2006 but it was intimated by Chief PMG- Rajasthan Circle vide letter

dated 15.09.2006 that "the case of Shri P.P. Tiwari for placing to the next higher grade under BCR cadre was not considered as he was not placed in the higher grade under TBOP Scheme so far" and the applicant was informed accordingly. Counsel for respondents also submitted that the case of applicant was also put before the Screening Committee for MACP from time to time but he was not found fit by the Screening Committee for his financial up gradation. The applicant is retired on 30.06.2011 and his various representations dated 30.12.2010, 08.03.2011, 08.04.2011, 03.06.2011 and one months notice for demand of justice dated 09.09.2011 were duly considered and decided by the Respondent No. 2 and intimated by Respondent No. 3 vide letter dated 09.02.2012 (Annexure A/1). Counsel for the respondent was also referred to the chequered history of the applicant as brought out at para 4.1 to the reply wherein the applicant remained dismissed from service from 25.12.1992 to 25.02.2006 but he was treated on duty without back wages in view of the Hon'ble Supreme Court order dated 13.01.2006 (Annexure A/3). Earlier also the applicant remained suspended from 10.05.1982 to 27.05.1982 and 20.09.1991 to 30.10.1991 and again remained from 14.08.2006 to 23.01.2007 and these periods were treated as Dies non. Counsel for respondent also submitted that though in Annexure A/17 dated 03.08.2011, it has been mentioned that the applicant was not selected for 3rd financial up gradation under MACP Scheme because of TBOP and BCR are to be decided first and at Annexure A/18 dated 29.08.2011 it has been inter alia mentioned that the official has not been granted TBOP and BCR and his case for 2nd financial up gradation under MACP can be only considered after finalization of his representation dated 30.12.2010 but later vide letter dated 09.02.2012 (Annexure A/1), his representations and notice for demand of justice have been decided and he has not been found fit by the DPC and Screening Committee for TBOP, BCR as well as for 2nd and 3rd MACP. Counsel for respondent also submitted that the applicant has not challenged any of the DPC proceedings and accordingly on all these grounds he prayed for the dismissal of the OA.

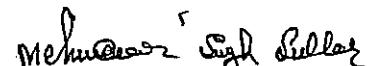
7. Considered the aforesaid contentions and perused the record Annexure A/1 dated 09.02.2012 states that the case of the applicant for financial up gradation under TBOP was placed before DPC held on 31.05.1990, 10.06.1991, 01.07.1992 and further DPCs held for the year 2006-07, 2007-08 and 2008-09 but the DPC did not find him fit and accordingly did not recommend for up gradation under TBOP due to unsatisfactory service record. With

regard to financial up gradation under BCR Scheme, it has been mentioned that the case of applicant was placed before the DPC held in July 2006, January 2007, July 2007, January 2008, July 2008, January 2009 and July 2009 but the DPC did not find him fit for up gradation. However, it is seen that while the Annexure A/1 dated 09.02.2012 states that the applicant was not found fit by the various DPCs for TBOP and BCR but quite to the contrary, it has been mentioned in A/17 dated 03.08.2011 that while considering his case for 3rd MACP, the review Screening Committee in its meeting held on 05.07.2011 did not select the applicant for 3rd MACP for the reason that TBOP and BCR (i.e. 1st and 2nd MACP) to be decided first. Thus there is apparent self contradiction in the information provided in Annexure A/1 dated 09.02.2012 where it is stated that the DPCs have already considered and rejected the applicant case for TBOP and BCR, and Annexure A/17 dated 03.08.2011 which states that they are to be decided before grant of 3rd MACP and further the reply also admits the position that the recommendation of the DPC held in Oct 2006 for the applicant for TBOP has been kept in sealed cover. From the above it can be inferred that the case of the applicant has not been considered with proper application of mind for grant of TBOP, BCR and MACP benefits and the communications issued by the respondents bring out a patently self-contradictory position.

8. In view of the above analysis, the OA is allowed and Annexure A/1 dated 09.02.2012 is set aside and the respondents are directed to reconsider the case of the applicant for grant of financial up gradation/benefits under TBOP, BCR and MACP under the Schemes afresh, from the dates the applicant is found suitable by the DPC/Screening Committee, in accordance with the parameters laid down under the Schemes. The respondents are further directed to carry out the exercise at the earliest but definitely within a period of four months from the date of receipt of this order.

9. Accordingly the OA is allowed as above, with no order as to costs.


(Ms. Meenakshi Hooja)
Member (A)


(Justice M.S. Sullar)
Member (J)