

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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Pronounced on: 31.7.2015 .

Reserved on : 28.07.2015

I. OA. No. 060/01117/14

**CORAM: HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A.AGRAWAL, MEMBER(J)**

1. Vidyanand, aged about 58 years, Mail overseer, Head Office, Bhiwani District, Bhiwani.
2. Satya Pal Postman aged about 54 years, Head Office Bhiwani, District Bhiwani.
3. Om Parkash Yadav aged about 59 years, Postman, Head Office Bhiwani District, Bhiwani.
4. Uggarsain, aged about 58 years, Mail overseer, Head Office Charkhi Dadri, District Bhiwani.
5. Umed Singh Pehal, aged 60 years, Ex-Mail overseer, Head Office, Bhiwani District, Bhiwani.
6. Ishtpal aged 61 years, Ex.Postman Head Office Bhiwani District, Bhiwani.
7. Umed Singh Gothwal, aged 61 years, Ex. Postman, Head Office, Bhiwani District, Bhiwani.

.....Applicants

BY ADVOCATE: SH. RAJESH KHANDELWAL

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Department of Information and Technology, New Delhi.
2. Chief Postmaster General, Haryana Circle, Ambala.
3. Superintendent of Post Offices, Bhiwani Division, Bhiwani.

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.....Respondents

BY ADVOCATE: **SH. B.B. SHARMA**

II. OA NO. 060/01153/2014

1. Babu Lal Tanwar aged 64 years, Retd. SPM M.S. Bhiwani.
2. Chet Ram, aged 62 years, Retd. P.A. Jhoju, District Bhiwani
3. Har Bhagwan, aged 61 years, SPM Kharak Kalan
4. Rattan Pal Lamba, aged 59 years, SPM Bus Stand, Bhiwani
5. Khajan Singh, aged 59 years, PA Chandigarh Dadri HSG-II

.....Applicants

BY ADVOCATE: **SH. RAJESH KHANDELWAL**

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Department of Information and Technology, New Delhi.
2. Chief Postmaster General, Haryana Circle, Ambala.
3. Superintendent of Post Offices, Bhiwani Division, Bhiwani.

.....Respondents

BY ADVOCATE: **SH. SANJAY GOYAL**

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. Both these OAs have been filed seeking similar relief regarding date of grant of 2nd /3rd MACP and hence these are disposed of



through a common order. However, for convenience, the facts are taken from OA No. 060/01117/14 wherein relief has been sought as follows:-

- (i) Quash/set aside the impugned order dated 10.07.2012 (Annexure A-1) qua the applicants.
- (ii) Order granting 3rd MACP dated 04.03.2011 may be restored and upheld alongwith all consequential benefits.

2. It has been stated in the OA that the applicants joined the service of the respondent department on different dates and are working as mail overseer/postman and some of them have retired on superannuation from these posts. After completion of 20 years of service, they were granted 2nd upgradation under MACP vide order dated 11.8.2010, but by impugned order dated 24.9.2014, the second MACP was partially modified and some recovery regarding alleged overpayment had been ordered.

3. In the grounds for relief, it has inter alia been stated as follows:-

- (i) There was no legal reason or cause whatsoever with the respondent department to modify the second grant of MACP into third MACP and recover the second MACP without any prior notice or hearing to the applicants. Cases of the applicants are covered by the judgement of Hon'ble High Court of Delhi dealing with the same issue in WP (C) 4131 of 2014 titled as Union of India and others versus Sakil Ahmad Burney which was decided on 05.08.2014 (Annexure A-4). Therefore, the impugned order dated 24.09.2014 cannot be sustained in the eyes of law and liable to be set aside.

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- (ii) That as far as recovery of the second MACP is concerned, the same cannot be held in view of full bench judgement of Punjab and Haryana High Court Chandigarh in Budh Ram's case reported in 2009(3) SCT 333 and applicants are protected from illegal recovery and they are even entitled to retain the same with them as per law.
- (iii) That the applicants who have retired and have deposited the amount are also legally and factually entitled for refund of the same and respondents are liable to refund the illegal recovery from the applicant.
- (iv) That it is a settled law that without any notice or reasonable opportunity for hearing no adverse order by judicial or quasi-judicial institution but the same has been done in the present case and rule of natural justice requires prior hearing also in view of judgement of Hon'ble DB reported as 2008(2) RCR (Civil) Page No. 54.
- (v) That even the applicants have completed their 30 years of service and as per respondent's own Rules/instructions covering the case of MACP Scheme. The applicants are legally and factually entitled to receive the 3rd MACP but the respondents have wrongly converted second MACP into third MACP and the impugned order is not sustainable in the eyes of law.

4. In the written statement filed on behalf of the respondents, it has been stated that the Department of Posts introduced One Time Bound Promotion Scheme for the staff belonging to basic grades in Group 'C' and Group 'D' who had completed 16 years of service in that grade (Annexure R-1). The Biennial Cadre Review Scheme came into force w.e.f. 01.10.1991 and benefitted staff who had completed 26 or more years of service (Annexure R-2). The Modified Assured Career

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Progression Scheme (MACPS) came into operation w.e.f. 01.09.2008 (Annexure R-3). As per the MACPS, staff working in Group 'C' and 'D' were entitled to three financial upgradations counted from the direct entry on completion of 10, 20 and 30 years respectively and three financial upgradations were assured to the persons who could not get their regular promotion.

5. It is further averred that a meeting of the Screening Committee was held on 09.07.2010 to consider the cases of financial upgradation of 11 officials of Postman cadre in Bhiwani Division under the MACPS introduced w.e.f. 01.09.2008 vide Director General Post letter No. 4-7/MACPS/2009-PCC dated 18.09.2009 further circulated vide Circle Office Ambala letter No. EB/EM-1913/VIth PC/III dated 24.09.2009 (Annexure R-3) and after receipt of approval of the minutes from CPMG Haryana Circle Ambala vide letter No. Staff/MACP/Gr.D/Bhiwani dated 09.08.2010 (Annexure R-4) necessary orders regarding placement of officials in next higher grade were issued accordingly vide SPOs Bhiwani Memo No. B-2/MACPS/20 years/Postman Cadre/2010 dated 11.08.2010 (Annexure A-2). However, when pension case of Sh. Ishtpal retired Postman Bhiwani HO was submitted to DAP Ambala, a discrepancy in the date from which the

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financial upgradation was granted to the official was noticed by the DAP Ambala and SPOs Bhiwani was informed in this regard vide letter No. Pen/PC-99/A/5108 dated 16.11.2011 (Annexure R-5) wherein it was pointed out that the said Sh. Ishtpal entered in the Department w.e.f. 31.08.1981 as Group D, was promoted as Postman w.e.f. 10.06.1988 and granted OTBP in Postman cadre w.e.f. 22.06.2004. Therefore, the official had already been granted two promotions i.e. Postman & OTBP and as such 2nd MACP was not due w.e.f. 01.09.2008. The DAP Ambala therefore ordered recovery of the over payment of pay and allowances to Sh. Ishtpal w.e.f. 01.09.2008 and in compliance, over payment of Rs. 46,053 for the period 01.09.2008 to 01.2012 to 01.2012 was credited into the head under UCR on 13.02.2012 at Bhiwani HO (Annexure A-3).

6. It is further stated that similar discrepancies were also noticed in the case of grant of financial upgradation in respect of some other officials whose cases were also considered in the DSC meeting held on 09.07.2010. Therefore, a review Screening Committee meeting was held on 01.08.2014 (Annexure R-6) that recommended the financial upgradation from the revised date/correct due date and after obtaining approval of the Circle Office Ambala vide letter dated 08.09.2014 necessary orders were issued by SPOs, Bhiwani, vide letter dated

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24.09.2014 (Annexure A-1). Besides, the applicants had not filed any representation or letter to the authorities in respect of their alleged grievance and as such, the OA is liable to be dismissed in view of Section 20(1) of Administrative Tribunals Act, 1985 which provides that "A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed all remedies available to him under the relevant service rules as to redressal of grievances".

7. It is also stated that although the applicant has claimed that there has been a violation of principles of natural justice, but the action of the respondents is based on a policy decision and the Courts would normally not interfere in such decisions. The Hon'ble Supreme Court has reiterated time and again that the doctrine of natural justice cannot be imprisoned within the strait-jacket of rigid formula and its application would depend upon the scheme and policy of the statute and relevant circumstances involved in a particular case. Reference is made to **Union of India Vs. P.K. Roy and Ors., AIR 1968 SC 850, Channabasappa Basappa Happali Vs. State of Mysore, AIR 1972 SC 32 and Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pandey and Ors. 2001(1) SCC 182**. Further in the case of **S.K. Kapoor Vs. Jag Mohan, AIR 1981 SC 136**, the Apex Court has observed that where on admitted

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or undisputed fact, only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue the writ to compel the observance of the principles of natural justice as it would amount to issuing a futile writ. Similarly, in **State of U.P. Vs. O.P. Gupta, AIR 1970 SC 679**, the Supreme Court has observed that the courts have to see whether non-observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice. Thus, it can be held that even if in a given case, there has been some deviation from the principles of natural justice but which has not resulted in grave injustice or has not prejudiced the cause of the delinquent, the Court is not bound to interfere.

8. Besides, it is well settled that a factual mistake can be rectified as held in **Jagdish Prajapat Vs. The State of Rajasthan and Ors., 1998(2) ATJ P-286**. It has been held in **Anand Prakash Vs. State of Punjab, 2005(4) RSJ 749** and **Raj Kumar Batra Vs. State of Haryana, 1992(1) SCT 129** that as and when a mistake is detected, the employer is within its right to rectify the mistake. In **Chandigarh Administration Vs. Narang Singh, JT 1997(3) SC P-536**, it has been held that a mistake can be corrected at any time. In similar circumstance, the Apex Court in the case of **G. Srinivas Vs. Government of A.P. &**



Ors. reported in 2005(13) SCC 712 held that any order passed by mistake or ignorance of relevant fact can be reviewed by the authority concerned.

9. No rejoinder has been filed on behalf of the applicants in either of these OAs.

10. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants in both these OAs stated that the impugned orders deserved to be set aside as these had been issued without any opportunity of hearing having been afforded to the applicants and alleged over payment had been ordered to be recovered.

11. Sh. B.B. Sharma, learned counsel for the respondents drew attention to the content of the written statement. He stated that the applicants had not filed any representation regarding their grievances and had straightaway rushed to the Tribunal. He further stated that the error which had been committed regarding dates for grant of financial upgradation under MACPS had been corrected through the impugned orders and there was no irregularity in the same. He admitted that no show cause notice/personal hearing had been afforded to the applicants in the OA before issuing the rectification order, but stated that since the rectification had been carried out keeping in view the clear-cut directions

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under the MACPS, even if an opportunity of hearing would have been allowed, the end result would have been no different.

12. Sh. Sanjay Goyal, learned counsel for the respondents in OA No. 060/01153/14 endorsed the arguments put forth by Sh. B.B. Sharma and also stated that the OA had been filed beyond limitation as the impugned order was dated 10.07.2012 while the OA had been filed on 22.12.2014. No application for condonation of delay had also been filed in the matter.

13. We have given our careful consideration to the matter and perused the material on record regarding grant of financial upgradation under MACPS to the applicants. It is very clear from the various orders filed on behalf of the applicants as well as respondents that initially the dates adopted for allowing the third financial upgradation were incorrectly fixed ignoring the principle that third MACP would be available to those who have completed 30 years of qualifying service or rendered more than 10 years in the same cadre/grade. Hence there is no defect in the rectification order issued on 24.09.2014 that is the subject of OA No. 060/01117/14 and order dated 10.7.2012 that is the subject of OA No. 060/01153/14. Although show cause notice/personal hearing was not afforded to the applicants before these orders were passed, but

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even if such notice had been issued, the end result would have been no different as the respondent department was merely correcting the error in fixing dates regarding grant of financial upgradation under MACPS in respect of the applicants. There being no defect in the impugned orders, the OAs are rejected. No costs.

14. A copy of this order be placed in the file regarding OA No. 060/01153/14 as well.



(RAJWANT SANDHU)
MEMBER(A)



(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 31-7-2015
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