

**Central Administrative Tribunal
Principal Bench**

**OA No.1076/2015
MA No.990/2015**

Reserved on : 14.03.2016
Pronounced on : 18.03.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Subhash Chandra Mathur
Aged about 61 years,
S/o Late Bankey Lal
Retd. PA/Office Assistant, Group 'C',
Divisional office, Delhi East,

R/o D-137, Laxmi Nagar,
Delhi 110 092. Applicant.

(By Advocate : Shri R. C. Gautam)

Versus

1. Union of India through
Director General, Ex-officio Secretary (Posts),
Ministry of Communication and I.T.,
Govt. of India, Department of Post,
Dak Bhawan, Sansad Marg,
New Delhi-01.
2. The Chief Post Master General
Delhi Circle,
New Delhi 110 001.
3. The Senior Superintendent of Post Offices,
Delhi East Division,
Delhi 110 051.
4. The General Manager (Finance)
Postal Accounts,
Delhi 110 054. ... Respondents.

(By Advocate : Ms. Bhaswati Anukampa)

: O R D E R :

Ms. Nita Chowdhury, Member (A) :

The present OA has been filed by the applicant essentially with regard to the benefit of his 2nd and 3rd MACP benefits and the

recovery of benefits extended to him during the service at the time of his retirement.

2. The facts in brief are that Shri S. C. Mathur, the applicant, was an employee of the Department of Posts serving under the Chief Post Master General, Delhi Circle, New Delhi.

2.1 The facts as admitted by the respondents also are that Shri S. C. Mathur, joined service as a Packer on 25.05.1973 in Group 'D' post and after clearing a departmental examination was posted as Postal Assistant, Group 'C' on 11.07.1982. Thereafter, while serving the department, he ultimately retired on 31.08.2014.

2.2 After introduction of TBOP Scheme w.e.f. 30.11.1983, the applicant got financial upgradation in the pay scale of Rs.4000-6000 w.e.f. 11.07.1998 and his pay scale was revised in Pay Band-1, Rs.5200-20200 with Grade Pay of Rs.2800 on the implementation of VIth CPC recommendations w.e.f. 01.01.2006, and further after introduction of BCR Scheme w.e.f. 01.10.1991, on completion of further ten years he became due for financial upgradation from 11.07.2008 in the next higher pay scale, i.e., PB-2 Rs.9300-34800 with Grade Pay of Rs.4200.

2.3 The applicant was found suitable for financial upgradation by the DPC held for this purpose and vide Order No.B-3/2/2 dated 30.03.2009 (Annexure A-3) he was granted financial upgradation in the Grade Pay of Rs.4200/- PB-2 in the pay scale of Rs.9300-34800 w.e.f. 01.09.2009 while it should have been w.e.f. the date he

completed ten years from the grant of financial upgradation under TBOP Scheme.

2.4 Later on, a Clarification dated 18.09.2009 with regard to admissibility of the Scheme was issued vide OM dated 18.09.2009 in MACP Scheme, 2008, wherein in paras 4 & 8 it has been clearly stated, which reads as under:-

“4. The scheme of Time Bound One Promotion introduced with effect from 30.11.1983 and the Biennial Cadre Review introduced with effect from 01.10.1991 and extended to other category of staff subsequent dates shall stand withdrawn with effect from 01.09.2008.”

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“8. Before initiating action for placing the eligible employees under MACPs, action may be taken to finalise all TBOP/BCR placement due for the period till 31.8.2008 by conducting meeting of Screening Committee and issuing necessary orders.”

In light of the clarifications above, the said benefits of TBOP Scheme were withdrawn from the applicant.

2.5 Vide File No.Pen/CR-II/PC-82/C.No.-3406/2014 dated 24.06.2014, the Accounts Officer (Pension) Section has returned the whole pension papers of the applicant to the SSPOs, Delhi East Dn., Delhi intimating that the applicant is not eligible for grant of 3rd MACP. The said order reads as follows:-

“Sub : Pension case of Sh. Subhash Chander Mathur, PA to be retired on 31.08.2014.

Kindly refer to your office letter No.C-I/Pen-43/SC Mathur dtd. 20.05.2014 on the subject cited above. The whole pension papers along with Service Book is returned herewith with the remark that the official is not eligible for grant the MACPs-IIIrd on 01/09/2008 as per MACPs order because he had already got three promotions. The official has joined as Packer on 25.05.1973 in the scale (196-232) and got 1st Promotion as Post Man on 25.10.1976 in the scale of (210-270) later on promoted as PA on 11/07/1982 in the scale of

(260-480) and got 3rd financial upgradation under TBOP Scheme w.e.f. 11.07.1998 in the scale of (4500-7000) further he was promoted under MACPs-IIId on 01/09/2008 with the Grade Pay of 4200/-. Please expedite the reason why he was got four promotions as per MACPs order. It is also noticed that the MACPs-III order copy of the official has not been pasted in the Service Book.

Therefore, you are requested to re-examine the whole case & recalculate the pensionary benefits accordingly & re-submitted with revised pension papers.”

Vide Corrigendum dated 14.07.2014, the following was sent to the applicant:-

“CORRIGENDUM

In light of objection raised by AAO (Inspection), Posts & Telecommunications Audit Office, Delhi dated 24.6.14, the 3rd financial upgradation under MACPs granted to the official Sh. S. C. Mathur (at Sl. No.104), O/Asstt., Divisional office, Delhi 110 051 upgrading his grade pay of Rs.4200/- in PB-II vide this office memo of even number dated 15.12.10 is hereby withdrawn.

All the remaining entries hold good.”

2.6 Subsequently, the applicant made an appeal against the aforesaid withdrawal of financial upgradation granted to him under TBOP Scheme on 11.07.1998 and received a denial to his representation/application vide letter No.B-9/4/2/PA dated 18.12.2014. Hence, the applicant has put forth his grievances against the withdrawal of financial upgradation to him despite his representation dated 11.11.2014. He has also filed this OA against the denial of benefits/snatching away of benefits previously awarded to him vide orders dated 24.06.2014, 14.07.2014 and 25.07.2014, without having been given any show cause notice by the respondents, and against the denial of his claims by the SSPO, Delhi, he has pointed out that the SSPO neither gave a reasoned reply to his representation, but in fact proceeded to deduct the

same from his gratuity at the time of retirement. The amount deducted from his final payment at the time of retirement is Rs.2,63,026/-. The relief sought for by the applicant are as follows:-

“8.1 to allow this OA and quash the impugned orders (i) No.Pen./CR.II/PC-82/C.No.3406/2014 dated 24.06.2014, (ii) No.B-9/4/2 dated 14.07.2014 & (iii) No.Accts/Misc./SC mathur/2014 dated 25.07.2014 and (iv) No.B-9/4/2 dated 18.12.2014 (Ann.A-1 colly) and declare that the petitioner is entitled for 2nd and 3rd financial upgradations under MACP Scheme at GP Rs.4200/- & GP Rs.4600 w.e.f. 01.09.2008 or alternatively Financial upgradation under MACP Scheme w.e.f. 01.08.2012 in GP Rs.4600/- on completion of 30 years by him on the same post viz., Postal Assistant on 11.07.2012 and he is entitled for refund of the sum of Rs.2,63,026/- the difference of arrears as result of grant of above benefits with interest @18% compounded monthly; and consequently.

8.2 to direct the respondents to release 2nd & 3rd Financial Upgradations under MACP Scheme at GP Rs.4200/- & GP Rs.4600/- w.e.f. 01.09.2008 or alternatively Financial Upgradation under BCR Scheme in GP Rs.4200/- w.e.f. 11.07.2008 and 3rd Fnancial Upgradation under MACP Scheme w.e.f. 01.08.2012 in GP Rs.4600/- on completion of 30 years by him on the same post i.e. Postal Assistant on 11.07.2012 and to refund the sum of Rs.2,63,026/- with interest @18% compounded monthly to the petitioner; and”

3. The respondents in their reply have not disputed the narration of facts on the factum of applicant's appointment, promotion and pay scales. The respondents in their reply have maintained that the official was granted 3rd financial upgradation under MACPs w.e.f. 01.09.08 vide memo dated 15.12.10 (Annexure RR-I). But AAO (Inspection), Posts & Telecommunications Audit Office, Delhi raised objection (Annexure A-1 of the OA) that as the official has already got three promotions, how the fourth promotion (upgrading to grade pay of Rs.4200) was given to the official. Hence the case was rechecked and the 3rd financial upgradation granted to the applicant has been withdrawn by the SSPO, Delhi East

Division vide memo dated 14.07.2014 (Annexure A-1 of OA). As the ex-official has already been granted three promotions/financial upgradation in the entire service from the date of entry in the Department, as such he is not entitled for any further financial upgradation under MACP Scheme. Since the official was due to retire from Government Service on 31.08.2014 on attaining the age of superannuation, an overpayment of Rs.2,63,026/- has been recovered from the DCRG vide memo dated 14.08.2014 issued by O/o G.M. Finance, Postal Accounts Office, Delhi 110 054. The representation/appeal preferred by the applicant against the said withdrawal of financial upgradation granted under BCR and MACPs has been considered by the competent authority but was rejected vide letter dated 18.12.2014 as per rules on the subject.

4. During arguments of the OA, the applicant sought to limit his objections to withdrawal of benefits/financial upgradation given to him during the course of his service but which was suddenly withdrawn from him on 14.08.2014 while his retirement date on reaching the age of superannuation was 31.08.2014. The Department of Posts admits that the official was given financial upgradation under Biennial Cadre Review (BCR) Scheme w.e.f. 01.01.2009. But it is denied that the said financial upgradation was due to him on 11.07.2008. It is also admitted that the official was granted 3rd financial upgradation under MACP Scheme w.e.f. 01.09.2008, but due to the objections raised by the AAO (Pension), DA (P), Delhi 110 054 that the applicant is not eligible for any financial upgradation under MACPs as he has already got three promotions in his entire service, the 3rd MACP has been withdrawn.

It is further submitted that the financial upgradation granted in Rs.4200/- Grade Pay was objected by the AAO (Pension), O/o DA (P), Delhi 110054 on the ground that the applicant has got all the three promotions/financial upgradation in his entire service, and, therefore, he is not eligible for any further financial upgradation under MACP Scheme. Hence the same was withdrawn by the SSPO, Delhi East Division, Delhi 110 054, vide memo dated 14.07.2014.

5. On the basis of the above submissions, the respondents have alleged that the OA being devoid of merit, deserve to be dismissed.

6. After hearing both sides, it becomes clear that the applicant at the fag end of his service, due to the objections pointed out to the respondents by the AAO of the Accounts Section of the Postal Department was suddenly informed a recovery would be made of the excess amount paid to the employee during the course of his employment, in fact, in the same month of his retirement. Clearly, he was given no opportunity of notice- in fact, he was only given information and without considering his representation, recovery was effected from his retirement benefits.

7. The applicant has referred number of Hon'ble Supreme Court judgments relating to recovery of excess amount paid to the employees during the course of their service. In the case of **State of Punjab and Others etc. Vs. Rafiq Mashri (White Washer) etc. 2014 (14) SCALE 300**, the Hon'ble Supreme Court has considered the matter of recovery of excess amount of pay paid to the employee

during the course of his employment (after his retirement) and it was concluded as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover”.

8. The only ground taken by the respondents is that no doubt the applicant worked in the Postal Department and was given various financial benefits as per his entitlement, but a mistake was made while giving him the last entitlement, i.e., TBOP Scheme on 11.07.1998.

9. The department admits that the mistake was made at the departmental level and it only came to their notice after it was

pointed out by the AAO (Inspection) Post and Telecommunications Audit Office, Delhi vide letter dated 24.06.2014 that the 3rd financial upgradation has wrongly been granted to the applicant. This objection was with regard to the interpretation of granting of financial upgradation vide order dated 18.09.2009, which is reproduced above.

10. Clearly this is a case in which the applicant's entitlement was on the then interpretation of the department of posts which was subsequently changed because of objections raised by the Finance Wing of the Postal Department itself.

11. The respondents could not have recovered the impugned amount at the time of applicant's retirement and with regard to over payment which was made without his fault. The case of the applicant squarely falls within the ambit of categories indicated by the Hon'ble Supreme Court in the matter of **Rafiq Masiha** (supra). There is yet another aspect of the matter which can be viewed entirely from a different angle. The indicated mistake was stated to have been committed by the respondents in the year 1998. No such order of recovery was passed by any authority to recover the amount from the applicant till his retirement. On the date of his retirement on 31.08.2014, the impugned order of recovery (Annexure A-1 Colly) was passed by the department, in a very casual and cryptic manner, that too without issuing any show cause notice or affording any opportunity to the applicant to explain his position. Even the impugned order is non-speaking and

result of non-application of mind. Such impugned order cannot legally be sustained.

12. Ex facie, the argument of the learned counsel that no such amount can be recovered at the time of retirement of the applicant, has considerable force. On the contrary, learned counsel for the respondents has miserably failed to urge that under what provisions of law/rules such impugned amount can be recovered after the expiry of more than 16 years, that too without fault of the applicant. Meaning thereby, the respondents have violated with impunity the principle of natural justice and fell in grave error while passing the impugned recovery order on wholly unsustainable ground. The crux of law laid down by the Hon'ble Apex Court in **Rafiq Mashri** (supra) mutatis mutandis is applicable to the facts of the present case and is the complete answer to the problem in hand.

13. Thus seen from any angle, we are of the considered opinion that impugned order cannot legally be sustained in the obtaining circumstances of the case.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

15. In the light of the aforesaid reasons, the instant OA is hereby accepted. The impugned order dated 24.06.2014 is hereby set aside, however, with no order as to costs.

16. It is needless to say that the applicant would be entitled to all/the whole of the amount which has been recovered from him

within a period of three months. In case of any delay in payment of amount which has already been recovered from him after the said period, the Department of Posts will pay an interest at the rate of 12% per annum for the period of delay calculated from a period of three months from the date of receipt of certified copy of this order.

(Ms. Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/pj/