

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3756/2011

Tuesday, this the 3rd day of November 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Shakeel Ahmad Burney
s/o late Mr. Khalil Ahmad
Assistant Manager Outdoor
PSFS, Department of Posts, Aligarh

.. Applicant

(Mr. S K Gupta, Mr. S P Singh and Mr. Shoeb Shakeel, Advocates)

Versus

1. Union of India
Rep. by its Secretary
Department of Personnel and Training
North Block, New Delhi
2. The Secretary
Department of Posts, Ministry of Communication
Dak Bhavan, New Delhi
3. The Director of Accounts (Postal)
UP Circle, Lucknow
4. The Supdt. PSFS
Department of Posts, Aligarh

..Respondents

(Ms. Bhaswati Anukampa, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The short issue arises to be determined in the present Original Application is “whether the appointment of the applicant to the post of Postal Assistant is to be treated by way of promotion or direct recruitment”. According to learned counsels for the applicant, in view of the judgment of Hon'ble High Court of Judicature for Rajasthan dated 10.08.2015 passed by

it approving the Order dated 13.09.2012 passed by the Jodhpur Bench of this Tribunal in a batch of Original Applications, i.e., O.A. Nos.137/2012, 361/2012, 362/2012, 20/2012, 21/2012, 22/2012, 29/2012, 210/2011, 211/2011, 408/2011 and 294/2012 with M.A. No.148/2012 as well as the Clarification issued by the Ministry of Communication & I.T. vide Office Memorandum No.4-7/MACPS/ 2009-PCC dated 25.04.2011, the appointment should be treated as direct recruitment for the purpose of financial upgradation.

2. In the counter reply filed on behalf of the respondents, it is espoused that since the applicant was initially appointed as Class-IV employee w.e.f. 04.09.1971 in the pay scale of Rs. 196-232 and subsequently, he was appointed as Postal Assistant w.e.f. 02.11.1976 after qualifying the Limited Departmental Competitive Examination (LDCE), the same should be treated as his first advancement in the career and has to be reckoned against one of the financial upgradations. Paragraphs 4.2 to 4.4 of the reply read thus:-

“4.2 That it is wrong and denied. The applicant got first upgradation /promotion as P.A. on 2.11.1976 after qualifying the limited departmental competitive examination (LDCE) as per rules in the grade of Rs.260-480.

4.3 That it is wrong and denied, the fact of the matter is that the applicant got 2nd financial upgradation in the grade of Rs.1400 to 2300 under TBOP scheme vide memo No.B-2/16/TBOP/Ch II dt. 16.10.1992, not on 02.09.1992 as stated by the applicant in his OA whereas the truth as per record is that the date mentioned in the memo dated 16.10.1992 is 2.11.1992 for 2nd upgradation. Further the official was promoted under BCR scheme w.e.f. 1.1.2003 in the pay scale of Rs.5000-8000 vide memo No.B-2/BCR/PAS dt. 28.3.2003. The copies of Memo dated 16.10.92 and 28.3.2003 are enclosed as Annexure R/2 and R/3. Thus the official got three promotions/ financial upgradations from the date of entry in the department i.e. from 4.9.71 which were admissible to him as per the rules/instructions. The plea of the applicant that the promotion in

P.A. cadre cannot be treated as first financial upgradation is wrong as per rules and instructions of MACPS issued by the department.

4.4 That the contents of this para are misconceived. It is reiterated that the promotion under MACP given by SPO’s Bulandshahar with grade pay of Rs.4600 w.e.f. 1.9.2008 is incorrect and not admissible to him as per instructions contained in Para 9 of Annexure R/7. Copy of SPO’s Bulandshahar memo No.B-2/DPC/MACPS/10-11 dt. 28.6.11 is enclosed as Annexure R/4.”

- 3. We heard the learned counsels for the parties and perused the record.
- 4. The answer to the proposition arises to be determined in the present Original Application is contained in Annexure to Office Memorandum No. 35034/1/97-Estt. (D) (Vol. IV) dated 10.02.2000 issued by the Department of Personnel & Training (DoPT). The Clarifications read thus :-

“The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 regarding the Assured Career Progression Scheme (ACPS). Consequent upon introduction of the Scheme, clarifications have been sought by various Ministries/Departments about certain issues in connection with implementation of the ACPS. The doubts raised by various quarters have been duly examined and point-wise clarifications have accordingly been indicated in the Annexure.

- 2. The ACP scheme should strictly be implemented in keeping with the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 read with the aforesaid clarifications (Annexure). Cases where the ACP Scheme has already been implemented shall be reviewed/rectified if the same are not found to be in accordance with the scheme/clarifications.
- 3. All Ministries/Departments may give wide circulation to these clarificatory instructions for general guidance and appropriate action in the matter.”

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8.	Appointment on the basis of limited departmental examination by which an employee joined a new service should be treated as promotion or not. For example, in case of	If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers Grade ‘D’/ Junior Stenographers by direct recruitment, induction of
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	Group-D employees appointed as LDCs or Grade-D stenographers appointed from amongst LDCs should be treated as direct recruits or not in the respective higher grades.	LDCs to the aforesaid grade through Limited Departmental Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay-scale shall not be counted for the purpose of benefit under ACPS. The case of Grade 'D' employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ACPS. In such situations, past regular service shall also be counted for further benefits, if any, under the Scheme.
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5. As can be seen from the aforementioned Clarification, if the candidates only from one category are eligible to participate in the LDCE, the appointment on the basis of the examination should be treated as promotion for the purpose of financial upgradation but if relevant Recruitment Rules provided for filling up of the vacancies in the promotional grade from amongst more than one categories, the same may be treated as direct recruitment.

6. A somehow similar clarification was issued in terms of Circular dated 25.04.2011 (ibid), relied upon by learned counsel for applicant. The Clarification reads thus:-

“Sub- MACP to the Group, D, and Postmen in Department of Posts

Please refer to your letter No.618/IF Sn/PM-II/MACP to Gr. D/ Postman dated 03 Nov 2010.

2. In this context, the doubts raised by your office are clarified as under:-

Sl. No.	Doubts	Clarifications
1.	Whether to consider the appointment to Gr. D cadre as entry grade and to Postmen cadre as one promotion.	In accordance with Para-9 of Annexure-I of MACPS dated 10 Sep 2009, regular service for the purpose of MACPS commences from the date joining of a post in direct entry grade on a regular basis. In the present case before us, the official was selected based on seniority in GDS and joined the group “D” post & later, he was declared successful in Postman exam, in which he had appeared fulfilling the eligibility condition of Gramin Dak Sevaks and thereafter he was allowed to join in Postman cadre as direct recruit. Accordingly, the official has joined in Postman cadre under the direct recruitment quota on regular basis & as such the regular service for the purpose of MACPS commences from the date of joining in Postman cadre as direct recruit basis. The issue is clarified accordingly.
2.	Whether the appointment to the cadre of Postmen Post as entry grade ignoring the Gr. D post held prior to the appointment as the official wrote the Postman examinations from Gp “D” cadre directly. If so, it may also be please clarify whether the services rendered in Gr. D post may be counts for MACP and Pension benefits.	

3. This issues with the competent authority.”

7. In the present case, as can be seen from the Recruitment Rules, 50% posts of Time scale clerks and sorters, excluding the time-scale clerks in Telecommunication Accounts Branch are filled up by promotion through a test. The permanent or quasi-permanent officials, below the time-scale

clerical and sorters grade are eligible for promotion. For easy reference, Columns 9 and 10 of the Recruitment Rules are reproduced hereinbelow:-

9.	10.
(a) 50% by direct recruitment	Promotion: Permanent or quasi-permanent officials, below the time-scale clerical and sorters grade in accordance with the orders issued by the posts & Telegraphs Board from time to time.
(b) 50% by promotion through a test.	

8. Apparently, it is not so that the incumbents of only one feeder category are eligible to participate in the test for promotion to the post in question. *Ex facie*, all the permanent or quasi-permanent officials below the time-scale clerical and sorters grade are eligible to participate in the test for the post in issue in the present Original Application, thus the appointment of applicant to the post of Postal Assistant made in the year 1976 has to be treated as direct recruitment and he should be given the benefit of Modified Assured Career Progression Scheme (MACP) accordingly.

9. Our view is supported by the view taken by a coordinate Bench of this Tribunal at Jodhpur (*ibid*). Paragraphs 6 to 14 of the Order read thus:-

“6. Having heard the Learned Counsels for both the parties and having gone through their pleadings and other documents adduced by them, the following issues emerge for consideration:-

- (i) Whether the applicant was promoted to the post of Sorting Assistant or it shall be deemed to be a case of direct recruitment?
- (ii) Whether the order of the respondent organization in granting III MACP in pay band of Rs.9300-34800 with grade pay of Rs.4600 vide the impugned order dated 18.10.2010 was erroneous?
- (iii) What relief, if any, could be granted to the applicant?

Whether the applicant promoted to the post of Sorting Assistant or it shall be deemed to be a case of direct recruitment?

7. So far as the first issue is concerned, the principal contention of the respondents is that the Department of Post (Postal Assistant/ Sorting Assistant) Recruitment Rules, 2002, provide that 50% of the recruitment ____ of the cadre, Sorting Assistant, will be done through direct recruitment and the other 50% were to be done to the promotion, the mode of entry being undergoing a selection examination. On being pointedly asked that whether the selection examination was the same both for those getting promoted and for getting directly recruited, the Learned Counsel for the respondents was emphatic that it was different. In the case of two categories including the question papers and the mode of examination, the two respective positions of the contending party could be explained with the help of the chart below:-

Year	Number of year as per the applicant	Entitlement of benefits as per the Applicant	No. of years as per the respondents	Entitlement of benefits as per the respondents
1972	___	-	0	-
1976	0	-	4	1 st (Promotion)
1992	16	1 st	20	2 nd (TBOP)
2002	26	BCR (2 nd)	30	3 rd (BCR)
2008	32	MACP (3 rd)	-	-

8. The Learned Counsel for the respondents has produced a Photostat copy of the letter No.10/6/86 PCC/SPB-1 date 25th September, 1987 on the subject of recruitment to the cadre of Postmen/ Village Postmen/ Mail Guards- Implementation of recommendations of Fourth Central Pay Commission. This prescribes as under:-

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9. The above letter, further provides for a common paper and syllabi for promotion as well as direct recruitment and a common process. The letter dated 07.04.1989 reiterates and supplements the earlier guidelines, as under:-

“(i) The existing method of recruitment to 50% of vacancies in the cadre of Postmen/Village Postmen by promotion of Group ‘D’ officials, who qualify in the test will continue.

9. From among the 50% of the vacancies reserved for outsiders, one half will be filled in from amongst EDAs on merit and another half will be filled in from 100 points will be maintained. The reserved points should also be divided equally

between the quota of length of service and that on merit. The add figure should be added to the quota for these based on length of service. If that vacancy is not filled in on the basis of length of service, the vacancy will go to the quota meant for those selected on merit.

12. The above instructions and the revised procedure will not be applicable in the case of recruitment to the cadre of Group 'D', but only for recruitment to Postmen/ Village Postmen/ Mail Guards. The other conditions prescribed for filling up vacancies and conducting of examination not mentioned in the amendments as above, will remain unaffected.

10. The applicant was selected for the post of Sorting Assistant in the year 1976 and it has not been possible to ascertain the guidelines in vogue at that point of time. However, it appears that there was continued practice of direct recruitment to the PA cadre of Sorting Assistant in which the Group D employees were also allowed to participate. In this regard, it is to be noted the critical determinants for a promotion are (i) qualifying length of service, (ii) constitution of DPC; (iii) formulation of promotion criteria; (iv) elevation from one level to another, and (v) a promotion process as distinct from a direct recruitment process. Though the Learned Counsel for the respondents has asserted that all these processes are in place but has not been able to adduce evidence to that effect, in absence of which, it has to be taken for granted that that the process of examination was one for both the groups. Admittedly, the TBOP was not in vogue in the year 1976 when the applicant had been appointed as Sorting Assistant and it came into existence in the year 1993. It is relevant to quote the Annexure-A/5 office memorandum, which is as under:-

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11. The Modified Assured Career Progression Scheme was introduced by the Memo of Government dated 18.09.2009, with the following objectives and directives:-

“The Sixth Central Pay Commission vide Para 6.1.15 of its report has recommended Modified Assured Career Progression Scheme (MACPS). The Government has considered the recommendations of the Sixth Central Pay Commission on the Assured Career Progression and accepted the same with further modification to grant three financial upgradations under the revised Scheme at intervals of 10,20 and 30 years of continuous regular service and issued orders vide Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) OM No 35034/3/2008-Estt. (D) dated 19.5.2009. The Scheme is known as "MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES" and which has come into operation w.e.f. 01-09-2008.

2. This scheme is in supersession of previous ACP Scheme and clarifications issued there under. The scheme shall be applicable to all regularly appointed Group "A", "B", "C" Central Government Civilian Employees except officers of the Organised Group "A" service. The status of Group D employees cease and be treated as Group C. Multi-Skilled employees on their completion of prescribed training. Casual employees, including those granted 'temporary status' and employees appointed in the Central Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme.

3. Department of Posts has its own scheme of Time Bound One Promotion (TBOP)/Biennial Cadre Review (BCR) for its employees. . Time Bound One Promotion was introduced w.e.f. 30.11.1983 vide letter No 31-26/83-PE.I dated 17/12/1983. Biennial Cadre Review was introduced w.e.f. 01.10.1991 vide Directorate Memo No 22-1/89-PE-1 dated 11.10.1991. The scheme was further extended to certain other categories of employees from different dates.”

12. In this regard the clarification submitted by the applicant, in response to query, illuminates point as under:-

“No mailman/ mail peon can become a Mall Guard/ Postman by seniority only. No Mail Guard/Postman can become a PA/Sorting Assistant by virtue of seniority only. Similarly no PA/SA can become an Inspector posts by seniority. Different cadre employees can compete for posts filled through the limited departmental examinations conducted for recruitment to higher ex cadre posts. Even outsiders-GDS also compete in those competitive examinations. A Mailman / Mail peon can be higher in merit than a mall guard/postman in the examination for recruitment to PA/Sorting Assistant because it is examination for recruitment to ex cadre posts.”

13. The identical issue has been dealt with in the case of Bhanwar Lal Regar & Ors. (supra), the relevant para 16, 17, 18 and 19 are being reproduced as under:-

“16. It is obvious that appointment from the civil post of EDA to a regular Government employment as Group-D is a fresh appointment, and that has not been disputed by the respondents either. Thereafter when, as Group-D employees, these three applicants faced a process of selection, and were appointed as Postmen, such selection cannot be called a promotion, as it was not done in the course of natural progression through seniority. Any advancement in career which is based on a process of selection especially undertaken for that purpose cannot be called as a promotion. A promotion has to be in higher category in the same cadre, or service, or though a prescribed avenue of promotion, but without an

element of a process of selection, through tests or examinations etc..

17. The meaning of the word “promotion” was considered by the Hon’ble Apex Court in the case of Director General, Rice Research Institute, Cuttack & Anr. V Khetra Mohan Das, 1994 (5) SLR 728, and it was held as follows:-

“A promotion is different from fitment by way of rationalization and initial adjustment. Promotion as a generally understood; means; the appointment of a person of any category or grade of a service or a class of service to a higher category or Grade or such service or class. In C.C.Padnabhan V. Director of Public Instructions, 1980 (Supp) SCC 668; (AIR 1981 SC 64) this Court observed that “Promotion” as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class.

18. Further in the case of State of Rajasthan v. Fatehchand Soni, (1996) 1 SCC 562, at p.567; 1995(7) Scale 168; 1995 (9)JT 523; 1996 SCC (L&S) 340; 1996 (1)SLR 1, the Hon’ble Apex Court findings can be paraphrased and summarized as follows:-

“In the literal sense the word ‘promote means’ to advise to a higher position, grade, or honour. So also ‘promotion’ means “Advancement or preferment in honour, dignity, rank or grade”. (See :Webster’s Comprehensive Dictionary, International Edn., P 1009) ‘Promotion’ thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression ‘promotion’ has been understood in the wider sense and it has been held that “promotion can be either to a higher pay scale or to a higher post”.

19. In a similar manner, while being Postmen, the three applicants in these three OAs faced the Limited Departmental Competitive Examination (LDCE in short) and qualified to become Postal Assistants. Their joining as Postal Assistants was not in the nature of promotion in their earlier existing service or cadre, but was a career advancement though a process of selection. Therefore, for the purpose of grant of TBOP/BCR financial upgradations earlier, and ACP financial upgradation now, the only dates which are relevant to be taken into account for the purpose of counting the periods of their stagnation is the period spent by the applicants as Postal Assistant. In that sense, the clarification issued by the Pay Commission Cell of the

Department of Posts, Ministry of Commissions & IT on 25.04.2011 through file no. 4-7/MACPS/2009/PCC, as cited in para 8 above, is correct. The only problem with that clarification is that it stopped at the point of clarifying that when the GDS first joined in a Group-D post, and was later declared as successful in the Postman examination, the regular service for the purpose of MACP would be deemed to commence from the date of his joining as a Postman in the main cadre on direct recruit basis. But it is obvious that the corollary would follow, and when the Postman appears at the LDCE, and gets selected to a new Cadre as a Postal Assistant, then it is start of a new innings for him, and for the purpose of counting his stagnation, if any, the date of his joining as Postal Assistant alone would be relevant, and his previous career advancements cannot be called to be promotions within the definition of the word 'promotion', as is required for the grant of TBOP/BCR benefit consideration, and for consideration for eligibility for financial upgradation on account of stagnation under the MACP Scheme.

14. It is true that in the order of the Bhanwar Lal Regar & Ors (supra), the Recruitment Rules have not been specifically referred. The basic contention of the Department of Post (Postal Assistant/Sorting Assistant) Recruitment Rules, 2002, had already been covered under the order. For the sake of further clarification, it is to be provided that the applicant was granted the benefit of TBOP, BCR and MACP III, starting with the year 1976 when he joined the cadre of Sorting Assistant. It is against established legal norms to now revise this assumption with retrospective effect. The impugned order serves to create two classes of the Sorting Assistants- one recruited from the open market and those recruited departmentally. The main issue relating to the inter se seniority etc. have also to be determined and covered by the orders in the case of Bhanwar Lal Regar (supra). It may be stated clearly that had this been the intention of the department instructions to that effect would have been issued at that point of time itself.

Whether the order of the respondent organization in granting III MACP in pay band of Rs.9300-34800 with grade pay of Rs.4600 vide the impugned order dated 18.10.2010 was erroneous?

15. So far as this issue is concerned, the discussion in respect of the first issue partly answers the question. We have already looked at the provisions of the MACP having been circulated earlier. The fundamental purpose of this scheme was to greater benefits to the employees who had stagnated in ahas to agree with the submission of the applicant that it was.....curtail the benefits which already been extended through the instrumentally of the Pay Commission. The matter could have been referred to the DoP&T for clarification on the subject as provided in the scheme but we find no evidence of such consultation having taken place. Even assuming for a moment that the contention of the respondents are correct still the fact cannot be

ignored 30 years have lapsed without the applicant having earning promotion. Here one has to turn to the clarification issued by the DoP&T that Financial Upgradation becomes admissible “whenever a person has been 10 years continuously in the same grade pay.” Here we are compelled to recall the decision in the case of Bhanwar Lal Regar & Ors (supra), to hold para 9 and 20 of the said judgment, as under:-

“9. He further submitted that similar selection for the post of Postal Assistant by appearing at the relevant examination cannot also be called to be promotion. Therefore, it was reiterated by him that it cannot be held that he had received three promotions, because appointment to an ex-cadre post cannot be considered as promotion, when it is not that one can claim promotion to that post in the hierarchical line of promotion to that post from the earlier post, and the departmental does not permit promotion from Group-D to Postman, and from Postman to Postal Assistant, and from Postal Assistant to Inspector of Posts, by way of promotion itself. It was further reiterated that any selection, recruitment, appointment or absorption in an ex-cadre post has to be treated as a separate entry into a fresh grade for the purpose of ACP/MACP/Financial upgradation, and also for TBOP/BCR financial benefits. It was submitted that the respondents cannot be allowed to approbate and reprobate at the same time when they have themselves admitted that appointment from Group-D to Postman, and from Postman to Postal Assistant, was done through a process of selection. In the result, it was prayed that the OA be allowed and the impugned order Annexure-A-1 be quashed. In support of his contention, the applicant had cited the letter dated 18.10.2010 issued by the Pay Commission Cell of the Department of Posts, Ministry of Communication & IT, clarifying the doubt regarding eligibility of MACP Scheme benefit as follows:-

Sl. No	Point on which clarification sought	Status Position
	Eligibility of MACPS to a direct recruited Postal Assistant conferred with TBOP It has been represented that in some Circles the directly recruited Postal Assistants who were accorded financial upgradation under one time bound promotion scheme	Attention is drawn to Para No.28 of Annexure-1 to the office OM dated 18.09.2009. It is stated that a directly recruited Postal Assistant who got one financial upgradation under TBOP Scheme after rendering 16 years of service before 01.09.2008, will become eligible to 2nd MACP on completion of 20 years of continuous service from date of entry in Government

	on completion of 16 years of satisfactory service are not being given the 2nd MACPS on the ground that the officials have not completed 10 years of service TBOP Scale/Grade with grade pay of Rs.2800.	service or 10 years in TBOP grade pay or scale or combination of both whichever is earlier. However, financial upgradation under MACPS cannot be conferred from the date prior to 01.09.2008 and such 2nd financial upgradation for the above referred category of officials has to be given from 01.09.2008. They will also become eligible for 3rd MACP on completion of 30 years of service or after rendering 10 years service in 2nd MACP, whichever is earlier.
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20. It is, therefore, clear that para-2 of the impugned order in all these three OAs at Annexure A1 dated 10.08.2011 passed by the Supdt. Of Post Office, Churu Division, Churu was incorrect, and the eligibility of these three applicants for the grant of TBOP/BCR benefits earlier and MACP benefits thereafter, has to be counted only from the date they were substantively appointed as Postal Assistants. Therefore, the impugned Annexure-A/1 dated 10.08.2011 in all the three OAs are set aside, and the grant of MACP benefit correctly granted to the three applicants earlier through the order dated 31.03.2010 is upheld. The applicants shall be accordingly entitled to all the arrears, with interest at the GPF rate of interest being payable on the arrears of the financial upgradation benefits admissible to the applicants, correctly granted earlier on 31.03.2010.”

We see that there are no grounds to disagree with the same.

What relief, if any, could be granted to the applicant?

16. So far as this issue is concerned, the answer emerges from the discussion in the first 2 issues. Having held that the transition from Mailman to Sorting Assistant is not a promotion in absence of the essential attributes attaining promotion and overwhelming pointers being a case of direct recruitment, it is not possible to go back on the situation, particularly when the position has been ample clarified by the Government that the “Regular service” for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment” (Para 9 of Salient Features of includes to communication dated 18.07.2009) and the illustration that “if a Government servant (LDC) in PB-1 in the grade pay of is 1900 gets his first regular promotion (UDC) in the PB-1 in the grade pay of Rs.2400 on completion of 8 years and then continues in the same

Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs.2800 after completion of 18 years (8 + 10 years)". In this regard the clarification if the Sixth Pay Commission, is --- which quoting as under:-

Recommendation of the Sixth Pay Commission	Decision of the Government
<p>(iv) Financial upgradation under the scheme will be available whenever a person has spent 12 years continuously in the same grade. However, not more than two financial upgradations shall be given in the earlier career as was provided in the extant scheme.</p> <p>The scheme with aforesaid modifications shall be called modified ACPS and will ensure suitable progression uniformly to all the employees in Central Government.</p>	<p>Modified to the extent that the financial upgradation will be available whenever a person has spent 10 years continuously in the same grade. Further, three upgradations after 20 and 30 years of service will be allowed.</p>

10. The view so taken by the Jodhpur Bench of the Tribunal was upheld by the Hon'ble High Court of Judicature at Jodhpur in Civil Writ Petition No.11336/2012 in terms of Order dated 10.08.2015. Relevant excerpt of the Order reads thus:-

"Having considered the argument advanced we do not find any merit with the same. Learned counsel appearing on behalf of the appellant on asking again and again failed to point out any provision for promotion to the post of Postman/ Sorting Assistant. On the other hand, from perusal of the orders of appointment to the post of Postal Assistant/ Sorting Assistant, it is apparent that the respondent original applicants faced an examination, may that be a limited competitive examination, i.e. nothing but direct recruitment. Their joining as Postal Assistants was not at all in the nature of promotion,

hence their services for the grant of benefits under modified assured career progression has to be counted only from the date they were appointed as Postal Assistants/Sorting Assistants. The services rendered by them on earlier post prior to their appointment as Postal Assistants/Sorting Assistants are absolutely inconsequential for the purpose of grant of modified assured career progression. At the cost of repetition it shall be appropriate to mention that the petitioners failed to point out any provision for appointment to the post of Postal Assistant/Sorting Assistant by way of promotion and to point out any order of appointment making appointment of the original applicants on the post concerned by way of promotion.

The writ petitions, thus, are having no merit, hence dismissed. The orders passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in respective original applications stand affirmed.”

The view taken by Hon’ble High Court is binding on us.

11. In view of the aforementioned, the respondents are directed to treat the appointment of the applicant as Postal Assistant w.e.f. 02.11.1976 as direct recruitment and give him benefit of MACP/ACP Scheme accordingly. It goes without saying that while giving the benefit of financial upgradation to the applicant in accordance with the aforementioned view, they will make the calculation of the benefits payable to him and would refund any such amount recovered from the applicant on the ground that his appointment to the post of Postal Assistant in 1976 was promotion and not direct recruitment. Needful may be done within three months from the date of receipt of a copy of this Order.

12. Original Application stands disposed of. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

November 3, 2015
/sunil