

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-2679/2012

Reserved on: 06.09.2018

Pronounced on : 24.09.2018

Hon'ble Sh. V. Ajay Kumar, Member(J)
Hon'ble Sh. A.K. Bishnoi, Member(A)

Sh. Mahender Singh,
S/o Sh. Jugal Kishore,
R/o H.NO. 38, V&PO
Nangloi, Delhi-41.

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Applicant

(through Sh. Ajesh Luthra)

Versus

1. Union of India,
Through Secretary,
Ministry of Communication & IT
Department of Posts.
2. The Senior Manager,
Mail Motor Service,
Department of Posts,
Office at C-121, Narain Vihar, New Delhi-28.
3. The Director (M & SP)
Office of Chief Postmaster General
Delhi Circle,
Meghdoot Bhawan,
Link Road, New Delhi.
4. Union of India,
Through its Secretary,
Ministry of Personnel Pension & Grievances,
Department of Personnel & Training (DOP&T)
North Clock, New Delhi.

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Respondents

(through Sh. U. Srivastava)

ORDER

Hon'ble Sh. A.K. Bishnoi, Member(A)

Briefly stated, the facts of the case as submitted by the applicant are: -

- (i) That he was appointed as Group D employee with the respondents on 09.06.1980 in the pay scale of Rs. 196-232. Thereafter, on 09.07.1988, he was appointed as Skilled Draftsmen (M.V. Electrical) in the pay scale of Rs. 950-1500 after being found successful in the departmental examination where he appeared as a departmental candidate. Subsequently, on 23.06.1989, he was appointed as Postal Assistant in the pay scale of Rs. 975-1600 after being successful in the departmental examination as a departmental candidate. He was granted financial upgradation in the pay scale of Rs. 4500-7000 w.e.f. 30.03.2005 on completion of 16 years of service as Postal Assistant under the TBOP Scheme vide order dated 15.12.2005. Vide the same order, Sh. Narain Singh and Sh. Pheru Singh were granted same benefits w.e.f. 05.06.2005 and 23.07.2005 respectively, which is, after the applicant was given this benefit.
- (ii) Vide order dated 06.05.2010, Sh. Narain Singh and Sh. Pheru Singh, who were junior to the applicant were granted financial upgradation described as second financial upgradation w.e.f. 2009 on their completion of 20 years of service as Postal Assistant. However, the applicant was not considered and left out to which he submitted a representation dated 02.03.2011 which was rejected vide order dated 05.04.2011. The applicant then submitted another representation to the higher authority on 23.05.2011 on which no action has been taken.

2. The applicant is presently placed in Pay Band-I, 5200-20200 + Grade Pay Rs. 2800/- by virtue of replacement of the pay scale of 4500-7000 whereas his juniors, namely, Sh. Narain Singh and Sh. Pheru Singh are placed in the Pay Band-II, 9300-34800 + Grade Pay of Rs. 4200/-.

3. The applicant contends that he was initially appointed as Group D employee in 1980 but he was appointed as Postal Assistant in the year 1989 after a process of selection and the progression of the applicant was not a natural progression through seniority. Under such circumstances, this progression of the applicant cannot be taken to be promotion and MACP benefit cannot be denied to him.

4. In the grounds for filing the OA, the applicant has mentioned the points given above and has asserted that the action of the respondents is illegal and unjustified. In this regard he has submitted that in OA No. 382/2011 (**Bhanwar Lal Regar vs. UOI & Ors.**) along with connected OAs, Jodhpur Bench of this Tribunal has taken a similar view and granted relief to the applicant therein.

5. With this, the applicant has sought the following reliefs:-

(a) quash and set aside the impugned orders/action of the respondents

(b) direct the respondents to place the applicant in pay Band-II (9300-34800 + GP 4200/-) w.e.f. the date the applicant completed 20 years service as Postal Assistant with all consequential benefit or

(c) direct the respondent to step up the pay of the applicant at par with his juniors namely Sh. Narain Singh -III and Sh. Pheru Singh w.e.f. from the date the said juniors have been placed in the higher pay band i.e. 6.5.2010 with all consequential benefits

(d) award costs of the proceedings and

(e) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

6. The respondents, in the reply have stated that the applicant was appointed in the direct entry grade of Cleaner w.e.f. 09.06.1980 and thereafter

earned his first promotion to M.V. (Electrical) w.e.f. 11.07.1988, second promotion as Postal Assistant w.e.f. 23.06.1989 and third promotion/financial upgradation to Postal Assistant (TBOP) w.e.f. 31.03.2005 in the pay scale of Rs. 4500-7000/- (corresponding Pay Band Rs. 5200-20200 + Grade Pay Rs. 2800/-) .

7. It has been admitted by the respondents that as per the gradation list, the applicant is senior to Sh. Narain Singh-III and Sh. Pheru Singh, Postal Assistant Cadre, who were granted MACP-II w.e.f. 06.11.2009, 15.10.2009 respectively, on completion of twenty years of qualifying service required under MACP Scheme as both the officials were recruited/appointed directly in the cadre of Postal Assistants. To negate the claim of the applicant, they have quoted the relevant provisions contained in Para 20 of Annexure-1 of Department of Personnel and Training OM No. 35034/3/2008-Estt. (D) which is as follows:

"Financial upgradation under the MACPs shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS."

8. As per the respondents the case of the applicants was considered but he was not found fit for financial upgradation under the MACP scheme as he had already earned three promotions and so was not entitled to any other upgradation.

9. It has been admitted that the applicant submitted another representation dated 23.05.2011 which is still under consideration and not decided.

10. The applicant has filed rejoinder in which the contentions made in the OA are more or less repeated. The respondents have filed additional affidavit in which apart from the other submissions already made, they have contended that as far as the judgment passed by Jodhpur Bench of this Tribunal in OA No.

382/2011 as upheld by the Hon'ble High Court of Rajasthan in WP(C) No. 11336/2012 titled **UOI & ors. vs. Bhanwar Lal Regar** vide judgment dated 10.08.2015 is concerned, the same has not attained finality and the department has filed Writ Petition before Hon'ble High Court of Rajasthan which is pending for decision.

11. We have heard the learned counsels for the applicant and the respondents.

12. The applicant has stated that the appointment to the post of Postal Assistant w.e.f. 23.06.1989 was on the basis of selection and this has not been denied by the respondents.

13. The only point of determination in the present case is whether the selection of the applicant to the post of Postal Assistant w.e.f 23.06.1989 is to be treated as promotion for the purposes of the MACP Scheme. In this regard, it is noted that the facts of the case are similar to the facts before Jodhpur Bench in the case of Bhanwar Lal Regar (supra) in which it was held that:

"16. It is obvious that appointment from the civil post of EDA to a regular Government employment as Group 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 through a prescribed avenue of promotion but without an element of a process of selection, through tests or examination etc."

Further, this order was challenged before the Hon'ble High Court of Rajasthan in which it was observed that:-

"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 Assistant/ 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."

14. Though a review application may be pending against the abovementioned order, the principle as laid down by the Jodhpur Bench of this Tribunal in OA No. 321/2011 and as upheld by the Hon'ble High Court of Rajasthan in WP(C) No. 11336/2012 holds as on date.

15. However, the Hon'ble High Court of Delhi in Man Singh Vs. Union of India and Others W.P. (C) 2887/2012 dated 21.12.2012 and also in subsequent decision in Ajay Panday Vs. Union of India and Others W.P. (C) 1938/2011 dated 28.07.2014 while dealing with an identical issue, i.e. whether the appointment to a post by Limited Departmental Competitive Examination tantamounts to appointment by promotion or is a direct recruitment appointment, after considering the DOP&T U.O. dated 18.11.2011, categorically held that any appointment to a higher post through LDCE examination is a promotion only and the Recruitment Rules or guidelines which would apply to appointments through LDCE would have to be those which are applicable to appointment by promotions. Further, the Hon'ble Apex Court in Central Provident Fund Commissioner Vs. S. Ravindran and Others, 1995 Supp4 SCC 654, where the promotions were made to the next higher post partly on the basis of seniority-

cum-fitness and partly on the basis of LDCE held, that both the categories should be treated as a single class.

16. In view of the above referred decisions of the Hon'ble High Court of Delhi, which is the jurisdictional High Court of this Bench, and also of the judgment of the Hon'ble Apex Court, the appointment of the applicant to the post of Postal Assistant cannot be treated as a direct recruitment and the same should be treated as promotion only. Hence, in this view of the matter, there is no illegality in the action of the respondents in deciding the claim of the applicant for the purpose of granting the financial benefits under ACP/MACP benefits.

17. As regards the prayer of the applicant to step up his pay at par with his juniors w.e.f. the date the said juniors have been placed in the higher pay band is concerned, the same cannot be accepted. The grant of MACP benefits is specific to service details of the individual only and issues of relative seniority are of no consequence. This is amply clear from the relevant portion of the Department of Personnel & Training's OM No. 35034/3/2008-Estt. (D) quoted in Para 7 above of this judgment.

18. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merit. No costs.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member(J)

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