CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00481/2017

DATED THIS THE 30th DAY OF MAY, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

K.Prakash Shettigar
Aged above 60 years
Retired PRI-P, Kodiyalbail Sub Office
Mangalore-575003.
R/a –No.602, Sonar Apartment
Mahamayu Temple Road, Car Street
Mangalore-575001. … Applicant

(By Advocate Shri B.Venkateshan)

Vs.

1. Union of India
   By its Secretary
   Ministry of Communication
   Department of Posts
   Dak Bhavan, Sansad Marg
   New Delhi-110 001.

2. The Post Master General
   South Karnataka Region
   Bangalore-560259.

3. The Director of Postal Services
   South Karnataka Region
   2nd Floor, GPO Building
   Rajbhavan Road
   Bangalore-560001.

4. Senior Superintendent of Post Offices
   Mangalore Division
   Mangalore-575002. …Respondents

(By Advocate Shri M.Raja Kumar)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The applicant has filed the present OA seeking the following relief:

i. To set aside the Order No.13/PF/Dlgs Mangalore dt.24.7.2017

issued by R-4 at Annexure-A7.

ii. To set aside the order No.SK/AP/32-Misc/MR/I dt.31.7.2017 issued by R-2 at Annexure-A8.

iii. To direct the respondents to grant II MACP to the applicant with effect from 01.09.2008 and fix his Grade Pay at Rs.4200/- with all the consequential benefits and including arrears of pay and pension in the interest of justice.

2. According to the applicant, he joined the respondent organization as Postman on 1.3.1983. Subsequently he appeared for competitive examination for the post of Postal Assistant and on being selected, he joined as Postal Assistant w.e.f. 23.3.1988. He was granted Time Bound One Promotion(TBOP) w.e.f. 9.4.2004 on completion of 16 years of service in the cadre of Postal Assistant. He was initially granted 2nd MACP benefits w.e.f. 1.9.2008 on completion of 20 years of service. However, the same was subsequently withdrawn in view of audit objection. He was further granted 3rd MACP benefits on completion of 30 years of service w.e.f. 11.3.2013 in the initial grade of Postman. He made a representation in 2011 itself for grant of MACP benefits w.e.f. 1.9.2008 which was rejected. Thereafter, on learning that the issue of promotion gained on passing the competitive examination and counted for the purpose of MACP benefits was under challenge in various Courts and the issue of ignoring such promotion for reckoning MACP was concretized by order dt.16.8.2016 in SLP.No.4848/2016 in WP.No.30629/2014 in Madras High Court, he again made a representation on 8.6.2017 for granting the similar benefits. But the same was rejected vide orders dtd.24.7.2017 and 31.7.2017. Aggrieved by the same, he has approached this Tribunal in the present OA seeking the relief as mentioned earlier.

3. The respondents in their reply statement had admitted the fact that the applicant has been appointed as Postman w.e.f. 11.3.1983 and became Postal Assistant on qualifying the Limited Departmental Competitive Examination(LDCE) for promotion to the post of Postal Assistant/Sorting Assistant and say that this should be taken as 1st promotion. Since he has got one financial benefit under TBOP w.e.f. 9.4.2004, he is entitled only for 3rd financial upgradation under MACP on completion of 30 years of service w.e.f. 30.3.2013. The earlier MACP allowed w.e.f.1.9.2008 was erroneous and hence was withdrawn. Accordingly, they contended that the applicant is not entitled to any financial benefits.

4. During the hearing, Ld.Counsel for the applicant referred to the earlier order of this Tribunal saying that the case of the applicant is exactly similar to the applicants in those cases and wherein it was held that the appointment to the post of Postal Assistant/Sorting Assistant based on a Limited Departmental Competitive Examination shall be treated as fresh appointment. He also mentioned about an order of Hon'ble High Court of Madras in WP.No.30629/2014 where similar stand was taken and which was also upheld by the Hon'ble Apex Court. Therefore, he submitted that the applicant is entitled to the relief as allowed to the similarly placed persons. The Learned Counsel for the respondents, on the other hand, highlighted the contention already made in the reply statement and placed emphasis on the fact that the appointment to the post of Sorting Assistant through LGO's examination has to be treated as promotion only and not as appointment by way of selection.

5. This Tribunal in OA.No.361/2014 considered the same issue and held

that the appointment of the applicant to the post of Postal Assistant based on the LGO's examination cannot be considered as promotion and the applicant is entitled for 2nd MACP benefit. The Tribunal in its order dated 9.10.2015 in OA.No.361/2014 held vide para-11 to 14 as follows:

11. It is an admitted fact that the applicant was initially appointed to Group 'D' post in 1983. Then he was appointed to the cadre of Postman in 1987 and thereafter based on LGO's examination in which he has appeared in 1988, he was appointed as Postal Assistant w.e.f. 23.03.1989. He was given TBOP benefit on completion of 16 years of service in the cadre of Postal Assistant in August 2005. Considering the qualifying service in the cadre of Postal Assistant, he was also granted 2nd financial upgradation under MACP w.e.f. 13.09.2009. But subsequently the respondents held the view that his appointment from Group-D to Postman and Postman to Postal Assistant are to be considered as promotions. Since he also got TBOP benefit, he is not entitled to any further MACP benefits and hence the benefit already granted under MACP was then withdrawn. The issue to be considered here is as to whether the contention of the respondents that the appointment to the post of Postman from Group-D post and subsequent appointment to the Postal Assistant based on the LGO's examination will be considered as promotion or the appointment to the Postal Assistant will be considered as a fresh appointment in the basic cadre. The Ld.Counsel for the applicant has referred to a judgment of the Jodhpur Bench of this Tribunal which was upheld by the Hon'ble High Court of Rajasthan and also another order passed by the Hon'ble High Court of Delhi in support of his contention. It appears from the record that the judgment passed by the Jodhpur Bench of this Tribunal on 22.05.2012 in OA.No.382/2011 along with OA.No.353/2011 and OA.No.354/2011 are almost of identical nature. In those cases also, the applicants were appointed first as Group-D staff and then as Postman and then as Postal Assistants based on their selection in the LGO's examination. They also got TBOP on completion of 16 years of service in the cadre of Postal Assistant. They were also initially granted 2nd financial upgradation under MACP on completion of 20 years of service as Postal Assistant and which was subsequently sought to be withdrawn on similar grounds that their appointment from Group-D to Postman and from Postman to Postal Assistant should be considered as promotion. The Jodhpur Bench of the Tribunal in its order dated 22.05.2012 in the aforesaid OAs held as follows:

> *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:-*
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> > *"A Promotion is different from fitment by way of rationalization and initial adjustment. Promotion, as is 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 of such service or class. In C.C.Padmanabhan 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) SCC 562, at p.567: 1995(7) Scale 168: 1995(9) JT 523: 1996 SCC (L&S) 340: 1996 91) 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 through a process of selection. Therefore, for the purpose of grant of TBOP/BCR financial upgradations earlier, and MACP 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 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 for eligibility for financial upgradation on account of stagnation under the MACP Scheme.

20. It is, therefore, clear that Para-2 of the impugned order in all these three OAs at Annexure A-1 dated 10.08.2011, passed by the Supdt. of Post Offices, Churu Division, Churu was incorrect, and the eligibility of these three applicants for the grant of TBOP/BCR benefits earlier, and MACP benefit 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.

21. The three OAs are allowed in terms of the above directions, and the two MAs have already been rejected, in paras 11 and 14 above, but there shall be no order as to costs.

12. The Hon'ble High Court of Rajasthan in Civil Writ Petition

No.11336/2012 while upholding the order of the Tribunal held as follows:

> *"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 Assistant was not at all in the nature of promotion, hence their services for the garant 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.*
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> *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.*

13. Similar matter was also considered by the Hon'ble High Court of Delhi in W.P.(C) 4131/2014 in the case of Union of India and Ors Vs. Shakeel Ahmad Burney. While upholding the order of the Principal Bench of this Tribunal the Hon'ble High Court of Delhi in its order dated 05.08.2014 in the aforesaid W.P. observed as follows:

> *"There is no magic in the use of the expression "Promotion" or "Direct Recruitment"; whether, in fact, the mode of entry to the service is through direct recruitment or promotion would certainly be dependent on facts of each case and the structure of the Rules. If one analyzes Rule 3, it would be apparent that recruitment is through "a competitive examination which will be open" to both departmental candidates and outside candidates. During the course of submissions, the Union of India has exphasized that syllabus for departmental candidates was prescribed in 1964; even this fact nowhere indicates that a differential treatment is accorded to direct recruits who are drawn from the open market. The absence of any clearly stipulated and defined feeder post for promotion by way of seniority, or any other known method like seniority-cum-merit, selection etc., the mode prescribed in Rule 3 (a) (i.e., departmental candidates also having to qualify in the competitive examination, along with outsiders) in this Court's opinion clinches the matter. To that effect, the CAT's decision that the entry of departmental candidates to the cadre of Postal Assistant is by way of direct recruitment is unexceptionable. We consequently affirm the findings of the CAT in the impugned order.*

14. As already held in the above mentioned orders of co-ordinate Benches of this Tribunal which were also upheld by the Hon'ble High Court, it is clearly apparent that the appointment of the applicant to the post of Postal Assistant based on the LGO's examination cannot be considered as a promotion. Therefore, the applicant would be entitled to the 2nd MACP benefit as was initially granted to him by the respondents since he was already granted one financial benefit under TBOP. Therefore, we hold that

the applicant is entitled to the 2nd financial upgradation under MACP as was earlier granted to him by the respondents w.e.f. 13.09.2009 vide memo dated 02.08.2010(Annexure-A5). Therefore, the withdrawal of MACP benefit, by a subsequent order as well as the order dated 20.01.2014 issued by the respondent No.3 at Annexure-A10 rejecting the contention of the applicant are not sustainable and are therefore quashed. The respondents are directed to issue necessary order restoring the benefits of 2nd financial upgradation under MACP which was granted to the applicant w.e.f.13.09.2009 and also immediately refund him the amount already recovered from his pay as excess amount paid. This should be done within a period of two(2) months from the date of receipt of copy of this order.

6. The said order of the Tribunal was also upheld by the Hon'ble High Court of Karnataka in WP.No.200807/2016. In its order dated 20.9.2016, the Hon'ble High Court held vide para 6&7 as follows:

6.The contention now advanced by the learned counsel appearing for the petitioners is that appointment of petitioner for the post of Postman and Postal Assistant were not by way of direct recruitment but were by way of promotion. We are unable to appreciate this contention. Indeed as per Annexure-A2 order where under appointment has been made to the cadre of Postman it is clearly mentioned that the appointment formalities like verification of caste and educational qualifications etc. shall be completed as usual before issuance of orders of appointment. There is no mention made with regard to promotion of the respondent to the post of Postman. a reading of Annexure-A2 discloses that it was not a case of promotion but was a case of direct recruitment.

7.In so far as appointment to the post of Postal Assistant, the findings of the Tribunal are very clear inasmuch as the recruitment was made after conducting a limited departmental competitive examination and that there was nothing to show that respondent was promoted from the cadre of Postman to the next cadre of Postal Assistant.

7. It was brought to our notice by the Ld.Counsel for the applicant during hearing that the Hon'ble High Court of Madras in WP.No.30629/2014 in UOI vs. D.Sivakumar & another upheld the order of the Chennai Bench of the Tribunal and held that to adjust the appointment to the post of Postal Assistant through a selection process and adjusting the same against the MACP scheme is clearly erroneous. The Hon'ble High Court of Madras in para-9 of the order dt.4.2.2015 observed as follows:

9.What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly

erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which the first respondent got appointed on 22.9.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. One that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progression for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust it against Modified Assured Career Progression-I.

8. The said order of the Madras High Court was also challenged before the Hon'ble Supreme Court in SLP(C) No.4848/2016 and dismissed. The Review Petition No.1939/2017 filed before the Hon'ble Apex Court was also dismissed by order dated 13.9.2017.

9. From the aforesaid orders passed by different Benches of the Tribunal as well as Hon'ble High Courts and Hon'ble Supreme Court on this particular issue as highlighted in the preceding para, it is quite clear that the appointment of the applicant to the post of Postal Assistant based on the LGO's examination cannot be considered as promotion. Since the applicant has received one financial upgradation under TBOP on completion of 16 years of service in Postal Assistant cadre, he would be entitled to 2nd MACP benefit w.e.f. 01.09.2008. Accordingly, we direct the respondents to pass necessary orders regarding 2nd financial upgradation to the applicant w.e.f.01.09.2008. This shall be done within a period of three(3) months from the date of receipt of a copy of this order. The applicant should also be granted the consequential benefits within one(1) month thereafter.

10. The OA is accordingly allowed in terms of aforesaid direction. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA.170/00481/2017

Annexure-A1: Declaration of result of LGO Examination dt.05.10.1987
Annexure-A2: Posting order of Postal Assistant post dt.15.2.1988
Annexure-A3: 3rd MACP granted lr. dt.23.6.2010
Annexure-A4: Withdrawal of above benefit lr. dt.13.1.2011
Annexure-A5: Rejection lr. dt.30.6.2011
Annexure-A6: Representation dt.08.6.2017
Annexure-A7: Impugned order dt.24.7.2017
Annexure-A8: Impugned order dt.31.7.2017

Annexures with reply statement:

Annexure-R1: Copy of OM dtd:18.09.2009
Annexure-R2: Copy of corrigendum dtd:20.05.2010
Annexure-R3: Copy of the clarification dtd:18.10.2010

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