

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00391 of 2011
Cuttack, this the 26th day of September, 2017

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Sri Jayaram Nayak,
aged about 48 years,
S/o- Late Bhimsen Nayak,
serving as Assistant Accounts Officer(AAO)
in the office of the Director of Accounts (Postal),
Mahanadi Vihar, Cuttack-753004.

...Applicant

By the Advocate-M/s. G. K. Behera, D. R. Mishra

-VERSUS-

Union of India Represented through

1. Director General of Post,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. The Dy. Director General(PAF),
Postal Accounts Wing,
4th Floor, Dak Bhawan,
Sansad Marg, New Delhi-110001.
3. Director of Accounts (Postal),
Mahanadi Vihar, Cuttack-753004.

...Respondents

By the Advocate- Mr. S. K. Singh

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ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant has filed this O.A. challenging the order dated 23.02.2011 (Annexure-A/2) wherein it was ordered that the applicant, viz. Jayaram Nayak, AAO, is not entitled for the second MACP. The

applicant also challenges the Office Memorandum dated 01.06.2011 (Annexure-A/6) wherein it was categorically observed that since the applicant was initially appointed as Postal Assistant and then got TBOP and regular promotion in AAO before the implementation of the MACP Scheme thus has already earned one financial upgradation and one regular promotion, he will not be eligible for Second Financial Upgradation.

2. The whole case of the applicant has been filed under misconception and misreading of orders and circulars of the Department. In order to appreciate the factual backdrop, the service career of the applicant needs to be reproduced as averred in the counter.

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| (i) Initial recruitment | : 07.03.1982 - Postal Assistant PB-1 with Grade Pay of Rs. 2400/- |
| (ii) On completion of 16 years service | : 07.03.1998 – TBOP PB-1 with Grade Pay of Rs. 2800/- |
| (iii) On completion of further 6 years
i.e. 16 yrs+6 years= 22 years service. | : 30.12.2004 - 1 st regular promotion as AAO in PB-2 with Grade Pay of Rs. 4800/- |

3. According to the Respondents, on a comparative study of the illustrations given in the MACP Scheme as well as the service career of the applicant, it reveals that as per the illustration on completion of 10 years of service from the initial regular appointment one gets 1st MACP, i.e. on or after 01.09.2008, whereas the applicant had already got one financial upgradation on the TBOP system and one regular promotion before operation of the MACP Scheme on 01.09.2008. Respondents have further pleaded that the applicant is coming under the category of employees illustrated at Para 28 (C) of Annexure-I to O.M. dated

18.09.2009, which provides that if a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August-1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy. Respondents have further pleaded that if one government servant has already got two regular promotions, or two financial upgradations or one regular promotion and one financial upgradation under the ACP Scheme then he would be entitled to 3rd MACP on completion of 30 years of service, provided he does not earn 3rd promotion in the hierarchy. Positive case of the Respondents is that since the applicant has already got one financial upgradation under TBOP and one regular promotion to the cadre of Asst. Accounts Officer before 01.09.2008, he is not entitled for the 2nd MACP w.e.f. 01.09.2008. Respondents have further clarified that after receipt of clarificatory order from Postal Directorate vide Letter dated 19.11.2010 (Annexure-R/2), a Review Screening Committee meeting was conducted and as per its recommendations, the benefits irregularly granted vide order No. Admn. I/2276 dtd. 08.07.2010 has been withdrawn vide order No. Admn. I/2311 dtd. 23.02.2011 and Rs. 5000/- has been recovered as first installment in the month of February-2011 towards excess payments of pay and allowances. According to the Respondents, after the regular benefit was withdrawn, the applicant submitted one representation on 23.03.2011 to the Dy. Director General (PAF), Department of Post, New

Delhi (Respondent No.2), against the order of the Director of Accounts (Postal), Cuttack (Respondent No.3), and simultaneously filed O.A.No. 135/2011 before this Tribunal. This Tribunal disposed of the said O.A. vide order dated 27.04.2011 with direction to Respondent No.1 to dispose of the pending representation of the applicant by passing a reasoned order. The Respondents, in obedience to the order dated 27.04.2011 passed by the Tribunal in O.A.No. 137/2011, considered the case and rejected applicant's claim for grant of second financial upgradation under MACP Scheme as he had already got one financial upgradation under TBOP and one regular promotion to the cadre of AAO.

4. The Respondents have filed a letter dated 19.11.2010 wherein there was a clarification about MACP Scheme in which it has been clearly averred that financial upgradation earned under TBOP/BCR Scheme as well as regular promotion are to be counted for the purpose of financial upgradation under MACP Scheme. There is nothing wrong in the said order calling for interference. Even the Department has clarified in the speaking order dated 01.06.2011 that since the applicant has already earned two promotions, one under TBOP and one regular promotion, he is not entitled for second financial upgradation.

5. The MACP Scheme comes into operation when a person spends 10 years continuously in the same Grade Pay. In order to make eligible under MACP Scheme, the burden is heavy on the applicant to show that within the last 10 years he has not got any financial

upgradation and he is in a stagnant position. Since there is nothing wrong in the impugned order dated 23.02.2011 (Annexure-A/2) and order dated 01.06.2011 (Annexure-A/6), no interference is called for.

6. Ld. Counsel for the applicant has placed reliance on the decision of the CAT, Madras Bench in the case of ***Shri D. Sivakumar Vs. Union of India O.A. No. 1088 of 2011*** and on the decision of the Madras High Court in the ***Writ Petition No. 30629/2014 in the case of Union of India Vs. D. Sivakumar***. Since the facts and circumstances of the present case is quite different from the cases cited, the same are not applicable and are quite distinguishable. Hence ordered.

7. O.A. being devoid of merit is dismissed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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