

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00339/2016

Jabalpur, this Tuesday, the 17th day of July, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Bihari Prasad Dwivedi, S/o Shri Brijbhushan Prasad Dwivedi, aged about 66 years, r/o College Road, Dongargaon, Distt. Rajnandgaon, (C.G.), PIN – 491661 **-Applicant**

(By Advocate – Shri R.N. Pusty)

V e r s u s

1. Union of India through the Secretary, M.O. Communications & I.T., Deptt. Of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. The Chief Postmaster General, C.G. Circle, Raipur (C.G.) PIN 492001.
3. Dy. Director of Audit & Accounts, Postal Audit, Tikrapara, Raipur (C.G.).
4. The Sr. Supdt. of Posts, Durg Division, CC Bhilai, Distt. Durg, PIN – 490006 (C.G.)

-Respondents

(By Advocate –**Shri Vivek Verma**)

(Date of reserving order : 09.07.2018)

ORDER

By Ramesh Singh Thakur, JM.-

The applicant is seeking benefit of 2nd Modified Assured Career Progression (in short 'MACP') scheme w.e.f.

01.09.2008 by refixing his pay and pension along with arrears, as has been granted to applicant in OA No.958/2013.

2. The applicant has sought for the following reliefs:

“8.(i) This Hon’ble Tribunal may kindly be pleased to call for the entire records of the case relating to grant of financial upgradations in the form of TBOP/BCR and MACP.

8.(ii) This Hon’ble Tribunal may kindly further be pleased to set-aside the impugned memo dated 26.7.11 (Annexure A/6) thereby declining the request of the applicant for grant of 2nd MACP benefits.

8.(iii) This Hon’ble Tribunal may further be pleased to direct the Respondents to grant the 2nd MACP in PB-2 GP 4200 w.e.f. 1.9.2008 and accordingly refix his pay and pension and pay him all the arrears and other consequential benefits.

8.(iv) Further, this Hon’ble Court may be pleased to direct the Respondents Authorities to give applicant the benefits as has been granted to the applicant in O.A. No.958/2013 by this Hon’ble Tribunal, forthwith.

8.(v) Any other relief which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case, may also be granted to the applicant alongwith cost of this application.”

3. The applicant has also filed an MA No.203/745/2016 for condonation of delay. It has been submitted that applicant is being paid lesser pension due to denial of 2nd MACP.

Therefore, a recurring cause of action accrues in his favour and the O.A is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Precisely, the case of the applicant is that he was appointed as an Extra Departmental employee with the respondent department in the year 1971 and worked as such till 10.07.1977. Thereafter, the applicant was posted to the cadre of Class IV after declaring successful in the examination for recruitment to the cadre of Class IV vide Office Order dated 14.06.1977 (Annexure A-1). On 04.07.1981 (Annexure A-2), the applicant was declared successful under departmental and outsider quota examination held on 26.04.1981 and he was posted as Postman. The applicant was promoted from Postman cadre to Postal Assistant on 21.06.1983.

4.1 The Ministry of Communications & IT, Department of Posts, vide its Office Memorandum dated 18.09.2009 (Annexure A-3) has circulated the recommendations of the Sixth Central Pay Commission for implementing the MACP scheme, which came into operation w.e.f. 01.09.2008. Further

clarification regarding delay and irregularities in implementation of MACP scheme was issued on 18.10.2010 (Annexure A-4).

4.2 The applicant submits that he has completed more than 27 years of service in the grade of Postal Assistant. As per the MACP scheme, an employee is entitled to three financial upgradations on completion of 10, 20 and 30 years of service respectively. Since the post of Postal Assistant is not having any further avenue of regular promotion, the applicant was granted first financial upgradation under TBOP scheme vide order dated 18.08.2000 (Annexure A-5), upon completion of 16 years of service w.e.f. 25.06.1999. However, the applicant was not granted the benefit of 2nd financial upgradation under MACP scheme, which should have been extended to him w.e.f. 25.06.2009. He retired from the service as a Postal Assistant on 30.09.2010 after rendering 27 years of service on the post of Postal Assistant.

4.3 The applicant submitted a representation dated 26.04.2011 (Annexure A-7), which has been rejected by the

respondents vide order dated 26.07.2011 (Annexure A-7) on the ground that he has been promoted twice as Postman from 15.07.1981, Postal Assistant from 21.06.1983 and has also been granted the benefit of TBOP from 25.06.1999. Therefore, he is not entitled for any further financial upgradation under the MACP scheme.

4.4 The main ground of challenge in this Original Application is that the respondents have erroneously counted the appointment of the applicant on the post of Postman cadre from Group D cadre and thereafter in Postal Assistant cadre from the Postman cadre as promotion and are considering the benefit of TBOP given w.e.f. 25.06.1999 as 3rd financial upgradation. Further, in the identical cases, i.e. Original Applications Nos.958/2013 & 203/00378/2014, this Tribunal vide order dated 18.12.2015 has allowed both the Original Applications directing the respondents therein to grant the applicants benefit of 2nd and 3rd financial upgradations under the MACP scheme by treating their appointment as Postal Assistant, as the first recruitment, along with all consequential benefits.

5. The respondents have filed their reply. It has been submitted that the O.A is not maintainable and liable to be dismissed on the ground of limitation as the claim of the applicant was rejected way back in the year 2011 vide order dated 26.07.2011 and he has approached this Tribunal in 2016, i.e. after a lapse of more than four years. It has been further submitted that the promotion acquired by the applicant by way of appearing in the competitive examination, are benefits with financial upgradation/promotion. Since the applicant was granted the benefit of all three financial upgradations including his promotions as Grade D and Postal Assistant, he is not entitled for any further financial upgradation under the MACP scheme.

6. We have heard the learned counsel for the parties and have gone through the pleadings and documents available on record. We have also perused the averments made in the MA for condonation of delay.

7. Learned counsel for the respondents submitted that though the case of the applicant was rejected in the year 2012

and he has approached this Tribunal in the year 2016, however, the doctrine of delay and laches will not apply in his case, as he is seeking benefit of MACP and it will not affect the rights of third parties. In this regard he has placed reliance in the judgment of Hon'ble High Court of Delhi in **Anil Kumar vs. Union of India and Anr.**, LAWS (DLH)-2018-2-227.

8. We find force in the contention put-forth by learned counsel for the applicant, as the issue relates to grant of benefit of MACP, which will result into payment or re-fixation of applicant's pay or pension and will not affect the settled rights of third parties. Hence, the MA for condonation of delay is allowed. Delay in filing the Original Application is condoned.

9. The issue involved in this Original Application has already been considered and decided by this Tribunal in Original Applications Nos.958/2013 and 203/00378/2014 vide order dated 18.12.2015. This Tribunal, while placing reliance on the orders passed by the coordinate Bench at Jodhpur, in Original Application No.382 of 2011 and other connected

matters (**Bhanwar Lal Regar vs. Union of India and others**, decided on 22.05.2012), has held in Para 5 as under:

“5. The issue involved in the present case is no more res integra. The Jodhpur Bench of this Tribunal in the matters of **Bhanwar Lal Regar Vs. Union of India and others**, Original Application No.382 of 2011, and other connected matters disposed of vide order dated 22.5.2012 (Annexure A-6), has considered the same issue. In the said matter, the applicants who were similarly placed, as they were initially appointed as Extra Departmental Agent in the Postal Department and thereafter became Group-D employee of the Postal Department. After that, those employees were selected for the post of Postal Assistant. The respondents were denying grant of MACP to these employees by treating their promotions from Group-D employees to Postal Assistant as one of the promotions. The relevant paragraphs of the said order read thus:

“(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

Assistants. In that sense the clarification issued by the Pay Commission Cell of the Department of Posts, Ministry of Communication & 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 the Postmen in the main cadre on direct recruitment 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 advancement cannot be called to be promotions within the definition of work '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.

(20). *It is, therefore, clear that Para-2 of the impugned order in all these three OAs at Annexure A-1 dated 10.8.2011, 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 benefits thereafter, has to be counted only from the*

date they were substantively appointed as Postal Assistants.....”

In the instant case also, the applicant was duly selected for the post of Postal Assistant w.e.f. 21.06.1982 through a competitive examination. Therefore, he is entitled for grant of financial upgradations under the MACP scheme by treating his appointment as Postal Assistant, as the first recruitment.

10. In the result, the O.A is allowed. The respondents are directed to grant the applicant benefit of 2nd MACP by treating the benefit of TBOP granted w.e.f. 25.06.1999, as first upgradation, with all consequential benefits including revision of pension and pensionary benefits, along with arrears. However, he shall not be entitled for any interest on the amounts of arrears to be paid to him. The aforesaid exercise shall be completed within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member
am

(Navin Tandon)
Administrative Member