

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**ORIGINAL APPLICATION NO.291 OF 2012**

Jabalpur, this Friday, the 5th day of January, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

S.L.Jharia, S/o late K.L.Jharia, Aged about 59 years,
R/o 2248, Rani Durgawati Ward, Sharda Chowk,
Garha, Jabalpur-482003

- APPLICANT

(By Advocate – Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary,
Ministry of Communication & IT, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi-110001

2. The Assistant Director General (GDS/PCC),
O/o the Director General, Ministry of Communication & IT,
Department of Posts, Dak Bhawan, Sansad Marg,
New Delhi-110 001

3. Chief Post Master General, M.P. Circle, Hoshangabad Road,
Bhopal-462012 (M.P.)

4. Director, Postal Services, O/o Chief Post Master General,
M.P. Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

5. Sr. Superintendent of Post Offices, Jabalpur Division,
Jabalpur-482001 (M.P.)

- RESPONDENTS

(By Advocate – Shri A.P.Khare)
(Date of reserving the order:02.01.2018)

ORDER

By Navin Tandon, AM-

The applicant is aggrieved by non-consideration of his claim for grant of 2nd financial upgradation under the Modified Assured Career

Progression (for brevity 'MACP') Scheme with effect from 02.01.2009 by taking into his appointment as Postal Assistant on selection basis.

2. The brief facts of the case are that the applicant was initially appointed as Extra Departmental Agent in May 1976. He participated in the selection for Group-D post and having qualified in the selection, he was appointed as Group-D staff w.e.f. 13.1.1983. The applicant further participated in the selection conducted by the respondent-department for the post of Postal Assistant, and on his selection he was appointed as such with effect from 02.01.1989. After rendering 16 years of service in the Postal Assistant Cadre with effect from 02.01.1989 he had been granted financial upgradation with effect from 02.01.2005 in the pay scale of Rs.4500-7000 under One Time Bound Promotion Scheme (hereinafter referred to as '**the OTBP Scheme**'). The pay of the applicant has been fixed after 1.1.2006 in the pay band of Rs.5200-20200 with grade pay of Rs.2800/-. After completion of 20 years of service he had submitted a representation dated 03.01.2012 (Annexure A-5) for grant of 2nd financial upgradation under the MACP Scheme in the grade pay of Rs.4200/-, which was rejected vide impugned order dated 11.01.2012 (Annexure-A-1). Thereafter, the applicant submitted another representation dated 24.01.2012 (AnnexureA-6) requesting for change of his Grade Pay

from Rs.2800/- to Rs.4200/-, which was also rejected by the respondent No.5 vide impugned order dated 08.02.2012.

3. The applicant has sought for the following reliefs in this Original Application:

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

(ii) Set aside the order dated 11.1.2012 Annexure A/1 and the order dated 8.2.2012 Annexure A/2 with all consequential benefits arising thereto.

(iii) Upon holding that the applicant is entitled to get 2nd upgradation as per illustration 2B, direct the respondents to consider the applicant for 2nd upgradation w.e.f. 2.1.2009 with all consequential benefits.

(iv) Any other order/orders, direction/directions may also be passed.

(v) Award cost of the litigation to the applicant”.

4. During the course of hearing in support of his claim the learned counsel for the applicant placed reliance on the decision of Madras Bench of this Tribunal in the matters of **D.Sivakumar Vs. Union of India and others**, Original Application No.1088 of 2011 decided on 14.03.2013. The learned counsel submits that the Writ Petition No.30629 of 2014 (**Union of India and others Vs. D.Shivkumar & another**) filed against the aforesaid decision was dismissed by the Hon’ble High

Court of Judicature at Madras vide order dated 04.02.2015. He further submits that the Review Petition (c) No.1939 of 2017 in SLP(c) No.4848 of 2016 filed by the Union of India was also dismissed by the Hon'ble Supreme Court. The learned counsel submits that the applicant's case is fully covered by the aforesaid decision of Madras Bench of the Tribunal and he should be granted the said relief.

5. On the other hand, the respondents have submitted that the applicant was initially appointed as Extra Departmental Agent and thereafter he was selected for Group 'D' Post. Having qualified in the selection the applicant was appointed as Group-D staff. The applicant was further promoted to the post of Postal Assistant with effect from 09.01.1989. After rendering 16 years of service in Postal Assistant Cadre w.e.f. 09.01.1989 the applicant had been granted financial upgradation w.e.f. 22.01.2005 under OTBP Scheme.

5.1 The respondents further submitted that the applicant completed 10 years service on 12.01.1993 from date of entry in the department in Group-D cadre and entitlement for 1st MACP. He completed 20 years of service on 12.01.2013 for entitlement of 2nd MACP. Both these financial upgradations were counted against 1st while promoting him from group D to Postal Assistant cadre and, 2nd while granting him OTBP financial

upgradation. Now, the applicant will be entitled for 3rd financial upgradation under MACP after completion of 30 years of service which will be due on 12.01.2013. Therefore, the question does not arise for consideration of 2nd financial upgradation and grant of grade pay of Rs.4200/-. The representation submitted by the applicant has already been considered and rejected by the respondents by speaking order dated 08.02.2012 (Annexure A-2).

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. The short issue involved in the present case is whether the applicant, who was appointed as Postal Assistant on selection basis can be treated as a direct recruit to the said post and is entitled for financial upgradations under the MACP schemes on completion of prescribed length of service from the date of his appointment as Postal Assistant.

8. The Hon'ble High Court of Judicature at Madras in the matters of **D.Sivakumar** (supra) has held thus:

“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. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions 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”.

9. Thus, in view of the final verdict laid down by the Hon'ble High Court of Madras, against which the SLP & Review Petitions had already been dismissed by the Hon'ble Supreme Court, we are of the considered that the action of the respondent-department in adjusting the appointment of the applicant as Postal Assistant on 09.01.1989, as the first financial upgradation under the MACP Scheme is clearly erroneous in view of the fact that the appointment of the applicant as Postal Assistant in the present case was also not granted after mere completion of 10 years in the cadre of Postman, as has been held by the Hon'ble High Court of Madras in the case of **D.Sivakumar** (supra) . From Group-D cadre, to which, the applicant got appointed on 13.01.1983, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against MACP-I is clearly erroneous. Thus, it will be clear that the applicant would be entitled to 2nd financial upgradation on completion of 20 years of service after his appointment as

Postal Assistant. In this view of the matter, the present Original Application is liable to be allowed.

10. In the result, the Original Application is allowed. The impugned orders dated 11.1.2012 (Annexure A-1) and 08.02.2012 (Annexure A-2) are quashed and set aside. The respondents are directed not to take into account the appointment granted to the applicant to the post of Postal Assistant against the 1st financial upgradations under the MACP Scheme. The respondents are further directed to grant the 2nd financial upgradation under the MACP Scheme to the applicant, on completion of 20 years of service from the date of his appointment to the post of Postal Assistant, and grant him all consequential benefits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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