

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00426/2017

DATED THIS THE 25th DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.Suresh G., 55 years
S/o. Late Sri.M.K.Ganapathyappa
Assistant Accounts Officer
Director of Accounts (Postal)
GPO Blog, 4th Floor
Raj Bhavan Road
Bengaluru: 560001.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
By its Secretary
Ministry of Communications (DOP)
Dak Bhavan, Sansad Marg
New Delhi-110 017.
2. Department of Posts
By its Director General (Postal Accounts Wing)
Dak Bhavan, Sansad Marg
New Delhi-110 017.
3. Director of Accounts (Postal)
Karnataka Circle
3rd Floor, GPO Building
Raj Bhavan Road
Bengaluru-560 001.Respondents

(By Advocate Sri N.Amaresh)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The case of the applicant in a nutshell is that he enters service in Dept. of Posts as Postal Assistant (PA) on 14.12.1985. He is placed in TBOP scale w.e.f. 1.1.2001.

After introduction of MACP scheme by Dept. of Posts, he was placed in 2nd financial upgradation in PB-2 scale with Grade Pay of Rs.4200 w.e.f. 1.9.2008 by order dtd.30.6.2010(Annexure-A4). Thereafter, he took the special limited departmental competitive examination for appointment to the cadre of Assistant Accounts Officer(AAO) against 90% departmental examination quota for the year 2012 as per the notification dtd.11.9.2012(Annexure-A5). As per the result of the examination came to be notified on 4.6.2013 by the Dept. of Posts(Annexure-A6), the applicant whose name appears at Sl.No.31, was appointed as Assistant Accounts Officer in Indian Posts and Telecommunications Accounts and Finance Service Group ' B' in PB-2 with GP Rs.4800 on regular basis and posted to PAO Nagpur(Annexure-A7). Applicant on transfer joins Karnataka Postal Circle on 2.5.2016 and since then he is working as AAO under R3 at Bengaluru. Applicant submits that upon completion of 30 years of qualifying service as per MACP scheme as on 14.12.2015 but having 21 days non-qualifying service in the entire service career on account of strike period etc., he submitted a representation dtd.14.7.2016(Annexure-A8) claiming for placement in 3rd financial upgradation. Respondent No.3 rejects the claim by order dtd.16.8.2016(Annexure-A9) relying on the Postal Directorate's clarification dtd.8.3.2009 and 7.2.2013 and stated that if the Postal Assistants who have got financial upgradation under Postal Department's TBOP & BCR Schemes before their promotion to the grade of Assistant Accounts Officers are not entitled to any further financial upgradation under the MACP Scheme. The applicant submits that as per clarification dtd.5.4.2013(Annexure-A11) regarding Postal Assistant's admissibility of MACP and fixation of pay on account of appointment as AAO, as per paragraph 4 of Annexure-I of MACP scheme dtd.19.5.2009 notified by DOPT, if the Govt. Servant got his regular promotion in the hierarchy of the cadre after availing financial upgradation under MACP, he will only be granted the difference of

grade pay without any additional increment. As the promotion to AAO is not in the hierarchy of PA, 3% fitment is to be allowed. The Hon'ble High Court of Delhi in a similar issue in WP(C) No.4131/2014 has held in favour of the employee vide order dtd.5.8.2014(Annexure-A13). And CAT, Jaipur Bench also in OA.No.589/2013 decided on 12.5.2014(Annexure-A14) has held in favour of the employee. Some of the 2012 batch appointees to the AAO cadre in Cuttack Postal Account Unit have been extended the benefit of 3rd financial upgradation after their becoming AAOs(Annexure-A15). Neither Postal Directorate's letter dtd.8.3.2011 nor the Postal Directorate's clarification issued on 7.2.2013 which material is relied upon for rejecting the claim of the applicant under the impugned order at Ann-A9 are the correct interpretations of the MACP Scheme dtd.18.9.2009(Annexure-A1).

2. The applicant submits that in Karnataka Postal Accounts Directorate, the persons working in lower cadres to that of the AAOs cadre are granted GP Rs.5400 w.e.f. 1.1.2006 as per the 6th CPC recommendations whereas the AAOs are granted pay revision and placed in GP Rs.4200 or 4800 as per 6th CPC. Therefore, the AAOs including applicants sought parity of the GP on par with those juniors. Litigations in this regard came up before various Tribunals/High Courts. The Karnataka High Court has taken a view that in any case AAOs cannot get lesser grade pay than that of their juniors/below grade employees as per 6th CPC pay scales. In the event of applicant's getting the benefit of GP Rs.5400 in place of GP Rs.4800 as AAO w.e.f. 27.6.2013 in terms of the above ruling of Hon'ble High Court, then he would be entitled for placement under Level-10 under the CCS(RP) Rules w.e.f. 4.1.2016 the date on which he is entitled for the 3rd MACP benefit. Therefore, the impugned order dtd.16.8.2016 is liable to be set aside and he should be extended with 3rd MACP benefit w.e.f. 4.1.2016 with all consequential benefits including the monetary

benefits flowing there from.

3. The respondents have filed their reply statement wherein they submit that the applicant joined the department as Postal Assistant on 14.12.1985. He was given TBOP benefit after completion of 16 years of service and was given next higher scale in the hierarchy on non-functional basis w.e.f. 1.1.2001. He was granted 2nd financial upgradation under the MACP w.e.f. 1.9.2008. On passing the limited departmental competitive examination against 90% exam quota, he was promoted as AAO w.e.f. 27.6.2013. It is clear that he opted for the accounts line. Based on the clarification issued by the Directorate vide letter dtd.7.2.2013 & 8.3.2011, 3% fixation benefits was allowed at the time of fixation of pay in the cadre of AAO. Subsequently, when he represented for grant of 3rd financial upgradation under the MACPS to the GP Rs.5400 on completion of 30 years of service, it was informed that as he got fixation benefits on three occasions viz. TBOP, 2nd MACP and promotion to AAO, he was not entitled for 3rd financial upgradation.

4. Regarding the contention of the applicant that the promotion to AAO is not in the hierarchy of PA and hence 3% fitment is to be allowed, the respondents submit that the fixation benefit is given only on promotion to AAO even though it is not in the hierarchy of PA. If AAO cadre was hierarchical to PA, then the applicant would have got only the difference of GP Rs.600(4800-4200) on promotion as AAO as he would have been given 3% fixation benefit at the time of getting MACP-II itself. Further he would have been eligible for 3rd financial upgradation under MACP. Therefore whether the promotion was in the line of hierarchy of cadre or not is immaterial. What is of material is as to whether the Govt.servant has been given fixation benefit on such promotion. The crux of the scheme is that the Govt. servant should get at least three financial benefits in his career. These upgradations can be in the form of

regular norm based promotions, upgradations under existing scheme or a combination of both. Directorate letters dtd.5.4.2013 & 7.2.2013 clearly state that a Govt. servant who has got a regular promotion in the hierarchy of cadre, after availing financial upgradation under the MACPS, only the difference in GP will be given and if the promotion is not in the hierarchy of cadre, 3% fixation benefit along with difference in GP will be given. This is exactly what has been done in the applicant's case. In doing so, 3 fixations benefits have accrued as mandated under the MACPS. Nowhere in the scheme it is stated that only promotions earned in the hierarchical cadres as per recruitment rules should be counted for grant of financial upgradations. Obviously, a govt. servant can still go up the ladder if he gets further norm based promotions but there can be no further financial upgradations. Therefore, the applicant is not eligible for 3rd financial upgradation to the GP of Rs.5400.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that in terms of Min. of Finance, Dept. of Expenditure OM dtd.10.6.2009(Annexure-RJ1), after completion of 30 years of service, as a matter of fact, he is entitled for placement in the 3rd financial upgradation w.e.f. 4.1.2016 so as to get GP Rs.5400 in the same PB-2 scale of Rs.9300-34800 in view of his getting GP of Rs.4800 upon his appointment as AAO w.e.f. 27.6.2013. He stated that his appointment as AAO is not a case of promotion. He referred an OM dtd.21.8.2017(Annexure-RJ2) in order to submit the cases of AAOs who are eligible for grant of financial upgradation up to 31.3.2018 are required to be processed by the Postal Administration so as to mitigate his just demand in this regard.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record and written submissions made by both the parties in

detail. The crux of the issue is whether the applicant's promotion as AAO will entitle him for the benefit of 3rd MACP. The applicant has contended that AAO is not the cadre hierarchy promotion and therefore his entry as AAO even if it is a case of promotion should not come in his way of getting 3rd MACP after completion of 30 years of service. Secondly, he has relied on Annexure-RJ1, paragraph-2(b) which reads as follows:

b) The pay scales of JAO (Rs.6500-10500) and AAO (Rs.7450-11500) have been merged and upgraded to Rs.7500-12000 as recommended by the Sixth Pay Commission and they have been placed in grade pay of Rs.4800/- in Pay Band 2. Hence the promotion/financial upgradation granted to JAOs prior to 1.1.2006 is to be ignored. After the implementation of MACPS, 3rd financial upgradation may be granted to them in the next higher Grade Pay of Rs.5400/- on completion of 10 years service in the grade pay of Rs.4800/- or on completion of 30 years of service, whichever is earlier.

The third point made on the side of the applicant is that similarly situated officials have been extended the benefit of 3rd MACP in other Circles as evidenced by the documents in Annexure-A15. Regarding the first point, it is very obvious from the details furnished by the applicant himself vide Annexure-A5 that the applicant has passed the limited departmental competitive examination for the promotion to the cadre of Assistant Accounts Officer (90% departmental examination quota). As noted in para-2 of that Annexure, 90% of the vacancies in the JAO (now AAO) are to be filled up by promotion through a Limited Departmental Competitive Examination. No person who is not a departmental candidate can appear for this examination and therefore, it is clearly a case of promotion as has been stated in the Annexure itself. Further in Writ Petition No.102322/2018(S-CAT), the Hon'ble High Court of Karnataka, Dharwad Bench in its order dtd.27.11.2018 has gone into this question in a comprehensive manner in a similar case and has come to the conclusion that when as per departmental rules, a certain portion of the vacancies are to be filled up only through a departmental test, the same can be considered

only as a promotion and not direct recruitment. In the same WP, reference has also been made to the order of the co-ordinate Bench of the Court in its latest order dtd.2.8.2018 in the case of Shivalingappa. There is no need for us to further venture into the aspect as to whether the appointment of the applicant is a promotion or not. It is clearly a promotion. Regarding para-2(b) of Annexure-RJ1 cited by the applicant, it is clear that the same will apply only to the cases where the promotions/financial upgradations have been granted to the Junior Accounts Officers prior to 1.1.2006. In the case of the applicant, he was promoted as AAO on 27.6.2013 and therefore para-2(b) will certainly not be applicable in his case. The logic of that para is relating to the merger of the pay scales of JAO (Rs.6500-10500) and AAO (Rs.7450-11500) and upgraded to Rs.7500-12000 as recommended by the Sixth Pay Commission and they being placed in Grade Pay of Rs.4800/- in Pay Band 2. The same cannot be clearly applicable in the case of the applicant since he has been promoted as AAO with GP Rs.4800. Regarding the third point about similarly situated persons, from the documents furnished at Annexure-A15, it is not possible to make out whether the cases of those persons are similar to that of the applicant. Even if it were so, on the merits of the case, it is clear that the applicant has got three financial upgradations/fixations under TBOP in GP Rs.2800, 2nd MACP in GP Rs.4200 and one promotion as AAO in GP Rs.4800. Therefore, the applicant is clearly not eligible for any further financial upgradation. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00426/2017

Annexure A1: MACP scheme notified by the Dept. Of Posts on 18.9.2009

Annexure A2: Corrigendum 24.9.2009 issued by the Dept. Of Posts

Annexure A3: One more corrigendum dd,29,9,2009 issued by the Dept. Of Posts

Annexure A4: 2nd MACP placement order dtd.30.6.2010

Annexure A5: Notification dtd.11.9.2012 for conducting special limited departmental competitive examination for appointment to the cadre of AAO against 90% departmental examination quota for the year 2012

Annexure A6: Notification dtd.4.6.2013 regarding announcement of results of the examination held on 29th & 30th December 2012

Annexure A7: Applicant's posting order as AAO issued on 4.6.2013

Annexure A8: Representation dtd.14.7.2016

Annexure A9: Impugned order dtd.16.8.2016

Annexure A10: Dept. Of Posts communication dtd.7.2.2013 addressed to Director of Postal Accounts Jaipur with copies to all other Directors of accounts (Postal) in the country along with typed copy

Annexure A11: Dept. Of Posts letter dtd.5.4.2013

Annexure A12: DOPT OM dtd.19.5.2009

Annexure A13: Copy of the Delhi High Court judgment dtd.5.8.2014

Annexure A14: Copy of the CAT Jaipur Bench judgment dtd.12.5.2014

Annexure A15: Office orders issued by Director of Accounts (Postal) Cuttack granting 3rd MACP benefit to similarly placed AAOs of that unit

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-RJ1: Copy of the GOI OM dtd.10.6.2009

Annexure-RJ2: Copy of the GOI OM dtd.21.8.2017
