

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00797/2016
Original Application No. 180/00817/2017

Friday, this the 12th day of April, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. **Original Application No. 180/00797/2016** -

Smt. Jayaleela J. Thangaraj, aged 58 years,
 W/o. C. Thangaraj, Sr. Accountant, PAI Section,
 O/o. Directorate of Accounts (Posts), Kerala Circle,
 (IVth Floor), GPO Buildings, Trivandrum 695 001,
 residing at A-84, Sreeramam, Sreerangam Lane,
 Sasthamangalam, Trivandrum 695 010.

Applicant

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by
 the Director General Posts,
 New Delhi – 110 001.

2. The Chief Postmaster General, Kerala Circle,
 Trivandrum – 695 033.

3. Sr. Accounts Officer (Admn-I),
 O/o. The Director of Accounts (Postal),
 Kerala Circle, Trivandrum – 695 001.

Respondents

(By Advocate : Mr. S. Ramesh, ACGSC)

2. **Original Application No. 180/00817/2017** -

1. N. Sathikumar, aged 57 years, S/o. Narayanan,
 Sorting Assistant, Head Record Office, RMS TV Division,
 Thiruvananthapuram – 695 001, residing at TC 29/578(1),
 Palkulangara, Thiruvananthapuram – 695 024.

2. V. Jayakumar, aged 59 years, S/o. Velyudhan Pillai,
 Sorting Assistant, Head Record Office, RMS TV Division,
 Thiruvananthapuram, 695 001, residing at Aravind Bhavan,

TC 4/125(5), Kowdiar PO, Thiruvananthapuram-
695 003.

..... **Applicants**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by
the Director General Posts,
New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 033.
3. The Senior Superintendent of Railway Mail Services,
TV Division, Thiruvananthapuram-695 036. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

These applications having been heard on 09.04.2019, the Tribunal on 12.04.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-797-2016 and 180-817-2017 have common points of fact and law involved and hence are being disposed of through this common order. The pleadings, documents and records in OA No. 180-797-2016 are referred to in this common order for the sake of convenience.

2. The relief claimed by the applicant in OA No. 180-797-2016 are as under:

“(i) To call for the records relating to Annexure A-1 to A-8 and to quash A-1 being illegal and arbitrary;

(ii) To declare that the applicant is entitled for three financial upgradations as per MACP scheme with effect from the date of appointment as LDC i.e. with effect from 19.2.1986;

(iii) To direct the respondents to grant the applicant the 3rd financial upgradation as per MACP scheme on completion of 30 years service with effect from 19.2.2016 with all consequential benefits;

(iv) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

(v) To grant the costs of this Original Application."

3. The brief facts of the case are that the applicant joined the service of the respondents as Sorter. Later she cleared the competitive examination for promotion as LDC held from 23.12.1985 to 24.12.1985 and was promoted as LDC w.e.f. 19.2.1986. The applicant further qualified in the departmental examination for promotion as JA conducted in the year 1988 and she was promoted as JA w.e.f. 6.12.1993 i.e. five years after qualifying in the examination. Thereafter the applicant was promoted as Senior Accountant on regular basis w.e.f. 1.4.2006 and she is continuing as such till date. Consequent on the recommendations of the 6th CPC the Government of India had brought out MACP scheme. As per the same three financial upgradations are granted on attaining 10, 20 and 30 years of service. The applicant joined as a Sorter had earned a promotion as LDC on a fast track mode by qualifying in the LDCE and have earned 2 more promotions to the level of Senior Accountant on qualifying in the examinations for the same. The entry in to the cadre of LDC is by qualifying in the competitive examination and not through seniority quota. All the others who have been taken into the cadre on qualifying the examination is reckoned as a direct recruit and is considered as entered the cadre as a fresh recruit. In such circumstances the stand of the respondents is that as three promotions have been effected, she is denied the 3rd MACP benefit reckoning the

appointment as LDC as a regular promotion, though the same was on the basis of qualifying in the competitive examination. The promotion earned before her posting as LDC while in Sorter cadre is only to be ignored as the promotion to LDC cadre is not based on any seniority method or in normal channel of promotion. The Jodhpur Bench of this Tribunal in a similar matter held that the said promotion is to be ignored as the same is obtained on fast track mode and not in the normal mode. However, the respondents did not grant him the said benefit of the order passed by the Jodhpur Bench of this Tribunal in OA No. 382 of 2011 and connected cases. Further the Madras Bench of this Tribunal in a similar matter in OA No. 1088/2011 allowed the OA in favour of the applicant therein on 14.3.2013. The appeal filed by the respondents against the said order was dismissed by the Hon'ble High Court in WP No. 30629/2014 on 4.2.2015. The matter was taken up before the Hon'ble Supreme Court in SLP © No. 4848/2016 which was also dismissed vide judgment dated 16.8.2016. The applicant being similarly situated submitted a representation in this regard pointing out all these aspects but the respondents have rejected the same as per the impugned order. Aggrieved the applicant has filed the present Original Application claiming the above relief.

4. Notices were issued to the respondents. Mr. S. Ramesh, ACGSC took notice on behalf of the respondents and filed a detailed reply statement contending that the applicant entered in to service as Sorter and appeared in the LDCE and was promoted as LDC w.e.f. 19.2.1986. On qualifying in the departmental examination for promotion to the cadre of Junior Accountant

she was promoted as Junior Accountant w.e.f. 6.2.1993. Thereafter, the applicant was promoted as Senior Accountant on regular basis 2.e.f. 1.4.2006 and is continuing as such till date. The promotion of the applicant from Sorter to LDC on passing the LDCE cannot be treated as a direct recruit in LDC cadre as he is not accommodated against the direct recruitment quota. The essence of the MACP scheme is that an employee should get three financial upgradations on his entire career from his initial appointment even if he is not appearing for any promotional exam. Therefore, there is no scope for any further financial upgradation as per the MACP scheme. Accordingly, the representation of the applicant was rejected vide Annexure A1. With regard to the decision of the Madras Bench of this Tribunal in OA No. 1088/2011 it is submitted that the said matter has attained finality with the dismissal of the SLP filed against the judgment of the Hon'ble High Court of Madras. However, the Hon'ble apex court while dismissing the SLP held that the question of law is kept open. Therefore, Annexure A6 order is not automatically extendable to similarly placed officials and each case has to be decided on its own merits as the Hon'ble Supreme Court has kept the question of law still open. The respondents contend that the present matter is covered by the order passed by this Tribunal in OAs Nos. 127/2012, 142/2012 and 702/2012 dated 7.8.2013 wherein this Tribunal dismissed the OAs holding that ACP/MACP scheme takes into account the promotions earned by the official for the purpose of working out the eligibility for financial upgradation under the scheme. Respondents pray for dismissing the OA.

5. Heard Mr. Shafik M.A., learned counsel for the applicants in both OAs, Mr. S. Ramesh, ACGSC, learned counsel for the respondents in OA No. 180-797-2016 and Mr. N. Anilkumar, SCGSC learned counsel appearing for the respondents in OA No. 180-817-2017. Perused the record.

6. The issues raised in this OA are two fold: Firstly whether appointment of the applicants as LDC/Postal Assistant/Sorting Assistant is to be taken as fresh appointment or promotion. Secondly whether applicants are entitled for MACP after taking into account their appointment as LDC/Postal Assistant/Sorting Assistant by clearing the departmental exam.

7. Learned counsel for the applicants have relied upon the order passed by the Jodhpur Bench of the Tribunal in OA No. 382/2011 and connected cases dated 22.5.2012. He had also relied upon the order passed by the Principal Bench of the Tribunal in OA No. 3756/2011 dated 3.11.2015. The relevant part of the order passed by the ***Jodhpur Bench of the Tribunal in OA No. 382/2011*** and connected cases is extracted below:

“19.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 advancements cannot be called to be promotions within the definition of the 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.”

In a similar matter the Hon'ble High Court of Delhi on 5.8.2014 in ***Union of India v. Shakeel Ahmad Burney*** has held as under:

“8. 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 emphasized 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.”

8. On the contrary respondents counsel submitted that Annexure A6 order is not automatically extendable to similarly placed officials and each case has to be decided on its own merits as the Hon'ble Supreme Court has kept the question of law still open. Moreover, the appointment of the applicants in OA No. 180-817-2017 to the posts of Postal Assistant/Sorting Assistant is by LDCE i.e. 50% quota meant for departmental candidates which is actually a promotional post. Therefore, it should be treated as a promotion.

9. However, we are of the view that through 50% departmental quota the applicants in OA No. 180-817-17 were selected and appointed as Postal Assistant/Sorting Assistant after competing in the LDCE/test. Several categories including Group 'D' employees are also allowed to participate in the said LDCE/test and therefore, the rules of promotion is not in picture and the only yardstick is to qualify the exam in the order of merit for which standards are same as per the direct recruitment by a common process of selection. Further the applicant in OA No. 180-797-2016 also appeared in

the LDCE for promotion as LDC from the post of Sorter.

10. The rules of promotion is quite different as the basic criteria is seniority-cum-fitness in order to get the promotion and only the employees from the feeder category is eligible who comes under the consideration zone so fixed by the DPC. However, this is absent in the case of appointment to the posts of LDC/Postal Assistant/Sorting Assistant from the Limited Departmental Competitive Examination quota as it is only by way of merit alone. Further we are not in agreement with the respondents' contention that since applicants are coming through 50% LDCE quota the appointment to the posts should be treated as promotion posts for the simple reason that the selection is made not from feeder category alone but on the basis of seniority and several other categories of employees are also eligible to appear in the said examination who are not at all in the feeder categories and further selection would be on the basis of percentage of marks alone. Similar view is taken by the Hon'ble High Courts at Rajasthan and Delhi and the Tribunals at Principal Bench and Jodhpur Bench (supra). The contention of respondents would have been correct in the case of appointment to the post under 50% by way of promotion which is the other category and they can be said to be promotee LDC/Postal Assistant because they are promoted on the basis of seniority alone.

11. In view of the above legal position and the facts and circumstances of the case, we find that the selection to the post of LDC/Postal Assistant/Postman is by way of an exam and which is a direct recruitment

and shall not be counted as promotion for the purpose of MACP. Therefore, all the applicants are entitled for the financial upgradation as per the MACP scheme on completion of the respective period of service. The impugned orders in all the OAs to extent it denies the benefit of financial upgradation under MACP scheme to the applicants treating the appointment to the post of LDC/Postal Assistant/Postman as one promotion are quashed and set aside. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order.

12. The Original Applications are disposed of as above. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00797/2016**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the letter No. ST/65/SGC/2014 dated 30.6.2016 issued by the APMG of the 2nd respondent communicated as per letter No. 446/Admn-I/EI/C-82/Jayaleela J, dated 14.7.2016 issued by the 3rd respondent.

Annexure A2 – True copy of the OM File No. 4-7(MACPS)/2009-PCC dated 18.9.2009 issued by the DDG (Establishment) of the 1st respondent.

Annexure A3 – True copy of the order dated 22.5.2012 of Jodhpur Bench of this Hon'ble Tribunal in OA 353/2011.

Annexure A4 – True copy of the judgment dated 10.8.2015 of the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No. 11336/2012.

Annexure A5 – True copy of the representation dated 13.8.2015 to the 2nd respondent.

Annexure A6 – True copy of the letter No. 2535/Admn.I/E-II/Staff Adalat/2015 dated 18.3.2016 issued by the Accounts Officer.

Annexure A7 – True copy of the letter No. 72 Admn.I/E.II/Staff Adalat/2015 dated 12/13/4/2016 of the Asst. Accounts Officer.

Annexure A8 – True copy of the representation dated 11.5.2016 submitted before to the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the letter No. 3(4)/09/PA-Admn.I/687 dated 18.3.2010.

Annexure R2 – True copy of the order dated 7.8.2013 of the Hon'ble CAT, Ernakulam Benchin OA No. 127/2012.

Annexure R3 – True copy of order dated 16.5.2010 of the Hon'ble CAT, Ernakulam Bench in OA No. 448/2014.

Annexure R4 – True copy of DOPT OM No. 35034/3/2008-Estt(D) dated 9.9.2010.

Annexure R5 – True copy of the letter No. 65/Admn/EA.VII/8 dated 29.8.1979.

Annexure R6 – True copy of the order dated 7.11.2015 of Hon'ble CAT, Ahmedabad Bench in OA 219/2015.

Annexure R7 – True copy of the quinquennial attestation dated 6.11.1989.

Annexure R8 – True copy of the letter No. 3-7/81-PA-CE/1374 to 1405 dated 6.10.1981.

Annexure R9 – True copy of the judgment of the Hon'ble Supreme Court of India dated 16.8.2016 in SLP © No. 4848/2016.

Original Application No. 180/00817/2017

APPLICANTS' ANNEXURES

Annexure A1 – True copy of the letter No. ST/101-6/M/18/2017 dated 4.8.2017 issued by the 3rd respondent.

Annexure A2 – True copy of the order No. B/34/TBOP/08-09 dated 6.8.2009 issued by the 3rd respondent.

Annexure A3 – True copy of the OM File No. 4-7/(MACPS)/2009-PCC dated 18.9.2009 issued by the DDG (Establishment) of the 1st respondent.

Annexure A4 – True copy of the order No. B-1/MACP/SAS dated 13.7.2010 issued by the 3rd respondent.

Annexure A5 – True copy of the order dated 16.3.2016 in OA No. 180/8/2014.

Annexure A6 – True copy of the order dated 14.3.2013 in OA No. 1088/2011 of the Madras Bench.

Annexure A7 – True copy of the Judgment dated 4.2.2015 of the Hon'ble High Court of Madras in WP No. 30629/2014.

Annexure A8 – True copy of the judgment dated 16.8.2016 of the Hon'ble Supreme Court in SLP © No. 4848/2016.

Annexure A9 – True copy of the memo No. B2/MACP III/Dlgs.2016 dated 22.3.2017 of by the Sr. Supt. of Post Offices, Chennai.

Annexure A10 – True copy of the representation dated 12.6.2017 before the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules, 1991.

Annexure R2 – True copy of the letter No. B-1/MACP/GNL dated 8.8.2017.

Annexure R3 – True copy of Annexure A-I to Annexure A-3.

Annexure R4 – True copy of the common order dated 7.8.2013 in OA No. 127/2012.

Annexure R5 – True copy of the order dated 20.8.2014 in OA No. 725/2012.

Annexure R6 – True copy of the order dated 16.5.2017 in OA No. 448/2014.

Annexure R7 – True copy of the case status in OP (CAT) No. 44/2017 downloaded from the website of the Hon'ble High Court of Kerala.

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