

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00967/2017

Wednesday, this the 29th day of May, 2019

CORAM:

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

A.M. Jayarajan, aged 68 years, S/o. Gopala Warriyar,
 Retired Sorting Assistant (BCR), Sub Record Office,
 Kannur, RMS CT Division, residing at Padmalayam, Thrissilery PO,
 Karthikulam via, Wynad – 670 646. **Applicant**

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

V e r s u s

1. Union of India, represented by the Director General of Posts,
 New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle,
 Trivandrum – 695 033.
3. The Senior Superintendent of Railway Mail Services,
 RMS CT Division, Calicut – 673 032. **Respondents**

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

This application having been heard on 27.05.2019 the Tribunal on
 29.05.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

- “(i) To call for the records relating to Annexure A-1 to A-10 and to declare applicant is entitled for the 3rd upgradation as per MACP scheme on completion of his 30 years in the cadre of SA;
- (ii) To declare that the applicant is entitled for three financial upgradations as per MACP scheme with effect from the date of appointment as Sorting Assistant i.e. with effect from 31.7.1978;

(iii) To direct the respondents to grant 3rd MACP upgradation to the applicant with effect from the date he completed 30 years of service i.e. with effect from 31.7.2008 or with effect from the date of the OM i.e. 1.9.2008;

(iv) To issue appropriate direction or order to revise the pension payment order accordingly and direct the respondent to disburse the arrears of the difference of salary and pension with 18% penal interest;

(v) 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

(vi) To grant the costs of this Original Application.”

2. The brief facts of the case are that the applicant joined the service of the respondents as a Group D w.e.f. 27.11.1973. In the year 1977 he competed in the competitive examination conducted on 30.10.1977 for appointment as Sorting Assistant and was successful in the examination and was directed to undergo training. After completion of training the applicant joined as a Sorter with effect from 31.7.1978 in Ernakulam Division. On completion of 16 years, applicant was granted financial upgradation under TBOP w.e.f. 1.8.1994 in the pay scale of Rs. 4500-7000/-. The applicant was granted further upgradation under BCR scheme on completion of 26 years of service w.e.f. 1.1.2005 in the scale of pay of Rs. 5000-8000/-. However, consequent on the recommendations of the 6th CPC the applicant is entitled for 3rd MACP as he had completed more than 31 years of service in PA cadre itself. The applicant submitted representation on 3.10.2017 indicating the aforesaid. However, the respondents had not responded to the same. The applicant retired from service on 31.5.2009. Aggrieved the applicant has filed the present OA seeking the above relief.

3. Notices were issued to the respondents. Mr. N. Anilkumar, SCGSC took notice on behalf of the respondents and filed a detailed reply statement contending that the applicant joined the Department as Group D at SRO Kannur, w.e.f. 24.11.1973. Later on qualifying the LGO examination he got promotion as Sorting Assistant. On satisfactory completion of training he was appointed as temporary Sorting Assistant at SRO, Kannur w.e.f. 31.7.1978. On completion of 16 years of service he was granted the benefits of TBOP scheme w.e.f. 1.8.1994 and on completion of 26 years of service he was granted next upgradation under BCR scheme w.e.f. 1.1.2005. He retired from service on superannuation on 31.5.2009. Since the applicant has already earned one promotion and two financial upgradations under the relevant schemes applicable at that time, he was not entitled for any further financial upgradation and therefore, he was not granted 3rd financial upgradation under MACP scheme. 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.

4. Heard Mr. Shafik M.A., learned counsel for the applicant and Mr. N. Anilkumar, SCGSC appearing for the respondents. Perused the record.

5. The issues raised in this OA are two fold: Firstly whether appointment of the applicant as Sorting Assistant is to be taken as fresh appointment or promotion. Secondly whether applicant is entitled for 3rd MACP after taking into account his appointment as Sorting Assistant by clearing the departmental exam.

6. Learned counsel for the applicant has relied upon the order passed by the Jodhpur Bench of the Tribunal in OA No. 382/2011 and connected cases dated 22.5.2012. 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.”

Similarly he has also relied upon the judgment passed by the Hon'ble High Court of Delhi on 5.8.2014 in ***Union of India v. Shakeel Ahmad Burney*** wherein the Hon'ble High Court 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.”

7. On the contrary respondents counsel Shri N.Anilkumar submitted that the applicant's appointment to the post of 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 first promotion from 31.7.1978 when he has been promoted as Sorting Assistant. Thereafter he has been granted 2nd financial upgradation on 1.8.1994 on completion of 16 years of service under TBOP scheme applicable from the date of the last promotion as Sorting Assistant and further on completion of 26 years he was granted next upgradation under BCR scheme w.e.f. 1.1.2005. The applicant retired on 31.5.2009.

8. Learned counsel for the respondents had relied on the judgments of the High Court of Karnataka in WP No. 57935/2017 – ***The Union of India & Ors. v. M.G. Shivalingappa*** dated 2.8.2018 and the judgment of the Hon'ble High Court of Judicature of Rajasthan in Civil Writ Petition No. 18488/2016 and connected cases dated 10.5.2018. In ***M.G. Shivalingappa's*** case (supra) the Hon'ble High Court of Delhi held as under:

“5. In that regard, at the outset what is necessary to be taken note is the actual purport of the designation of the respondent as Postal Assistant/Sorting Assistant so as to arrive at a conclusion whether the same could be considered as a promotion that has intervened and elevated the position to a different grade so that the continuity in the same post cannot be contended and the financial upgradation through MACP be claimed. To that extent, the Rules for recruitment as at Annexure R4 would disclose that in respect of the Clerks and Sorters, the promotional avenue is 50% by direct recruitment and the remaining is by promotion through a test. If in that background the respondent who is promoted as Sorting Assistant through the order dated 21.5.1982 (Annexure A2) is taken note, it is seen that the

persons as named therein are the departmental promotees who are promoted to assume the post as Sorting Assistant and the name of the respondent is found at Sl. No. 6. If that be the position, the change from the Group-D post to which the petitioner was appointed on 28.11.1979 and to the Sorting Assistant on 24.5.1982 will have to be considered as promotion. If that be the position, the stagnation for which the financial upgradation is provided under the MACP Scheme cannot be applied when a promotion has been granted to the employee concerned. Thereafter when the respondent was in the promoted post as per the scheme that was in vogue at that point in time, the TBOP has been granted on 28.5.1998 when he had qualified for the same after putting in 16 years in the said position. Subsequently, on 1.7.2008 the next BCR financial upgradation has been granted.

6. On these aspects when there is no serious dispute and the respondent has been granted one promotion and two financial upgradations, the case of the respondent being considered once over again for grant of MACP in the manner as directed by the CAT would not arise in the instant case. In that view the order directing the petitioners to treat the case of the respondent as appointment with effect from the date on which he was promoted and thereafter grant the benefit of MACP scheme would not be justified. Accordingly, the order dated 21.8.2017 impugned at Annexure-A to this petition is set aside.”

9. We are of the view that through 50% departmental quota the applicant was selected and appointed as 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.

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 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 applicant is coming through 50% LDCE quota so the appointment to the post should be treated as promotion post 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 Tribunal at Jodhpur Bench (supra). The contention of Mr. N. Anilkumar, SCGSC 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 Sorting Assistant because they are coming 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 Sorting Assistant 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, applicant is entitled for 3rd financial upgradation as per the MACP scheme on completion of 30 years of service. 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. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the memo No. B-46/78 dated 28.7.1978 issued by the Senior Superintendent of RMS, Ernakulam Division.
- Annexure A2** - True copy of the memo No. B1/19/TBOP/VI dated 9.9.1994 issued by the 3rd respondent.
- Annexure A3** - True copy of the order No. ST/18/6/2004/I dated 20.5.2005 issued by the APMG (Staff) of the 2nd respondent.
- Annexure A4** - 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 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 3.10.2017 submitted before the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the OM dated 7.9.2010.
- Annexure R2** - True copy of the letter No. B1/135/MACP/2016-17 dated 11.10.17.

Annexure R3 - True copy of the letter No.
B1/135/MACP/2016-17/II dated 30.11.2017.

Annexure R4 - True copy of the recruitment rules of
Department of Posts to the post of PA/SA.

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