

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00742/2016

Wednesday, this the 5th day of December, 2018

CORAM:

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

1. K.M. Narayanan Nair, S/o. V.S. Madhavan Nair, aged 60 years, Rtd. SPM, Mepral, Mepral PO, Department of Posts, residing at Kangazha Vadakethil, Mepral PO, Pin – 689 591.
2. P. Ramachandran Pillai, S/o. Parameswaran Pillai, aged 59 years, SPM, Neerattupuram PO, residing at Thazhchayil House, Kavumbhagom PO. **Applicants**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government, Department of Posts, Ministry of Communications, Government of India, New Delhi – 110 011.
2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 033.
3. The Superintendent of Post Offices, Tiruvalla Postal Division, Tiruvalla – 689 101. **Respondents**

(By Advocate : Mr. E.N. Hari Menon, ACGSC)

This application having been heard on 29.11.2018 the Tribunal on 05.12.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “(i) To quash Annexure A1 and Annexure A2.
- (ii) To declare that the applicants are entitled to be extended the benefits of Annexure A7 and Annexure A8 by grant of next financial upgradations under MACP on completion of 20 years of service in the Postal Assistant

Cadre;

(iii) To direct the respondents to grant next financial upgradations under MACP on completion of 20 years of service in the Postal Assistant Cadre with all consequential benefits including arrears of pay and allowances with interest @ 18% per annum from the date on which they fell due till date of actual payment to the applicant.

(iv) Grant such other reliefs as ,may be prayed for and as the Court may deem fit to grant, and

(v) Grant the cost of this Original Application.”

2. The brief facts of the case are that the applicants commenced their service as GDS with effect from 1976. They were appointed as Postman in merit quota on 31.12.1990. Later they were appointed as Postal Assistants as on 3.4.1995 based on merit in the LDCE. Applicant No. 1 retired in 2016 and thereafter the 2nd applicant retired. On implementation of the MACP scheme the applicants were granted one financial upgradation under the scheme with effect from 1.5.2009 vide order dated 20.6.2010. The applicants further submitted that their juniors who have completed 20 years of service in Postal Assistant cadre have been approved for MACP-2 by an order dated 21.6.2016 as per Annexure A4 and applicants are entitled to be granted next financial upgradation under MACP scheme on 1.4.2015 as they have completed 20 years of service in Postal Assistant cadre. Since there was inaction on the part of the respondents to grant such financial upgradation the applicants submitted representations before respondent No. 2 claiming such upgradation. The said representations were rejected vide impugned order at Annexure A1 on the premises that applicants were promoted from Postman to Postal Assistant and promotion is treated as MACP-1 and eligibility under MACP-2 will be on rendering 10 years

continuing service with effect from 2.4.2005. However, the applicants got MACP-2 with effect from 1.9.2008 only. The view of the respondents is not sustainable as submitted by the applicants in view of the judgment passed by the Jodhpur Bench of the Tribunal in OA No. 382 of 2011. As per the judgment in OA No. 382 of 2011 the appointment from Postman cadre to Postal Assistant cadre based on competitive examination is not to be treated as promotion for the purpose of MACP scheme and financial upgradation ought to be granted reckoning the services in the Postal Assistant cadre. It is further submitted that Annexure A7 judgment passed by the Jodhpur Bench of the Tribunal is followed by the other Benches of the Tribunal as well as by the Hon'ble Delhi High Court.

3. Notices were issued to the respondents. They entered appearance through Shri E.N. Hari Menon, ACGSC. The factual position is not disputed by the respondents and they submitted that the order of the Jodhpur Bench of the Tribunal has not attained finality in so far as Writ Appeal has been filed by the respondents therein before the Hon'ble High Court of Rajasthan, Jodhpur Bench. Further the Full Bench of the Tribunal while disposing of OA No. 1103 of 2011 categorically declared that clause 20 of the MACP scheme is fully valid and legal and rejected the claim of the applicants for financial upgradation under the MACP scheme at par with juniors. The said Full Bench decision was also referred by this Tribunal while deciding the merits of OA No. 127 of 2012 and connected cases. This Tribunal had categorically held in the order dated 7.8.2013 in OA No. 127 of 2012 and connected cases as under:

“18. In all the cases under consideration, all the individuals have got their appointment as Postal Assistants/Sorting Assistants only under the promotion quota. ACP/MACP Scheme takes into account such promotion for the purpose of working out the eligibility for financial upgradation to the Scheme. As such in all the above cases notwithstanding the fact that junior is drawing more pay the applicants' case could not be brought within the parameters either for stepping up of pay or for grant of MACP”

The OAs were dismissed. Further this Tribunal on 20.8.2014 dismissed three identical cases i.e. OAs Nos. 293/2012, 204/2012 and 725/2012 filed by the officials similarly placed to the applicants in the instant OA. All the above orders have attained finality as no appeal was ever filed against these orders. These would undoubtedly clinch the instant case in favour of the respondents.

4. Heard Shri V. Sajithkumar, learned counsel appearing for the applicants and Mr. E.N. Hari Menon, ACGSC learned counsel appearing for the respondents. Perused the records.

5. The short point to be considered in this case is whether the Postal Assistant cadre should be treated as promotion for the purpose of upgradation or not ?

6. During the course of arguments learned counsel for the applicants submitted that applicant has got the post of Postal Assistants by LDCE and it should not be treated as promotion. In support of his arguments he has relied upon the judgment passed by the Hon'ble High Court of Madras in WP No. 30629 of 2014 – *Union of India v. D. Sivakumar & Anr.*, dated 4.2.2015. This judgment is based upon the order passed by the Madras

Bench of the Tribunal in OA No. 1088 of 2011. Relying upon paragraph 19 and 20 of the order passed by the Jodhpur Bench of the Tribunal OA No. 1088 of 2011 was allowed by the Madras Bench of the Tribunal. The Hon'ble High Court of Madras in WP No. 30629 of 2014 held as under:

“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.

10. Moreover, it is to be pointed out that even the second modified assured career progression was granted under the Modified Assured Career Progression Scheme only after 16 years and the third is said to have been granted after 26 years. If the first appointment is adjusted against Modified Assured Career Progression-I, this could not have actually happened. For doing so, the Department has counted the first appointment as 12.11.1977. Therefore, they cannot do so for the Modified Assured Career Progression Scheme in a different manner.”

Thereafter Union of India has gone on appeal before the Hon'ble Supreme Court of India in SLP(C) No. 4848/2016. The Hon'ble apex court vide order dated 16.8.2016 observed as under:

“We see no reason to entertain this petition under Article 136 of the Constitution of India. The special leave petition is, accordingly, dismissed.”

Lastly he submitted that the Department has implemented the order passed by the Madras Bench of the Tribunal and he wants a similar relief in the present case as well.

7. On the contrary respondents are sticking to their stand that post of Postal Assistant should not be treated as direct entry to the post for the purpose of MACP and further submitted that the order of the Jodhpur Bench of the Tribunal is stayed by the Hon'ble High Court of Rajasthan.

8. After considering the legal position this Tribunal is of the view that the order passed by the Madras Bench of the Tribunal so upheld by the Hon'ble High Court and SLP dismissed by the Hon'ble apex court is binding upon this Tribunal in which it was held that the post of Postal Assistant should be taken as direct entry for the purpose and not promotional post for grant of MACP. This issue has been decided by the Hon'ble High Court of Madras and there is nothing left to be decided by this Tribunal. Hence, we find merit in the present OA and direct the respondents to grant MACP on completion of 20 years of service in the cadre of Postal Assistant. Since the applicants have approached this Tribunal in the year 2016 only notional benefits should be given and actual monetary benefits is 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.

9. The Original Application is 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. 180/00742/2016

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the order No. BB/MACP/Dlgs dated 4.7.2016 issued by the 3rd respondent.
- Annexure A2** - True copy of the order No. BB/MACP/Dlgs dated 4.7.2016 issued by the 3rd respondent.
- Annexure A3** - True copy of the order No. BB/MACP/Dlg dated 25.6.2010 issued by the 3rd respondent.
- Annexure A4** - True copy of the order No. BB/MACPS/2015-16 dated 21.6.2016 issued by the 3rd respondent.
- Annexure A5** - True copy of the representation dated 30.1.2016 submitted by the applicant before the 2nd respondent.
- Annexure A6** - True copy of the representation dated 9.2.2016 submitted by the applicant before the 2nd respondent.
- Annexure A7** - True copy of the final order dated 22.5.2012 in OA 382/2011 of the Jodhpur Bench of this Honourable Tribunal.
- Annexure A8** - True copy of the order dated 3.7.2015 in OA 308/13 of the Honourable Tribunal; Guwahati published in Swamy news.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of DOPT OM No. 4-7/ (MACPS/2009-PCC dated 18.9.2009).
- Annexure R2** - True copy of OM No. 4-7/(MACPS/2009-PCC dated 18.10.2010).
- Annexure R3** - True copy of the order dated 7.8.2013 of Hon'ble Central Administrative Tribunal in OA No. 127/2012.

-X-X-X-X-X-X-X-