

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00230/2015

Monday, this the 25th day of March, 2019

CORAM:

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

M.M. Raby Sakeer, aged 59 years, S/o. M.K. Mohammed,
 Marketing Executive, Irinjalakuda Head Post Office, 680 121,
 residing at Mammasrayillath, Vellangalloor,
 Irinjalakuda – 680 662.

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. The Superintendent of Post Offices, Irinjalakuda Division,
 Irinjalakuda – 680 121.

Respondents

(By Advocate : Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 11.03.2019, the Tribunal on 25.03.2019 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-15 and to declare applicant is entitled for the third financial upgradation as per MACP scheme with effect from the date of appointment as Postal Assistant i.e. with effect from 12.6.1982;

(ii) To direct the respondents to immediately grant the 3rd financial upgradation as per MACP scheme on completion of 30 years of service i.e. with effect from 12.6.2012 with all benefits including arrears of salary with

18% penal interest;

(iii) 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

(iv) 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 Extra Departmental Mail Carrier, Kottanellur, Irinjalakuda Division under the 3rd respondent on 5.11.1973. After completion of 4 years and 8 months as Mail Carrier, he appeared for the Postman Examination held on 30.7.1978. He was successful in the examination and was directed to undergo training from 26.12.1978 to 4.1.1979. After completion of training the applicant was posted as leave reserve Postman in Irinjalakuda Sub Division w.e.f. 12.1.1979. Later he was confirmed w.e.f. 1.12.1980. Thereafter applicant appeared for Postal Assistant examination held on 25.10.1981 and he was declared as passed. Applicant was appointed as Postal Assistant w.e.f. 12.6.1982 and was deputed to undergo training from 15.3.1982 to 11.6.1982. On completion of 16 years as PA applicant was granted financial upgradation under TBOP w.e.f. 1.7.1998 in the pay scale of Rs. 4500-7000/- . The applicant was due to get BCR in 2008. However, consequent on the recommendations of the 6th CPC the applicant was granted 2nd MACP w.e.f. 1.9.2008 in the pay scale of Rs. 9,300-34,800/- plus GP of Rs. 4,200/- . The applicant is entitled for 3rd MACP w.e.f. 11.6.2012 as he completes 30 years of service as PA on such date. The applicant submitted representation on 24.7.2012 indicating the aforesaid. However, the respondents had not responded to the same and in

the meantime the applicant retired from service on 31.3.2015. Aggrieved the applicant has filed the present OA seeking the above relief.

3. Notices were issued to the respondents. Mr. T.C. Krishna, Sr. PCGC took notice on behalf of the respondents and filed a detailed reply statement contending that the date of commencement of continuous service in respect of the applicant as Postman is 12.1.1979 as the applicant was working in the post of GDS prior to this. He was promoted as Postal Assistant w.e.f. 12.6.1982 which is his 1st promotion. Applicant was given TBOP w.e.f. 1.7.1998 on completion of 16 years of service in Postal Assistant which is his 2nd placement and later he was given 3rd MACP in the Grade Pay of Rs. 4,200/- w.e.f. 1.9.2008 on completion of 10 years of service after 2nd placement. Respondents contend that financial upgradation under the scheme will be admissible whenever a person spent 10 years continuously in the same Grade Pay. As such applicant was given all the three eligible financial upgradations. With regard to the decision Annexure A11 is concerned the respondents have moved the Hon'ble High Court of Rajasthan by filing Civil Writ Nos. 11336/2012, 11414/2012 and 11321/2012. The orders of the Tribunal in Annexure A11 had been stayed by the Hon'ble High Court. Further with regard to Annexure A15 judgment of the Hon'ble High Court of Delhi, the respondents had filed Review Petition No. 441/2014 and Annexure A15 judgment was reviewed and after hearing the Writ Petition was allowed. The Hon'ble High Court remanded the matter back to the Principal Bench of the Tribunal for fresh decision on the OA in view of the subsequent development in the matter. 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. Applicant has filed a rejoinder submitting that the Civil Writ Nos. 11336/2012, 11414/2012 and 11321/2012 filed before the Hon'ble High Court of Rajasthan were dismissed by the Hon'ble High Court on 10th August, 2015.

5. Heard Mr. Shafik M.A., learned counsel for the applicant and Mr. T.C. Krishna, Sr. PCGC appearing for the respondents. Perused the record.

6. The issues raised in this OA are two fold: Firstly whether appointment of the applicant as Postal 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 Postal Assistant by clearing the departmental exam.

7. 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. 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.”

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.”

8. On the contrary respondents counsel Shri T.C. Krishna submitted that the applicant's appointment to the post of Postal 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 12.6.1982 when he has been promoted as Postal Assistant. Thereafter he has been granted 2nd financial upgradation on 1.7.1998 on completion of 16

years of service under TBOP scheme applicable from the date of the last promotion as Postal Assistant and further on implementation of MACP scheme he has been granted 3rd MACP w.e.f. 1.9.2008 in Grade Pay of Rs. 4,200/- and applicant retired on 31.1.2015.

9. 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.”

10. However, we are of the view that through 50% departmental quota the applicant was selected and appointed as Postal 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.

11. 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 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 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 Tribunals at Principal Bench and Jodhpur Bench (supra). The contention of Mr. T.C. Krishna, Sr. PCGC 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 Postal Assistant because they are coming on the basis of seniority alone.

12. In view of the above legal position and the facts and circumstances of the case, we find that the selection to the post of Postal 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”

Original Application No. 180/00230/2015**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the letter No. B2/Rectt/P'men/78 dated 16.12.1978 issued by the 3rd respondent.

Annexure A2 – True copy of the letter No. B2/Rectt/P'men/78 dated 19.12.1978 issued by the 3rd respondent.

Annexure A3 – True copy of the order No. B/Dlg/Postman dated 9.1.1979 of the Inspector of Post Offices, Irinjalakuda Sub Division.

Annexure A4 – True copy of the memo No. BB/16/II dated 10.6.1982 issued by the 3rd respondent.

Annexure A5 – True copy of the memo No. BB/10/II dated 29.7.1988 issued by the 3rd respondent.

Annexure A6 – True copy of the OM file No. 4-7/9MACPS)/2009-PCC dated 18.9.2009 issued by the DDG (Establishment) of the 1st respondent.

Annexure A7 – True copy of the memo No. B1/MACP/Dlg dated 15.9.2010 issued by the 3rd respondent.

Annexure A8 – True copy of the memo No. B1/MCT/Trg. Dated 9.7.2012 issued by the 3rd respondent.

Annexure A9 – True copy of the memo No. TRG-2/8-15/PA MACP I/12-13 dated 23.7.2012 issued by the Dpty. Director, Postal Training Centre, Mysore.

Annexure A10 – True copy of the representation dated 24.7.2012 submitted before the 3rd respondent.

Annexure A11 – True copy of the order dated 22.5.2012 of Jodhpur Bench of this Hon'ble Tribunal in OA 353/2011.

Annexure A12 – True copy of the representation dated 29.1.2013 submitted before the PMG, Kochi.

Annexure A13 – True copy of the representation dated 12.1.2015 submitted before the 2nd respondent.

Annexure A14 – True copy of the OM No. 35034/3/2008-Estt.(D) dated 18.2.2015 of the Ministry of Personnel.

Annexure A15 – True copy of the judgment dated 5.8.2014 in WP(C) No. 4131/2014 of the Hon'ble High Court of Delhi.

Annexure A16 – True copy of the memo No. 4-7/(MACPS)/2009-PCC dated 18.9.2009 issued by the Department of Posts, New Delhi.

Annexure A17 – True copy of the judgment dated 10.8.2015 in D.B. Civil Writ petition No. 11336/2012 of the Hon'ble Rajasthan High Court.

Annexure A18 – True copy of the memo No. B1/MACP/Dlg/IV dated 19.7.2013 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R3(a) – True copy of memo No. B1/MACP/Dig. Dated 15.9.2010 issued by the 3rd respondent.

Annexure R3(b) – True copy of Directorate letter No. 4-7/MACPs/2009-PCC dated 18.10.2010.

Annexure R3(c) – True copy of order dated 29.9.14 of Hon'ble High Court in RP No. 441/2014 & CM No. 15847/2014.

Annexure R3(d) – True copy of order dated 7.8.2013 of CAT in OA No. 127/2012.

Annexure R3(e) – True copy of order dated 20.8.2014 of Cat in OA No. 725/2012.

Annexure R3(f) – True copy of Annexure to DOPT OM dated 9.9.2010.

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