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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00773/2015

Wednesday, this the 20th day of February, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER

R.Hemanchandran,
S/o late N.Raghavan,
Aged 60 years,
Postal Assistant,
Head Post Office,
Kollam – 691 012,
Department of Posts,
residing at Latheendram, ARA-105,
Karikulangara North,
Thirumullavaram P.O.,
Kollam – 691 012.Applicant

(By Advocate Mr.V.Sajithkumar)

Versus

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 Senior Superintendent of Post Office,
Kollam Division – 691 001.

.....Respondents

(By Mr. N.Anilkumar, SCGSC for Respondents)

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This application having been heard on 13th February, 2019, the Tribunal on 20th February, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.773/2015 is filed by Shri R.Hemachandran, Postal Assistant, Head Post Office, Kollam, against the refusal of the respondents to grant 3rd financial upgradation under MACP Scheme on the ground that his appointment as Postal Assistant effected on 27.09.1983 was a promotion from the category of Postman. The applicant joined as GDSBPM in 1974 and was appointed as Postman under merit quota on 04.04.1979. Subsequently, he was appointed as Postal Assistant on 27.09.1993 after passing the Limited Departmental Competitive Examination. He was granted promotion under the Time Bound One Promotion (TBOP) Scheme on 12.10.1989. When the Modified Assured Career Progression Scheme was introduced the applicant was granted one financial upgradation with effect from 02.05.2009.

2. The applicant contends that he is entitled to be granted the next financial upgradation under MACP Scheme on 27.09.2013, as he had completed 30 years of service in Postal Assistant cadre. A copy of the representation filed by him on 13.04.2015 before the 3rd respondent is marked as Annexure A3. The said representation was rejected by issuance of Annexure A1.

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3. The impugned order at Annexure A1 was issued under the premise that the applicant was given two promotions, one from Postman cadre to Postal Assistant cadre then the other under the TBOP scheme before the grant of first financial upgradation under MACP. Hence it is contended that he is not entitled to be granted the second financial upgradation, even though he had completed 30 years of service as Postal Assistant. It is contended that the above view is legally unsustainable in view of the order of the Jodhpur Bench of this Tribunal in OA No.382/20111 and connected cases dated 22.05.2012. A copy of the order of the Jodhpur Bench is at Annexure A4.

4. Reply statement has been filed by the respondents disputing the claims of the applicant. The service particulars of the applicant is given in the form of a table reproduced below:

Particulars	With effect from	Grade Pay with respect to VI CPC (Rs)	Remarks
GSBPM, Kuthirapanthy	1974	---	
Postman	04/04/79	2000	GDS merit quota – commencement of service
Postal Assistant	09/26/83	2400	I MACP
Financial upgradation under TBOP (completion of 16 years of service as PA)	10/12/99	2800	II MACP
Financial upgradation under MACP (completion of 30 years of service from entry into department)	05/02/09	4200	IIIMACP

5. Heard Shri Sajithkumar for the applicant and the Standing Counsel for the

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respondents. A critical factor to be considered here is that the diverse interpretation given to the commencement of the applicant's service. While the passage of the applicant from Postman to Postal Assistant is treated as a promotion by the respondents, the applicant maintains that it was in the nature of direct entry, as a result of having passed the LDCE. This controversy has been settled in favour of the applicant, if we consider the order of the Jodhpur Bench of this Tribunal and connected cases. The Jodhpur Bench has ruled as under:

“19. In a similar manner, while being Postmen, the three applicants in these three Oas faced the Limited Departmental Competitive Examination (LDCE in short) and qualified to become Postal Assistants. Their joining as Postal Assistants was not in the nature of promotion in their earlier existing service or cadre, but was a career advancement through a process of selection. Therefore, for the purpose of grant of TBOP/BCR financial upgradations earlier, and MACP financial upgradation now, the only dates which are relevant to be taken into account for the purpose of counting the periods of their stagnation is the period spent by the applicants as Postal Assistant. In that sense, the clarification issued by the Pay Commission Cell of the Department of Posts, Ministry of Commissions & IT on 25.04.2011 through file No.4-7/MACPS/2009/PCC, as cited in para 8 above, is correct. The only problem with that clarification is that it stopped at the point of clarifying that when the GDS first joined in a Group-D post, and was later declared as successful in the Postman examination, the regular service for the purpose of MACP would be deemed to commence from the date of his joining as a Postman in the main cadre on direct recruit basis. But it is obvious that the corollary would follow, and 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 word '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.”

6. The learned Counsel for the applicant at the time of argument relied upon

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the judgment of the Hon'ble High Court of Madras in W.P.No.30629 of 2014 - **Union of India v. D.Sivakumar & Anr., dated 04.02.2015.** This judgment was based on the order of Madras Bench of the Tribunal in OA No.1088/2011 which in turn relied upon paragraph 19 and 20 of the order passed by the Jodhpur Bench of the Tribunal. The Hon'ble High Court of Madras 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 22.09.1973, 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.”

7. The same view has been taken by this Tribunal itself in OA No.742/2016 in the order pronounced on 05.12.2018. This Tribunal ruled as under:

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

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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.

8. The issue having been settled thus, the OA succeeds. The applicant is entitled to be extended the next financial upgradation under MACP with effect from 27.09.2013, when he completed 30 years of service. He will be entitled to all consequential benefits excluding interest. Orders in this regard are required to be issued within 60 days from the date of receipt of a copy of this order. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00773/2017

1. **Annexure A1** – True copy of the order No.BB/59/Dlgs/2014 dated 14.7.2015 issued by the 3rd Respondent.
2. **Annexure A2** – True copy of the Order No.BB/59/Dlg dated 20/03/2013 issued by the 3rd respondent.
3. **Annexure A3** – True copy of the Representation dated 13.04.2015 submitted by the Applicant before the 3rd Respondent.
4. **Annexure A4** – True copy of the final order dated 22.05.2012 in OA No.382/2011 of the Jodhpur Bench of this Hon'ble Tribunal
5. **Annexure R1(a)** -True copy of the O.M. Dated 18.09.2009.
6. **Annexure R1(b)** – True copy of the OM No.35034/3/2008-Estt(D) dated 09.09.2010.
7. **Annexure R1(c)** - True copy of the common order dated 07.08.2013 of this Hon'ble Tribunal in OA No.127/2012 and connected cases.
