

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**(1) ORIGINAL APPLICATION NO.200/00603/2016****(2) ORIGINAL APPLICATION NO.200/00675/2016****(3) ORIGINAL APPLICATION NO.200/01066/2017****Jabalpur, this Friday, the 10th day of May, 2019****HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER****HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER****(1) ORIGINAL APPLICATION NO.200/00603/2016**

Kamlakar Upshyam, Postal Assistant (Retired), S/o Late Shri Jagannath Upshyam, DOB 28.12.1955, R/o Santoshi Mata Ward, Pandhurna, District Chhindwara-480334 (M.P.) - **APPLICANT**

(By Advocate – Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001

2. Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

3. Superintendent of Post Offices, Chhindwara Division, Chhindwara-480001 (M.P.)

4. Director Postal Accounts, O/o Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (MP)

-RESPONDENTS

(By Advocate – Shri D.S.Baghel)

(Date of reserving the order: 13.11.2018)

(2) ORIGINAL APPLICATION NO.200/00675/2016

Shashidharan Nair, S/o Shri R.Shridharan Nair, DOB 29.04.1951, R/o A-35, Jai Bhawani, Phase-II, Housing Society, P-8 Extension, Trilanga, Bhopal-462039 (M.P.) - **APPLICANT**

(By Advocate – Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001

2. Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

3. Director Postal Accounts, Madhya Pradesh Region, Hoshangabad Road, Bhopal-462012 (M.P.)

4. Sr. Superintendent of Post Offices, Bhopal Division, Bhopal- 462002 (M.P.)

- RESPONDENTS

(By Advocate – Shri D.S.Baghel)

(Date of reserving the order:30.11.2018)

(3) ORIGINAL APPLICATION NO.200/01066/2017

1. Shankar Lal Devkaran, S/o late Devkaran, DOB-01.07.1947, Retired Postal Assistant, R/o 336, Saket Nagar Indore (M.P.)-495001 Mobile No.9009161367

2. Devi Deen Patel, S/o late Panduram Patel, DOB-04.01.1952, Retired Postal Assistant, R/o ITI Road Shivdharma Nagar, Jabalpur-482001, Mobile No.9009442097

- APPLICANTS

(By Advocate – Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001

2. Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

3. Director Postal Accounts, O/o Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

4. Director of Accounts (Postal) O/o Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (M.P.)

5. Sr. Superintendent of Post Office, Indore City Division, Indore-495002 (M.P.)

6. Sr. Superintendent of Post Office, Jabalpur Division, Jabalpur-482001 (M.P.) -

- RESPONDENTS

(By Advocate – Shri D.S.Baghel)

(Date of reserving the order:28.03.2019)

COMMON ORDER

By Navin Tandon, AM.-

The issue involved in these cases is common. Hence, we have decided to pass a common order in these three Original Applications.

In Original Application No. 200/00603/2016 -

2. The applicant is aggrieved by denial of second financial upgradation under the MACP Scheme. The brief facts as submitted by the applicant are that –

2.1 He was initially appointed as Extra Departmental Delivery Agent in the year 1973. After qualifying the selection he was appointed in Group-D on 22.09.1979. He was further appointed as Postman vide order dated 23.09.1985 (Annexure A-2) after qualifying the competitive examination held on 04.05.1985. He was further appointed as Postal Assistant on 18.07.1990 in the pay scale of Rs.975-1660. He was considered fit and approved by the DPC for first upgradation under Time Bound One Promotion Scheme (for brevity ‘**TBOP**’) with effect from 03.08.2006 on completion of 16 years of service vide order dated 18.08.2010 (Annexure A-3). He retired from service on attaining the age of superannuation on 31.12.2015.

2.2 The claim of the applicant for 2nd financial upgradation was rejected by the respondents vide order dated 08.12.2015 (Annexure A-1)

on the ground that judgment passed by the Jodhpur Bench of this Tribunal and by the Hon'ble High Court of Jodhpur, in the case of **Bhanwar Lal Regar** (infra), cannot be made applicable in his case, as it is in personam.

3. The respondents in their reply have submitted as under:-

3.1 The applicant had already got his first promotion from Group-D to Postman vide order dated 21.08.1985 (Annexure R-2); further he had got his second promotion from Postman cadre to Postal Assistant on 18.07.1990. Thereafter he had got TBOP after completion of 16 years of regular service in Postal Assistant cadre w.e.f. 03.08.2006.

In Original Application No.200/00675/2016 -

4. The applicant is aggrieved by denial of third financial upgradation under the MACP Scheme. The brief facts as submitted by the applicant are that –

4.1 He was initially appointed as Extra Departmental Mail Career on 01.05.1969 and thereafter was appointed as Postman on 18.02.1973. He was further appointed as Postal Assistant on 30.10.1978. He was given first financial upgradation under TBOP with effect from 04.09.1994 on completion of 16 years of service. He was also given 2nd upgradation under Biennial Cadre Review (for brevity 'BCR') Scheme with effect

from 01.01.2005 on completion of 26 years of service in the pay scale of Rs.4500-7000.

4.2 He has completed 30 years of service. Therefore, he is entitled to get 3rd promotion/upgradation with effect from 01.09.2008. However, his representation has been rejected vide order dated 27.05.2016 (Annexure A-1) on the ground that he has already got three promotions.

5. The respondents in their reply have submitted that the applicant has already got three promotions/financial upgradations. He was promoted as Postal Assistant by way of departmental examination. He got 2nd upgradation under TBOP w.e.f. 04.09.1994 and 3rd upgradation under BCR w.e.f. 01.01.2005. Hence he is not required to be given 3rd promotion under MACP Scheme.

OA 200/01066/2017 -

6. The applicants are aggrieved by denial of third financial upgradation under the MACP Scheme. The brief facts as submitted by the applicants are that –

6.1 They were initially appointed as Mail Peon in 1978/1979. Thereafter, they were promoted as Postman in 1981/1980. They were further promoted as Postal Assistant in the year 1982 and were given

benefits of OTBP and BCR in the years 1998 and 2009 respectively, as reflected in Annexure A-3.

6.2 They have completed 30 years of service. Therefore, they are entitled to get 3rd financial upgradation under the MACP Scheme.

7. The respondents in their reply have submitted that the applicants have already got four promotions, during their entire service period and therefore, the applicants do not deserve any further promotion.

8. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

9. The learned counsel for the applicants relied on the following decisions on the analogy that their joining as Postal Assistants was not at all in the nature of promotion, hence their service for the grant of benefits under MACP has to be counted only from the date they were appointed as Postal Assistants:-

(i) **Bhanwar Lal Regar Vs. Union of India and others**, Original Application No.353 of 2011, decided on 22.05.2012 by CAT/Jodhpur Bench, which was affirmed by the Hon'ble High Court of Rajasthan, Jodhpur in Civil Writ Petition No.11336/2012 vide order dated 10.8.2015.

(ii) **Shakeel Ahmad Burney Vs. Union of India and others**, Original Application No.3756/2011 decided by CAT/Principal Bench on 21.12.2012, which was affirmed by Hon'ble Delhi High Court in W.P.(C) No.4131/2014 vide order dated 05.08.2014

(iii) **D.Sivakumar Vs. Union of India and others**, Original Application No.1088/2011 decided on 14.03.2013, which was affirmed by the Hon'ble High Court of Judicature at Madras in Writ Petition No.30629/2014 vide order dated 04.02.2015 and the SLP No.4848/2016 filed against the said order was dismissed by the Hon'ble Supreme Court on 16.08.2016.

(iv) **G.R.Durgadi Vs. Union of India and others**, Original Application No.170/00847/2016 decided by CAT/Bangalore Bench on 22.11.2017.

(v) **S.L.Jharia Vs. Union of India and others**, Original Application No.291 of 2012 decided on 05.01.2018 by CAT/Jabalpur Bench.

10. On the other hand learned counsel for the respondents has relied on the decision of Ahmedabad Bench of the Tribunal in the matters of **Shri B.C.Dutt Vs. Union of India and others**, Original Application No.219/2015 decided on 17.11.2015, wherein the Ahmedabad Bench, after considering aforesaid decisions of this Tribunal as well as of Hon'ble High Courts in the matters of **Bhanwar Lal Regar** (supra) and

Shakeel Ahmad Burney (supra), has rejected the contention of the applicant that selection to the post of Postal Assistant cannot be held to be a promotion.

10.1 The learned counsel has further contended that the subsequent decisions in the matters of **G.R.Durgadi** (supra) & **S.L.Jharia** (supra) are mainly based on earlier decision of the Tribunal in the case of **D.Sivakumar** (supra) and in these two subsequent decisions the decision of Ahmedabad Bench in the case of **Shri B.C.Dutt** (supra) was not considered. However, the SLP No. 4848/2016 filed against the decision in the matters of **D.Sivakumar** (supra) was dismissed by the Hon'ble Supreme Court vide order dated 16.08.2016, keeping the question of law open.

10.2 The learned counsel for the respondents has also pointed out that in the matters of **Shri B.C.Dutt** (supra), the Ahmedabad Bench in para 28 of its order has relied on the order of Hon'ble Delhi High Court dated 29.09.2014 in R.P.No.441/2014 and C.M.No.15847/2014.

11. Having considered rival contentions of learned counsel of parties and on perusal of the record and various decisions of contradictory decisions of different Benches of the Tribunal, following question emerges for our consideration:-

“Whether appointment of an employee to a post having higher pay than his present pay, which may or may not have an element of

direct recruitment, through limited departmental competitive examination be counted as promotion/financial upgradation for the purpose of MACP Scheme?

12. For the purpose of considering the above question, we have carefully gone through the decisions, relied upon on both sides, on identical subject matter of various Benches of this Tribunal.

13. We may further observe that the learned counsel for the respondents produced a copy of the notification dated 09.01.2002 [(G.S.R.18(E))] by which the Recruitment Rules of Postal Assistants were notified. On perusal of the same we find that the method of recruitment to the post of Postal Assistant is 50% by direct recruitment and 50% by promotion through LDCE. The very fact that certain percentage of posts is earmarked exclusively for the departmental candidates itself implies an element of promotion, as in the 50% of the posts exclusively earmarked for departmental candidates, open market candidate is not entitled to participate and compete. In fact competition in respect of the said 50% of the posts is narrowed down. Such narrowing down competition itself involves an element of uplifting the departmental candidates to get appointment to a higher grade post.

14. Since we find that there are various contradictory decisions of this Tribunal on the one hand relied upon by learned counsel of applicants and the decision of Ahmedabad Bench relied upon by the learned counsel for the respondents, we are of the considered opinion that the question raised

above in the present case is of importance and needed to be decided by a larger Bench.

15. We find that after remand by the Hon'ble Delhi High Court the case **Shakeel Ahmad Burney** (supra) was again considered by the CAT/Principal Bench and vide order dated 03.11.2015, the CAT/Principal Bench again held that the appointment to the post of Postal Assistant should be treated as direct recruitment. Whereas in the subsequent order passed on 17.11.2015 in the matters of **Shri B.C.Dutt** (supra) the CAT/Ahmedabad Bench has taken a contrary view.

16. Therefore we are of the considered view that before adjudicating these Original Applications, the following issue is required to be decided by a larger Bench :-

“Whether appointment of an employee to a post having higher pay than his present pay, which may or may not have an element of direct recruitment, through limited departmental competitive examination be counted as promotion/financial upgradation for the purpose of MACP Scheme?

17. We direct the Registry of this Tribunal to refer the matter to the Principal Bench of the Tribunal for placing it before the Hon'ble Chairman for consideration of the matter by a larger Bench.

(Ramesh Singh Thakur)
Judicial Member
Rkv

(Navin Tandon)
Administrative Member