

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00726/2018

DATED THIS THE 10th DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

S.S.Jeure
S/o Sidramappa
Aged 64 years, retired as
Sorting Assistant
RMS Office, Kalburgi
Residing at H.No.1-892/25/77
Laxminarayan Nagar
Kalburgi-585 102.

...Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan
New Delhi-110 001.
2. The Postmaster General
N.K.Region
Dharwad-580 001.
3. The Superintendent
RMS HB Division
Hubballi-580 029.

...Respondents

(By Advocate Sri S.Sugumaran)

O R D E R (ORAL)

(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.))

The matter seems to be covered by the judgment of the Hon'ble High Court

of Karnataka in WP.No.57935/2017(S-CAT) dtd.2.8.2018 which we quote:

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF AUGUST, 2018

PRESENT

*THE HON'BLE MR.JUSTICE A.S.BOPANNA
AND
THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ*

WRIT PETITION NO.57935/2017(S-CAT)

BETWEEN:

1. THE UNION OF INDIA
REP.BY ITS SECRETARY
DEPARTMENT OF POSTS
DAK BHAVAN
NEW DELHI-110 001.
2. CHIEF POST MASTER GENERAL
KARNATAKA CIRCLE
BENGALURU-560 001.
3. POSTMASTER GENERAL
S.K.REGION
BANGALORE-560 001.
4. SUPERINTENDENT
RMS 'Q' DIVISION
BENGALURU-560 026.

.....PETITIONERS

(BY SRI B PRAMOD, CGC.)

AND:

M.G.SHIVALINGAPPA
AGED ABOUT 61 YEARS
RETIRED BSR SA
R/AT NO.307
OPP. SKN SCHOOL
VINOBHANAGARA
SHIVAMOGGA-577 204.

....RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 21.08.2017 VIDE ANNEX-A PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, BENGALURU IN OA.NO.170/00017/2016 AND DECLARE IT AS ILLEGAL, ARBITRARY AND CONTRARY TO THE MACP SCHEME.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **A.S.BOPANNA. J.**, MADE THE FOLLOWING:

ORDER

The petitioners are before this Court assailing the order dated 21.08.2017 passed in OA No.170/00017/2016 by the Central Administrative Tribunal ('the CAT' for short).

2. The respondent herein was before the CAT claiming that the 3rd Modified Assured Career Progression Scheme ('the MACP' Scheme) benefit introduced with effect from 01.09.2008 was not granted in favour of the respondent. Such benefit had been claimed by the respondent after he had retired from service and was seeking the appropriate fixation of pensionary benefits. The petitioners herein having appeared, filed detailed objection statement as also the additional objection statement. In the light of the contentions what would also be necessary to note is that if the MACP Scheme is kept in view whether in the facts and circumstances as arising in the instant case where the respondent was initially appointed as Group-D and was thereafter promoted as Sorting Assistant, would also be entitled to such 3rd MACP under the Scheme when according to the petitioners herein the respondent herein had been provided one promotion and two financial upgradation under the relevant schemes which were in operation at that point in time?

3. In that background, at the outset, a perusal of the order passed by the CAT dated 21.08.2017 would indicate that the CAT in fact has directed the petitioners to compute the period under the scheme by reckoning the appointment as Sorting Assistant from the date he had been promoted to the said post as the initial appointment and thereby grant the 3rd MACP as per the Scheme. It is also seen that the CAT has referred to certain decisions of its Bench at Delhi, Jodhpur and this Court. Insofar as that aspect of the matter as pointed out from the petition papers, the matter is under consideration before the High Court of Delhi. In any event considering that the matter was taken note in those proceedings including the decision of this Court keeping in view the position the employees concerned therein were placed in. Hence, what would require consideration herein is with regard to the present facts which is relevant in this case as already indicated above.

4. In that regard, in order to keep the matter in its perspective and consider the same, it is seen that the petitioners through the Office Memorandum dated 18.09.2009 had introduced the MACP Scheme which had come into operation with effect from 01.09.2008. From the said date, it

has been provided that the schemes of the Time Bound One Promotion (TBOP) introduced with effect from 30.11.1983 and the Biennial Cadre Review introduced with effect from 01.10.1991 and extended to other categories of staff of subsequent dates shall stand withdrawn with effect from 01.09.2008. Further the grant of 3 financial up-gradations under the revised scheme is to be granted at the intervals of 10, 20 and 30 years of continuous regular services as provided therein so as to take care of stagnation in the same position. If in that background the instant facts are taken into consideration, the respondent was appointed as an orderly in Group-D on 28.11.1979. Subsequently, the respondent has been promoted as a Sorting Assistant/Postal Assistant through the order dated 24.05.1982. Subsequent thereto, as per the existing TBOP scheme which had come into operation with effect from 28.05.1998, as per which the financial up-gradation was to be granted on completion of 16 years and the same was provided to the respondent on 28.05.1998. Further, on completion of 26 years of service as provided under the BCR financial up-gradation which had come into effect from 01.07.2008 the benefit had accrued to the respondent and had been given to him. It is in that background it is required to be considered herein as to whether the date as indicated on 24.05.1982 when the petitioner was promoted as Sorting Assistant could be taken as the date of initial appointment to service as ordered by CAT so as to provide benefit under the MACP Scheme?

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 up-gradation 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 21.05.1982 (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 24.05.1982 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 01.07.2008 the next BCR financial up-gradation has been granted.

6. On these aspects when there is no serious dispute and the respondent has been granted one promotion and two financial up-gradations, 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 21.08.2017 impugned at Annexure-A to this petition is set aside.

The petition is accordingly disposed of.

*Sd/-
JUDGE
Sd/-
JUDGE*

2. Both sides agree that this matter is covered by the above judgment. We will follow it. The OA is therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00726/2018

Annexure-A1: Copy of the order dtd.21.8.1989

Annexure-A2: Copy of applicant's representation dtd.10.01.2017

Annexure-A3: Copy of the order dtd.14.12.2017

Annexure-A4: Copy of applicant's representation dtd.12.01.2018

Annexure-A5: Copy of the order dtd.22.3.2017

Annexures with reply statement:

Annexure-R1: OM No.4-7/MACP dtd.18.10.10

Annexure-R2: Corrigendum dtd.20.5.2010

Annexure-R3: RR of relevant period

Annexure-R4: Order dtd.29.9.2014 in OA.No.1259/2014

Annexure-R5: Order dtd.2.8.2018 in WP.57935/2017
