

## CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 1<sup>st</sup> DAY OF JULY, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. P.MADHAVAN, MEMBER (J)

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01523/2015

S. Vasimalai,  
Sub Post Master (Retd.)  
No.5/176-1, Vijaytha Colony,  
Old Karur Road,  
Dindigul 624 001.

...Applicant

-versus-

Union of India rep., by  
Senior Superintendent of Post Offices,  
Dindigul Division,  
Dindigul 624 001.

...Respondent

By Advocates:

M/s S. Arun, for the applicant.

Mr. J. Vasu, for the respondent.

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The short but sharp legal issue involved in this case is as to whether positioning of Postman as Postal Assistant through limited departmental competitive examination is considered as promotion or direct recruitment and if reckoned as promotion whether the same is to be accounted for the purposes of grant of MACP.

2. The brief facts of the case, according to the applicant are that he was appointed as Postman on 3.10.1972 in the Department of Posts. He was selected through Limited Departmental Competitive Examination to the Post of Postal Assistant on 7.10.1977. The Department of Posts notified Time Bound One Promotion Scheme (hereinafter referred to as TBOP Scheme) on 17.12.1983. Under the said Scheme, each employee of the Department is entitled to get one financial upgradation wherein his pay will be placed on the next higher pay scale on successful completion of 16 years of service in a particular cadre. The Department also notified another Scheme called Biennial Cadre Review Scheme (hereinafter referred to as BCR Scheme) vide Office Memo dated 11.10.1991 under which the incumbents of the existing posts in the Department would be entitled to draw pay in the next higher pay scale on successful completion of 26 years service in that cadre. The applicant having been selected through Limited Departmental Competitive Examination to the post of Postal Assistant on 7.10.1977 was granted financial upgradation under the TBOP Scheme w.e.f. 12.10.1993. He was further granted financial

upgradation under the BCR Scheme on 1.1.2004. Pursuant to the recommendation of the VI Central Pay Commission, the Department of Posts adopted Modified Assured Career Progression Scheme (hereinafter referred to as MACP Scheme) w.e.f. 1.9.2008. The object of the MACP Scheme is to avoid stagnation of employees in a particular post for years together without any promotion subject to a maximum of three such upgradation in their entire service. Under the said Scheme, the employees will be granted financial upgradation to the next Pay Band and Grade Pay in promotional hierarchy immediately on completion of 10, 20 and 30 years of service. The applicant submitted representation dated 6.1.2014 and reminder dated 10.9.2014 and sought financial upgradation under MACP III as he had completed 32 years of service in the Postal Assistant cadre and had availed two financial upgradations under TBOP and BCR Schemes on completion of 16 years and 26 years of service but however, his claim was rejected vide impugned order dated 20.2.2015 on the ground that the applicant was granted promotion from Postman to Postal Assistant. The said representations stood rejected on the ground that his initial appointment being Postman from which he was promoted as Postal Assistant the same has been reckoned for the purpose of grant of MACP in which event the said promotion coupled with two upgradations of TBOP and BCR would mean three upgradations and thus no further upgradation is available to him. Order dt. 20.02.2015 (impugned herein) refers.

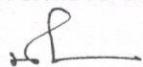
3. The applicant has thus filed the OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-



"...to set aside Memo No.B1/MACP/Grievance/dlgs dated 20.02.2015 issued by the Respondent and consequently direct the Respondent to grant him financial upgradation under MACP III and re-fix his pension accordingly with all attendant benefits including interests on arrears at the rate of 12% per annum till the date of payment and pass such other orders as are necessary to meet the ends of justice."

4. The learned counsel for the applicant would submit that selection of applicant as Postal Assistant in a Limited Departmental Competitive Examination is altogether a new recruitment to a different cadre than that of Postman and, therefore, would not constitute a promotion. It is only to offset MACP to the applicant, the respondents have rejected the claim. It is further submitted that the post of Postman is not a feeder post to that of Postal Assistant and hence rejecting the claim of the applicant is illegal and arbitrary. Hence the applicant has filed this OA on the following among other grounds;-

- (a) The reasoning of the respondent that selection of the applicant to the post of Postal Assistant in competitive examination will constitute a promotion to offset MACP in order to deny the applicant his legitimate right to get MACP III financial upgradation is unjust and arbitrary because the selection of applicant as Postal Assistant on 07.10.1977 is altogether a new recruitment to a different cadre than that of Postman.
- (b) The respondents ought to have computed the service of the applicant in the department for the purpose of granting MACP III only from the date on which he was selected as Postal Assistant since the applicant's selection cannot in any way be termed as promotion but on the contrary it is a result of direct recruitment process.
- (c) Denial of financial upgradation under MACP III on the premises that



the applicant already availed maximum financial upgradation is unjust and arbitrary.

(d) The selection of applicant to the post of Postal Assistant cannot be terms to be a promotion especially when Postman Post which the applicant was holding earlier is not the feeder post to that of Postal Assistant.

5. The respondents have filed a detailed reply statement rebutting the claim of the applicant. It is submitted that the applicant was appointed as Postman in Madras South Division on 3.10.1972. He appeared in the Limited Departmental Competitive Examination (LDCE) and was selected and appointed as Postal Assistant (PA) on 8.10.1977 at Perumbarai Sub Post Office. He was granted second financial upgradation under TBOP Scheme on completion of 16 years of service on 12.10.1993 and third financial upgradation under BCR Scheme on completion of 26 years of service on 1.1.2004. Promotion from Postman to Postal Assistant cadre through LDCE cannot be equated as direct recruitment since Lower Grade Official (LGO) examination is exclusively conducted for departmental candidates and no outside candidates appear for Lower Grade Officials examination. It is also submitted that a departmental official get certain relaxations like age, educational qualification and has to face a limited competition within his own cadre. It was a prescribed channel or avenue of promotion for career advancement to lower grade officials to qualify the written test under departmental examination and to earn promotion such as Postman to Postal Assistant, Postal Assistant to Inspector of Post Offices or to Junior Accounts

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Officer cadre. After qualifying the departmental examination, candidate's pay is fixed under FR 22(1)(a)(i) earlier it was FR 22-C with reference to pay drawn in a lower post. It is not considered as a fresh recruitment to draw pay scale of the post to which appointed unless such minimum is higher than the pay drawn in lower post (feeder cadre). Even the qualifying service for other purpose like pensionary benefits, voluntary retirement eligibility for long term advances like House Building Allowance (HBA), Scooter, Motor Conveyance advance, study leave etc., counts from the initial date of entry in service irrespective of grade or post to which appointed. Regular service for the purpose of MACPs implemented on the recommendation of the VI CPC for 3<sup>rd</sup> financial upgradation counts from the direct entry grade on completion of 10, 20 and 30 years of service and not from the date of appointment to the higher post acquired through departmental examination. He had completed 33 years of service and retired as Sub Post Master, Dindigul SO on 30.1.2010. It is further submitted by the respondents that the claim of the applicant was also referred to the Departmental Screening Committee wherein in the meeting held on 6.4.2010, it was held that the applicant was not eligible for grant of 3<sup>rd</sup> financial upgradation.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. At the outset it is to be seen whether the mode of recruitment to the post of Postal Assistant is by way of direct recruitment or through Limited Departmental Competitive Examination (LDCE). The relevant portion of the recruitment rule reads as follows:-



11	12	13
(a) 50% by direct recruitment (b) 50% by promotion through departmental promotion examination, failing which by direct recruitment.	<u>Promotion</u> Permanent officials belonging to following categories namely: 1. Letter box Peons 2. Mail peons 3. Packers 4. Porters 5. Runners 6. Van Peons 7. Orderly 8. Attendant cum Khansama 9. Chowkidars/watchman 10. Safaiwala/Scavenger 11. Gardener/Mail 12. Waterman/Bhisti 13. Cleaners 14. Rest House Attendant 15. Dafty 16. Selection Grade Dafty 17. Selection Grade Group D (Jamadhar) 18. Gestener Operateor 19. Postman/Village Postman 20. Reader 21. Sorting Postman 22. Head Postman	<u>Departmental Promotion</u> <u>Committee for the post of Postal Assistant</u> 1. Senior Superintendent of Post Officer(SSPOS) or Superintendent of Post Office (SPOS) of the concerned division. 2. SSPOS or SPOS or the neighbouring Division 3. Senior Superintendent of Railway Mail Services (SSRM) or Superintendent of Railway Mail Services (SRM) of the nearest Railway Mail Service division.

8. Admittedly the Limited Departmental Competitive Examination (LDCE) is the prescribed method for promotion of deserving employees to higher grades without having to wait for completing the eligibility period. The whole purpose of LDCE is to encourage and facilitate the staff to get accelerated promotion on the basis of merit subject to fulfilling certain terms and conditions and the length of qualifying service. The LDCE is meant for selection for promotion from the entire lot of eligible employees irrespective of seniority but subject to fulfilling the prescribed qualifying years to make a candidate eligible to sit in the Limited Departmental Competitive Examination.

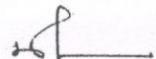
9. In the instant case, the applicant was a Postman. He participated in the

Limited Departmental Competitive Examination for promotion to the post of Postal Assistant. He was selected and promoted as Postal Assistant. Accordingly, the selection made by way of promotion cannot be equated as direct recruitment. The entry level cadre of the applicant is to the post of Postman w.e.f. 3.10.1972. The next promotion is to the cadre of Postal Assistant w.e.f., 8.10.1977. That was the first regular promotion of the applicant. On completion of 16 years of service, the applicant was placed in TBOP w.e.f. 12.10.1993 being the second financial upgradation. On completion of 26 years of service, the applicant was placed in BCR w.e.f. 1.1.2004 being the third financial upgradation.

10. In a similar case, the Principal Bench of the Central Administrative Tribunal in OA.2679/2012 dated 24.9.2018 has discussed the issue in brief, the relevant portion of which would read as follows:-

15. However, the Hon'ble High Court of Delhi in Man Singh vs. Union of India and others WP(C)2887/2012 dated 21.12.2012 and also in subsequent decision in Ajay Panday vs. Union of India and others WP(C)1935/2011 dated 28.07.2014 while dealing with an identical issue, ie., whether the appointment to a post by Limited Departmental Competitive Examination tantamounts to appointment by promotion or it a direct recruitment appointment, after considering the DOP&T U.O dated 18.11.2011, categorically held that any appointment to a higher post through LDCE examination is a promotion only and the Recruitment Rules or guidelines which would apply to appointments through LDCE would have to be those which are applicable to appointment by promotion. Further, the Hon'ble Apex Court in Central provident Fund Commissioner vs. S. Ravindran and others, 1995 Supp 4 SCC 654, where the promotions were made to the next higher post partly on the basis of seniority-cum-fitness and partly on the basis of LDCE held, that both the categories should be treated as a single class.

16. In view of the above referred decisions of the Hon'ble High Court of Delhi, which is the jurisdictional High Court of this Bench and also the judgement of the Hon'ble Apex Court, the appointment of the applicant to the post of Postal Assistant cannot be treated as a direct recruitment and the same should be treated as promotion only. Hence in this view of



the matter, there is no illegality in the action of the respondents in deciding the cases of the applicant for the purpose of granting the financial benefits under ACP/MACP benefits."

11. Following the decision of the Principal Bench of the Central Administrative Tribunal, it could be held that the appointment of the applicant to the post of Postal Assistant after passing the Limited Departmental Competitive Examination is to be treated as promotion. Taking a diagonally opposite view, the Hon'ble High Court of Madras in the case of Union of India vs. D. Sivakumar & Anr. reported in CDJ 2015 MNC 4401 and the Hon'ble High Court of Rajasthan, Jodhpur Bench in the case of UOI vs. S.N. Singh Bhati reported in CDJ 2018 Raj HC 008 have upheld the decision of the Central Administrative Tribunal that employees coming out successful after passing the Limited Departmental Promotion Examination should be treated as Direct Recruits.

12. The learned counsel for the respondents on his part has also referred to various orders/Judgements of the Central Administrative Tribunal/Hon'ble High Courts and submits that the promotion granted after passing the Limited Departmental Competitive Examination should be treated as promotion for the purpose of financial upgradation, the said orders/Judgements are reproduced hereunder.

- (1) OAs.1089/2012 & 309/2015 dated 8.1.2016 (C.A.T, Madras Bench)
- (2) OAs.1024 to 1031/2015 dated 11.8.2016 (C.A.T. Madras Bench)
- (3) OA.613/2012 dated 8.1.2016 (C.A.T. Madras Bench)
- (4) OA.1566/2015 dated 1.2.2017 (C.A.T. Madras Bench)
- (5) OA.929-932/2014 dated 10.8.2016 (C.A.T. Madras Bench)

- (6) OA.2679/2012 dated 24.9.2018 (C.A.T. Principal Bench)
- (6) Hon'ble High Court of Karnataka (Dharwad Bench) in WP.No.102322/2018 (S-CAT) dated 22.11.2018 in the case of UOI & Ors. vs. Smt R.K. Kulkarni.
- (7) Hon'ble Punjab & Haryana High Court at Chandigarh Bench in CWP No.4829 of 2015 etc., in the case of Senior Superintendent of Post Offices, Karnal Division, Karnal & Ors., vs. Nand Kishore & Ors.

13. In regard to the above facts and circumstances of the matter, the short question for consideration in this OA is which of the precedent has to be followed in this case. It could be seen on perusal of the records that different Benches of this Tribunal have taken a different stand. Some Benches have treated the employees coming out on passing the limited departmental competitive examination as promotion and some benches have treated as direct recruit. As a result the respondents are passing different orders leading to filing of litigation over litigation before this Tribunal. Similarly Hon'ble High Courts had already taken different views. As a result the Tribunal is unable to adopt and take a coherent stand on the issue. There are several cases pending before this Bench for adjudicating this issue. Unless a correct decision is taken in this matter this Tribunal would not be able to dispose of similar issues pending before this Tribunal.

14. The Hon'ble Apex Court had held in the case of Pradeep J Metha Vs. CIT (2008 14 SCC 283) as under:

"24. ....

..... Judicial decorum, propriety and discipline required that the High Court should, especially in the event of its contra view or dissent, have discussed the aforesaid judgments of the different High Courts and recorded its own reasons for its contra view. We quite see the fact that the judgments given by a High Court are not binding on the other High Court(s), but all the same,

they have persuasive value. Another High Court would be within its right to differ with the view taken by the other High Courts but, in all fairness, the High Court should record its dissent with reasons therefor. The judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons."

15. In so far as the Central Administrative Tribunal is concerned the same has one Principal Bench and as many as 16 outlying Benches. Members of one Bench are asked to take the Court in other Benches as well and transfer from one Bench to another Bench of the members is also made. Thus unlike High Courts in various states which constitute independent entity in so far as Administrative Tribunal is concerned, the Tribunal is considered only as one entity. Thus, different views of different co-ordinate Benches on a particular issue would only mean that there may be more consistency which is not in the interest of the judicial delivery system, since consistency is a virtue as held by the High Court in the case of State of Karnataka Vs Uma devi (2006 4 SCC 1). The Hon'ble Apex Court in the case of Sub-Inspector Ruplal Vs Lt./ Governor (2000 1 SCC 644) held as under:

"If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel, [1968] 1 SCR 455 while dealing with a case in

which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimhai's case and of Macleod, C.J., in Haridas 's case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr.

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re- considered, lie should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

16. Hence it is felt necessary that the matter may be placed before the Hon'ble Chairman for constitution of a larger Bench for decision.