

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 702 of 2012**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Khanu Charan Das, aged 59 years, S/o Late Pranakrushna Das, Vill – Bhatapada, PO – Debidol-754109, Dist. – Jhagatsinghpur, at present working as Sub Post Master, At/PO Nauganhat, Dist. – Jagatsinghpur - 754113.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to Government, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi – 110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar – 751001.
3. Director of Postal Services (Headquarters), Office of the Chief Post Master General, Orissa Circle, Bhubaneswar – 751001.
4. Assistant Director (Estt), Office of the Chief Post Master General, Odisha Circle, Bhubaneswar, Dist. – Khurda.
5. Post Master, Jagatsinghpur Head Office, At/PO & Dist. – Jagatsinghpur – 754103.
6. Superintendent of Post Offices, Cuttack South Division, Cuttack – 753001.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 5.7.2019

Order on : 18.7.2019

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

This OA was filed by the applicant claiming the benefit of the 3<sup>rd</sup> financial upgradation under the Modified Assured Career Progression Scheme (in short 'MACP Scheme') at par with his juniors in the light of the judgment dated 22.5.2012 of the Jodhpur Bench of this Tribunal in the OA No. 353 and 354 of 2011 as the said judgment is claimed to be applicable to the present case. The applicant has prayed for the following reliefs in this OA:-

“Admit the application, issue notice to the respondents and upon hearing issue necessary direction for grant of 3<sup>rd</sup> ACP in MACP Scheme as per Annexures A/8 and Annexure A/9 at par with his juniors which has been granted to them pursuant to Annexure A/7 on consideration of the representation in Annexure A/8 and A/9 within a stipulated period on the basis of the ratio decided by the Hon'ble Central Administrative Tribunal, Jodhpur Bench vide Annexure A/10, within a stipulated time;

AND pass such other order or direction as this Hon'ble Court deems fit and proper."

2. As stated in the OA, the applicant had joined the service initially in the cadre of Postman vide order dated 30.10.1974 and was appointed as a Clerk vide order dated 4.10.1979 (Annexure-A/2) and he joined as Clerk on 5.10.1979. In the Gradation list, the applicant was senior to one Sri Pitabas Mishra and they were placed at serial 9 and 10 of the Gradation list dated 31.10.2008 (Annexure-A/3). Both availed the benefit of the TBOP and BCR Schemes under which the pay scales of the employees after completion of certain number of years of service are upgraded to the next higher scale. Then Government introduced the MACP Scheme vide OM dated 18.9.2009 (Annexure-A/4) with effect from 1.9.2008. The applicant's case is that the benefit of the MACP Scheme was extended to the juniors of the applicant like Sri Pitabas Mishra, but the applicant was denied such benefit. The applicant filed a representation dated 30.9.2009 (Annexure-A/8 followed by a reminder at Annexure-A/9. It is claimed by the applicant that his case is covered by the order dated 22.5.2012 of Jodhpur Bench of this Tribunal.

3. The respondents have filed their Counter opposing the submissions in the OA that the applicant claims the benefit of 3<sup>rd</sup> MACP at par with his juniors. It is stated that as per the guidelines, under the MACP Scheme the upgradation benefit is personal to an employee and no senior can claim higher pay/grade pay under MACP on the ground that his junior was allowed the same benefit. It is further stated that the applicant had availed one promotion when he was posted as Clerk from postman and then had availed two financial upgradations under TBOP and BCR, for which, he cannot get one more upgradation under MACP since as per the guidelines for MACP, an employee can get maximum three promotions or upgradations.

4. In the Rejoinder, the applicant did not bring out any new grounds. Heard learned counsel for the applicant who argued that as per the judgments cited by the applicant, the applicant's case is covered by these judgments and hence, the applicant is entitled for the same benefit allowed to other similarly placed employees in the cited cases. In addition, he also cited the order of this Bench of the Tribunal in OA No. 200/2013 which he claims is similar to the present OA. Learned counsel also submitted a written note of submissions enclosing the following judgments in which, it was submitted that the employees under similar circumstances as the applicant, have been allowed the benefit of 3<sup>rd</sup> upgradation MACP:-

- i) Order of CAT, Madras Bench in OA 1088/2011 (D.Sivakumar -vs- Union of India & Ors.)

- ii) Order of High Court of Judicature at Madras in WP No. 30629/2014
- iii) Order of High Court of Delhi in WP(C) 4131/2014 (Union of India & Ors. -vs- Shakeel Ahmad Burney)

5. Learned counsel for the respondents reiterated the points mentioned in the Counter and submitted that as per the guidelines for the MACP Scheme, the applicant is not entitled for the relief sought for. Regarding the cases cited by the applicant, it was submitted that the judgments are applicable to the applicants in those cases and these cannot be generalized for other cases. In reply to reference to the order of this Bench of the Tribunal in OA No. 200/2013 by the applicant's counsel, Learned counsel for the respondents submitted that the order of the Tribunal in OA No. 200/2013 has been set aside by the judgment dated 11.5.2018 of Hon'ble High Court in W.P. (C) No. 21962 of 2017, copy of which was furnished.

6. We have considered the submissions of the rival parties. Regarding the point that the applicant should be allowed the benefit of MACP since his juniors had been allowed, it is seen that the applicant had not made such juniors as parties in this OA. The circular dated 18.9.2009 (Annexure-A/4) for the MACP Scheme, stipulates the following in para 20 of the guidelines:

"20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPs."

Hence, the ground that some junior employee had received the MACP benefit will not be helpful for the applicant.

7. The other ground taken by the applicant is the precedent judgments in which, under similar factual circumstances, the employees had been allowed the benefit of MACP by the Tribunal and some of these orders had been upheld in the respective High Court and the SLP filed had been dismissed by Hon'ble Apex Court. Per contra, learned counsel for the respondent has cited the judgment of Hon'ble High Court in W.P. (C) 21962 of 2017 in which the order of the Tribunal in OA No. 200/2013 has been set aside. It is seen that in the judgment dated 11.5.2018 in W.P. (C) 21962 of 2017, the issue of whether the posting of the applicant in that case as Sorting Assistant from Mailman was promotion or not was not disputed in that case. The dispute in that case was whether the applicant will be eligible for 2<sup>nd</sup> MACP benefit after 20 years from the posting as Sorting Assistant w.e.f. 2009. It was held by Hon'ble High Court that the Tribunal has ignored the TBOP benefit allowed to the applicant in 2005 while passing the order allowing the benefit of 2<sup>nd</sup> MACP from 2009. Hence, the order of the Tribunal was set aside. In this OA, the applicant claims

the benefit of the order dated 22.5.2012 (Annexure-A/10) of Jodhpur Bench of the Tribunal in which it was held that the posting of the employee from Group D to Posta Assistant cannot be treated as a promotion. The facts and issues in this OA are different from the facts and issues considered by Hon'ble High Court in W.P. (C) 21962 of 2017 which is factually distinguishable.

8. In the case of Bhanwar Lal Regar (supra) before Jodhpur Bench, the applicant was first appointed as an ED agent and subsequently was appointed as a regular Group D employee. Thereafter, he had appeared in the examination conducted by the respondents for the post of Postal Assistant and was appointed as Posta Assistant. He was then allowed the benefit of upgradation under TBOP and BCR schemes. Although he was allowed the benefit of 3<sup>rd</sup> MACP, but it was cancelled on the ground that he had already availed three promotion/upgradation, treating the posting as Postal Assistant as promotion and this decision was challenged in that OA before Jodhpur Bench, which held 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 25.4.2011 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 equality 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."

9. Learned counsel for the applicant has also cited the judgment dated 5.8.2014 of Hon'ble Delhi High Court in the case of Shakeel Ahmad Burney (supra) in which the issue adjudicated was whether the movement from Group D to Postal Assistant is a direct recruitment or promotion. It was held by Hon'ble Delhi High Court as under:-

"4. The petitioner-Union of India is aggrieved by the impugned order to the extent it holds that movement from Group 'D' post to the post of Postal Assistant is direct recruitment; it is argued that such movement is in fact, a "promotion". It is contended that the order of Jodhpur Bench in Bhanwar Lal Regar (supra), has been stayed by the Jodhpur Bench of the Rajasthan High

Court. He also stressed that the judgment in Bhanwar Lal Regar (supra) itself has been differed from by the CAT in another Bench's decision.

5. Learned counsel highlighted that in terms of the Rule, a clear distinction had been made between recruitment of outsiders and those within the department. Learned counsel relied upon Rules for Recruitment to the Clerical Service in Post Office in the Indian Posts and Telegraphs Department, especially Rule 3, 4 and 5 (which are produced at page 157 of the paper book), and urged that these Rules clearly indicate that a differential treatment is accorded to the departmental candidates and outsider candidates. This distinction has to be kept in mind while determining whether entry to the cadre of Postal Assistant was by way of promotion or direct recruitment. Great stress was laid on the fact that the eligibility condition for departmental candidates and outside candidates stipulated different age limits, which indicates that both are not part of the same category and that departmental candidates are, in fact, to be promoted to the cadre of Postal Assistant.

6. Learned counsel for the respondent submitted that a look at the rules would clarify that apart from departmental candidates and direct recruits being part of the common pool eligible for the recruitment, no other criterion of promotion such as that of seniority or selection, has been carved out. It is submitted that both the categories have to compete through an examination and then even though eligibility threshold in terms of age limit for departmental candidates is 30 years (as against 23 years for direct recruits), that alone would not be a relevant factor. Counsel urged that, taking these into consideration, the conclusion of the CAT that entry to the cadre of Postal Assistant, was by way of direct recruitment should not be interfered with.

7. To the extent they are relevant, the Rules are extracted below:

"3-Recruitment-Recruitment will be by a competitive examination which will be open to-(a) Departmental officials of all classes below the clerical cadre in the post offices hereafter called departmental candidates, and  
(b) Outside candidates.

4-Conditions for departmental candidates: A departmental candidate should have put in not less than five years unblemished service followed by confirmation.

He must submit his application in the prescribed form in due time to the Head of Circle through his immediate superior. It will be at the discretion of the Head of the Circle whose decision will be final, to permit the applicant to appear for the examination.

5. Conditions for outside candidates- The following conditions will apply to outside candidates:

(a) A candidate must be-

(i) a citizen of India, or (ii) a subject of Sikkim, or (iii) a person who has migrated from Pakistan with the intention of permanently settling in India, or (iv) a subject of Nepal or of a Portuguese or French possession in India, and if he comes under category (iii) or (iv), must be a person in whose favour a certificate of eligibility has been given by the Government of India. A candidate in whose case such a certificate is necessary, may however, be admitted to the examination and he may also be provisionally appointed subject to the necessary certificate being even tally given to him by the Government.

(b) He must not be less than 18 years of age and not more than 23 years of age on the date of commencement of examination referred to in rule 3.

Exception-I- In regard to Muslims, other Minority Communities and scheduled Classes (Depressed Classes) the upper age limit is 22 years.

Exception-II-Departmental candidates referred to in rule 3(a) above who are not over 30 years of age, are permitted to appear at the examination as outside candidates, if they fulfil all other conditions prescribed for outside candidates. They will not in that case be allowed to compete for the 50 per cent of the vacancies reserved for departmental candidates.

(c) He must have passed at least the Matriculation examination of a recognized university, or one of the equivalent examinations detailed in Appendix No. 3

(d) He must apply in prescribed form.

(e) Female candidates can appear for the competitive examination on the same conditions as male candidates 5-A candidates who are permitted to appear for the examination will receive from the Head of Circle a written order which should be produced before the Supervisor in charge at the time of examination.

5-B Candidates, both departmental and outsiders, must a fee of Rs. 4 which will be refunded if they are not allowed to sit at the examinations."

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.

9. For the above reasons, no interference is called for with the impugned order of CAT."

The specific issue decided by Hon'ble Delhi High Court in the above case is that the movement of a departmental Group D employee as Postal Assistant in the Clerical cadre after qualifying in the examination which will be open for the departmental candidates as well as outsiders as revealed from the provisions of the recruitment rules, is to be treated as direct recruitment and not as promotion as averred by the departmental authorities.

10. In view of above discussions, we are of the considered opinion that the case of the applicant has been able to make out a case in favour of his claim as per the judgment dated 5.8.2014 of Hon'ble Delhi High Court and applying the ratio of the aforesaid judgment to the present OA, the movement of the applicant from Group D to Clerk on 5.10.1979 cannot be termed as a promotion for the purpose of the MACP. From the documents produced before us by the parties in this OA, it is noticed that nowhere in the order of posting of the applicant as a Clerk vide Annexure-A/2 of the OA, it is mentioned that it

was a posting on promotion. No document has been furnished by the respondents to show that the applicant was in fact promoted when he was posted as a Clerk on 4.10.1979 (Annexure A/2). Further, upgradation benefits under TBOP and BCR schemes were admittedly allowed to the applicant on the basis of his service as Clerk only without considering his service prior to posting as Clerk. From these documents, we are of the view that the respondents have not been able to establish that the posting of the applicant as Clerk on 5.10.1979 was a promotion, as contended in the counter.

11. In the circumstances as discussed above, we are inclined to direct the respondents to consider the case of the applicant for 3<sup>rd</sup> upgradation under the MACP Scheme in accordance with the extant rules and guidelines on the issue and as per the judgment dated 5.8.2014 of Hon'ble Delhi High Court in the case of Shakeel Ahmad Burney (supra) and communicate their decision to the applicant through a speaking and reasoned order within three months from the date of receipt of a copy of this order.

12. The OA is disposed of as above with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath