

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00272/2018

Tuesday, this the 30th day of July, 2019

CORAM

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

1. P.N.Chandrasekharan Nair
Sub Postmaster, Mylapra Town P.O
Pathanamthitta – 689 678
Residing at Puthiyathu, Mylapra Town
Pathanamthitta – 689 678
2. Gourikutty K
Sub Postmaster, Malayalapuzha Eram
Pathanamthitta-689 664
Residing at Letha Bhavan
Malayalapuzha Eram
Pathanamthitta-689 664
3. K.P.Ravi
Retired Postal Assistant
Pathanamthitta H.O – 689 645
Residing at Anjilimoottil House
Mylapra Town
Pathanamthitta – 689 678
4. K.C.Raju
Retired Postal Assistant
Punalur H.O
Residing at Kariakkal
Chennapetta, Kollam – 691 311

..Applicants

(By Advocate Mr. Vishnu S.Chempazhanthiyil)
Vs.

1. The Superintendent of Post Offices
Pathanamthitta Postal Division
Pathanamthitta – 689 645
2. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033
3. Union of India, represented by its Secretary &

Director General, Department of Posts
Dak Bhavan, New Delhi – 110 001

... Respondents

(By Advocate Mr.V.A.Shaji,ACGSC)

This OA having been heard on 26th July, 2019, the Tribunal delivered the following order on 30.7.2019.

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/00272/2018 is filed by Mr.P.N.Chandrasekharan Nair and three other applicants aggrieved by the refusal of the respondents in extending to them the benefit of the judgment of the Chennai Bench of this Tribunal at Annexure A-4, which has been confirmed by the Hon'ble High Court as per Annexure A-6 order. If the benefit is extended, the applicants will be entitled for 2nd financial upgradation under MACP on completion of 20 years in the Postal Assistant cadre.

2. The brief facts of the case are as follows:

The applicants, except 2nd applicant, while working as Extra Department Delivery Agents, were appointed as Postman and later appointed as Postal Assistant through Limited Departmental Competitive Examination. The 2nd applicant was appointed as a Postman on compassionate basis and later, after having cleared the Limited Departmental Competitive Examination, appointed as Postal Assistant.

3. Though the applicants had completed more than 20 years of service in

the Postal Assistant cadre itself, the department has not considered their case for upgradation under MACP in the cadre of Postal Assistant. The first applicant became due for 1st MACP w.e.f 3.4.2005 and 2nd MACP from 3.4.2015 i.e, on completion of 20 years in the Postal Assistant cadre and the second applicant became due for 1st MACP on 17.9.2000 and 2nd MACP on 17.9.2010. The 3rd applicant became eligible for 1st MACP on 17.2.2005 and 2nd MACP on 17.2.2015 and the 4th applicant became eligible for 1st MACP w.e.f 3.4.2005 and 2nd MACP w.e.f 3.4.2015.

4. Applicants submit that the promotions earned before their posting as PA is to be ignored as the appointment to PA cadre is not based on any seniority method nor is the post included in normal channel of promotion. In O.A No.382/2011 filed by similarly situated applicants before the Jodhpur Bench, the Tribunal declared that the promotions earned by way of competitive examination to a higher post, cannot be considered as promotion for the purpose of granting financial upgradations under MACP scheme and the same order was upheld by the Hon'ble High Court of Rajasthan. This Bench of the Tribunal also had an occasion to examine the issue in O.A 180/8/2014 and following the decision of the Jodhpur Bench's decision, the O.A was allowed (Annexure A-3). The Chennai Bench of this Tribunal had also allowed similar O.A 1088/2011 (Annexure A-4). As per Annexure A-8 series, the applicants have prayed for extending to them the benefit of the judgment at Annexure A-4. Annexure A-4 judgment has been confirmed by the Hon'ble High Court and the Apex Court vide Annexure A-5 and Annexure A-6 orders respectively. However, those were not responded to and the

applicants have approached this Tribunal praying for the following reliefs:

(i) Direct the respondents to grant financial upgradation to the applicants on completion of 20 years from the date they have been appointed as Postal Assistant and to revise the pay and draw arrears with 12% interest.

(ii) Declare that the applicants are entitled and eligible to be granted 2nd MACP financial upgradation benefits reckoning his service from the date on which the applicants are appointed as Postal Assistant.

(iii) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. A detailed reply statement has been filed by the respondents denying the contentions made by the applicants in the Original Application. It is stated therein that the scheme of Modified Assured Career Progression was introduced on 19.5.2009 retrospectively with effect from 1.9.2008 and the applicants had not even preferred representations to the appropriate authority till 2017. Regular service for the purpose of financial upgradation shall commence from the date of joining of a post in direct entry grade on a regular basis or on absorption/re-employment basis. The financial upgradations under the scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay as clarified by Annexure R-1 order of the Directorate. The applicants appeared in the Limited Departmental Competitive Examination to the cadre of Postal Assistant under 50% promotion quota and hence as per the extant rules, the 1st, 2nd and 4th applicants were granted financial upgradation under MACP scheme.

Appointment to a post which provides for mode of promotion through LDCE has to be treated as promotion only and not as direct recruitment for the purpose of grant of financial upgradations under MACP scheme. Respondents pray for dismissing the Original Application.

6. Heard Mr.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Mr.V.A.Shaji, learned counsel for the respondents. Perused the records.

7. When the matter was taken up for hearing, Learned counsel for the applicant has produced Order of this Tribunal in O.A No.180/136/2017 dated 18.7.2019. We have carefully perused the judgment and found that the case is squarely covered by the said decision. Jodhpur Bench of this Tribunal in a batch of Original Applications (No.382/2011 and connected matters), considered the issue in detail and held that the eligibility of applicants therein for the grant of TBOP/BCR benefits earlier, and MACP benefit thereafter, has to be counted only from the date they were substantively appointed as Postal Assistants. The view so taken by the Jodhpur Bench of the Tribunal was upheld by the Hon'ble High Court of Judicature at Jodhpur in Civil Writ Petition No.11336/2012 in terms of order dated 10.8.2015. Same view was followed by the Principal Bench in O.A 3756/2011 and this Bench in O.A 180/136/2017 also. The view taken by Hon'ble High Court is

binding on us.

8. In view of the above, the respondents are directed to treat the appointment of the applicants as Postal Assistants as direct recruitment and give them the benefit of MACP Scheme accordingly. It is needless to say that while giving the benefit of financial upgradation under MACP Scheme, applicant is entitled to other consequential benefits like arrears of pay etc. Orders in line with the above directions are to be issued as expeditiously as possible and in any case within 60 days of receipt of copy of this order.

9. The Original Application is allowed as above. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures of the Applicants

Annexure A-1 - True copy of the memo No.B/MACP 1/Dlg dated 22.6.2010 issued by the 1st respondent

Annexure A-2 - True copy of OM issued as per File No.4-7/(MACP)/2009-PCC dated 18.9.2009 issued by the DDG (Establishment) of the 1st respondent

Annexure A-3 - True copy of order dated 16.3.2016 in O.A No.180/00008/2014 of this Hon'ble Tribunal

Annexure A-4 - True copy of order dated 14.3.2013 in O.A No.1088/2011 of the Hon'ble Madras Bench

Annexure A-5 - True copy of the judgment dated 4.2.2015 in W.P 30629/2014 of the Hon'ble High Court of Madras

Annexure A-6 - True copy of the judgment dated 16.8.2016 in SLP(C) No.4848/2016 of the Hon'ble Supreme Court

Annexure A-7 - True copy of the memo No.B2/MACP III/Dlgs. 2016 dated 22.3.2017 issued by the Senior Superintendent of Post Offices, Chennai City North Division

Annexure A8 - True copy of the representation 29.12.2017 submitted by the 1st applicant to the 1st respondent

Annexure A8(a) - True copy of the representation 12.1.2018 submitted by the 2nd applicant to the 1st respondent

Annexure A8(b) - True copy of the representation 10.1.2018 submitted by the 3rd applicant to the 1st respondent

Annexure A8(c) - True copy of the representation 4.1.2018 submitted by the 4th applicant to the 1st respondent

Annexure R-1 - True copy of Directorate Letter No.4-7(MACPS)/2009-PCC dated 18.10.2010

Annexure R-2 - True copy of the Recruitment Rules to the post of Postal Assistant/Sorting Assistants

Annexure R-3 - True copies of the orders issued to the applicants upon promotion to the cadre of Postal Assistant

Annexure R-4 - True copy of the order dated 7.8.2013 in O.A No.127/2012

Annexure R-5 - True copy of order dated 20.8.2014 in O.A No.725/2012

Annexure R-6 - True copy of the order dated 16.5.2017 in O.A No.448 of 2014

Annexure A-9 - True copy of the judgment dated 5.8.2014 in W.P(C) No.4131/2014 of the Hon'ble High Court of Delhi

Annexure A-10 - True copy of order dated 16.3.2016 in O.A No.180/8/2014 of this Tribunal

Annexure A-11 - True copy of order dated 14.3.2013 in O.A No.1088/2011 of the Madras Bench of this Tribunal

Annexure A-12 - True copy of the judgment dated 4.2.2015 in W.P 30629/2014 of the Hon'ble High Court of Madras

Annexure A-13 - True copy of the judgment dated 16.8.2016 in SLP(C) No.4848/2016 of the Hon'ble Supreme Court

Annexure A-14 - True copy of the judgment in O.A No.797/2016 and connected cases dated 12.4.2019 of the Ernakulam Bench of the Hon'ble Tribunal
