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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00386/2019

Tuesday, this the 20th day of August, 2019

C O R A M :

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

A.U.Paulose,
Aged 59 years,
S/o.Urumese,
Sub Postmaster, Mekkad,
Aluva Division – 683 589.
Residing at Areeckal House,
Karippapadam Road, JN 112,
Angamaly – 683 572.Applicant

(By Advocate – Mr.Shafik.M.Abdulkhadir)

v e r s u s

1. Union of India represented by the Director General Posts,
New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Senior Superintendent of Post Offices,
Aluva Division, Aluva – 683 101.Respondents

(By Advocate Mr.T.C.Krishna, Sr.PCGC)

This Original Application having been heard on 8th August 2019, the Tribunal on 20th August 2019 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by A.U.Paulose aggrieved by the refusal of the respondents in extending him benefits of 2nd financial upgradation under MACP Scheme on the ground of gradings which are below bench mark. He

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also seeks extension of benefits of the order of the Tribunal in O.A.No.1088/2011 which was confirmed by the Hon'ble High Court and Hon'ble Supreme Court. The reliefs sought by the applicant in the O.A are as follows :

1. To call for the records relating to Annexure A-1 to Annexure A-1 and to quash Annexure A-1 being illegal and arbitrary.
2. To declare that the applicant is entitled and eligible to be granted MACP financial upgradation benefits reckoning his service from the date on which he is appointed as Postal Assistant.
3. To direct the respondents to grant financial upgradations to the applicant on completion of 10, 20 and 30 years from 1995 and to revise the pay and draw arrears with 12% interest.
4. Issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case
and
5. To grant the costs of this Original Application.

2. The brief facts of the case are :

The applicant had initially joined the services of the respondents as an EDMC on 1.11.1978. He submits that he successfully competed in the Postman Examination and became a Postman with effect from 11.2.1991. Thereafter again he successfully competed in the LGO Examination on Fast Track and was appointed as Postal Assistant on 1.4.1995 after training. He is presently a Postal Assistant, working as SPM under the 3rd respondent. It is submitted that consequent to the recommendations of the 6th CPC, the Government of India has brought out the Modified Assured Career Progression Scheme which was adopted by the Department of Posts. The Scheme provides for three financial upgradations on attaining 10, 20 and 30

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years of service. Consequently vide Memo dated 12.7.2010 the applicant was placed in MACP II in the Grade Pay of Rs.2800/- with effect from 1.9.2008. Though the applicant has objected to placing him in MACP II and requested to treat it as MACP I, the respondents has not acceded to his request on the ground that they have already granted a promotion to him as PA in lieu of the 1st financial upgradation.

3. The applicant submits that various Benches of this Tribunal have extensively examined the very same issue in a catena of decisions and in one such O.A declared that the promotions earned by way of competitive examination to higher posts, cannot be considered as promotions for the purpose of granting financial upgradations for MACP Scheme. The decisions of the Tribunal was confirmed by the Hon'ble High Court and Hon'ble Supreme Court also. However, the benefits of those orders were not extended to the applicant when he requested for similar treatment vide his representation dated 18.4.2019. Instead the 3rd respondent has issued Annexure A-1 order stating entirely different reasons for the rejection of 2nd MACP. The applicant submits that he is entitled for the 1st MACP upgradation with effect from 2005 and for 2nd MACP upgradation after another 10 years in 2015.

4. As grounds the applicant submits that the issue raised in the O.A has been subjected to judicial review at more than one Bench of this Tribunal and the conduct of the respondents in not extending the benefits of Annexure A-4 and Annexure A-5 in spite of the fact that the Hon'ble

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Supreme Court has specifically decided that relief is to be granted to similarly situated employees even if they are not parties to the proceedings, is absolutely illegal and arbitrary.

5. The respondents in their reply statement submitted that the entry grade of the applicant is in the Postman cadre ie. on 12.2.1991 and before completion of 10 years of service, he was promoted to the cadre of Postal Assistant on 1.4.1995. As such he got one upgradation ie., through regular promotion before the introduction of MACP Scheme with effect from 1.9.2008. He got second financial upgradation under MACP Scheme with effect from 1.9.2009 vide Annexure A-3. As he earned two upgradations before completion of 20 years of service, third financial upgradation would be admissible on completion of 10 years of service in the same Grade Pay from the date of second promotion or 30 years of service from the date of appointment, whichever is earlier. For considering the eligibility of officials in the cadre of Postal Assistants in Aluva Division for grant of financial upgradation under MACP III from 1.4.2018 to 30.9.2018, DPC meeting was convened on 19.3.2019 and the case of the applicant was not recommended for financial upgradation under MACP as his APAR grading for the year 2016-17 was below bench mark. Accordingly Annexure A-1 was issued by the 3rd respondent to intimate the applicant of the same. The respondents further submitted that as per the Recruitment Rules the post of Postal/Sorting Assistant have to be filled up 50% by direct recruitment from open market and 50% by promotion through Limited Departmental Competitive Examination. The LDCE is an internal route for promotion of

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departmental candidates in accordance with Recruitment Rules. Candidates with the same qualification in open market are not allowed to compete with the existing employees of feeder grade. Since the applicant has not been recruited against the post earmarked for direct recruitment from open market and has passed LDCE available for departmental officials for which he has availed benefits of age limit, qualification etc. treating him as a direct recruit in the cadre in which he has been inducted through LDCE appears to be against the spirit of the Recruitment Rules of the Department. Therefore, 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 any purpose including grant of financial upgradations under MACP Scheme. Hence the departmental examination cannot be treated as on par with direct recruitment. With regard to extending the benefits of the orders in identical O.As, the respondents submitted that none of the orders have attained finality.

6. We have heard Shri.Shafik.M.A, learned counsel for the applicant and Shri.T.C.Krishna, learned Sr.PCGC for the respondents. We have also perused the pleadings available on record. The question to be considered in this O.A is whether the benefit of the MACP Scheme requires to be reckoned from the date on which he entered the grade of Postman ie. on 12.2.1991 or from the date on which he was appointed as Postal Assistant ie. on 1.4.1995. The Madras Bench of this Tribunal in an identical O.A.No.1088/2011 passed order dated 14.3.2013 in favour of the applicant therein. It reads as follows :

“7. There is no dispute with regard to the admitted facts. On perusal of the orders passed by the coordinated Bench of this Tribunal at Jodhpur, it is seen that the applicants therein also belong to the Postal Department and they were initially appointed as EDA and thereafter they became a Group D employee and after qualified in the selection process, they were appointed as Postman and pursuant to the selection on the basis of the results of the Departmental Examination, they were appointed as Postal Assistant. Like in the present case, they were also granted the financial upgradation but the same has been subsequently withdrawn on the ground that they had already granted the benefits under TBOP/BCR. Aggrieved by the same, they have filed applications before the Jodhpur Bench of this Tribunal which after considered the rival submissions, observed as follows :

19. In a similar manner, while being Postmen, the three applicants in these three O.As 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 Communications & 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 Group D post and was later declared as successful in the Postman Examination, the regular service for the purpose of MACP would deemed to commence from the date of his joining as a Postman in the main cadre as direct recruit basis. But it is obvious that 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 for 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.

20. It is therefore clear that para 2 of the impugned order in all these three O.As at Annexure A-1 dated 10.8.2011 passed by the Supdt. Of Post Offices, Churu Division, Churu was incorrect, and the eligibility of these three applicants for the grant of TBOP/BCR benefits earlier and MACP benefits thereafter has to be counted only from the date they were substantively appointed as Postal Assistants. Therefore, the impugned Annexure A-1 dated 10.8.2011 in all the three O.As are set aside, and the grant of MACP benefits correctly granted to the three applicant through the order dated 31.3.2010 is

upheld. The applicants shall be accordingly entitled to all the arrears, with interest at the GPF rate of interest being payable on the arrears of the financial upgradation benefits admissible to the applicants, correctly granted earlier on 31.3.2010.

The above decision squarely applies to the case of the present applicant.

8. Though the learned counsel on either side submitted their contentions on various aspects, in view of the fact that the Jodhpur Bench of this Tribunal has dealt with the similar issue in the O.A. cited supra, and the respondents have not controverted the same, we do not want to take a different view. During the hearing learned counsel for the respondents submitted that against the orders of the Jodhpur Bench, the Department has filed a Writ Petition No.11414 of 2012 before the Rajasthan High Court and the same is pending.

9. As we have already stated that the orders of the Jodhpur Bench will apply to the case of the applicant herein, the O.A is to be allowed as prayed for the applicant. Accordingly, we allow the O.A by setting aside the impugned order dated 28.9.2010. The respondents 1 to 3 are directed to grant the third financial upgradation to the applicant from the date on which he has completed 30 years of service or from the date on which it is due to him till his retirement. The said direction shall be complied with within a period of three months from the date of receipt of a copy of this order. We also make it clear that the order rendered by us will be subject to the result of the final outcome of the Civil Writ Petition No.11414 of 2012 pending before the Apex Court. In the circumstances, there shall be no order as to costs.”

7. The respondents took the aforesaid order in appeal before the Hon'ble High Court of Judicature at Madras in Writ Petition No.30629 of 2014 along with M.P.No.1/2014. The Hon'ble High Court dismissed the Writ Petition vide judgment dated 4.2.2015. The judgment reads as follows :

“7. In paragraph 19 of the affidavit filed in support of the above writ petition, the Department itself has given the entire service particulars of the first respondent. The same can be summarized for easy appreciation as follows : Details Date of Appointment Remarks Grade Pay Entered in service as Group-D 30.5.1973 Ignored as per DG's guidelines vide order No.4-7/MACPS/ 009/PCC dated 25.4.2011 Rs.1,800/-

Entry in Postman Cadre 22.9.1973 Taken an Entry grade for the purpose of MACP Rs.2,000/-

Promoted to Postal Assistant Cadre 12.11.1977 Adjusted against MACP-I Rs.2,400/-

Granted financial upgradation under TBOP Scheme on completion of 16 years of service 15.11.1993 Adjusted against MACP-II Rs.2,800/-

Granted financial upgradation under BCR Scheme on completion of 26 years of service 1.1.2004 Adjusted against MACP-III Rs.4,200/-

8. A close look at the above tabular column would show that even from the date of his promotion as Postal Assistant, namely 12.11.1977, the first respondent completed more than 30 years before his retirement. The fact that he stagnated in the post of Postal Assistant, is borne out by the very pleadings of the petitioners.

9. What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which, the first respondent got appointed on 22.9.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust it against Modified Assured Career Progression-I.

10. Moreover, it is to be pointed out that even the second modified assured career progression was granted under the Modified Assured Career Progression Scheme only after 16 years and the third is said to have been granted after 26 years. If the first appointment is adjusted against Modified Assured Career Progression-I, this could not have actually happened. For doing so, the Department has counted the first appointment as 12.11.1977. Therefore, they cannot do so for the Modified Assured Career Progression Scheme in a different manner.

11. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MP is also dismissed."

8. Hon'ble Supreme Court also dismissed the S.L.P (C) No.4848 of 2016 filed against the judgment of the Hon'ble High Court of Madras as per judgment dated 16.8.2016 on admission itself.

9. In view of the settled position and in the facts and circumstance of the case, the O.A is allowed as prayed for by the applicant. Annexure A-1 is quashed and set aside. We declare that the applicant is entitled to the financial upgradation as per MACP Scheme with effect from the date of

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appointment as Postal Assistant ie. from 1.4.1995 and direct the respondents to revise his pay accordingly. The consequential benefits arising out of this order shall be granted to the applicant within a period of three months from the date of receipt of a copy of this order. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this O.A as laid down by the Apex Court in **Union of India & Ors. v. Tarsem Singh (2008) 8 SCC 648**. No costs.

(Dated this the 20th day of August 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00386/2019

1. **Annexure A-1** - True copy of the Order No.B1/MACPs/I dated 2.5.2019 issued by the 3rd respondent.
2. **Annexure A-2** - True copy of the O.M.File No.4-7/(MACPS)/2009-PCC dated 18.9.2009 issued by the DDG (Establishment) of the 1st respondent.
3. **Annexure A-3** - True copy of the Memo No.B1/MACP/Dlgs dated 12.7.2010 issued by the 3rd respondent.
4. **Annexure A-4** - True copy of the order dated 16.3.2016 in O.A.No.180/00008/2014.
5. **Annexure A-5** - True copy of the order dated 14.3.2013 in O.A.No.1088/2011 of the Madras Bench.
6. **Annexure A-6** - True copy of the representation dated 18.4.2019 before the 3rd respondent.
7. **Annexure A-7** - True copy of the order dated 4.4.2019 of this Hon'ble Tribunal in O.A.No.180/950/2017 & connected cases.
8. **Annexure R-1** - True copy of the Directorate vide letter No.7-8/2016-PCC(Pt) dated 2.7.2018.
9. **Annexure R-2** - True copy of the Directorate vide letter No.7-8/2016-PCC(Pt) dated 13.3.2019.
10. **Annexure R-3** - True copy of the Corrigendum dated 19.6.2019.
11. **Annexure R-4** - True copy of the O.M.No.4-7/(MACPS)/2009-PCC dated 18.10.2010.
12. **Annexure R-5** - True copy of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules 1990.
13. **Annexure R-6** - True copy of the judgment dated 20.8.2014 in O.A.No.725/2012.
14. **Annexure R-7** - True copy of the common order dated 7.8.2013 in O.A.No.127/2012 & connected cases.
15. **Annexure R-8** - True copy of the order dated 16.5.2017 in O.A.No.448/2014.
16. **Annexure R-9** - True copy of the common order dated 10.5.2018 in C.W.P.No.18488/2016 and other similar cases.

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17. Annexure R-10 - True copy of the judgment of the Hon'ble High Court of Karnataka dated 2.8.2018 in WP(C) No.57935/2017 (S-CAT).
