

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00872/2017

Monday, this the 19th day of August, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Sree Kumaran Nair A., aged 66 years, S/o. Anantha Raman,
 Postal Assistant (Retired), TC (42/935(2), ANRA, 30,
 Asan Nagar, Vallakadavu Post, Thiruvananthapuram-
 695 008.

..... **Applicant**

(By Advocate : Mr. S.M. Prasanth)

V e r s u s

1. The Senior Superintendent of Post Offices,
 Thiruvananthapuram North Postal Division,
 Thiruvananthapuram – 695 001.
2. The Chief Postmaster General,
 Kerala Circle, Thiruvananthapuum – 695 033.
3. Union of India, represented by the Secretary and
 the Director General, Department of Posts, DAK Bhavan,
 New Delhi – 110 001.

..... **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 8.8.2019 the Tribunal on
 19.08.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

“i) To call for the records leading up to Annexure-2 and set aside the same.

ii) To direct the respondents to grant third financial upgradation to the applicant under MACP Scheme on completion of the 30 years of service from 5.11.1980 and all consequential benefits including arrears of salary

and pension with interest at the rate of 12% per annum; and

iii) Grant such other relief or order as this Honourable Tribunal may deem fit and proper to meet the ends of justice.

iv) Award the cost of these proceedings.”

2. The brief facts of the case are that the applicant joined the service of the respondents as Postman w.e.f. 1.4.1976. In the year 1980 he competed in the competitive examination conducted for appointment as Postal Assistant and was appointed w.e.f. 5.11.1980. On completion of 16 years, applicant was granted financial upgradation under TBOP w.e.f. 22.11.1996 and BCR on completion of 26 years in the cadre of Postal Assistant. However, consequent on the recommendations of the 6th CPC the applicant is entitled for 3rd MACP as he had completed more than 30 years of service in PA cadre itself from 5.11.1980 till his retirement on 30.11.2011. The applicant submitted representation on 29.06.2017 indicating the aforesaid. However, the respondents rejected the request of the applicant vide Annexure A2. The applicant submitted that an identical issue had been considered by the Madras Bench of the Tribunal in OA No. 1088 of 2011. The Department filed WP(C) No. 30629/2014 before the Hon'ble High Court of Madras which was dismissed by judgment dated 4.2.2015. The Department filed SLP No. 4848 of 2016 before the Hon'ble apex court which was also dismissed. Denying the benefits to the similarly situated person, the applicant, is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution. Aggrieved the applicant has filed the present OA seeking the above relief.

3. Notices were issued to the respondents. Mr. N. Anilkumar, SCGSC took notice on behalf of the respondents and filed a detailed reply statement contending that the OA is hopelessly barred by limitation under Section 19 of the Administrative Tribunals Act, 1985 and is liable to be dismissed. The applicant entered the Department as Postman w.e.f. 1.4.1976. Later he appeared in the LDCE to the cadre of Postal/Sorting Assistant under 50% promotion quota. The applicant was promoted to the cadre of Postal Assistant w.e.f. 5.11.1980. As per the extant rules the applicant was granted financial upgradation under TBOP upon completion of 16 years of service in the cadre of PA w.e.f. 22.11.1996 and another financial upgradation under BCR scheme w.e.f. 1.1.2007. The applicant's promotion as Postal Assistant was treated as an offset against 1st MACP, the TBOP granted to him on completion of 16 years as 2nd MACP and BCR granted to him on completion of 26 years of service as an off set against 3rd MACP. Therefore, the applicant had already been granted three financial upgradations in his career. There is no scope for any further financial upgradation as per Annexure R1 MACP scheme which governs the field w.e.f. 1.9.2008. The respondents contend that the present matter is covered by the order passed by this Tribunal in OAs Nos. 127/2012, 142/2012 and 702/2012 dated 7.8.2013 wherein this Tribunal dismissed the OAs holding that ACP/MACP scheme takes into account the promotions earned by the official for the purpose of working out the eligibility for financial upgradation under the scheme. Respondents pray for dismissing the OA.

4. Heard Mr. S.M. Prasanth, learned counsel for the applicant and Mr. N. Anilkumar, SCGSC appearing for the respondents. Perused the record.

5. The issues raised in this OA are two fold: Firstly whether appointment of the applicant as Postal Assistant is to be taken as fresh appointment or promotion. Secondly whether applicant is entitled for 3rd MACP after taking into account his appointment as Postal Assistant by clearing the departmental exam.

6. Learned counsel for the applicant has relied upon the order passed by the Madras Bench of the Tribunal in OA No. 1088 of 2011 dated 14.3.2013. The Madras Bench after relying upon the order passed by the Jodhpur Bench of the Tribunal in OA No. 382/2011 and connected cases dated 22.5.2012 held that the decision of the Jodhpur Bench squarely applies to the applicant therein. The relevant part of the order passed by the Jodhpur Bench of the Tribunal in OA No. 382/2011 and connected cases is extracted below:

“19.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 work '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.”

The respondents filed WP(C) No. 30629/2014 before the Hon'ble High Court of Madras which was dismissed by judgment dated 4.2.2015 and the SLP No. 4848 of 2016 filed by the respondents was also dismissed by the

Hon'ble apex court.

7. The Hon'ble High Court of Delhi on 5.8.2014 in *Union of India v. Shakeel Ahmad Burney* held as under:

“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.”

8. On the contrary respondents counsel Shri N.Anilkumar submitted that the applicant's appointment to the post of Postal Assistant is by LDCE i.e. 50% quota meant for departmental candidates which is actually a promotional post. Therefore, it should be treated as first promotion from 5.11.1980 when he has been promoted as Postal Assistant. Thereafter he has been granted 2nd financial upgradation on 22.11.1996 on completion of 16 years of service under TBOP scheme applicable from the date of the last promotion as Postal Assistant and further on completion of 26 years he was granted next upgradation under BCR scheme w.e.f. 1.1.2007. The applicant retired on 30.11.2011.

9. We are of the view that through 50% departmental quota the applicant was selected and appointed as Postal Assistant after competing in the LDCE/test. Several categories including Group 'D' employees are also allowed to participate in the said LDCE/test and therefore, the rules of promotion is not in picture and the only yardstick is to qualify the exam in the order of merit for which standards are same as per the direct recruitment by a common process of selection.

10. The rules of promotion is quite different as the basic criteria is seniority-cum-fitness in order to get the promotion and only the employees from the feeder category is eligible who comes under the consideration zone so fixed by the DPC. However, this is absent in the case of appointment to the post of Postal Assistant from the Limited Departmental Competitive Examination quota as it is only by way of merit alone. Further we are not in agreement with the respondents' contention that since applicant is coming through 50% LDCE quota the appointment to the post should be treated as promotion post for the simple reason that the selection is made not from feeder category alone but on the basis of seniority and several other categories of employees are also eligible to appear in the said examination who are not at all in the feeder categories and further selection would be on the basis of percentage of marks alone. The contention of Mr. N. Anilkumar, SCGSC would have been correct in the case of appointment to the post under 50% by way of promotion which is the other category and they can be said to be promotee Postal Assistant because they are coming on the basis of seniority alone.

11. In view of the above legal position and the facts and circumstances of the case, we find that the selection to the post of Postal Assistant is by way of an exam and which is a direct recruitment and shall not be counted as promotion for the purpose of MACP. Therefore, applicant is entitled for 3rd financial upgradation as per the MACP scheme on completion of 30 years of service. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANTS' ANNEXURES

- Annexure A1** - True copy of representation submitted by the applicant to CPMG, Kerala Circle dated 29.6.2017.
- Annexure A2** - True copy of the order No. B/MACP-2016-17 dated TVM 24.7.2017 issued by the 1st respondent.
- Annexure A3** - True copy of OA No. 1088/2011 filed by the applicant before the CAT, Madras Bench.
- Annexure A4** - True copy of the judgment in WP(C) No. 30629/2014 filed by the applicant before the Honourable High Court of Kerala.
- Annexure A5** - True copy of the SLA No. 4848/2016 filed by the applicant before the Honourable Supreme Court of India.
- Annexure A6** - True copy of the memo No. B2/MACP III/Dlgs/2016 dated 22.3.2017 issued by the respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the OM No. 4-7/(MACPS)/2009-PCC dated 18.9.2009 of the Department of Posts.
- Annexure R2** - True copy of the letter No. 4-7/(MACPS)/2009-PCC dated 18.10.2010.
- Annexure R3** - True copy of the Recruitment Rules.
- Annexure R4** - True copy of the common order dated 7.8.2013 of this Hon. Tribunal in OA No. 127/2012 and connected cases.
- Annexure R5** - True copy of the order dated 20.8.2014 in OA No. 725/2012.

Annexure R6 - True copy of the order dated 16.5.2017 in OA
No. 448 of 2014.

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