

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 180/00136 of 2017

Thursday, this the 18th day of July, 2019

CORAM

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

1. Krishnadasan.A
Retired Sub Postmaster
Keralassery, Palakkad-678 641
Residing at Baby Nivas, Mannur, Palakkad-678 642
 2. Nanikutty.C.C
Retired Postmaster, Kalpathi
Palakkad – 678 003
Residing at Abhilash, Punathil Parambu
Pudanur P.O
Mundur, Palakkad – 678 592
- ... Applicants**

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Senior Superintendent of Post Offices
Palakkad Postal Division, Palakkad – 678 001
 2. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033
 3. Union of India, represented by the Secretary
and Director General, Dak Bhavan
New Delhi – 110 001
- Respondents**

(By Advocate Mr.N.Anilkumar,SCGSC)

The above application having been finally heard on 15.7.2019, the Tribunal on 18.7.2019 delivered the following:

ORDER

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

Original Application No.180/00136/2017 is filed by the applicants aggrieved by the inaction on the part of the respondents in extending the benefit of decision in Annexures A3 judgment of the Principal Bench of this Tribunal in O.A 3756/2011 and Annexure A5 judgment of the Jodhpur Bench of this Tribunal in O.A No.382/2011.

2. The first applicant entered service as Postman on 19.11.1988, while working as an Extra Departmental Agent and the second applicant joined as Post Women on 8.3.1989 while working as an Extra Departmental Agent. Subsequently, on passing the Departmental Competitive Examination, they were promoted as Postal Assistants on 1.3.1993 and 9.1.1993 respectively in the pay scale of Rs.975-1660. A copy of the posting order of 2nd applicant is produced as Annexure A-1.

3. After the implementation of the 6th Central Pay Commission recommendations, both the applicants were placed in PB 1 Rs.5200 –

20200 + GP Rs.2400/- and was granted 2nd financial upgradation under the MACP Scheme in PB1 Rs.5200-20200 with GP of Rs.2800/- (Annexure A-2); while directly recruited Postal Assistants were granted Grade Pay of Rs.4200/- on grant of 2nd MACP, applicants were granted only Grade Pay of Rs.2800/- on grant of 2nd MACP. Applicants seek the benefits granted in the order of the Principal Bench of this Tribunal in O.A No.3756/2011 holding that appointment as a Postal Assistant should be treated as direct recruitment for the purpose of grant of financial upgradation under MACP scheme (Annexure A-3). Claiming the benefit, applicants sent representations, vide Annexures A4 and A4(a) respectively, which were not responded to.

4. Applicants referred judgment of the Jodhpur Bench of this Tribunal in O.A No.382/2011 and connected cases (Annexure A-5) on the same issue. This issue was considered by the Hon'ble High Court of Judicature in Jodhpur in Civil Writ Petition No.11336/2012 and as per order dated 10.8.2015, orders of the Tribunal were upheld.

5. Applicants contend that the disparity between a directly recruited Postal Assistant and one who came from the cadre of Postman is unjust, illegal and arbitrary. This has caused a huge disparity on

grant of pensionary benefits also. Applicants prayed for the following reliefs:

1. Direct the respondents to extend the benefit of judgment at Annexure A3 and A5 to the applicants by granting Grade Pay of Rs.4200/- on being granted 2nd financial upgradation under MACP.

2. Direct the respondents to grant 2nd financial upgradation under MACP and grant Grade Pay of Rs.4200/- w.e.f 1.3.1993 and 9.1.1993 respectively to the applicants.

3. Declare that the applicants are eligible for 2nd financial upgradation under MACP and placement in Grade Pay of Rs.4200/- w.e.f 1.3.1993 and 9.1.1993 respectively and direct the respondents to grant all consequential benefits including revision of pension and its arrears.

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

6. Reply statement has been filed by the respondents. It is admitted therein that the applicants were promoted as Postal Assistants on 1.3.1993 and 10.1.1993 respectively and they retired from service on superannuation on 31.5.2013 and 30.4.2013 respectively. Respondents submitted that the MACP Scheme came into operation w.e.f 1.9.2008 and consequent to this, the cases of the applicants were considered along with all other officials. Since the first and second applicants have entered into regular government service w.e.f

19.11.1988 and 8.3.1989 respectively and as both of them got one promotion as Postal Assistants, they were considered for second financial upgradation under MACP Scheme. Accordingly, they were granted second financial upgradation under MACPS with effect from 1.9.2008 from Grade Pay of Rs.2400/- to Rs.2800/-. Respondents have referred Postal Directorate letter No.4-7/(MACPS)/2009-PCC dated 18.10.2010 (Annexure R1(a) and submitted that they have only acted as per the extant instructions on the subject. It is also submitted that as per the above mentioned Postal Directorate letter, no stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme. Respondents have filed additional reply statement also in this matter and they pray for dismissal of the Original Application.

7. Heard Mr.Vishnu S Chempazhanthiyil, learned counsel for the applicants and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents. Perused the records.

8. The Original Application is filed by the applicants claiming that their selection as Postal Assistants by way of Limited

Departmental Competitive Examination cannot be counted as a Promotion and their regular service for the purpose of financial upgradation shall be reckoned from the date of joining as Postal Assistant. According to learned counsel for the applicant, in view of the judgment of the Principal Bench of this Tribunal in Annexures A-3 and A-5 judgements, the appointment should be treated as direct recruitment for the purpose of financial upgradations. But the respondents object to the same.

9. 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 also in O.A 3756/2011 also. The view taken by Hon'ble High Court is binding on us. It reads:

“ Having considered the argument advanced we do not find any merit with the same. Learned counsel appearing on behalf of the appellant on asking again and again failed to point out any provision for promotion to the post of Postman/Sorting Assistant. On the other hand, from perusal of the orders of appointment to the post of Postal Assistant/Sorting Assistant, it is apparent that the respondent original applicants faced an examination, may that be a limited competitive examination, i.e, nothing but direct recruitment. Their joining as Postal Assistants was not at all in the nature of promotion, hence their services for the grant of benefits under modified assured career progression has to be counted only from the date they were appointed as Postal Assistants/Sorting Assistants. The services rendered by them on earlier post prior to their appointment as Postal Assistants/Sorting Assistants are absolutely inconsequential for the purpose of grant of modified assured career progression. At the cost of repetition it shall be appropriate to mention that the petitioners failed to point out any provision for appointment to the post of Postal Assistant/Sorting Assistant by way of promotion and to point out any order of appointment making appointment of the original applicants on the post concerned by way of promotion.

The writ petitions, thus, are having no merit, hence dismissed. The orders passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in respective original applications stand affirmed. ”

10. In view of the aforementioned, the respondents are directed to treat the appointment of the applicants as Postal Assistants w.e.f 1.3.1993 and 9.1.1993 respectively as direct recruitment and give them 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.

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

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

- Annexure A1 - True copy of the Memo No.B1/6/Rectt. Dated 21.4.1993 issued by the 1st respondent
- Annexure A2 - True copy of the Memo No.B1/MACP/Dlg dated 7.7.2010 issued by the 1st respondent
- Annexure A3 - True copy of the order dated 3.11.2015 in O.A No.3756/2011 of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi
- Annexure A4 - True copy of representation dated 12.8.2016 submitted by the 1st applicant to the 1st respondent
- Annexure A4(a) - True copy of representation dated 12.8.2016 submitted by the 2nd applicant to the 1st respondent
- Annexure A4(a) - True copy of representation dated 12.8.2016 submitted by the 2nd applicant to the 1st respondent
- Annexure A5 - True copy of the order dated 22.5.2012 of the Jodhpur Bench of the Tribunal in O.A No.382/2011 and connected cases
- Annexure A6 - True copy of the extract of the decision of the Guwahati Bench of Tribunal in O.A No.308/2013, as extracted in Swmy's News
- Annexure A7 - True copy of the representation dated 2.1.2017 submitted by the 1st applicant to the 2nd respondent
- Annexure A7(a) - True copy of the representation dated 2.1.2017 submitted by the 2nd applicant to the 2nd respondent.
- Annexure R1(a) - True copy of the letter No.4-7/(MACPS)/2009-PCC dated 18.10.2010
- Annexure R1(b) - True copy of the letter no.4-7/(MACPS)/2009-PCC dated 18.9.2009
- Annexure A8 - 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 A9 - True copy of the order dated 16.3.2016 in

O.A No.180/00008/2014 of this Tribunal

Annexure A 10 - True copy of order dated 14.3.2013 in O.A No.1088/2011 of the Hon'ble Madras Bench

Annexure A11 - True copy of the judgment dated 4.2.2015 in W.P 30629/2014 of the Hon'ble High Court of Madras

Annexure A12 - True copy of the judgment dated 16.8.2016 in SLP(C) No.4848/2016 of the Hon'ble Supreme Court

Annexure A13 - 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 R1(c) - True copy of the letter No.60-52/90-SPB-I dated 27.12.1990

Annexure A14 - True copy of the judgement in O.A No.797/2016 and connected cases dated 12.4.2019 of the Ernakulam Bench of the Hon'ble Tribunal.

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