

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.24316 of 2014

V.Prabakaran

.... Petitioner

vs.

1.The Chief Postmaster General
Tamil Nadu Circle
Chennai - 600 002

2.Postmaster General
Chennai City Region
Chennai 600 002

3.The Senior Superintendent of Post Officer
Pondicherry Division
Pondicherry 605 001

..... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the Central Administrative Tribunal, Madras Bench dated 07.08.2013 in O.A.No.1096 of 2011 and quash the same as illegal and improper and consequently direct the respondents to grant the petitioner third promotion under MACP scheme introduced by GOI in DOPT O.M.No.35034/2008-Estt.(D) dated 19.05.2009 with effect from 01.09.2008 along with arrears of pay and allowances and all other consequential benefits and to decide the matter on merits.

For Petitioner : Mr.A.Laxmirajathnam

For Respondents : Mr.S.Namonarayanan

ORDER

S.MANIKUMAR, J.

Challenge in this writ petition is to an order made in O.A.No.1096 of 2011 dated 07.08.2013, by which, the Tribunal, declined to issue any direction to the respondents to grant third promotion to the writ petitioner under MACP scheme

introduced by the Government of India in Department of Personnel and Training O.M.No.35034/2008-Estt.(D) dated 19.05.2009 with effect from 01.09.2008 along with arrears of pay and allowances and consequential benefits.

2. The writ petitioner was appointed as Postal Assistant on 07.11.1973 and as per the TBOP/BCR Scheme, the writ petitioner was granted first time bound promotion (TBOP) with effect from 07.11.1989 and second promotion (BCR) with effect from 01.01.2000. The Government have issued Modified Assured Career Progression Scheme (MACPS), of time bound promotion, vide Government of India, Department of Personnel and Training OM dated 19.05.2009, applicable to all Group A, B and C Central Government civilian employees. According to the petitioner, all the Central Government employees are eligible for three time bound promotions at intervals of 10, 20 and 30 years of continuous regular service.

3. Writ petitioner was given two time bound promotions, in the normal course, as per the earlier scheme of time bound promotions. He had completed 30 years of service on 06.11.2003 and therefore, eligible for the third promotion with effect from 01.09.2008, the date on which the scheme was given effect. According to him, several juniors were granted third promotion under the Modified Assured Career Progression Scheme, but he was not promoted. He therefore, made a representation dated 05.08.2010 to the Postmaster General, Chennai City Region, Chennai - 2/respondent No.2. There was no reply. He made an application dated 14.03.2011 to the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/respondent No.3. A reply dated 09.04.2011 was given stating that earlier when NSG promotion was offered to the writ petitioner vide Memo dated 20.07.2007, the writ petitioner had declined. By letter dated 18.08.2007 and as per the Rulings and instructions on the subject for grant of financial upgradation under MACP, financial upgradation under third MACP, was not granted.

4. According to the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/respondent No.3 since the writ petitioner had declined regular promotion granted, he was not eligible for third MACP upgradation. However in the reply dated 09.04.2009, the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/respondent No.3 has also stated that the Postmaster General, Chennai City Region, was intimated that a clarification has been sought for from the higher authorities as to whether financial upgradation can be denied to an official who have denied regular promotion before introduction of MACP Scheme/receipt of MACP orders. The Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/respondent No.3 in his reply dated 09.04.2011 under RTI Act, has also stated that grant of financial upgradation

under third MACP to the writ petitioner, would be decided on receipt of further clarification from RO/CO.

5. The writ petitioner has sought for information from the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/respondent No.3, regarding recommendation of the DPC held on 07.07.2010. According to the writ petitioner, information furnished under the RTI Act revealed that in the DPC, which held on 07.07.2010, a decision was taken to the effect that the writ petitioner was not eligible for consideration for third financial upgradation under MACPS in accordance with the letter dated 18.09.2009 of the Director General of Posts. Before the Tribunal, the petitioner has contended that it was an erroneous interpretation of the guidelines.

6. Before the Tribunal, the petitioner has further contended that he has completed 30 years of service as on 06.11.2003. He is entitled to opt for either General line or Accounts line and accordingly, opted for Accounts line. But the Chief Postmaster General, Tamil Nadu Circle, first respondent herein, vide order dated 27.07.2007, suo motu, promoted the petitioner to LSG cadre (equivalent of TBOP). Inasmuch as the petitioner had opted for Accounts line, he declined promotion to LSG Cadre General line.

7. The writ petitioner has further contended that even otherwise, the order of promotion to LSG cadre contains a clause to the effect that "any official declining the promotion will forfeit the seniority and they will be considered for promotion only after one year subject to eligibility." The writ petitioner has contended that he had declined regular promotion to LSG on 18.08.2007, which was not his line of choice, but he is eligible to be considered for regular promotion after 18.08.2008 in his chosen line, namely accounts line.

8. He further contended that since MACP scheme, has come into effect from 01.09.2008, he should have been considered for third upgradation under MACP scheme. Thus on the above facts, O.A.No.1096/2011 has been filed for a direction to the respondents to grant third promotion under MACP scheme introduced by the Government of India in DOPT O.M.No.35034/3/2008-Estt.(D) dated 19.05.2009 with effect from 01.09.2008 along with arrears of pay and allowances and all other consequential benefits.

9. Before the Tribunal, respondents, in their counter affidavit, admitted that the writ petitioner, was appointed as Postal Assistant on 07.11.1973, he was given financial upgradation under the time bound scheme on completion of 16

years of service with effect from 07.11.1989 and under BCR scheme with effect from 01.01.2000 on completion of 26 years of service. He was promoted as lower selection grade on regular basis, vide memorandum dated 20.07.2007 of the Postmaster General/respondent No.1. He, vide letter dated 18.08.2007 declined promotion to LSG cadre. His declaration was accepted by Chief Postmaster General, Tamil Nadu Circle, Chennai/1st respondent.

10. The respondents have further contended that, as per the OM dated 01.10.1981, if a Government servant does not want to accept the promotion, acceptance of the refusal of promotion by the competent authority is subject to the condition that no fresh offer of appointment on promotion shall be made for the period of one year from the date of refusal or till the next vacancy arises, whichever is later and that on the eventual promotion to the higher cadre, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled up by selection or otherwise.

11. The respondents in O.A.No.1096/2011 have further contended that based on the accepted recommendations of the VI Pay Commission, the Central Government introduced the scheme for Modified Assured Career Progression Scheme dated 18.09.2009 of the Department of Personnel and Training. The same implemented by the Department of Posts in OM No.35034/3/2008-Estt(D) dated 18.09.2009. As per the scheme, regularly appointed Group A, B & C employees are eligible for three financial upgradations on completion of 10, 20 and 30 years respectively. For considering the case of grant of financial upgradation, a Screening Committee would be constituted, which would meet twice in a financial year viz. January and July. The MACP scheme was effective from 01.09.2008.

12. According to the respondents, as per paragraph 25 of MACP guidelines indicated in Postal Directorate's letter dated 18.08.2009, if a regular promotion was offered, but refused by the employee, before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such, the employee has not been stagnated due to lack of opportunities. Further contention has been made that the Departmental Screening Committee of Pondicherry Postal Division which met on 07.07.2010 for considering the MACP to eligible officials for the period from 01.09.2008 to 31.03.2010, did not find favour with the writ petitioner though he had completed 30 years of service as on 28.11.2003 and due for financial upgradation with effect from 01.09.2008.

13. The respondents have further submitted that vide letter

dated 30.11.2011, the Directorate of Posts, has clarified that option to be exercised by officials qualified in PO & RMS Accountant exam, for promotion to lower selection grade (general) line or lower selection grade(accountant) line, during the turn irrespective of their earlier option exercised by them, at the time of TBOP/BCR etc. Accordingly, writ petitioner has given his option on 03.01.2012, choosing accounts line for regular promotion. His case was considered for regular promotion to LSG (Accountant) cadre by the Departmental Promotion Committee at Circle level in the office of the Chief Postmaster General, Chennai/1st respondent. Promotion order as LSG (Accountant) has been issued to the writ petitioner on 25.07.2012. He has also joined the promotional post. The respondents, in their counter affidavit before the Tribunal, have stated that the case of the petitioner for third MACP upgradation, would be considered after the writ petitioner accepts promotion.

14. Writ petitioner has filed a rejoinder reiterating that he had completed 30 years of service as on 08.11.2003 and therefore, eligible for the benefits under third MACP with effect from 01.09.2008 and denial of the same was arbitrary. He has also pleaded that in a similar situation, the respondents had considered the case of an official who had declined regular promotion LSG, but adopted a different standard to deny benefits to him. After considering the material on record and hearing the learned counsel for the parties, the Tribunal declined to accept the contentions of the writ petitioner and accordingly, dismissed the original application.

15. Instant writ petition has been filed and submissions are reiterated in the supporting affidavit.

16. The Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry 605 001 has also filed a counter affidavit reiterating the same defence, made in the Tribunal, with an additional fact stating that LSG promotion in accounts line to which the writ petitioner opted was processed and he was accordingly, promoted in the year 2012. He joined as LSG (Accountant) at Tindivanam, on 29.08.2012 and on his acceptance of LSG promotion from 29.08.2012, third upgradation was also granted to the petitioner with effect from 29.08.2012 from the date of acceptance of his regular promotion. On the contention that another official had been granted, third MACP upgradation and whereas, the writ petitioner was discriminated, the Senior Superintendent of Post Offices, Pondicherry Division, in his counter affidavit, has stated that the said official was granted MACP inadvertently, without noticing the fact of declining his promotion to LSG and subsequently, his case was reviewed by the Chief Postmaster General, Chennai/1st respondent herein and action has been taken to cancel the MACP granted. Therefore, the

respondents have submitted that there is no violation of Article 14 of the Constitution of India. For the reasons stated, they prayed to sustain the order of the Tribunal.

Heard the learned counsel for the parties and perused the materials available on record.

17. On 20.07.2007, the writ petitioner has been offered promotion in LSG cadre post on regular basis. As per promotion and allotment in LSG cadre, if any official declining promotion, the declination in the prescribed form, should be obtained within a fortnight and sent to the office of the Chief Postmaster General, Tamil Nadu Circle, Chennai/1st respondent for necessary action. Any official declining promotion, will forfeit the seniority and they will be considered for promotion only after subject to eligibility. On 20.08.2007, the writ petitioner has declined promotion for one year. Modified Assured Career Progression Scheme has been introduced on 19.05.2008 on the basis of VI Pay Commission recommendation with the modification to grant financial upgradations under the MACPs at intervals of 10, 20 and 30 years of continued service. As per clause 9 of the office memorandum dated 19.05.2009 of the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), Government of India, any interpretation/clarification of doubt, as to the scope and manner of the provisions of the MACP scheme shall be given by the Department of Personnel and Training (Estt.D), the scheme would be apparently with effect from 01.09.2008. In other words, financial upgradation, as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

18. Some of the clauses of Modified Assured Career Progression Scheme, are as follows:

"2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.

4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be revised by 3% of the

total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs.1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs.2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs.100). After availing financial upgradation under MACPS, if the government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs.2400, on regular promotion, he will only be granted the difference of grade pay between Rs.2000 and Rs.2400. No additional increment will be granted at this stage.

5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACP.

The pre-revised hierarchy (in ascending order) in a particular organisation was as under:-

Rs.5000 - 8000, Rs.5500 - 900 & Rs.6500 - 10500

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organisation, i.e. to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of

Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.

13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employee in the Ministry/Department or its offices, may continue to be operation for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch over to the MACPS. However, these schemes shall not run concurrently with the MACPS.

25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

19. On 05.08.2010, the writ petitioner, has made a representation to the Postmaster General, Chennai Region/1st respondent stating that he was given promotion to LSG Cadre for the year 2007 and due to family circumstances, he declined the same for one year. MACP scheme was introduced with effect from 01.09.2008. He was not offered any regular promotion. After 2007, the Circle office has not issued any further LSG Promotion list. Only during May 2010, after a gap of three years, vide letter dated 14.05.2010, LSG Promotion was issued in which, the name of the petitioner was not inclined. In his representation, he has sought for inclusion of his name for the third financial MACP upgradation. Reply dated 24.07.2009, has been issued by the Senior Superintendent of Post Offices, Pondicherry/3rd respondent, stating that the case of the petitioner would be considered for promotion to LSG Accountant cadre. Similar reply has been given on 24.11.2010. Thereafter, the writ petitioner

has made applications under the RTI Act, 2005, for which reply has been given.

20. For an application dated 12.03.2011 made by the petitioner under the RTI Act, 2005, the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry, has sent a reply dated 09.04.2011 stating that case of the petitioner was considered for grant of financial upgradation under the third MACP scheme in the DPC held on 07.07.2010 and since he had declined to accept the promotion offered on 20.08.2007, as per the ruling and instructions on the subject for grant of financial upgradation under MACP III was not granted to him. However, the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry has also stated that it was intimated by the Postmaster General, Chennai City Region, that a clarification has been sought for from the higher authorities as to whether financial upgradation can be denied to an official, who had declined the regular promotion before introduction of MACP Scheme/receipt of MACP orders. Thereafter, the writ petitioner, has filed the original application. Though before the Central Administrative Tribunal, Madras Bench, the respondents, have contended that the clarification sought for from the higher authorities, as to whether financial upgradation can be denied to an official who have denied regular promotion before introduction of MACP Scheme/receipt of MACP orders, was yet to be received and that the same was under consideration, vide letter dated 16.01.2012 to the Directorate, they have further contended that writ petitioner was given promotion as LSG (Accountant) and he has joined the promotional post on 25.07.2012. They have further contended that his case would be considered in the DPC meeting after his acceptance as LSG (Accountant). Perusal of the letter dated 18.10.2010 of the Ministry of Communications and Information Technology, Department of Posts (Pay Commission Cell), Government of India, addressed to all the Chief Postmasters General, All Postmasters General, General Managers (Finance), All Directors of Accounts Postal, shows that there was some delay.

21. Clarifications have been issued for the strict guidelines and strict observance. One of the questions for which clarification was sought for is, the eligibility of MACP on completion of 30 years of service from date of entry as on 01.09.2008, declining regular promotion to LSG during 2009 and 2010. While issuing the clarification attention has been invited to para 25 of the Annexure 1, to the order on MACPS issued on 18.09.2009 which states that "if a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse

the promotion, it shall not be a ground for withdrawal of the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion and the second and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal. Therefore, the issue raised was already covered under paragraph 25 and in such cases where due date of financial upgradation precedes the refusal for regular promotion, financial upgradation under MACPS shall be allowed.

22. Subsequently, by inviting the attention to paragraph 25 of Annexure-I to the Department of Posts letter dated 18.09.2009, Ministry of Communications & IT, Department of Posts (Pay Commission Cell), Government of India, vide letter dated 14.08.2012 have issued further clarifications to all the Chief Postmasters General, All Postmasters General, All General Managers (Finance)/Directors of Accounts (Postal). Paragraphs 2 and 3 of the said letter are as hereunder:

"2. As part of their charter of demands served with notice of indefinite strike with effect from 17.01.2012, the Postal Joint Council of Action had taken up the an item relating to cases where the employees had declined promotions prior to issue of MACP Orders (prior to 2009). The justification offered in this regard was that the refusal to regular promotion during the interim period effective from 01.09.2008 to the date of issue of the orders cannot be taken as refusal since the employees were not in a position to know that the Government was going to introduce MACPS for them with effect from 01.09.2008 and in that way refusal to regular promotion during this interim period has a bearing on their financial upgradation.

3. The matter was taken up with DoPT and vide their ID Note No.46752/CT/12 dated 16.08.2012, DoPT has now clarified as under:-

"ACP/MACP Schemes are being operated as safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. In case an employee has refused promotion, no financial upgradation is allowed under ACP/MACP Schemes. Para 25 of the MACPS is a policy decision of the Government with regard to the effect of refusal of regular promotion on the operation of the Scheme. Any relaxation in the matter may not therefore be possible in deviation of the provisions of the Scheme."

23. As per the ACP Scheme for the Central Government civilian employees, Government of India, Department of Personnel and Training, OM dated 09.08.1999, Government have decided to grant two financial upgradations. As per 1999 Scheme, there was only two financial upgradations. In the year 2007, the writ petitioner has been offered regular promotion as LSG (General Line). On 20.07.2007, he had declined to accept the promotion for one year which ended on 19.07.2008. MACP scheme came into effect from 01.09.2008. Though, as per paragraph 9 of the letter dated 19.05.2009 of the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, MACP scheme would be operation from 01.09.2008 and financial upgradation as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008, the writ petitioner, had already earned two time bound promotions with effect from 07.11.1989 (TBOP) and on 01.01.2000 second promotion, under erstwhile Accelerated Career Progression Scheme for the Central Government Civilian servants and therefore, he would not be eligible for any financial upgradation under the said scheme, but only eligible for promotion to higher post subject to the available vacancies. Therefore, under the existing scheme of ACP Scheme for the Central Government civilian servants, writ petitioner has been granted two time bound promotions and also considered for promotion in LSG Cadre (Postal) on regular basis against the existing vacancies, which the petitioner declined vide letter dated 20.08.2007. At best, the petitioner can make his claim for promotion to LSG Cadre after completion of one year. At this juncture, it is relevant to extract the letter dated Nil of the writ petitioner, addressed to the Senior Superintendent of Post Officers, Pondicherry Division/3rd respondent, when he declined promotion to LSG Cadre.

From
V.Prabhakaran
SPM
Botanical Garden
Pondicherry

To

The Sr. Supdt of POs.
Pondicherry Dn 605001

Sub : Promotion and allotment in LSG Cadre - Reg.
Ref : DO Lr No.B1/LSG/Dlys dt 14.8.2007

I hereby decline the promotion to LSG cadre offered in the Memo u/r for one year. I have enclosed necessary declaration form in duplicate.

Thanking you sir,

Yours faithfully,

(V.Prabakaran)

Forwarded to the SSPOs, Py Divn.

24. Though the petitioner has contended that LSG general line was not his choice and therefore, declined promotion offered in the year 2007, letter dated 20.08.2007 addressed to the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry/3rd respondent, does not indicate the same.

25. Material on record further discloses that only on 22.03.2009 i.e. after expiry of one year, from the date of declination to the post of LSG (Postal/Regular), writ petitioner had exercised his option of choosing Accounts line for regular promotion. However, as per the guidelines contained in paragraph 25 of the Directorate's letter dated 18.09.2009, wherein it has been mentioned that if regular promotion offered, was refused before he becoming entitled to financial upgradation, no financial upgradation shall be allowed, the Departmental Selection Committee, which met on 07.07.2010, declined to consider his case.

26. The Tribunal has also taken note of the clarifications issued by the Department of Posts, Ministry of Personnel and Information Technology, Government of India, dated 14/24.08.2012, which reads that as part of their charter of demands served with notice of indefinite strike with effect from 17.01.2012, the Postal Joint Council of Action had taken up the an item relating to cases where the employees had declined promotions prior to issue of MACP orders (prior to 2009).

27. Though, vide letter dated 09.04.2011 of the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry has stated that grant of financial upgradation under MACP scheme, in the DPC meeting held on 07.07.2010 has been declined, the writ petitioner has not chosen to challenge the same, whereas O.A.No.1096 of 2011, he has sought for a direction to the respondents to grant third promotion, under MACP scheme introduced by the Government of India, Department of Personnel and Training O.M.No.35034/3/2008-Estt.(D) dated 19.05.2009 with effect from 01.09.2008 along with arrears of pay and allowances and all other consequential benefits. Though the letter dated 09.04.2011 is a reply to an information sought for, under the

RTI Act, 2005, still there is a clear communication of the refusal to grant financial upgradation under MACP3 scheme in the meeting held on 07.07.2010. No direction or order can be issued in the nature of mandamus, setting aside an order issued by a competent authority. As stated supra, there was no challenge to the communication dated 09.04.2011. Without there being a challenge, directions cannot be issued.

28. Moreover, the Tribunal, has also taken note of the clarifications issued by the Ministry of Communications & Information Technology, Department of Posts (Pay Commission Cell), New Delhi. Though the clarifications issued may indicate that refusal to accept promotion during the interim period effective from 01.09.2008 to the date of issue of the letter No.4-7/(MACPS)/2009-PCC dated 18.09.2009, at paragraph 25 of the MACPS, Government of India, have indicated that if a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities and any relaxation may not be possible in deviation of the provision of the scheme. The respondents have considered the case of the petitioner for promotion as LSG (Accountant) and accordingly, he has joined as LSG (Accountant) in the Office of the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry on 29.08.2012 and that he has also been granted third financial upgradation with effect from the same date. Financial upgradation is given only to the those who qualified for the promotional post, but could not have been promoted due to non-availability of posts.

29. Going through the material on record and the order impugned, we are of the view that the petitioner has not made out a strong case for interference with the order made by the Tribunal. Hence, the writ petition, deserves dismissal.

Accordingly, the writ petition is dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

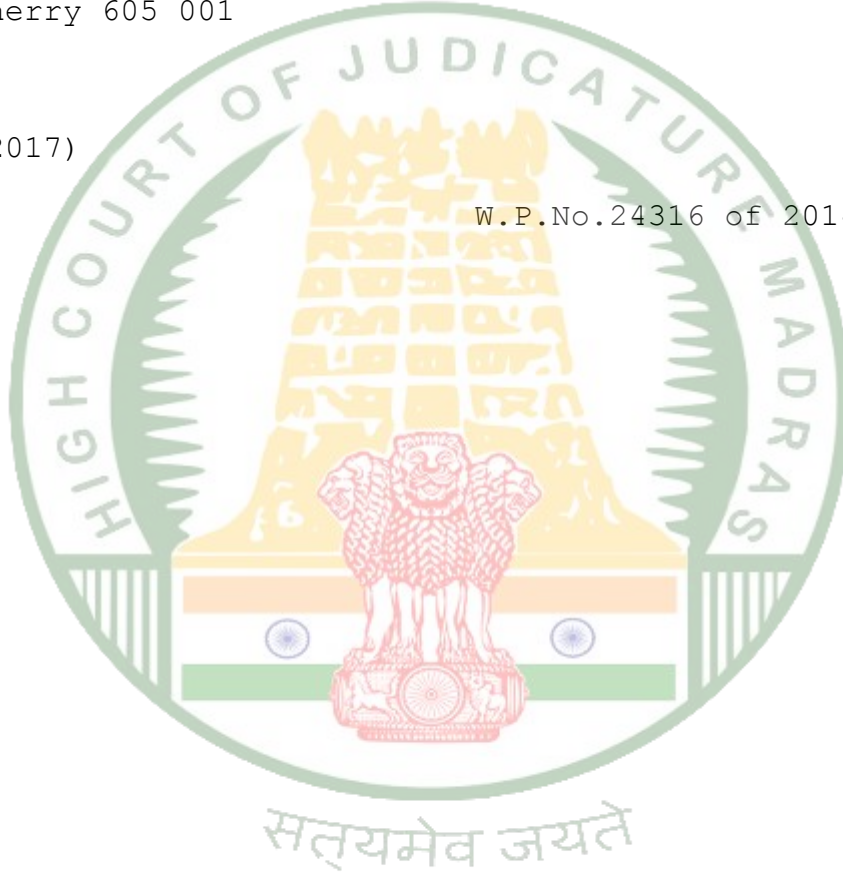
1.The Chief Postmaster General
Tamil Nadu Circle
Chennai - 600 002

2.Postmaster General
Chennai City Region
Chennai 600 002

3.The Senior Superintendent of Post Officer
Pondicherry Division
Pondicherry 605 001

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