IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.17955 of 2016
and W.M.P.No.15651 of 2016

1.Union of India
rep.by Assistant Director General (GDS/PCC)
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

2.The Chief Postmaster General,
Tamil Nadu Circle,
Chennai-600 002. ... Petitioners

-vs-

1.S.Chandrasekaran

2.The Central Administrative Tribunal,
rep.by its Registrar,
Madras Bench,
Chennai-600 104. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the second respondent dated 08.01.2016 made in O.A.No.1225/2012 and quash the same.

For Petitioners :: Mr.V.P.Sengottuvel

For Respondents :: Mr.M.Lakshmi Narasimhan for R1

ORDER
(Made by HULUVADI G.RAMESH, J.)

The first respondent was appointed as Lower Division Clerk in the Department of Posts on 19.04.1974. Thereafter, he was promoted as Upper Division Clerk in 1979. In the year 1991, the posts of Lower Division Clerk and Upper Division Clerk were merged into one category, viz.Postal Assistant. On completion of 16 years of service, he was granted One Time Bound Promotion with effect from 01.08.1991. Thereafter, he was granted BCR promotion on completion of 26 years of service with effect from 01.10.1991 on par with his junior. In March 2008, he was offered promotion as LSG. However, he declined the said promotion. Upon implementation of MACP Scheme in the Postal Department, he was granted 3rd Financial Upgradation with effect from 01.09.2008. However, at the time of retirement, a sum of Rs.67,083/- was deducted from his retirement benefits. On enquiry, he came to know that the Department recalled the proceedings by which he has been granted 3rd MACP on the ground that he declined LSG promotion in March 2008.

2.Challenging the action of the Department in deducting Rs.67,083/- from his retirement benefit, the first respondent filed an original application in O.A.No.1225 of 2012 and the same was allowed by the Tribunal by order dated 08.01.2016. Challenging the said order, the Department has come up with this writ petition.

3.The learned counsel for the petitioner has submitted 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. He further submitted that P & T Audit, Chennai, while conducting inspection at Chengalpattu, had noticed the irregular promotion under MACP-III granted to the first respondent and accordingly objected the upgradation and ordered for recovery to the tune of Rs.67,083/- from the pay and hence the said sum was deducted from his retirement benefits.

4.The learned counsel for the first respondent has submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.According to the Department, once promotional opportunity has been given and it was 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. Referring to the whole idea of MACP Scheme and also the promotional aspects, the said contention of the Department has been affirmed by a Division Bench of this Court by passing a detailed order in W.P.No.24316 of 2014 dated 03.01.2017. In the case on hand, the first respondent denied the promotions given to him, on 14.02.2008 and 24.02.2011. Subsequently, by proceedings dated 29.04.2011, the first respondent was granted third Financial Upgradation with effect from 01.09.2008, but thereafter, due to the objections made by P&T Audit, Chennai, stating that the first respondent was not eligible for financial upgradation under MACP-III Scheme as per the Directorate's Order, a sum of Rs.67,083/- has been deducted from the retirement benefits of the first respondent.

We are of the considered view that having denied the promotions given to him twice, the first respondent cannot now say that his case has to be considered for financial upgradation.

7.It has to be borne in mind that ACP/MACP Schemes are being operated as safety net only to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The issue involved in the present case is no more res integra in view of the order passed in W.P.No.24316 of 2014 dated 03.01.2017.

8.Hence, the impugned order passed by the Tribunal in O.A.No.1225 of 2012 dated 08.01.2016 is set aside and the writ petition is allowed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KM

To
The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

+1cc to Mr.V.P.Senguttuvel, Advocate SR.No.42159
+1cc to Mr.P.Rajendran, Advocate Sr.No.42439

sm:11.7.2018