

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.16098 of 2017
and
W.M.P.No.17385 of 2017

- 1.Union of India
rep.by the Chief Postmaster General,
Tamil Nadu Circle,
Chennai-600 002.
- 2.The Director of Postal Services,
Office of the Postmaster General,
Chennai City Region, Chennai-600 002.
- 3.The Chief Postmaster,
Chennai GPO,
Chennai-600 001. Petitioners

-vs-

- 1.Geetha Narasimhamurthy
- 2.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
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 impugned order dated 28.09.2016 made in O.A.No.940 of 2013 on the file of the first respondent herein and quash the same.

For Petitioners :: Mr.C.V.Ramachandra Murthy
For Respondents :: Mr.N.Chandra Raj for
M/s.Raj & Raj Associates for R1

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

The first respondent was given financial upgradation under Time Bound One Promotion (TBOP) Scheme with effect from 01.08.1991 and under BCR with effect from 21.02.1992. She was offered promotion to LSG on regular basis by proceedings dated 02.11.2006. However, the first respondent declined the said offer by a representation dated 02.12.2006. Since the first respondent declined the said promotion, the petitioners have rejected her representation for grant of 3rd MACP by order dated 22.05.2013.

2.Hence the first respondent filed an application before the second respondent Tribunal in O.A.No.940 of 2013 praying to quash the order passed by the first petitioner herein rejecting her request for the grant of MACP-III with effect from 01.09.2008 with 12% interest from the date of her next immediate junior, who was being paid the higher pay and also for a direction to the petitioners herein to grant the MACP-II upgradation to the first respondent with effect from 01.09.2008 introduced by the order made in DOPT OM No.35034/3/2008 dated 19.05.2009. Considering the facts and circumstances of the case, the Tribunal allowed the said application. Challenging the order passed therein, the Department has come up with this writ petition.

3.The learned counsel for the petitioners has submitted that as per para-25 of the MACP Guidelines communicated in the Directorate's Letter No.4-7/MACPs/2009-PCC dated 18.09.2009, if a regular promotion offered was refused by an employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed. In this regard, reliance has been placed on an order passed by a Division Bench of this Court in W.P.No.26316 of 2014 dated 03.01.2017.

4.The learned counsel for the first respondent relied upon a Division Bench judgment of the High Court of Gujarat at Ahmedabad in Union of India v. Paulbhai, Son of Khushalbhai Parmar, in SCA No.18318 of 2013 dated 10.02.2014 in support of his contention that third financial upgradation has to be given. A counter affidavit has been filed in which it is stated that the order of the Division Bench of this Court in W.P.No.24316 of 2014 dated 03.01.2017, which has been relied upon by the Department, was made subsequent to the order passed in the Original Application and hence it cannot have any retrospective effect.

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. 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.

7. Hence, the impugned order passed by the Tribunal in O.A.No.940 of 2013 dated 28.09.2016 is set aside and the writ petition is allowed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai-600 104.

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.11560
+1cc to M/s.Raj & Raj Associates, Advocate, S.R.No.12249

W.P.No.16098 of 2017

and

W.M.P.No.17385 of 2017

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cs/26/03/18

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