

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.NO.1589 OF 2018

ORAL ORDER (Per the Hon'ble Sri Justice Suresh Kumar Kait)

The respondent herein is the applicant before the Tribunal. He filed O.A.No.213 of 2013 on the file of Central Administrative Tribunal, Hyderabad Bench, at Hyderabad, under Section 19 of the Administrative Tribunals Act, 1985, seeking for a direction to the petitioners herein to grant financial up-gradation under MACP-III with effect from 01.09.2008. By the impugned order dated 01.06.2016, the Tribunal allowed the O.A. Assailing the same, the Union of India, filed the present writ petition.

Brief facts of the case are that the respondent was appointed as Mail Man (Group D) on 9.5.1972 in Hyderabad Sorting Division. He appeared in the examination for the post of Sorting Assistant in Hyderabad Sorting Division and got qualified and thereupon he came to be appointed as Sorting Assistant i.e., Group C cadre on 24.05.1977. The department of Posts introduced the scheme called Time Bound One Promotion (TBOP) with effect from 23.11.1983. According to which, the postal officials irrespective of the cadre up to Grade C level, are entitled to a financial up-gradation after completion of 16 years of service. The respondent was given the financial up-gradation on 26.05.1993 on completion of 16 years of service in the cadre of Sorting Assistant. The Department of Posts also introduced another financial up-gradation scheme called Biennial Cadre Review (BCR) with effect from 01.10.1993. As per BCR, officials who are in regular service for 26 years, are entitled to 2nd financial up-gradation. The respondent has been granted 2nd financial up-gradation on completion of 26 years of service in Group C

cadre under BCR on 01.07.2003. The Government of India introduced a scheme called Modified Assured Career Progression Scheme for Civilian Central Government Servants, which came to be announced on 19.05.2009 with effect from 1.9.2008. The respondent was given regular promotion of Lower Selection Grade (LSG), with effect from 22.01.2009. The respondent did not gain any monetary benefit, since he was drawing more than the pay band and grade pay attached to LSG grade post. The respondent would have been given third financial up-gradation on 1.09.2008, by which time he completed 30 years of service in the cadre of Sorting Assistant. Since that was not done, he submitted a representation dated 16.08.2012 to the Chief Postmaster General, A.P. Circle, Dak Sadan, Abids, Hyderabad – 2nd petitioner herein, requesting him to grant 3rd MACP. However, Senior Superintendent of RMS, Hyderabad Sorting Division, Hyderabad – 3rd petitioner herein, informed the respondent that his request for grant of 3rd MACP has not been acceded to vide proceedings No. B1/MACP/Corr/2012-13 dated 28.01.2013.

Being aggrieved, the respondent filed O.A. mentioned above before the Tribunal and same has been allowed vide order dated 01.06.2016.

The case of the respondent before the Tribunal was that the appointment of the respondent to the post of Sorting Assistant consequent on his clearing departmental competitive examination is not a promotion post from Group D. The post of Sorting Assistant is not an hierarchical promotion from Group D post and it is a change of category. By virtue of the respondent's appointment as Sorting Assistant, his position has been changed from Group D to Group C post.

In the reply filed by the petitioners – Union of India before the Tribunal, it is stated that the respondent got three promotions as on 01.09.2008. Therefore, he is not entitled to get any benefit under MACP. It is further submitted that DOP & T by OM dated 19.05.2009 introduced Modified Assured Career Progression (MCP) scheme to all the Central Government employees assuring three bound promotions after 10, 20 and 30 years of service in the very same Grade pay and the scheme is available from 01.09.2008. As per para (1) of the Annexure-I to the above said scheme, financial up-gradation is available whenever a person spent 10 years continuously in the same grade pay. The said O.M. is filed as Annexure R-1 before the Tribunal. Accordingly, the respondent got the following promotions:

Mailman	:	09.05.1972 Basic pay Rs.70-80
Sorting Assistant	:	24.05.1977 Basic pay Rs.260-480
TBOP (After 16 years)	:	26.5.1993 Basic pay Rs.1400-2300
BCR (After 26 years)	:	01.07.2003 Basic pay Rs.5000-8000

The respondent submitted representation dated 16.08.2012 for grant of III MACP on completion of 30 years of service with effect from 1.9.2008 and the competent authority after considering the service records of the respondent found that the respondent availed three promotions during the service and as such not entitled for any more up-gradation under the MACP and rejected his request by proceedings dated 28.01.2013.

Considering the rival contentions, the Tribunal allowed the O.A. Assailing the same, the Union of India filed the present writ petition.

Learned Assistant Solicitor General appearing for the petitioners would submit that the respondent got three promotions from the date of

his entry into service and therefore, he is not entitled to any further benefit under MACP scheme. In MACP scheme, all Central Government employees have been assured three time bound promotions after 10, 20 and 30 years of service provided they are continuing in the same grade pay. Since the respondent got one promotion as Sorting Assistant and earned financial up-gradation under TBOP and BCR, he is not entitled to claim any benefit under MACP scheme.

The only issue that arises for consideration is whether the mobility of the respondent from Group D post to Group C consequent to his clearing LDCE is to be treated as a promotion or fresh appointment?

The aforesaid issue is no longer *res integra* in view of the decision of the Principal Bench, Central Administrative Tribunal, New Delhi in *SHAKEEL AHMAD BURNEY vs. UNION OF INDIA*¹. The learned Tribunal after considering the rival contentions came to the conclusion that mobility from group-D post to Sorting Assistant i.e., Group C is not a promotion post and it is to be treated as direct entry into Group C cadre. The relevant portion at paragraph No.10 of the order passed in O.A.No.3756 of 2011, as under:

“10. 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 of 2012 in terms of order dated 10.08.2015. Relevant excerpt of the order reads thus:-

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 order 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

¹ O.A.NO.3756 OF 2011 dated 3.11.2015

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 order passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in respective original applications stand confirmed."

The aforesaid order was challenged before the High Court of Delhi in W.P.(C)4131 of 2014. The Division Bench of the Delhi High Court while confirming the order in O.A.No.3756 of 2011 held as paragraph No.8 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 W.P.(C) No.4131/2014 page 6 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."

It is not the case of the petitioner that the order passed by the Tribunal and Delhi High Court has been stayed or set aside by Hon'ble Apex Court.

In view of the above discussion and the fact that the Principal Bench of Central Administrative Tribunal and the High Court of Delhi has taken the same view after considering the rival contentions, therefore, we find no illegality or perversity in the order passed by the Tribunal.

Find no merit in the instant petition, the same is dismissed at the pre-admission stage.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

SURESH KUMAR KAIT,J

ABHINAND KUMAR SHAVIL,J

DATE:23—01—2018

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