

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 14878 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 29.07.2013 in O.A.No. 374 of 2011 passed by the Central Administrative Tribunal, Hyderabad whereby the application filed by the petitioner, has been dismissed.

The petitioner was initially appointed as Postman on 23.02.1983, and thereafter, he appeared for LGO Examination for the post of Postal Assistant and was promoted on 11.06.1988. On 08.12.2004, he was given first financial upgradation under Time Bound One Promotion (TBOP) and retired on 31.12.2008. Therefore, after direct entry as Postal Assistant, he got only one financial upgradation under TBOP and should be given second upgradation under TBOP after completion of 20 years of service from 11.06.1988.

The learned Tribunal, while dismissing the application filed by the petitioner, observed that the scheme of Modified Assured Career Progression (MACP) was anti-stagnation measure and if an employee gets no regular promotion then he would at least get one upgradation at the end of 10 years, second one at the end of 20 years and third one at the end of 30 years. The petitioner had already got two promotions, but

his total service is about 25 years from 1983. Therefore, there is no way he can get the 3rd promotion, which is due after 30 years.

It is not in dispute that the petitioner was selected as Postal Assistant on 11.06.1988 through the LGO examination, and thereafter, he received one promotion under TBOP scheme in the year 2004, however the respondents have not given second financial upgration under TBOP to the petitioner.

In the counter affidavit, it is stated that the petitioner joined the department as Postman on 23.02.1983 and was subsequently promoted to the cadre of Postal Assistant on 16.11.1988. Thus, he got one promotion from Postman cadre to P.A. cadre and thereupon he got second promotion i.e. financial upgradation under Time Bound One Promotion Scheme in PA cadre after completion of 16 years of qualifying service with effect from 08.12.2004. Therefore, the next financial upgradation (3rd promotion) under MACPS-III is due only on completion of 30 years of qualifying service from the date of entry in the initial cadre of Postman with effect from 23.02.1983. Thus, the petitioner would be eligible for promotion under MACP-III with effect from 23.03.2013. However, the petitioner retired from service on superannuation on 31.12.2008. Thus, he completed service of 25 years 10 months 08 days only from the date of his initial

appointment i.e. 23.02.1983 as Postman to the date of retirement i.e. 31.12.2008.

When an issue that is, if an employee got promotion through departmental examination and whether he is entitled to upgradation, came up before the High Court of Madras in case of Union of India v. D.Siva Kumar and Anr.¹ it is held as under:

“What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which, the first respondent got appointed on 22.09.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust it against Modified Assured Career Progressions-I.

It is pertinent to mention here that consequent to the order dated 14.03.2013 pronounced by the Tribunal in O.A.No. 1088 of 2011, this order was upheld by the High Court and Supreme Court as well in SLP No. 48 of 2016, dated 16.08.2016. Moreover, in pursuance of the orders of the Directorate

¹ CDJ 2015 MHC 4401

conveyed vide No.2-19/ 2015-PCC dated 01.03.2017 the respondent-department has decided to implement the orders of the Central Administrative Tribunal subject to the concurrence of the D pending being the financial implications involved in this case, and finally, vide letter dated 07.03.2017, directed the orders to be implemented.

In the present case also, the petitioner, no doubt, was initially appointed as Postman in the year 1983 and thereafter, through departmental examination, selected as Postal Assistant on 11.06.1988. It is not in dispute that thereafter he got only one financial upgradation under TBOP on 08.12.2004 and the petitioner retired from service on 31.12.2008. Thus, the petitioner has completed 20 years of service from 11.06.1988 and got only one upgradation as mentioned above, whereas the petitioner is entitled to second upgradation in the light of the Supreme Court judgment and also the fact that the respondents have already implemented the orders dated 14 03.2013 in O.A.No. 1088 of 2011 passed by the Central Administrative Tribunal.

In addition to the above, similar issue came up before this Court in W.P.No. 3420 of 2017 decided on 04.08.2017 wherein it is observed as under:

“Sri B. Narayana Reddy, learned Assistant Solicitor General of India, submitted that the view taken by the Tribunal is erroneous as respondent No.1 was promoted as Postal Assistant which shall be treated as a financial upgradation. While denying the claim of

the 1st respondent for the third financial upgradation under MACPS, petitioner No.4 has taken into consideration the former's appointment as Postal Assistant on 30.06.1975 also, recruitment through a selection process, the same cannot be considered as a financial upgradation. In *Union of India and others v. D.Siva Kumar and another*, a Division Bench of the Madras High Court dealt with an identical aspect, wherein also the appointment as Postal Assistant was treated as the first financial upgradation. In the above judgment, the Division Bench has clearly observed that such an approach is erroneous in view of the fact that appointment as Postal Assistant was not granted to the employee after mere completion of 10 years in the cadre of Postman and that he was appointed after he participated in selection process and on being selected and appointed on merit to the post of Postal Assistant."

In view of the legal position and the facts recorded above, we hereby set aside the order dated 29.07.2013 in O.A.No. 374 of 2011 passed by the Tribunal and direct the respondents to grant second financial upgradation under TBOP Scheme to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

26.06.2018

SURESH KUMAR KAIT, J

bcj

ABHINAND KUMAR SHAVILI, J