

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

W.P. No.22175 of 2018

COMMON ORDER:- (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 01.06.2016 passed in O.A.No.1182 of 2014 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the petition filed by the respondent has been allowed.

2. The present petition is filed on the ground that the respondent was initially appointed in Group-D post at Chittoor Head Post Office in the year 1982 and thereafter, he was promoted to the cadre of Postal Assistant w.e.f 02.12.1988 after his becoming successful in the competitive examination. Thereafter, he was extended to Time Bound One Promotion (TBOP) financial upgradation w.e.f. 21.12.2004 after completion of 16 years of service in the cadre of Postal Assistant. Since the respondent has got one promotion and benefit of TBOP, the only benefit left over is 3rd financial upgradation under Modified Assured Career Progression (MACP) Scheme on completion of 30 years of regular service. The 3rd financial upgradation under MACP Scheme came to be granted to the respondent w.e.f 24.08.2012. Thus, the respondent is not entitled for MACP Scheme during the year 2008 and the order passed by the Tribunal deserves to be set aside accordingly.

3. The case of the respondent is that his mobility from Group-D to Group-C i.e., Postal Assistant, cannot be termed as a promotion

and it is to be treated as a direct recruitment in which case he deserves 2nd financial upgradation on completion of 20 years of service in the cadre of Postal Assistant.

4. The Tribunal held that this issue is no more *res integra* in view of the order passed by the Principal Bench of the Tribunal at New Delhi in O.A.No.3756 of 2011 dated 03.11.2015 as confirmed by the High Court of Delhi in W.P.(C) No.4131 of 2014 dated 05.08.2014, wherein at paragraph No.8 held as under”

“There is no magic in the use of 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 outsides) 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”.

5. The respondent’s date of entry into service as Postal Assistant is 02.12.1998 and he has been allowed the benefit under TBOP on 21.12.2004 on completion of 16 years of service as Postal Assistant. He deserves to be granted 2nd financial upgradation on completion of 20 years from the date of entry into service as Postal Assistant.

The respondent has completed 20 years of service as on 02.12.2008 and therefore, he is entitled to MACP-II benefit.

6. In view of the above, we find no ground to interfere with the order passed by the Tribunal. Therefore, we find no merit in the present petition.

7. The Writ Petition is accordingly dismissed. No order as to costs. Miscellaneous Petitions, if any pending in this petition, shall stand dismissed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

13th July, 2018
sj

