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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1903 of 2017

1. Union Of India Through The Secretary, M.O. Communications And I.T. Department Of Post, Dak Bhawan, Sansad Marg, New Delhi 110116.
2. The Chief Postmaster General, Chhattisgarh Circle, Raipur Chhattisgarh Pin 492001.
3. Deputy Director Of Audit And Accounts, Postal Audit, Tikrapara, Raipur Chhattisgarh.
4. The Senior Superintendent Of Posts, Durg Division, Civic Centre Bhilai, District Durg Chhattisgarh Pin 490006

---- Petitioners

Versus

- Amar Singh Sahu S/o. Late Shri Salik Ram Sahu, Aged About 60 Years Retd. Sub Post Master, Chichola (Rajnandgaon) Chhattisgarh R/o. Shanti Nagar, Ward No. 4, Dhaba Road, Rajnandgaon, Chhattisgarh PIN 491441.

---- Respondent

WPS No. 1772 of 2017

1. Union Of India Through The Secretary, Ministry Of Communication And I.T. Department Of Posts Dak Bhawan, Sansad Marg, New Delhi 110116.
2. The Chief Postmaster General, Chhattisgarh Circle Raipur Chhattisgarh.
3. The Sr. Superintendent Of Posts, Durg Division, Civil Centre Bhilai, District Durg Chhattisgarh.
4. The Postmaster Rajnandgaon, H.O. At Rajnandgaon, District

Rajnandgaon Chhattisgarh.

---- Petitioners

Versus

- Smt. Dukhni Bai Pal W/o Late K. R. Pal Aged About 60 Years R/o Shanti Nagar, Ward No. 4 Dhaba-Road, Rajnandgaon, Chhattisgarh.

---- Respondent

WPS No. 2591 of 2017

1. Union Of India Through The Secretary, M.O. Communications And I.T. Department Of Post, Dak Bhawan, Sansad Marg, New Delhi 110116.
2. The Chief Postmaster General, Chhattisgarh Circle, Raipur Chhattisgarh Pin 492001.
3. Deputy Director Of Audit And Accounts, Postal Audit, Tikrapara, Raipur Chhattisgarh.
4. The Senior Superintendent Of Posts, Durg Division, Civic Centre Bhilai, District Durg Chhattisgarh Pin 490006.
5. The Post Master, Head Office, Durg, District Durg Chhattisgarh Pin 492001.

---- Petitioners

Versus

- Basant Kumar Hirwani S/o Late Guhariram Hirwani, Aged About 54 Years Working As Sub Postmaster, R/o Quarter No. 18, Type- II, P And T Colony, Sector- VI, Bhilai, District Durg Chhattisgarh 490006.

---- Respondent

WPS No. 2592 of 2017

1. Union Of India Through The Secretary, M.O. Communications And I.T. Department Of Post, Dak Bhawan, Sansad Marg, New Delhi 110116.
2. The Chief Postmaster General, Chhattisgarh Circle, Raipur Chhattisgarh Pin 492001.
3. Deputy Director Of Audit And Accounts, Postal Audit, Tikrapara, Raipur Chhattisgarh.
4. The Senior Superintendent Of Posts, Durg Division, Civic Centre Bhilai, District Durg Chhattisgarh Pin 490006.
5. The Post Master, Head Office, Durg, District Durg Chhattisgarh Pin 492001.

---- Petitioners

Versus

- Kaushal Prasad Verma S/o Late Shri Munna Lal Verma, Aged About 62 Years Retired Postal Assistant R/o Subhash Nagar, Mitani Chowk, Durg, District Durg Chhattisgarh.

---- Respondent

For Petitioners	:-	Shri B. Gopa Kumar, ASG
For Respondents	:-	Shri R.N. Pusty, Advocate

Hon'ble Shri Prashant Kumar Mishra, Ag. CJ

Hon'ble Shri Parth Prateem Sahu, J.

Judgment on Board

By

Prashant Kumar Mishra, Ag. CJ

15/04/2019

1. Union of India would assail the order passed by the Central Administrative Tribunal, Jabalpur Bench sitting at Bilaspur, allowing the original application filed by the respondents in which the challenge was to the withdrawal of the benefit of third financial upgradation under the Modified Assured Career Progression (for brevity 'MACP') scheme vide order dated 26.06.2014.
2. Learned Assistant Solicitor General for the petitioners would argue that the respondents were initially appointed as Extra Departmental Postal Agents and thereafter promoted to the post of Postman and thereafter to the post of Postal Assistant, therefore, it being a case of promotion the benefit of MACP was not available to the respondents.
3. Perusal of the papers including the impugned order would reveal that while allowing the original application, the Tribunal has referred to similar order of Jodhpur Bench of CAT in which the writ petitions were allowed holding that the employees like the present respondents were appointed as

Postal Assistant after being selected in a Limited Departmental Competitive Examination (LDCE), therefore, they were direct recruits and not promotes on the said post and as such they are entitled to MACP. This order of the Jodhpur Bench was affirmed by the Rajasthan High Court in Civil Writ Petition No.11336/2012. In that writ petition itself the Rajasthan High Court referred and relied upon similar writ petition decided by the Delhi High Court in WP(C) No.4131/2014 (Union of India and others vs. Shakeel Ahmad Burney) decided on 05.08.2014.

4. Learned counsel for the respondents would place before this Court the order passed by the Rajasthan High Court in D.B. Writ Review Petition No.171/2016 between Union of India and others vs. S.N. Singh Bhati decided on 03.01.2018. This order of the Division Bench of Rajasthan High Court would observe thus in paragraph 6, 7 and 8:-

“6. Learned counsel for the respondents point out that similar is the view taken by the Division Bench of the Madras High Court in the Civil Writ Petition No.30629/2014, Union of India & Ors. vs. D. Sivakumar & Anr. against which decision SLP(C) No.4848/2016, Union of India & Ors. vs. D. Sivakumar was dismissed by the Supreme Court on 16th August,

20106 vide Review Petition (C) No.1939/2017 was dismissed by the Supreme Court as recently as on 13th September, 2017. Learned counsel further submit that even a Division Bench of the High Court of Karnataka in Writ Petition 200807/2016, The Union of India & Ors. vs. Shri Basanna Nayak has taken a similar view. Learned counsel for the respondents point out that in the Madras Circle and Karnataka Circle the decisions have been implemented.

7. Learned counsel for the review petitioner does not dispute aforesaid facts pertaining to the decisions of the Madras High Court and Karnataka High Court having attained finality on the same issue. The decision passed by the Central Administrative Tribunal brings out that Group-D employees, irrespective of their seniority participated in a merit based selection and appointed to the higher post were never treated as a case of promotion. The examination was not a Limited Departmental Qualifying Examination but was a Limited Departmental Competitive Examination. Before the MACP Scheme was introduced the department had a TBOP/BCR Financial upgradation Scheme and under the said Scheme benefit was granted treating the appointment as one of direct

recruitment and not by way of promotion.

8. Thus we find not merit in the review petitions which are dismissed and since we are dismissing the review petitions on merits we are not going into the issue whether sufficient cause has been shown in the delay to be condoned.”

5. Challenging the above order passed by the Rajasthan High Court in the writ petition, the Union of India moved before the Hon'ble Supreme Court in SLP(Civil) Diary No(s).23260/2018, wherein the SLPs were dismissed *in limine*. The issue is thus settled by at least three High Courts namely Karnataka High Court, Madras High Court and Rajasthan High Court and in the matter arising from Rajasthan High Court, SLP has also been dismissed by the Hon'ble Supreme Court.

6. It is informed that the matter has not attained finality in the Delhi High Court. Be that as it may, the similar issue has already been decided by the Rajasthan High Court, therefore, considering the fact that the Postal Assistants are Central Government employees and the orders passed by Karnataka, Madras and Rajasthan High Courts have already been implemented to the benefit of Postal Assistants working in those circles, we are not inclined to interfere with

the impugned order.

7. Otherwise also, it is clear that the appointments to the post of Postal Assistants were made through Limited Competitive Examination and not through Limited Departmental Examination. Thus, it being a case of selection and not only a qualifying examination, their appointments and posting on the post of Postal Assistant was by way of direct recruitment and not by way of promotion, therefore, the CAT has rightly held them to be entitled to MACP.

8. In above manner, writ petitions are dismissed.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Ankit