IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order : 07.01.2019	Date of Pronouncing Order : 08.02.2019

Coram
The Hon'ble Mr.Justice M.M.Sundresh
and
9The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.6505 of 2014
and M.P.No.1 of 2014
+
Writ Petition Nos.4753 of 2015

W.P.No.6505 of 2014

1. M. V. Akkiniveeranan
2. S.Sivasankaran
3. A. Beer Mohamed
4. R.Rajeswari
5. U. Radhakrishnan
6. M.S. Rita
7. R. Swaminathan
8. R. Dharmaraj
9. A.Manickam
10. M.Ramaraj
11. S.Sundar
12. S. Veerakumar ...Petitioners

Vs.

1. Union of India,
   rep. By Secretary,
   Ministry of Communications and IT,
   Department of Posts,
   Dak Bhavan, Sansad Marg,
   New Delhi – 110 001.

2. Union of India,
 rep. By the Deputy Director General (Establishment)
 Ministry of Communications and Information Technology
 Department of Posts,
 Dak Bhavan, Sansad Marg,
 New Delhi – 110 001.

3. General Manager (Postal Accounts and Finance)
 Tamil Nadu Circle,
 No.5/7, Ethiraj Salai,
 Chennai – 600 008.

4. Director of Postal Accounts,
 O/o. General Manager,
 Postal Accounts and Finance,
 Tamil Nadu Circle,
 No.5/7, Ethiraj Salai,
 Chennai – 600 008.

5. Senior Accounts Officer/Admn,
 O/o. General Manager,
 Postal Accounts and Finance,
 Tamil Nadu Circle,
 No.5/7, Ethiraj Salai,
 Chennai – 600 008.

6. Chief Postal General,
 Tamil Nadu Circle,
 Anna Salai, Chennai – 600 002.

7. Postmaster General,
 Chennai City Region,
 Anna Salai, Chennai – 600 002.

8. Postmaster General,
 Chennai Region,
 Tamil Nadu Circle, Thiruchirapalli 620 001.

9. The Postmaster General,
Southern Region,
Tamil Nadu Circle, Madurai – 625 002.

10. Director
Postal Training Centre,
Perungudy, Madurai – 625 022.

11. Senior Accounts Office,
Ministry of Finance,
Department of Expenditure,
Controller General of Accounts,
Lok Nayak Bhavan, Khan Market,
New Delhi.

12. Assistant Director General (PA-Admn)
Ministry of Communications and IT,
Department of Posts,
Postal Accounts Wing, Dak Bhavan,
New Delhi – 110 001.

13. Assistant Director General (GDS/PCC)
Department of Posts,
Pay Commission Cell,
Dak Bhavan, Parliament Street,
New Delhi – 110 001.

14. Central Administrative Tribunal,
Madras Bench, rep. By its Registrar,
High Court Compound, Chennai – 600 104.

...Respondents in W.P.No.6505 of 2014

Prayer in Writ Petition Nos.6505 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records from the files of the respondent Tribunal in O.A.Nos.1582/2010, 473, 517, 557 and 1021 of 2011 and to quash its impugned common order made therein dated 12.12.2013 insofar as it denied and negatived the claim of the petitioners for the grant of second and third MACP benefits and consequently, to direct the Official respondents 3 to 10 to grant second and third MACP benefits to the petitioners within a time.

For Petitioners : Mr.K.M.Ramesh

For Respondents 1 to 13 : Mr.V.Venkatesan
Senior Counsel

Writ Petition Nos.4753 of 2015

1. A. Kumarasamy
2. C.Murugaiah
3. R.Radha Krishnan
4. S.Vijayalakshmi
5. R.Jayaraman
6. G.Padmanabhan
7. N. Sivakumar
8. R. Nalvalzhi
9. O.Madhava Raj
10. M.Rudramurthy

11. S.Loganathan

12. K. Thinakaran

13. K.Chandramouli

14. P.Vijayarajan

15. V.Vedhambal

16. S.Subramaniyan

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai – 600 104.

2. Union of India,
rep. By Secretary,
Ministry of Communications and IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.

3. Chief Post Master General,
Tamil Nadu Circle,
Chennai – 600 002.

4. The General Manager
(Postal Accounts and Finance)
Tamil Nadu Circle,
No.5/7, Ethiraj Salai,
Chennai – 600 008.

5. Director of Postal Accounts,
O/o. General Manager,
Postal Accounts and Finance,
Tamil Nadu Circle,
No.5/7, Ethiraj Salai,
Chennai – 600 008.

6. Senior Accounts Officer/Admn,
   O/o. General Manager,
   Postal Accounts and Finance,
   Tamil Nadu Circle,
   No.5/7, Ethiraj Salai,
   Chennai – 600 008.

Prayer in W.P.No.4753 of 2015 :-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the common order dated 12.12.2013, given in O.A.Nos. 517 of 2011 and O.A.No.1021 of 2011 passed by the first respondent and to quash the same.

For Petitioners : Mr.S.Ramaswamy Rajarajan

For Respondent-2 to 6 : Mr.C.V.Ramachandra Murthy

COMMON ORDER

Krishnan Ramasamy,J.,

Writ Petition No.6505 of 2014 has been filed by the petitioners, who are some of the applicants in O.A.Nos.1582 of 2010, 473, 517, 557 and 1021 of 2011, challenging the common order passed by the Central Administrative Tribunal (for short, Tribunal) dated 12.12.2013. So far as Writ Petition No.4753 of 2015 is concerned, the same has been filed by the petitioners, who are some of the applicants in O.A.Nos. 517 of 2011 and O.A.No.1021 of 2011, challenging the very same order passed by the Tribunal, dated 12.12.2013.

2. Since the issue involved in both the Writ Petitions is identical in nature, both the Writ Petitions were heard together and disposed of vide this common order.

3. Brief facts of the case are as follows:-

i)**.** The petitioners, who are the applicants in O.A.No.1582 of 2010 and O.A.Nos.517 and 557 of 2011 have originally joined as Postal Assistant in the Postal Department. They were granted financial upgradation under Time Bound One Promotion (TBOP) and Binneal Cadre Review (BCR) benefits. Since the petitioners have qualified in the examination conducted for according promotion to the post of Junior Accounts Officer (now Assistant Accounts Officer), they were promoted to the cadre of Assistant Accounts Officer. However, after the receipt of the TBOP benefits and BCR benefits and promotion to the cadre of Assistant Accounts Officer, they were granted third financial upgradation under the Modified Assured

Career Progression Scheme (MACP scheme) vide Office Order No.114/Admn/Ea//IV/MACP/AA0s, dated 02.11.2010. Subsequently, the said order, dated 02.11.2010 was cancelled vide Office Order No.190/Admn/EA-IV/MACP/AAOs dated 22.03.2011, since MACP scheme wrongly granted to the petitioners, as they have already enjoyed the benefits of TBOP benefits and BCR benefits and promoted to the cadre of Assistant Accounts Officer.

ii) Aggrieved by such cancellation order, dated 22.03.2011, the petitioners filed Original Application O.A.Nos.1582 of 2010, 517 and 557 of 2011 before the Tribunal seeking to quash the cancellation order, dated 22.03.2011. However, the Tribunal, after considering the facts and circumstances of the case, dismissed the said Original Applications. Against which, present Writ Petitions are filed, as stated above.

iii) The applicants in O.A.No.473 of 2011 also joined originally in the Postal Department as Postal Assistant and were granted TBOP benefits on completion of 16 years of service. Thereafter, they have been promoted as Assistant Accounts Officer. As per the Office Order

No.114/Admn/Ea//IV/MACP/AA0s, dated 02.11.2010, the petitioners were granted second financial upgradation under MACP scheme. However, the said order was kept in abeyance, vide order No2588/Admn.EA-IV/MACP/AAOs, dated 16.12.2010. Aggrieved by the said order, the petitioners filed O.A.No.431 of 2011 and the Tribunal granted an interim order, staying the operation of the order, dated 22.03.2011. However, on the same date, another Office Order in Ref. No.190/Admn/EAIV/MACP/AAOs dated 22.03.2011, was passed cancelling the earlier order, dated 02.11.2010. Aggrieved by the said cancellation order, the petitioners filed O.A.No.473 of 2011 and the same was dismissed by the Tribunal after considering the merits of the case, vide the impugned order, dated 12.12.2013.

iv) So far as the petitioners, who are applicants in O.A.No.1021 of 2011 are concerned, they originally joined in the Postal Department as Postal Assistant and they were granted TBOP benefits on completion of 16 years of service and they have also been granted BCR benefits. The respondents, vide Office Order in Ref No.114/Admn/Ea//IV/MACP/AA0s, dated 02.11.2010, granted MACP benefits to the petitioners. However, the said order was cancelled vide Order in Ref. No.190/Admn/EA-IV/MACP/AAOs, dated 22.03.2011. Therefore, the petitioners preferred O.A.No.1021 of 2011. However, the same was dismissed by the Tribunal. Aggrieved by the said order, the applicants in O.A.No.1021 of 2011 have filed the present Writ Petitions.

4. Mr. K.M.Ramesh, learned counsel appearing for the petitioners in W.P.No.4753 of 2015 advanced his arguments stating that the petitioners had initially joined as Postal Assistants in the respondent/Postal Department, and on completion of 16 years of service, the Department had given financial upgradation under TBOP scheme at Postal side for the petitioners 1 to 6 and 8 to 11 and another financial upgradation under BCR scheme on completion of 26 years of service. Insofar as the petitioners 7 and 12 to 16 are concerned, they were given at the postal side, as there was no regular promotion in the hierarchy, i.e. as Lower Selection Grade (LSG), Higher Selection Grade-II (HSG-II), and Higher Selection Grade -1 (HSG-I). In these circumstances, the petitioners were elevated to the cadre of Junior Assistant Officer, which was redesignated as Assistant Accounts Officer after passing the qualifying examination.

5. The learned counsel further contended that the petitioners, those who have obtained financial upgradation under TBOP scheme and the petitioners, those who have obtained financial upgradation under TBOP and BCR scheme have participated in the examination and were qualified. Hence, they were promoted to the post of Assistant Accounts Officer. According to the petitioners, promotion to the post of Assistant Accounts Officer cannot be treated as financial upgradation. Therefore, the petitioners are entitled to the benefit under MACP scheme for II and III financial upgradation after completion of 20 and 30 years of service respectively.

6. The learned counsel further contended that the respondents also granted financial upgradation II and III vide Office Order No.114/Admn/Ea-IV/MACP/AA0s, dated 02.11.2010. Subsequently, the order dated 02.11.2010 was cancelled by the same Authority, i.e, by respondent No.4 and payment of recovery was also ordered. The first respondent/Tribunal, not at all considered the fact that promotion to the post of Assistant Accounts Officer cannot be treated as financial upgradation and completely ignored the fact that the respondents also considered promotion to the post of Assistant Accounts Officer cannot be treated as financial upgradation.

Therefore, they have granted II and III financial upgradation to the petitioners. However, the same was wrongly cancelled by the respondents without application of mind. All these facts were not appreciated by the Tribunal. The promotion to the post of Assistant Accounts Officer is not a regular promotion to the next higher upgradation to the postal Assistant. The postal Assistant can have their regular promotion in the hierarchial post based on seniority. The petitioners had got such promotions directly and they cannot denied financial upgradation under the MACP scheme. Elevation to the cadre of Assistant Accounts Officer is a separate one and it cannot be said that the petitioners got regular promotion in the hierarchy of erstwhile promotion cadre. Considering the fact that the elevation to the cadre of Assistant Accounts Officer is not under the hierarchy, the fourth respondent granted II and III financial upgradation under the MACP scheme. However, the same was cancelled by order, dated 22.03.2011 and recovery was ordered based on a clarificatory order, dated 08.03.2011. Under these circumstances, the learned counsel also referred to illustration 28 A as provided under MACP scheme, dated 18.09.2009 and Illustration 2B attached to the said Scheme.

7. Therefore, he submitted that as per the Illustration 28 A and Illustration 2B, the petitioners are eligible for II and III financial upgradation and prays for allowing the Writ Petition. Further, learned counsel also placed reliance on the following decisions in support of his case/contentions:-

i) **Director General of Posts and others Vs. S.Ravidran and others (1997) SCC (L & S) 455.**

ii) Banswar Lal Regar and others in D.B.Civil Writ Petition No.11336 of 2012. (High Court of Rajasthan).

iii) Union of India and others Vs. Shakeel Ahmed Borne, in W.P.(C) No.4131 of 2014. (High Court of Delhi).

(iv) Union of India and others Vs. D.Shivakumar and another in W.P. No.30629 of 2015. (High Court of Madras).

(v) Union of India and others Vs. Shakeel Ahmed Borne, in SLP.(C) No.4848 of 2016 (Supreme Court).

8. Mr.S.Ramasamy Rajarajan, the learned counsel appearing for the petitioners in W.P.No.6505 of 2014 while adopting such arguments of the learned counsel for the petitioners in W.P.No.4753 of 2015 submitted that illustration to 28A and 28 C of MACP scheme will not be applicable to the petitioners' case. The petitioners were arbitrarily denied the benefit of II and III upgradation by the fourth respondent stating that promotion to the Assistant Accounts Officer itself is a promotional post, though it is not a hierarchial post under the postal department. It is his further contention that the petitioners have not got any single promotion in the hierarchical post. Therefore, the petitioners were granted II and III financial upgradation respectively, but, the same was subsequently cancelled, which is arbitrary in law without understanding the MACP scheme, under which, financial upgradation was granted.

9. The learned counsel also further contended that promotion to the Assistant Accounts Officer is a different cadre and it is not a hierarchical post in the Postal Department. Therefore, it cannot be treated as a financial upgradation under the Postal Assistant Cadre. Hence, the petitioners are entitled for the II and III financial upgradation. Further, the petitioners separately wrote examination conducted for promotion to the post of Assistant Accounts Officer and were qualified and based on their qualification, they were promoted as Assistant Accounts Officer. The same cannot be treated as grant of financial upgradation and therefore, they are entitled for II and III financial upgradation. Illustrations under 28 A and 28 C will not applicable to the petitioners ' case. Therefore, he contended that the order passed by the Tribunal is liable to be set aside and the Writ Petition No.6505 of 2014 may be allowed.

10. Mr. V.Venkatesan, the learned Senior Central Government Standing Counsel for the respondents submitted that the Postal Department brought a Scheme on 17.12.1983, in the name of TBOP to its employees on completion of 16 years of service. In the present case, all the petitioners, who have completed 16 years of service were granted TBOB benefit. Thereafter, on 11.10.1981, BCR scheme had been introduced in the Postal Department with effect from 11.10.1991 for its employees on completion of 16 and 26 years of service, who draw the same scale of pay. In the present case, some of the petitioners have also obtained BCR benefits as well. The Central Government, by proceeding dated 18.09.2009, brought out a MACP scheme and the same has been implemented in the Postal Department with effect from 01.09.2008, by giving three financial upgradation to those, who have completed 10, 20 and 30 of years of service respectively. By virtue of MACP scheme, BCR scheme was withdrawn with effect from 01.09.2008. In the similar way, TBOP scheme was withdrawn with effect form 11.10.1981. Therefore, as the per the MACP scheme, those, who are not getting any promotion in the cadre of Postal Assistant on completion of 10, 20 and 30 years of service, they are eligible for III financial upgradation on completion of 10, 20 and 30 years of service. However, in the present case, some of the petitioners have obtained financial upgradation under TBOP scheme upon completion of 16 years of service and some of the petitioners also obtained financial upgradation under BCR scheme. After obtaining financial upgradation under TBOP scheme by some of the petitioners and under BCR scheme by some of the petitioners, the petitioners have participated in the examination for promotion to the post of Assistant Accounts Officer and all the petitioners are qualified and accordingly, they were promoted as Assistant Accounts Officer. Therefore, the Assistant Accounts Officer post itself is a promotional post and therefore, the petitioners are not entitled for II and III Financial upgradation under MCAP scheme. In this regard, he referred to illustrations 28 B and 28 C, which reads as follows:-

> 28 B) If a Government servant (LDC) in PB-1 in the Grade pay of Rs.1900 is granted 1st Financial Upgradation under the MACPs on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later, he gets 1st regular promotion (UDC) in PB-1, in the Grade Pay of Rs.2400, the 2nd Financial upgradation under MACPs (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs.4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.

> 28 C. If a Government servant has been granted either two regular promotions or 2nd Financial upgradation under the ACP scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPs on completion of 30 years of

service provided that he has not earned third promotion in the hierarchy"

11. As per the said clause, the petitioners are not eligible for II and III financial upgradation, since they only granted promotion to the post of Assistant Accounts Officer. Hence, he submitted that the Writ Petitions are liable to be dismissed.

12. We have heard the learned counsel for the parties and perused the materials placed on record.

13. The petitioners in both the Writ Petitions have joined as Postal Assistant in the Postal Department. The hierarchy of the Postal Assistant are i) LSG, HSG-II and HSG-I. The Postal Department introduced TBOP and BCR schemes, as there was no regular promotion in the hierarchy of Postal Assistant. Therefore, all the petitioners on completion of 16 years of service were granted financial upgradation under TBOP scheme and some of the petitioners on completion of 26 years of service were granted BCR benefits. In those circumstances, the Department conducted examination for promotion to the post of Assistant Accounts Officer. The petitioners have participated in such examination and got qualified and thereafter, they were promoted as Assistant Accounts Officer.

14. The moot question to be answered in both the Writ Petitions is that, promotion granted as Assistant Accounts Officer after qualifying the examination by the petitioners on the different hierarchy of the Postal Assistant can be treated as financial upgradation for the Postal Assistant, in their own hierarchy. The main intention for introducing TBOP scheme, BCR scheme and MACP scheme is only to grant financial upgradation to the employees, those who are not getting any avenues of promotion. Only those, who have not obtained promotion, they are eligible for financial upgradation under the above scheme. In the present case, all the petitioners by virtue of working as Postal Assistant in the Postal Department, they were eligible to write the examination to become Assistant Accounts Officer. This is an avenue provided to the Postal Assistants, so as to enable them to go for different cadre by way of promotion. Some of the petitioners herein have obtained benefit under the TBOP scheme after completion of 16 years and some of the petitioners have obtained benefit under the BCR scheme. All the petitioners have qualified in the examination and got promoted to the post of Assistant Accounts Officer. Promotion to the post of Assistant Accounts Officer was an avenue available for the Postal Assistants and thereby, they have posted, qualified and got promoted. Those, who availed the benefit of promotion as Assistant Accounts Officer, they are not eligible for one financial upgradation. Accordingly, the fourth respondent rightly refused to grant II and III upgradation to the petitioners. The Tribunal also considered all these facts and rightly dismissed the Original Applications. The illustration provided in 28 A and 2B attached to MACP scheme as referred by the learned counsel appearing for both the parties cannot be applied for the present case, in view of holding that the promotion to the Assistant Accounts Officer is an avenue available and the same was availed by the petitioners by virtue of promotion. Similarly, the decisions relied on by the learned counsel appearing for the petitioners in W.P.No.4753 of 2015 are also not applicable to the facts of the case on hand. Therefore, we hold that there is no merit in the present Writ Petitions. Also, there is no need to interfere with the order passed by the Tribunal.

15. Accordingly, both the Writ Petitions fail and are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

M.M.S.J., K.R.J.,
08.02.2019

sd
Index : yes/no
Speaking Order/Non speaking

To

1. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, Chennai – 600 104.

2. Union of India,
   rep. By Secretary,
   Ministry of Communications and IT,
   Department of Posts,
   Dak Bhavan, Sansad Marg,
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3. Chief Postal General,
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4. The General Manager
   (Postal Accounts and Finance)
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M.M.Sundresh, J.,
&
Krishnan Ramasamy, J.,

sd

Pre-delivery orders
in
W.P.No.6505 of 2014
and
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