HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY ,THE ELEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION NO: 22646 OF 2020

Between:

1. Union of India, Represented by The Secretary, Government of India, Ministry of Communication and IT, Department of Posts India, DakBhavan, Sansad Marg, New Delhi 110 001.
2. The Chief Postmaster General, A.P. Circle, DakSadan, Abids, Hyderabad 500 001.
3. The Director of Postal Services, Hyderabad City Region, O/o. The Chief Postmaster General, Hyderabad 500 001.
4. The Senior Superintendent of Post Offices, Hyderabad South East Division, Hyderabad 500 002

...PETITIONERS

AND

Sri. K. Devender, S/o Late K. Ramaiah, Aged about 61 years, Retd. Postal Assistant, Malakpet colony SO R/o. H.no.4-1-123, Amangal, Hayathnagar, R.R. District-501505

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly in the nature of Writ of Certiorari, calling for the records pertaining to order dated 1/6/2016 in OA No.859 of 2015 of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dt. 1/6/2016 in OA No.859 of 2015 passed by the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad pending disposal of Writ petition.

Counsel for the Petitioner : SRI NAMAVARAPU RAJESHWAR RAO,
ASST. SOLICITOR GENERAL

Counsel for the Respondent:-------
The Court made the following: ORDER

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.22646 of 2020

ORDER: *(per Hon'ble Sri Justice A.Rajasheker Reddy)*

This writ petition is filed against the order dated 01.06.2016 passed in OA.No.859 of 2015, by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, wherein and whereby the Central Administrative Tribunal allowed the OA filed by the applicant/respondent herein for grant of 3rd financial up-gradation under Modified Assurance Career Progress (MACP) Scheme with effect from 01.09.2008.

Heard learned counsel for petitioners who submit that the respondent/ applicant was granted three promotions within a span of 30 years and as such, he is not entitled for any further up-gradation under Modified Assurance Career Progress (*for short* 'MACP') Scheme, but, the Tribunal without considering the said aspect allowed the OA directing the petitioners herein to grant 3rd financial up-gradation to the respondent/applicant under MACP Scheme, which is erroneous and against the Scheme. He also submits that at the first instance the respondent was promoted from Group-D post to Postal Assistant through Limited Departmental Competitive Examination and that aspect was not properly appreciated by the Tribunal. With regard to delay, learned counsel for petitioners submit that the delay is due to the fact that some of the cases of similar nature are pending before the Hon'ble Supreme Court and also on administrative grounds.

In this case it is to be seen that the respondent was appointed to Group-D post on 20.10.1977 and thereafter he appeared in the Limited Departmental Competitive Examination and came out successful and appointed as Postman on 05.03.1979. Thereafter, he appeared in the Limited Departmental Competitive Examination for the post of Postal Assistant and consequently he was appointed as Postal Assistant on 30.08.1983 and thereafter on completion of 16 years of service as Postal Assistant, he was given first financial up-gradation under Time Bound One Promotion (for short 'TBOP') on 30.08.1983. He was given second financial up-gradation under MACP scheme on 01.09.2008. The Department has introduced MACP Scheme with effect from 01.09.2008 in supersession of earlier promotional schemes. Prior to introduction of MACP, there were only two financial up-gradations under TBOP and BCR (Biennial Cadre Review) schemes and after introduction of MACP scheme three financial up-gradations are permitted in the intervals of 10, 20 and 30 of regular service. Since the applicant has more than 30 years of service in the cadre of Postal Assistant and since he was not given third financial up-gradation, the respondent/ applicant filed OA and the said OA was allowed holding that the appointment of applicant as Postal Assistant on 30.08.1983 through Limited Departmental Competitive Examination cannot be treated as promotion from Group-D post and it has to be treated as direct recruitment, and in that view of the matter the applicant got only two financial up-gradations and the 3rd financial up-gradation was due to him on completion of 30 years

of service as Postal Assistant. In support of the same the Tribunal has relied on the Judgment of Delhi High Court in WP (C) No.4131/2014, dated 05.08.2014 wherein it is held as follows;

> "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."

Law declared by the Delhi High Court has not been disputed by the Department and the Tribunal treated the matter as covered by the Judgment of Delhi High Court and granted relief. More so, the writ petition is liable to be dismissed on the ground of latches as the explanation of delay contained in para 10 of the writ affidavit cannot be accepted as respondent/applicant cannot wait till some other litigation is concluded and again initiate the litigation. If the Department is of the opinion that the order of the Tribunal is erroneous, it could have immediately filed the writ petition. It shouldn't have waited till some other litigation is concluded in the Court. If that is permitted, as and when similar matters disposed of, several litigations will crop up at belated stage, delay explained cannot be a ground for entertaining the writ

petition by condoning the latches. The administrative delay cannot be a ground for condoning the delay and latches. Viewed from any angle, we hold that the writ petition lacks merit and same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand dismissed.

SD/-I.NAGALAKSHMI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri Namavarapu Rajeshwar Rao, Asst. Solicitor General Advocate [OPUC]
2. Two CD Copies

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HIGH COURT

DATED:11/12/2020

ORDER

WP.No.22646 of 2020



DISMISSING THE WP

WITHOUT COSTS

(3) VLV 23/12/20