

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 10594 of 2018

***The Director General (Posts)
and others***

.....

Petitioners

Mr. D. Moharana, CGC

Vs.

***Kishore Kumar Kar and
another***

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

20.07.2022

**Order No.
04.**

This matter is taken up through hybrid mode.

2. The petitioner has filed this Writ Petition seeking to quash the order dated 21.03.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/0094 of 2013, by which the Tribunal allowed the Original Application, by quashing the impugned orders dated 09.11.2012, 14.11.2012 and 05.0.2013 under Annexures-13, 14 and 16 to the Original Application.

3. Mr. Moharana, learned Central Government Counsel contended that the Opposite Party No.1 is not entitled to get the benefit and, as such, the Tribunal has committed gross error by passing the order as mentioned above. Therefore, he seeks for quashing of the same.

4. As it appears, Opposite Party No.1 entered into Group-D Service of Postal Department on 28.10.1983. Therefore, he was

promoted to Sorting Assistant on 22.02.1989. The benefit of TBOP was allowed to him on 13.03.2005. Opposite Party No.1 was granted 3rd financial up gradation under MACP with effect from 22.02.2009 which was withdrawn vide order dated 14.11.2012. Being aggrieved by the order dated 14.11.2012, Opposite Party No.1 preferred O.A. No. 849/2012 before the Central Administrative Tribunal, which was disposed of vide order dated 23.11.2012 granting liberty to Opposite Party No.1 to make representation. Consequentially, Opposite Party No.1 submitted the representation on 06.12.2012, which was rejected by the Authorities on 05.02.2013. Therefore, the second round of litigation arose, wherein the case of Opposite Party No.1 was that as per the MACP Scheme, an employee is entitled to three financial up-gradation at the interval of 10, 20 and 30 years of service and as per the clarification made by the Government, an employee who has availed one promotion before completion of 10 years, the 1st MACP shall be off set of 1st promotion and the period of 10 and 20 years for 2nd and 3rd financial up-gradation shall be counted from the date of promotion. Therefore, in the case of 3rd financial up-gradation under MACP allowed to the Opposite Party No.1 counting twenty years from the date of promotion, the impugned order of withdrawal of the same is bad and liable to be quashed.

5. On the basis of the Rejoinder filed by Opposite Party No.1, the Tribunal, by taking into consideration the earlier judgment passed by it in O.A. No. 200 of 2013 disposed on 21.06.2017 (*Gati Krushna Das v. Union of India and others*), allowed the Original Application in favour of Opposite Party No.1, by

quashing the impugned orders therein. Needless to say, the reliance had also been placed on the judgment of Jodhpur Bench of the Tribunal in O.A. Nos. 382/2011, 353/2011 and 354/2011 disposed of on 22.05.2012 (*Banwar Lal Regar v. Union of India and others*), which was upheld by the High Court of Rajasthan at Jodhpur in Civil Writ Petition No. 11336 of 2012, disposed of on 10.08.2015. Nothing has been brought to the notice of this Court at this point of time that the judgment passed in *Gati Krushna Das* (supra) has ever been challenged or the same has been set aside by the higher forum. Similarly, nothing has been placed on record to show whether the judgment of the High Court of Rajasthan in *Banwar Lal Regar* (supra) has been challenged before the apex Court and the same has been set aside. Therefore, once the matter has been settled by the Tribunal and on that basis Opposite Party No.1 is entitled to get such benefit, the same cannot be said to be illegal, arbitrary or unreasonable, so as to call interference by this Court at this stage.

6. In view of such position, this Court does not find any error apparent on the face of the impugned order passed by the Tribunal so as to call for any interference by this Court. Thus, the Writ Petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE