

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9414 of 2017

J. P. Mandal Son of Late D.P. Mandal Ex - Assistant Director Recruitment Office of the Chief Post Master General, Bihar Circle, Patna, Resident of Village - Kahalgaon Tola, PO - Khawaspur, P.S. - Pirpainti, District - Bhagalpur, Pin Code - 813209 Bihar at present residing at House No. 417 D, Ram Nagari More, P.O. Ashiyana Nagar, P.S. - Rajeev Nagar, Town and District - Patna, Pin Code - 800025 Bihar.

... .. Petitioner/s

Versus

1. The Union Of India through the Director General of Post, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director, Postal Service HQ, Office of the Chief Post Master General, Bihar Circle, Patna.
4. The Director, Accounts of Post, Patna Bihar.
5. The Assistant Director (Staff and Rectt.), Office of Chief Post Master General, Bihar Circle, Patna, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3129 of 2017

1. The Union Of India through the Director General of Post, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna
3. The Director, Postal Services HQ , Office of the Postmaster General, Bihar Circle, Patna
4. The Director, Accounts of Post, Patna, Bihar
5. The Assistant Director (Staff and Rectt.), Office of Chief Post Master General, Bihar Circle, Patna, Bihar.

... .. Petitioner/s

Versus

J. P. Mandal Son of Late D.P. Mandal, office Superintendent HSG - I , office of the Chief Postmaster General, resident of village - Kahalgaon Tola, P.O. Khawaspur, P.S. Pirpainti, District - Bhagalpur, Bihar

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9414 of 2017)

For the Petitioner/s : Mr. M. P. Dixit, Advocate
Mr. S. K. Dixit, Advocate
Mr. S. K. Choubey, Advocate
Mrs. Swastika, Advocate

For the Respondent/s : Mr. Sujeet Kumar Sinha, CGC

(In Civil Writ Jurisdiction Case No. 3129 of 2017)

For the Petitioner/s : Mr. Rakesh Kumar Sinha, CGC
For the Respondent/s : Mr. M. P. Dixit, Advocate



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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-01-2023

Heard learned counsels for the parties.

2. In the instant writ petition, petitioner- J.P. Mandal has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') dated 28.07.2016 passed in O.A. No. 341 of 2012.

In the original application filed before the CAT, petitioner has prayed for the following reliefs:-

“8.1 That your Lordships may graciously be pleased to quash and set aside the impugned order dated 17.02.2012 as contained in Annexure-A/7 together with the order dated 26.03.2012 as contained in Annexure-A/9.

8.2 That your Lordships may further be pleased to direct/command the Respondents to grant the benefit of Grade Pay of Rs. 5,400/- with effect from 01.01.2006, Grade Pay of Rs. 6,600/-, Grade Pay of Rs. 7,600/- and Grade Pay of Rs. 8,700/- with effect from 01.09.2008 under M.A.C.P. Scheme.

8.3 That your Lordships may further graciously be pleased to direct/command the Respondents to grant the Grade Pay of Rs. 4,800/- and Rs. 5,400/- instead of Rs. 4,600/- with effect from 01.01.2006 under Normal Replacement and thereafter Grade Pay of Rs.6,600/-, Grade Pay of Rs. 7,600/- and Grade Pay of Rs. 8,700/- under Financial Upgradation under M.A.C.P. Scheme as already prepared by the Applicant on the basis of the Rules & Instructions as shown in Annexure-A/5 without any further delay.

8.4 That your Lordships may further be pleased to direct/command the Respondents to grant



all consequential benefits including revision/ fixation of pay with arrears and statutory interest thereupon.

8.5 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.”

3. The Tribunal has allowed the Original Application in part in so far as granting third MACP benefit to the petitioner- J. P. Mandal.

4. The Union of India -Postal Department filed C.W.J.C. No. 3129 of 2017 against the order of the CAT dated 28.07.2016 passed in O.A. No. 341 of 2012, in so far as granting third M.A.C.P. to the petitioner- J.P. Mandal.

5. Brief facts of the case are that petitioner J.P. Mandal was initially appointed to the post of Postal Assistant on 01.03.1975. He was extended benefit of Higher Selection Grade-II with effect from 26.06.1993 on 16.09.1994. Further he was extended Lower Selection Grade on 07.03.1995 with effect from 17.06.1988. Similarly, he was extended B.C.R. and T.B.O.P. in the Lower Selection Grade with effect from 17.05.2000. As on 17.05.2000 he was in the pay scale of Rs. 5000/- to 8000/- and it was revised on 30.03.2001 @ Rs. 6,500/-10,500/-. On 13.11.2009, he had benefit of upgradation @ Rs. 7450/- to Rs. 11,500/- and also benefit of revised pay @ Rs. 9300/- to Rs. 34800/- in the Grade Pay of Rs. 4600/-. Such a benefit has been assigned on the petitioner with effect from 01.01.2006. Thereafter, he has earned



promotion to the post of Assistant Director (Recruitment) on 14.06.2013. He has attained the age of superannuation and retired from service on 31.01.2014. Whereas MACP Scheme was issued on 18.09.2009 with effect from 01.09.2008. In this backdrop, whether petitioner is entitled to first, second and third MACP or not? The CAT examined whether the petitioner is entitled to first, second and third MACP or not. Having regard to the service particulars of the petitioner narrated in paragraph Nos. 12 and 13, the Tribunal proceeded to extend third MACP benefit to the petitioner.

6. Learned counsel for the Respondent-Department who have filed independent writ petition in so far as extending third MACP to the petitioner J.P. Mandal.

7. Core issue involved in the present litigation is how the criteria insofar as granting MACP is required to be examined with reference to the Scheme, namely, Official Memorandum dated 18.09.2009 read with the salient features. Modified Assured Career Progression Scheme for the Central Government Civilian Employees is the subject matter of the Scheme. Scheme provides illustration at Para-28 of the Scheme.

8. Learned counsel for the petitioner- J.P. Mandal submitted that illustration is in respect of LDC whereas the post held by the petitioner was Postal Assistant and it is equivalent to



UDC. To that effect he has not produced any material to show that Postal Assistant is equivalent to UDC, therefore, illustration at para 28 is not attracted is incorrect. However, the principle of the illustration is required to be taken into consideration. MACP would be extended with reference to grade pay. Petitioner J.P. Mandal entered the grade pay for the first time @ Rs. 4600/- with effect from 01.01.2006 notified on 13.11.2009 with reference to revised pay scale at Rs. 9300/-to 34800/-. Before completion of ten years, he has earned promotion to the post of Assistant Director (Recruitment) on 14.06.2013 and he has attained age of superannuation and retired from service on 13.01.2014. The aforesaid material information has not been taken note of by the CAT in so far as extending third MACP. To that extent the CAT has committed error, therefore, the petitioner is not entitled to third MACP.

9. The petitioner is not entitled to first and second MACP for the reasons that his service particulars would reveal that he had the benefit of Higher Selection Grade on 16.09.1994 with effect from 26.06.1993, Lower Selection Grade with effect from 17.06.1988 on 07.03.1995, further he has earned BCR/TBOP on 17.05.2000. For the first time he has entered Grade Pay on 01.01.2006, therefore, he is not entitled to first MACP and second MACP in the light of para-1 of salient features (Annexure-I) of the



MACP Scheme. Para-1 reads as under:-

"1. There shall be three financial upgradation under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay."

The aforementioned is one of the criteria to determine whether the Central Government employee is entitled to MACP benefit or not.

10. Moreover, reading of the entire MACP Scheme, nowhere it is stated that upgradation does not amount to promotion so as to extend MACP benefit to the petitioner even though he has earned upgradation from time to time.

11. In the light of these facts and circumstances, Petitioner- J.P. Mandal has not made out a case so as to extend first and second MACP benefit as claimed by him. Similarly, grant of third MACP by the CAT is not in accordance with the criteria and the CAT has not taken note of the fact that Petitioner- J.P. Mandal has earned promotion to the post of Assistant Director (Recruitment) on 14.06.2013. In other words, from 01.09.2008 he has not completed 10 years of service in any of the post and so also in the post of Assistant Director (Recruitment) for the reasons he has attained age of superannuation and retired from service on 31.01.2014. At any given point of time he was not stagnated in a



particular cadre for about 10 years so as to extend MACP benefit as a first, second or third MACPs.

12. In view of the aforesaid facts and circumstances, petitioner-Union of Indian-Postal Department has made out a *prima facie* case, so as to interfere with the order of the CAT dated 28.07.2016 passed in O.A. No. 341 of 2012, which stands set aside.

13. Accordingly, C.W.J.C. No. 3129 of 2017 stands allowed and C.W.J.C. No. 9414 of 2017 filed by Petitioner -J.P. Mandal stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Rakhi/Ashish

AFR/NAFR	
CAV DATE	NA
Uploading Date	10-01-2023
Transmission Date	

