IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.11.2023	Delivered on: 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.1354 of 2018
and
W.M.P. No.1725 of 2018

1. Union of India
represented by the
Chief Postmaster General,
Tamil Nadu Circle,
Chennai-600 002.

2. The Director of Postal Services,
O/o. PMG, Central Region,
Tiruchirappalli – 607 001.

3. The Superintendent of Post Offices,
Cuddalore Postal Division,
Cuddalore-607 001. ... Petitioners

vs.

1. T. Rajavarmacholan

2. The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of 2nd respondent and quash the order dated 17.10.2016 made in O.A. No.310/01486/2013 as the same is unsustainable.

For Petitioners	:	Mr. Venkatasamy Babu, S.P.L
For Respondents	:	Mr. M. S. Velusamy [for R1] Tribunal [for R2]

ORDER

(Order of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioners / Postal Department to issue a Writ of Certiorari or any other appropriate order or direction calling for the records of 2nd respondent's order dated 17.10.2016 made in O.A. No.310/01486/2013 and quash the same.

2. According to the petitioners, the 1st respondent was initially appointed as postman in Cuddalore Division on 16.05.1980. Thereafter he was promoted to the cadre of Postal Assistant from 27.08.1987 through passing the Limited Departmental Competitive examination.. The 1st respondent was granted financial upgradation under TBOP w.e.f from 14.09.2003 on completion of 16 years of service in P.A. cadre. The 1st

respondent has completed more than 21 years of service in Postal Assistant on 01.09.2008. But he is not eligible for MACP II with effect from 01.09.2008 as he had already got two upgradations, one through regular promotion and another through TBOP. The second upgradation was given with effect from 01.09.2008 only to those who were not given earlier two promotions / upgradations before the said date even after completion of 20 years of service on 01.09.2008. The Time Bound One Promotion [TBOP] Scheme was replaced by Modified Assured Career Progression [MACP] Scheme with effect from 01.09.2008. As per the said Scheme, there shall be three financial upgradations, counted from direct entry grade on completion of 10, 20, 30 years service respectively. As such the 1st respondent has to be considered only for the grant of 3rd MACP. For the grant of 3rd MACP, the 1st respondent has to complete 10 years of service from the last financial upgradation or 30 years of service from the date of initial appointment whichever is earlier. The 1st respondent would complete 30 years of service only on 16.05.2010 and 10 years from the last Grade Pay would be completed only on 14.09.2013, but he retired on superannuation on 28.02.2009 and hence he is not eligible for third financial upgradation under MACP III. As the 1st respondent got two financial upgradations before completion of 20 years of service, the grant of 2nd MACP benefit with effect from the date of completion of 20 years of service in PA cadre is not justified. But the Tribunal without considering the said aspects allowed the O.A. No.1486 of 2013 and directed to grant 3rd MACP to the 1st respondent.

3. The 1st respondent has filed counter stating that he was appointed as Postman in the year 1980 and earned promotion as Postal Assistant in the year 1987 and financial upgradation was granted under TBOP in the year 2003 on completion of 16 years of service in Postal Assistant cadre with effect from 14.09.2003. The petitioner department implemented the MACP Scheme dated 19.05.2009. As per the said Scheme, he was eligible for grant of another financial upgradation with effect from 01.09.2008. While all those who have completed 20 years or more of service as Postal Assistant on 01.09.2008, including several of his juniors have been granted due financial upgradation under the MACP Scheme, but the 1st respondent has not been given the benefit of fincancial upgradation under the MACP Scheme. The 1st respondent gave representations on 05.04.2011 and 28.07.2011 to the 3rd petitioner seeking due financial upgradation under

MACP Scheme, but his request was rejected through order dated 02.08.2011 stating that he would be eligible for 3rd MACP only after 30 years of service i.e., 16.05.2010 and as he had already retired on 28.02.2009, he was not eligible for 3rd MACP. Thereafter, the 1st respondent preferred an appeal on 01.10.2011 before the 2nd petitioner and Appellate Authority followed by another representation on 14.12.2011. But his genuine claim was not granted on an erroneous interpretation of the Scheme. Hence he filed O.A. No.1486 of 2013 before the Central Administrative Tribunal and the same was allowed on 17.10.2016. Even after order of Central Administrative Tribunal, the petitioners have not taken any positive steps. The identical issue as described below has been discussed in the illustrations given in Para 28 of DOPT OM dated 19.05.2009. As per illustration 28 A(ii), in case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200/- on completion of further 10 years of service i.e., after 28 years. The 1st respondent is entitled to 3rd MACP in the PB-II (Rs.9300-34800) in Grade Pay of Rs.4200 on completion of 20 years of service as Postal Assistant i.e., with effect from 01.09.2008 and rejection of his claim is totally illegal. Therefore the Central Administrative Tribunal has passed reasoned order and this Writ Petition is liable to be dismissed.

4. The learned counsel appearing for the appellant would contend that the 1st respondent was working with the petitioners' department and his date of joining is 16.05.1980 and he was promoted to the post of Postal Assistant on 27.08.1987 and he was given TBOP with effect from 14.09.2003. Thereafter the 1st respondent retired on 28.02.2009. The petitioners' department has introduced MACP Scheme on 19.05.2009, with effect from 01.09.2008. As per the Scheme, the 1st respondent has to complete 30 years of service or 10 years from the earlier financial upgradation. 30 years of completion would be on 16.05.2010 and 10 years from previous financial upgradation would be 14.09.2013. Since he was retired on superannuation on 28.02.2009, he is not eligible for MACP III. But he gave representations and the same were rejected on the said grounds. Therefore, the 1st respondent filed O.A. No.1486 of 2013 and the same was erroneously allowed by the Tribunal. Hence this present Writ petition has been filed.

5. The learned counsel appearing for the 1st respondent would

contend that the 1st respondent was working in the petitioners' department till 28.02.2009. The petitioners' department had introduced MACP Scheme on 19.05.2009 with effect from 01.09.2008. As per the Scheme, on completion of 8 years of service in 1st promotion and then continues in the same Grade Pay for further 10 years without any promotion, then he would be eligible for 2nd financial upgradation, in case he does not get any promotion thereafter, then he would get 3rd financial upgradation on completion of further 10 years of service i.e., 28 years (8+10+10). The 1st respondent's 1st promotion was on 27.08.1987 and thereafter he was not promoted and he retired on 28.02.2009, so he completed 20 years of service from the 1st promotion i.e., on 27.08.1987, thereby he is eligible for 3rd financial upgradation. But the petitioners' department wrongly interpreted the rules and declined to grant 3rd financial upgradation. Hence the 1st respondent filed O.A. No.1486 of 2013 before the Central Administrative Tribunal and the C.A.T. after analysing all the aspects correctly allowed the O.A. through order dated 17.10.2016. Therefore, this Writ petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on

record.

7. It is an admitted fact that the 1st respondent was appointed as Postman in the year 1980 and then he was promoted as Postal Assistant in the year 1987. Thereafter, he was granted benefit of Time Bound One Promotion (TBOP) in the year 2003. According to the 1st respondent, the above said TBOP is not a promotion and it is only a financial upgradation. According to the petitioners' department, the above said TBOP is a promotion and not financial upgradation. Since the 1st respondent has got two promotions within 20 years, he would be eligible for next promotion under MACP III only on completion of 30 years of service from the entry grade (i.e., on 16.05.2010) or on completion of 10 years from last promotion / upgradation (ie., on 14.09.2013) whichever is earlier, but the 1st respondent retired on superannuation on 28.02.2009 on completion of 60 years of age before satisfying the above conditions for the grant of MACP III. In fact, the 1st respondent was granted the 1st financial upgradation, i.e., the benefit of Time Bound One Promotion (TBOP) in the year 2003 and he was eligible for the 2nd MACP w.e.f. 01.09.2008 under the new MACP Scheme as he had completed 20 years in the Postal

Assistant cadre without promotion. But it was denied by the petitioners' postal department. Therefore, the 1st respondent submitted his representations dated 05.04.2011 and 28.07.2011 before the 3rd petitioner herein. But the claim of the 1st respondent was rejected on the ground that he had not completed 10 years of service from the date of last upgradation ie., 14.09.2003 or 30 years from the date of initial appointment i.e., 16.05.1980, the 1st respondent would be due for MACP III only on 16.05.2010 on completion of 30 years of his service from the date of entry in the Postal Assistant Cadre, as the 1st respondent had already retired by that date, the question of granting the 3rd MACP would not arise.

8. The main issue in this case is whether the TBOP granted to the 1st respondent is a actual promotion or only a financial upgradation. In this context, the learned counsel appearing for the 1st respondent has produced the Official Memorandum of the Ministry of Communications & IT, Department of Posts dated 18.09.2009. On careful perusal of the above said Official Memorandum, it reveals that in Para 12, it has been stated as follows:-

> "12. Any interpretation/clarification or doubt as to the scope and meaning of the provisions of the

> MACP Scheme given by the Department of Personnel and Training (Establishment-D) will be further communicated by the Establishment Division of the Directorate. The Scheme would be operational w.e.f. 01.09.2008 and **financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999)/TBOP/BCR Schemes of the Department of Posts would be granted till 31.08.2008**".

Therefore, on careful reading of the above Memorandum, it is clear that TBOP is only a financial upgradation and it is not an actual promotion.

9. As per the Scheme, in Annexure I, illustrations 28 A.(i) & (ii), it has been clearly indicated that "In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-2 in Grade Pay of Rs.4200 on completion of further 10 years of service i.e., after 28 years (8+10+10). In this case also, the petitioners have not granted promotion to the 1st respondent in the cadre of Postal Assistant for more than 20 years. The 1st promotion was in the year 1987 and thereafter, the 1st respondent was given Time Bound One Promotion (TBOP) i.e., financial upgradation with effect from 14.09.2003. Since the 1st respondent has completed 21 years of service as 'Postal Assistant' on 01.09.2008, he is eligible for the next financial upgradation ie., MACP III w.e.from

01.09.2008 under new MACP Scheme. But he was not given MACP III on the ground that he had not completed 10 years of service from the date of last upgradation i.e. 14.09.2003 or 30 years from the date of initial appointment i.e. 16.05.1980. Further the 1st respondent would be due for MACP III only on 16.05.2010 on completion of 30 years of service from the date of entry in the Postal Assistant cadre and he retired from his service by that date and the same is not in accordance with MACP Scheme. Therefore, the 1st respondent is eligible for the next financial upgradation under the MACP Scheme and the order passed by the petitioners department by rejecting the claim of the 1st respondent is misinterpretation of Scheme and the same is unsustainable.

10. The Tribunal also, in its order in O.A. No.310/01486/2013, has categorically held as follows:

"6...........T*he financial upgradations are due at the end of 10 years, 20 years and 30 years of service respectively. The Scheme also provides that where regular promotion or upgradation had been given earlier, the next financial upgradation would be due from a date 10 years from the date of such promotion or upgradation.*

7. The applicant claims that his 2nd financial upgradation in the cadre of Postal Assistant is due from 27.08.2007. The respondents would, however, insist on counting a period of 30 years from the date of initial entry into service i.e., 16.05.1980. According to them, the appointment of the applicant as Postal Assistant on 27.08.1987 was in the nature of promotion and, therefore, the upgradation granted under TBOP i.e., on 14.09.2003 was the 2nd upgradation. The respondents however, do not seem to appreciate the fact that if the applicant's appointment as Postal Assistant on 17.08.1987 is to be treated as promotion, his 2nd financial upgradation would accordingly fall due w.e.f. 27.08.1997 as per Para-28(a)(i) to (iii) of the Scheme. Accordingly, his 3rd financial upgradation would fall due on 27.08.2007.

8. The TBOP granted on 14.09.2003 had been described as a 2nd financial upgradation by the respondents themselves in the impugned order dated 02.08.2011. Clause 28(a)(iii) would be applicable only if it is a case of regular promotion granted sometime after the financial upgradation to the same level in which case the period of 10 years would count from the date of such promotion. Since the TBOP is in the nature of an upgradation only, as it was due to an employee on completion of 16 *years of service and not subject to availability of any vacancy, the respondents are not justified in applying 28(a)(iii) to the situation of the applicant to deny him the 3rd financial upgradation by not counting the 10 years' period from 27.08.1997 but from 14.09.2003".*

11. The learned counsel appearing for the 1st respondent has relied upon the following judgments:

a. T. Thirumalai vs. Union of India reported in 2016 SCC Online Mad 23630 – W.P. No.16143 of 2016.

b. UOI & ors vs. CAT, Chandigarh Bench & Anr. Reported in 2018 (3) SLJ 129 – CWP No.13953 of 2018 dated 23.08.2018.

c. UOI & Ors vs. M.S. Sharma reported in 2018 SCC Online Kar38 – W.P. No.47005 of 2017 (S-CAT) dated 08.01.2018.

d. The Union of India & Ors vs. M.S. Sharma reported in SLP (Civil) Diary No.33060 of 2019.

On careful perusal of the above judgments, it is clear that all the MACP are admissible within the service span of 8+10+10 years and 3rd MACP with effect from 01.09.2008 in the Grade Pay of Rs.4800/- upon completion of 20 years of service from the 1st promotion. In the case on hand also, the date of 1st promotion is 27.08.1987 and without any promotion, the 1st respondent retired on 28.02.2009. Therefore, on completion of 20 years, he is eligible for MACP III.

12. In view of the above said judgments and as discussed supra, this Court is of the opinion that the order passed by the Tribunal is correct and well reasoned and this Court has no warrant to interfere with the order of the Tribunal. Therefore, this Writ petition is liable to be dismissed.

13. IN THE RESULT, this Writ Petition is dismissed. No Costs. Connected miscellaneous petition is closed.

(D.K.K.J) & (P.D.B.J)
21.12.2023

mjs
Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No

To

The Registrar,
Central Administrative Tribunal,
Chennai.

D.KRISHNAKUMAR, J.,
and

P.DHANABAL,J

(mjs)

Pre-delivery judgment in
W.P.No.1354 of 2018

21.12.2023