



W.P.No.34199 of 2017

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.34199 of 2017

and

W.M.P. No.38081 of 2017

1. Union of India
represented by the
Director of Postal Services,
O/o. PMG, Chennai City Region,
Chennai.

2. The Superintendent of Post Offices,
Chennai City Central Division,
Chennai.

... Petitioners

vs.

1. S. Vijayakumar, Postal Assistant

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



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respondent and quash the order dated 29.03.2017 made in O.A. No.310/01805/2014 as the same is unsustainable.

For Petitioners : Mr. Venkatasamy Babu, S.P.L

For Respondents : Mr. 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 29.03.2017 made in O.A. No.310/01805/2014 and quash the same.

2. According to the petitioners, the 1st respondent was initially appointed as postman in Chennai City Central Division on 02.04.1983 and on passing the Limited Departmental Competitive examination for promotion to the cadre of Postal Assistant and appointed as PA w.e.f. from 01.07.1991. The 1st respondent was granted financial upgradation under TBOP w.e.f from 27.07.2007 on completion of 16 years of service. Based on the accepted recommendation of 6th Pay Commission, the Central Government introduced the scheme for Modified Assured Carrier



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Progression vide O.M. No.35034/3/2008-Estt(D) dated 19.05.2009 of the Department of Personnel and Training and scheme was implemented by the Department of Posts in order dated 18.09.2009 of Postal Directorate. As per the above said scheme, all regularly appointed Group A, B & C employees are eligible for 3 financial upgradation on completion of 10, 20 and 30 years of service respectively and for considering the cases for grant of financial upgradations, Screening Committee shall be constituted. As per the clarification issued by Department of Personnel & Training in O.M. No.35034/3/2008-Estt(D) dated 09.09.2010, the benefits under MACPs would be available from the date of actual joining of the post in the entry grade and as per Official Memorandum dated 19.05.2009, the promotions earned in the post carrying same grade pay in the promotional hierarchy as per the recruitment rules shall be counted for the purpose of MACP scheme. The 1st respondent was due for next MACP in the year 2013 on completion of 30 years of service. Therefore, the 1st respondent was given suitable reply vide SSPOs Chennai City Central Division letter dated 19.12.2012 that as he has already earned two promotions i.e., from Postman to PA and TBOP in PA Cadre, the applicant would be eligible for MACP III only on completion of 30 years of service.



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2.1. The 1st respondent submitted a representation dated 17.08.2013 claiming that he is eligible for 2nd MACP w.e.f. 01.07.2011 on completion of 20 years of service in PA cadre and requesting to grant the same. In the meantime, the Departmental Screening Committee of office of the Senior Superintendent of Post Offices, Chennai City Central Division recommended the case of applicant for grant of 3rd MACP on completion of 30 years of service from the entry grade i.e., w.e.f. 23.04.2013 and the 1st respondent was also granted MACP III from the above date. After the grant of MACP, the 1st respondent again submitted representation dated 30.12.2013 to the Senior Superintendent of Post Offices, Chennai City Central Division to grant MACP-II by cancelling the MACP-III which was already granted. Further, the 1st respondent repeatedly submitted representations dated 26.05.2014 and 15.07.2014 with the same request. The said representations were disposed of by the SSPOs, Chennai City Central Division dated 08.09.2014 by rejecting the request. Aggrieved by the order of rejection of the representation to grant MACP on completion of 20 years of service in Postal Assistant cadre, the 1st respondent filed an application before the Central Administrative Tribunal in O.A. No.1805 of 2014 and the same was erroneously allowed. Hence this Writ petition.



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3. The 1st respondent filed counter stating that he was appointed as Postman in the year 1983 and earned promotion as PA in the year 1991 and financial upgradation under TBOP in the year 2007. The department implemented the MACP with effect from 01.09.2008 through letter dated 19.05.2009. As per the Scheme, the employees are eligible for 3 Time Bound Promotion at intervals of 10, 20 and 30 years of continuous regular service. As per the MACP Scheme, the 1st respondent is eligible for 2nd MACP with effect from 01.07.2011. While all those who have completed 20 years of service as Postal Assistant on 01.09.2008 including several of his juniors have been granted due 2nd financial upgradation under the MACP Scheme, but he was not given. On 31.10.2012, 17.08.2013 and 30.12.2013, the 1st respondent gave representations to the petitioner department and the same were rejected through order dated 17.01.2014. In the meanwhile, the petitioner department granted 3rd MACP to him with effect from 23.04.2013 after completion of 30 years of service from the entry grade of Postman. The 1st respondent filed appeal before the 1st petitioner on 26.05.2014 followed by a reminder dated 15.07.2014, but the same was also declined through letter dated 08.09.2014. The identical issue as described below has been discussed in the illustrations given in



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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 financial upgradation 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 01.07.2011 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 02.04.1983 and he was promoted to the post of Postal Assistant on 01.07.1991 and he was given TBOP with effect from 27.07.2007. 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. The initial appointment of the 1st respondent as Postman was in the year 1983. He had earned promotion as Postal



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Assistant in the year 1991 and 1st financial upgradation under TBOP in the year 2007 and as such he has already availed 2 promotions / financial upgradations. The next financial upgradation under MACP on completion of 30 years of service was also granted to the 1st respondent with effect from 23.04.2013. But he gave representations and the same were rejected on the said grounds. Therefore, the 1st respondent filed O.A. No.1805 of 2014 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 joined in the petitioners' department as Postman on 02.04.1983. 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 from Postman to Postal



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Assistant was on 01.07.1991 and then he was granted the benefit of Time Bound One Promotion (TBOP) after 16 years service as Postal Assistant i.e. w.e.f. 27.07.2007. Since he completed 20 years of service as Postal Assistant on 01.07.2011, he was eligible for 2nd MACP w.e.f. 01.07.2011 under the new MACP Scheme, but he was not given 2nd MACP. The 1st respondent was granted 3rd MACP w.e.f 23.04.2013 on completion of total 30 years of service from the entry grade of Postman. The petitioners' department wrongly interpreted the rules. Hence the 1st respondent filed O.A. No.1805 of 2014 before the Central Administrative Tribunal and the C.A.T. after analysing all the aspects correctly allowed the O.A. through order dated 29.03.2017. 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 1983 and then he was promoted as Postal Assistant in the year 1991. Thereafter, he was granted benefit of Time Bound One



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Promotion (TBOP) in the year 2007. 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 10 years, he would be eligible for next promotion under MACP III only on completion of 30 years of service from the entry grade and the same was also granted to the 1st respondent on 23.04.2013. Therefore, the 1st respondent is not eligible for further financial upgradation under MACP.

8. The main issue in this case is whether the TBOP granted to the 1st respondent is an 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



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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 16 years. The 1st promotion was in the year 1991 and thereafter, the 1st respondent was given Time Bound One Promotion (TBOP) i.e., financial upgradation with effect from 27.07.2007. Since the 1st respondent has completed 20 years of service as 'Postal Assistant' on 01.07.2011, he is eligible for the next financial upgradation i.e., MACP II from 01.07.2011 under new MACP Scheme. But he was not given next financial



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upgradation i.e., MACP II. Instead, MACP III was granted with effect from 23.04.2013 and the same is not in accordance with MACP Scheme.

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 discussed that the impugned Proceedings No.B2/MACP/DLGS dated 17.01.2014 and B2/MACP/DLGS dated 08.09.2014 shall be reviewed by the 2nd respondent in the light of the order passed by this Tribunal in O.A. No.310/01486/2013 dated 17.10.2016. The Tribunal, has categorically held as follows:

“6.....The 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*



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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



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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".

Therefore, 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.

11. 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.



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D.KRISHNAKUMAR, J.,
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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