

The Superintendent of Post Offices vs C.Vasudevan

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Court : Kerala

Decided On : Feb-14-2025

Judge : Honourable Mr. Justice Amit Rawal,Honourable Mr.Justice K. V. Jayakumar

Appeal No. : OP (CAT)/220/2020

Appellant : The Superintendent of Post Offices

Respondent : C.Vasudevan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946 OP (CAT) NO. 220 OF 2020 AGAINST THE ORDER DATED 28.11.2019 IN OA NO.1114 OF 2017 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH PETITIONERS/RESPONDENTS IN OA: 1 THE SUPERINTENDENT OF POST OFFICES THIRUVANANTHAPURAM SOUTH DIVISION, THIRUVANANTHAPURAM 695 036. 2 THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE, THIRUVANANTHAPURAM 695 033. 3 UNION OF INDIA,

REPRESENTED BY ITS SECRETARY AND DIRECTOR GENERAL, DEPARTMENT OF POSTS, DAK BHAVAN, NEW DELHI 110 001. BY Sri.T.C.Krishna DEPUTY SOLICITOR GENERAL OF INDIA in charge RESPONDENTS/APPLICANTS IN OA: C.VASUDEVAN, RETIRED SUB POSTMASTER, KANJIRAMPARA SO, THIRUVANANTHAPURAM 695 001, RESIDING A T CHIRAKANDATHI, SRDA 95, KARAKULAM P.O. THIRUVANANTHAPURAM 695 564. THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 14.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

K. V. JAYAKUMAR, J Feeling aggrieved by the order of the Central Administrative Tribunal in O.A.No.1114/2017 dated 28.11.2019, Union of India and its officers preferred this OP(CAT). As per the impugned order, the Central Administrative Tribunal allowed the following claims of the respondent/applicant.

(i) Call for the records leading to the issue of Annexure A10 and set aside Annexure A10 to the extent it refuses 3rd financial upgradation under MACP Scheme.

(ii) Declare that the applicant is entitled and eligible to be granted 3rd MACP financial upgradation benefits reckoning his service from the date on which he is appointed as Postal Assistant.

(iii) Direct the respondents to grant financial upgradation to the applicant on completion of 30 years from the date he has been appointed as Postal Assistant and to revise the pay and draw arrears with 12% interest.

(iv) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

(v) Award the cost of these proceedings.

2. Succinctly, the facts in brief are as follows:

The respondent/applicant, C. Vasudevan, joined the service of the respondents/petitioners as Postman with effect from 22.04.1978. In the year 1981, the respondent attended a competitive examination conducted for the appointment as Postal Assistant and was appointed with effect from 05.05.1982. On completion of 16 years, the applicant was granted financial upgradation under Time Bound One Promotion (TBOP) with effect from 10.05.1988 and Biennial Cadre Review (BCR) on completion of 26 years in the cadre of Postal Assistant with effect from 01.07.2008.

3. On the basis of the recommendations of 6 th CPC, the

claim of the respondent/applicant is that he is entitled to 3 rd Modified Assured Career Progression (MACP) as he had completed more than 30 years in the service of Postal Assistant cadre itself with effect from 05.05.2012 and submitted a representation to that effect, which was rejected vide Annexure-A10 order.

4. The stand of the petitioners/Union of India before the Tribunal and before us is that, since the applicant was granted two financial upgradations and one promotion, he is not entitled to get 3rd MACP.

5. The Tribunal, noticing the rival contentions of the

counsel for the parties, expressed the view that the respondent/applicant is entitled to get financial upgradation as per the MACP Scheme on completion of 30 years of service. The relevant paragraphs are extracted hereunder:

7. The Hon'ble High Court of Delhi on

5.8.2014 in Union of India v. Shakeel Ahmad Burney

held as under:

"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 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."

8. On the contrary respondents counsel

Shri N.Anilkumar submitted that the applicant's appointment to the post of Postal Assistant is by LDCE i.e. 50% quota meant for departmental candidates which is actually a promotional post. Therefore, it should be treated as first promotion from 5.5.1982 when he has been

promoted as Postal Assistant. Thereafter he has been granted 2nd financial upgradation on 10.05.1998 on completion of 16 years of service under TBOP scheme applicable from the date of the last promotion as Postal Assistant and further on completion of 26 years he was granted next upgradation under BCR scheme w.e.f. 1.7.2008. The applicant retired on 31.10.2013.

9. We are of the view that through 50%

departmental quota the applicant was selected and appointed as Postal Assistant after competing in the LDCE/test. Several categories including Group 'D' employees are also allowed to participate in the said LDCE/test and therefore, the rules of promotion is not in picture and the only yardstick is to qualify the exam in the

order of merit for which standards are same as per the direct

recruitment by a common process of selection.

10. The rules of promotion is quite different as

the basic criteria is seniority-cum-fitness in order to get the promotion and only the employees from the feeder category is eligible who comes under the consideration zone so fixed by the DPC. However, this is absent in the case of appointment to the post of Postal Assistant from the Limited Departmental Competitive Examination quota as it is only by way of merit alone. Further we are not in agreement with the respondents' contention that since applicant is coming through 50% LDCE quota the appointment to the post should be treated as promotion post for the simple reason that the selection is made not from feeder category alone but on the basis of seniority and several other categories of employees are also eligible to appear in the said examination who are not at all in the feeder categories and further selection would be on the basis of percentage of marks alone. The contention of Mr. N. Anilkumar, SCGSC would have been correct in the case of appointment to the post under 50% by way of promotion which is the other category and they can be said to be

promotee Postal Assistant because they are coming on the basis of seniority alone.

11. In view of the above legal position and the

facts and circumstances of the case, we find that the

selection to the post of Postal Assistant is by way of an exam and which is a direct recruitment and shall not be counted as promotion for the purpose of MACP. Therefore, applicant is entitled for 3d financial upgradation as per the MACP scheme on completion of 30 years of service. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in Union of India & Ors. v. Tarsem Singh

(2008) 8 SCC 648. The respondents shall implement the

order within three months from the date of receipt of a copy

of this order. Parties are directed to bear their own costs.

6. The learned counsel for the respondent/applicant supported the order of the Central Administrative Tribunal.

7. Per contra, Sri.T C Krishna, Deputy Solicitor General of

India-in-Charge submitted that the impugned order is legally unsustainable and illegal and interference from this Court is warranted under Article 227 of the Constitution. Adv.T.C. Krishna submitted that the promotion of the respondent/applicant as Postal Assistant should be treated as an offset against 1st MACP, the TBOP granted to him on completion of 16 years should be considered as 2nd MACP and BCR granted to him on completion of 26 years should be treated as an offset against the 3 rd MACP and therefore, the applicant has already been granted three financial upgradations in his career and, there is no scope for further financial upgradation.

8. The issue involved in this case has already been

pondered by this Court in O.P(CAT) No.105/2020. As per the judgment

dated 23.10.2024, this Court decided the issue in favour of the Union of India. The relevant paragraphs are extracted hereunder:

8. During the course of arguments, the learned

Central Government Counsel has relied on the judgment of the Division Bench of this Court dated 18.06.2020 in O.P. (CAT)No.23 of 2018 and connected matters. Paragraphs 9 to 17 of that judgment read thus;

9. The Rajasthan and Karnataka High Courts allowed the claim of the applicants, since it was not demonstrated before them that there was a promotion permissible from the post of Postman to Postal Assistant. Here it has been clearly demonstrated that such a promotional avenue is available. The Madras High Court found the appointment as Postal Assistant was not by virtue of the 10 year service as a Postman, but after participating in a selection process. There is no reference to a LDCE and in that circumstance it has to be assumed that there the applicant was appointed in the direct recruitment quota. The Chhattisgarh High Court followed the other High Courts. We also are placed with an order in SLP of the Hon'ble Supreme Court, from the decision of the Madras High Court; which though dismissed the SLP, left the question of law open. We hence take a different view especially on the compelling material placed before us by way of the Recruitment Rules.

10. We extract the Clarification as referred to by the CGSC as below: MACP Scheme for Railway servants - treatment of employees selected under LDCE/GDCE Scheme - clarification G.I., Railway Board Letter No.PC-V/2009/ACP/2, dated the 12th September, 2012

References have been received from Zonal Railways seeking clarification regarding grant of benefits under MACPS in respect of the employees qualifying through LDCE/GDCE. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of Government on MACPS and it has

been decided as under:-

(i) if the relevant RRs provide for filling up of

vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases, past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP Scheme.

(ii) If the relevant RRs prescribe a Promotion Quota

to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP Scheme. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

11. Clause 9 of the MACPS reads as under:

9. Any Interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational with effect from 1.9.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

The clarification issued by the Department of Personnel and Training applies to all the Central

Government Departments, irrespective of who seeks the clarification.

12. It is evident from the Recruitment Rules that the appointment to the post of Postal/Sorting Assistant is not by way of direct recruitment alone and it has a 50% promotion quota of in-service candidate selected by

way of a LDCE. Hence the induction by LDCE is not covered by clause (i) and Clause (ii) applies; for there is a specific promotion quota spoken of in the Recruitment Rules.

13. We also see from the order of the CAT

impugned herein especially at Paragraphs 11 and 12 that the issue has been correctly analysed and the claim for counting MACP from the date of passing LDCE is rejected(sic). But however, in the operative portion in paragraph 13 it was directed that the period to be counted is declared to be from the date of appointment as Postal Assistant, which according to us is not only erroneous; but is diametrically opposite to and against the reasoning as extracted below.

14. We extract herein paragraphs 11 and 12 of the impugned common order produced in OP (CAT) No.23/2018.

11. A promotion is an advancement made in the career of an official in various modes as provided by respondents through various channels. The channel can be by moving to a higher position by virtue of seniority or by a faster channel of qualifying in a departmental examination. Both channels provide a way out of stagnation which has been sought to be alleviated by the TBOP/BCR and MACP Schemes. It depends on the motivation of employee as to which channel he proposes to use for his career advancement. Just because various channels are provided for career advancement, it does not provide a right to applicant to claim that he should be compensated for stagnation at every level of career advancement. He can obtain the dignity, honour, rank

or grade by seniority or merit channel provided by respondent, the preference of choice being left to him but both are recognized channels for promotion being provided to him for advancement. The intention of the Pay Commission was that no employee should be allowed to

stagnate in a scale of pay for over 10 years. Because the respondent has provided channels for accelerated promotion through a scheme of examination it cannot be obliterated or overlooked and the stand taken that these are not promotions or career advancement can not be accepted. Stagnation is to be counted in the career of an employee and not at every stage of promotion. Promotion by a faster channel of examination has also been provided as a way out of stagnation by the employer, exercised wisely. Hence applicant cannot claim benefit in both ways or all ways. The fine distinction sought to be drawn between promotion by merit and promotion by length of service in a particular grade is not necessary as both are modes provided for career advancement and the MACP incorporates all the avenues provided to an employee to get out of the rut of stagnation in a system. It should not be selectively applied to individual desire or greed. Reasonable promotional prospects where ever provided should be acknowledged and made a part of the running career advancement and should not be segregated into stagnation pools in the rut of which reliefs are being sought.

12. The judgment of this Tribunal in OA No.725/2012

of 20th August 2014 applies to the facts of this case and we follow the same. MACP of 10, 20 and 30 years will count from the date of promotion as Postman as the stagnation issue has been addressed by providing him a channel of career advancement by an accelerated mode of promotion by departmental examination. Hence the applicants in Oas Nos 1189, 1190 and 1197 of 2012 are entitled to get MACP only w.e.f the date of completion of 10, 20 and 30 years from the date of promotion as Postman. Claim for counting MACP from the date of passing LDC exam is rejected.

15. We perfectly agree with the reasoning

and add, at the risk of repetition, that it is not relevant as to how the employee gets promoted, by way of seniority or a merit oriented selection. The financial up-gradation as intended by the Career Progression Schemes is to ensure that an employee does not suffer the hardship of stagnation, for reason only of there being not available enough avenues for promotion. Such stagnated employees are allowed a financial up- gradation, to the higher scale or the Grade Pay, without a functional promotion to the higher status. The employee having availed a fast track for promotion and acquired it for reason of his superior merit, cannot claim a further up-gradation as per the Assured Career Progression Scheme. That would be conferring a double benefit of promotion and financial up-gradation, when by the former his career has progressed.

16. The applicants were appointed as

Postman after being engaged as Extra Departmental Agent (EDA)/Gramin Dak Sevak (GDS). The Hon'ble Supreme Court in AIR 2016 SC 3789 [Najithamol Y and others v. Soumya S D and others] found that recruitment to the post of Postman is a fresh appointment. Hence the service, for granting MACP has to be counted from that date. We notice the facts in each of the above cases but emphasise that none of the applicants have a contention that they applied under the direct recruitment quota and were appointed as Postal Assistants in that 50% quota. The very contention that they were appointed after being selected in a LDCE validates the stand of the P&T Department that they were promoted to that post; as per the Recruitment Rules.

17. The MACP Scheme was introduced on 01.09.2008. Prior to that in the Postal Department there were two financial up-gradation; one in the 16th year under Time Bound One Promotion (TBOP) and in

the 24th year, under the Biennial Cadre Review (BCR). When MACP is introduced, the benefits though reckoned on completion of 10,20 and 30 years, the same would be payable only from 01.09.2008.

9. In the said judgment, the Division Bench held that when

MACP Scheme is introduced, the benefit though reckoned on completion of 10, 20 and 30 years, the same would be payable only from 01.09.2008. In view of the law laid down in the decision of the Division Bench in O.P(CAT)No.23 of 2018 and connected matters, Ext.P6 order dated 18.06.2019 of the Central Administrative Tribunal, Ernakulam Bench cannot be sustained.

9. In view of the dictum laid down in the aforementioned

case, this OP(CAT) is allowed. Consequently, the O.A. is dismissed. Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE Sbnal/ APPENDIX OF OP (CAT) 220/2020 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE MEMO NO. B.5/ACT/C DATED 17.04.1978 ISSUED BY THE SENIOR SUPERINTENDENT OF POST OFFICER, MADARAS CITY CENTRAL DIVISION, MADRAS.

ANNEXURE A2 TRUE COPY OF THE MEMO D B/BCR/1/DLG DATED 04.02.1999 ISSUED BY THE 1ST RESPONDENT IN OA. ANNEXURE A3 TRUE COPY OF THE MEMO O B/BCR/1/DLG DATED 18.08.2008 SUED BY THE 1ST RESPONDENT IN OA. ANNEXURE A4 TRUE COPY OF OM ISSUED AS PER FILE NO. 4-7 (MACPS) 2009-PCC DATED 18.09.2009 ISSUED BY THE DDG ESTABLISHMENT OF THE 1ST RESPONDENT. ANNEXURE A5 TRUE COPY OF ORDER 16.03. 2016 UN OA NO. ANNEXURE A6 TRUE COPY OF ORDER DATED 14.03.2013 IN A ANNEXURE A7 TRUE COPY OF THE JUDGMENT DATED 04.02.2015 IN WPC 30629/2014 OF TH HONBLE COURT OF MADRAS,. ANNEXURE A8 TRUE COPY OF THE JUDGMENT DATED 16.08.2016 IN SLP @ NO. 4848/20165 OF THE HONBLE SUPREME COURT. ANNEXURE A9 TRUE COPY OF MEMO NO. B2/MACPIII/DLGS 2016 DATED 22.03.2017

ISSUED BY THE SENIOR SUPERINTENDENT OF POST OFFICES, CHENAI CITY NORTH DIVISION. ANNEXURE A10 TRUE COPY OF NO. B/MCAP/GNL DATED 06.11.2017 ISSUED BY THE 1ST RESPONDENT IN OA, ANNEXURE R1 TRUE COPY OF THE DIRECTORATE LETTER NO. 4- 7(MACPS) 2009-PCC DATED 18.10.2010. ANNEXURE R2 TRUE COPY OF THE DEPARTMENT OF POST'S POSTAL ASSISTANTS AND SHORTING ASSISTANTS RECRUITMENT RULES 1971. ANNEXURE R3 TRUE COPY OF THE ORDER ISSUED TO THE APPLICANT UPON PROMOTION TO THE CADRE OF POSTAL ASSISTANT. ANNEXURE R4 TRUE COPY OF THE COMMON ORDER DATED 07.08.2013 OF THE HONBLE CENTRAL ADMINISTRATIVE TRIBUNAL IN OA NO. 127/2012 AND CONNECTED CASES. ANNEXURE R5 TRUE COPY OF THE ORDER OF THE CAT, ERANAKULAM BENCH DATED 20.08.2014 IN OA 725/2012. ANNEXURE R6 TRUE COPY OF THE ORDER OF THE CAT ERNAKULAM BENCH DATED 16.05.2017 IN OA NO. 448/2014. ANNEXURE A11 TRUE COPY OF ORDER DATED 18.07.2019 IN O.A. NO. ANNEXURE A12 TRUE COPY OF THE ORDER DATED 30.07.2019 IN OA NO. 180/00272/2018 OF THE CAT, ERNAKULAM BENCH. EXHIBIT P1 TRUE COPY OF THE OA NO. 1114/2017 FILED BY THE PETITIONER DATED 28.11.2019 BEFORE THE CAT, ERNAKULAM BENCH. EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT IN OA BY THE PETITIONER IN OA NO. 1800/00114/2017. EXHIBIT P3 TRUE COPY OF MA 1027/19 DATD 27.10.2019 FIELD BY RESPONDENT IN OA. EXHIBIT P4 TRUE COPY OF THE ORDER IN OA 1114 OF 2017 DATED 28.11.2019 ISSUED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.

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