

Central Administrative Tribunal - Ernakulam

K.J.Mercyamma vs 3 The Superintendent Of Post ... on 4 June, 2015

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 572/2013

Thursday this the 4th day of June, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mr. R.Ramanujam, Administrative Member

K.J.Mercyamma

Retired Sub Postmaster

Alappuzha Bazar PO, Alappuzha

Residing at C benezer, Ponga

Mancombu, Thekkekara

Alappuzha District.

...Applicant

(By Advocate Mr. B. Unnikrishna Kaimal)

Versus

1 Union of India represented by the
Secretary to Government of India,
Department of Posts,
Dak Bhawan, New Delhi 110 001.

2 The Director of Postal Services,
Central Region, Office of the Postmaster
General, Ernakulam 682016.

3 The Superintendent of Post Offices,
Alappuzha Division, Alappuzha 688012.

...Respondents

(By Advocate Mr. N. Anil Kumar, Sr.PCGC)

This application having been finally heard on 1.6.2015, the Tribunal
on 4..6.2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member This O.A is filed challenging the rejection of the claim made by the applicant for the third financial up- gradation w.e.f. 1.9.2008. Shorn off the details the case of the applicant can be stated thus.

2. The applicant joined the service as Postal Assistant on 1.7.1975. She got the first Time Bound grade promotion on completion of 16 years service. She got the second BCR promotion on completion of a total 26 years of service. BCR promotion was in the year 2001. While she was in the BCR grade her scale of pay was Rs. 5000-8000. In the year 2007 she was offered promotion to lower selection grade (LSG for short) in the pay scale of Rs. 4500-7000. MACP Scheme was introduced w.e.f. 1.9.2008. The applicant was denied the third financial up-gradation though she has completed 30 years of service as on 1.7.2005. The reason for rejection of the same put forward by the respondents is untenable. The applicant contends that she is entitled to get the third financial up-gradation.

3. The respondents resisted the claim contending that as per Directorate Letter dated 14.8.2012 it was clarified that if an employee refused regular promotion it will have an adverse impact on the MACP up-gradation. LSG is a grade promotion based on seniority cum fitness whereas MACP is only a financial up-gradation attached to a person based on his length of service. In paragraph 25 of Annexure.A1of MACP it is made clear that if a regular promotion is declined by an employee before becoming entitled to financial up- gradation he will not be allowed financial upgradations on the premise that he was stagnated for want of personal avenues. As the applicant refused LSG promotion during the year 2007 she is not entitled to the financial up- gradation as claimed by her.

4. Though the OA was filed with a delay of 243 days, since we thought of disposing of the OA itself, we found that the application need not be dismissed on the ground of delay. It was allowed. We have thus proceeded to hear application O.A itself.

5. The short point that falls for consideration is; whether the rejection of the claim for third financial up- gradation is illegal and whether the applicant is entitled to the third financial up-gradation as sought for by her?

6. Heard the learned counsel for the applicant and the learned counsel for the respondents. We have gone through the annexures/documents produced by the parties.

7. The learned counsel for applicant heavily relied on the judgment of the Bombay Bench of the Tribunal (CAT). In that case the employee refused promotion before the enforcement of the ACP Scheme. The facts dealt with therein are entirely different. It is important to note that in the case dealt with by the Bombay Bench of the CAT there was no anticipation of the intended benefit of the ACP Scheme and it was at that time the applicant therein refused the promotion offered. There the employee was not aware of the ACP Scheme when he refused promotion as it was earlier to the introduction of ACP Scheme. Had it been a case where the refusal was made at a time when there was no ACP Scheme then certainly the position would have been different. Here admittedly the applicant was offered the promotion to LSG in the year 2007 long after the introduction of the ACP Scheme. True the MACP Scheme was introduced with effect from 1.9.2008. As per that Scheme

employee is entitled to get three financial upgradation ie., on completion of 10 years, 20 years and 30 years of service. It is not in dispute that had the applicant not refused the promotion to LSG in the year 2007, she would have been entitled to get the third MACP on her completion of 30 years of service on 1.7.2005. MACPS contemplates merely placement on personal basis in the immediate higher grade pay/grant of financial benefits only and it does not amount to actual or functional promotion of the employees concerned. Financial up-gradation under the MACPS is purely personal to the employee.

8. Clause 25 of Annexure A.2-MACP Scheme is pressed into service in this case. Clause 25 reads:

If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial up-gradation, no financial up- gradation shall be allowed as such on employee has not been stagnated due to lack of opportunities. If, however, financial up-gradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial up- gradation. He shall, however, not be eligible to be conspired for further financial up-gradation till he agrees to be considered for promotion again and the second and the next financial up-gradation shall also be deferred to the extent of period of debarment due to the refusal.

Here admittedly the promotion to LSG was offered to the applicant. It is also not in dispute that the same was refused by the applicant. Further it is not disputed that the ACP was in vogue at the relevant time. Therefore, it cannot be said that the applicant was unaware of the fact that if she refused the promotion to LSG she would not be entitled to get the financial up-gradation under the ACP Scheme. The fact that it was subsequently modified and MACP was introduced would not alter the position since Clause/paragraph of 25 of MACP Scheme makes it clear that if the promotion offered was refused by the employee before becoming entitled to a financial up-gradation, no financial up-gradation shall be allowed. The principle behind is that once promotion is offered there is no stagnation. MACPS envisage merely placement in the immediate next higher pay in the hierarchy of the recommended revised pay band and grade pay as given in Section 1 Part -A of the 1st Schedule of the CCS (Revised Pay) Rules, 2008. Thus if the government servant gets his regular promotion in the hierarchy of his cadre he cannot contend, on refusal of the promotion, that he should be granted the financial up- gradation.

9. Since the Bombay Bench of CAT was dealing with a case which arose prior to the introduction of the ACP when there was no anticipation of the intended benefits under that Scheme, that decision cannot come to the rescue of the applicant.

10. The respondents have also relied upon Annexure.R.3, the clarificatory notification dated 14.8.2012. This clarification happened to be issued since it was contended that refusal of offer of regular promotion during the interim period effective from 1.9.2008 to the date of issue of the orders under the MACP Scheme cannot be taken as refusal since the employees were not in a position to know that the government was going to introduce MACPS for them w.e.f. 1.9.2008. It was clarified that the refusal to regular promotion during that interim period should be separately

considered. The matter was taken up with DoP&T and as per their order dated 6.8.2012 (ID Not No.46752/CR/12/) it was clarified that the ACP/MACP Schemes were being operated as safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues and that in case an employee has refused promotion, no financial up-gradation is allowed under ACP/MACP Schemes. It was further stated that Para 25 of MACP is a policy decision of the government with regard to the effect of refusal of regular promotion on the operation of the Scheme and as such relaxation in the matter is not possible in deviation of the provisions of the Scheme. It is further submitted by the learned counsel for the respondents even if no such clarification had been issued the position so far as the case on hand is concerned is very clear that the refusal was made in the year 2007 at a time when ACP Scheme was in vogue. She could have reasonably anticipated an improvement in the ACP Scheme to provide for three upgradations under a new Scheme. By voluntarily declining the promotion to LSG, the applicant subjected herself to a possible denial of MACP. She cannot now turn around and contend that the refusal made by her should not be considered and that she should be allowed the third financial up-gradation.

11. We find no merit in this application. The O.A is accordingly dismissed. No costs.

(R.Ramanujam)
Administrative Member
pps

(N.K.Balakrishnan)
Judicial Member