

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE**

**ORIGINAL APPLICATION NO.170/01707/2018**

**DATED THIS THE 31<sup>st</sup> DAY OF JANUARY, 2020**

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER**

**HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

M.Lingaraju  
S/o H.Mancaiah  
Aged about: 59 years  
Working as MTS  
Basavanagudi HO  
Bangalore-560004.  
Residing at:  
No.117, II Main  
III Cross, Kastribadavane  
Kamalanagar  
Bangalore-560079.

....Applicant

(By Advocate Sri P.Kamalesan)

Vs.

1. Union of India  
Reptd by Director General of Posts  
Department of Post  
Dak Bhavan  
New Delhi-110001.
2. Post Master General  
Bangalore Region  
Bangalore-560001.
3. Chief Post Master General  
Karnataka Circle  
Bangalore-560001.
4. Senior Superintendent of Post Offices  
Bangalore South Division  
Bangalore-560001.
5. Senior Post Master  
Basavanagudi HO  
Bangalore-560004.

....Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.PC for CG )

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was engaged as a casual labour during the year 1984 and conferred temporary status from 1.12.1989. After completion of 3 years as Temporary status casual labour, he was treated on par with Group-D status from 1.12.1995 and he was posted as LR Group-D at Basavanagudi HO from 23.1.2009 and placed under new pension scheme. Aggrieved by placing him under new pension scheme, the applicant has filed OA.No.1436/2014 which was allowed by this Tribunal vide order dtd.16.6.2015 holding that the applicant was eligible to be placed under CCS Pension Rules 1972(Annexure-A1). The respondents challenged the said order before the Hon'ble High Court of Karnataka in WP.No.54224/2015 which was dismissed by the High Court vide order dtd.1.2.2016(Annexure-A3). Thereafter, the 3<sup>rd</sup> respondent issued orders dtd.1/4.7.2016 to comply with the orders of this Tribunal(Annexure-A4). The 4<sup>th</sup> respondent issued order dtd.22.7.2016 to modify the date of appointment of the applicant from 23.1.2009 to 1.12.1995(Annexure-A5). The applicant was granted 1<sup>st</sup> financial upgradation under MACP w.e.f. 1.9.2008 vide Memo dtd.16.8.2016 of the 4<sup>th</sup> respondent(Annexure-A6). Vide Memo dtd.16.8.2016, the applicant was granted 2<sup>nd</sup> MACP w.e.f. 17.12.2015. Thereafter, the 4<sup>th</sup> respondent issued orders dtd.12.2.2018(Annexure-A8) for modifying the date of appointment of the applicant from 1.12.1995 to 10.1.2012 and order dtd.3.7.2018(Annexure-A9) for withdrawing the 1<sup>st</sup> and 2<sup>nd</sup> MACPs. Then the applicant submitted a petition to the Secretary, Dept. of Posts, New Delhi on 4.7.2018 against the orders of the 4<sup>th</sup> respondent(Annexure-A10). Thereafter, the 5<sup>th</sup> respondent issued an order dtd.10.7.2018(Annexure-A11) to the applicant directing to credit the overpaid pay and allowances working out to Rs.2,06,491/- from 1.9.2008 to 30.6.2018 due to

withdrawal of 1<sup>st</sup> & 2<sup>nd</sup> MACPs. The applicant submitted representation dtd.16.7.2018(Annexure-A12) requesting not to resort to any recovery. But the 5<sup>th</sup> respondent resorted to effecting recovery at the rate of Rs.5000/- per month from the salary of June, 2018(Annexure-A13). The applicant submits that the Hon'ble Apex Court in *Civil Appeals No.1855-1857/1971* held that promotion/upgradation made on permanent basis and so reversion of the promoted/upgraded incumbents is violative of Article 311(2) of the Constitution of India(Annexure-A14). In *Civil Appeal No.11527/2014(State of Punjab vs. Rafiq Masih)*, the Hon'ble Apex Court has declared that any recovery from Group C and D is impermissible in law(Annexure-A15). The applicant submits that the financial upgradations were withdrawn unilaterally without providing any opportunity of hearing which is in violation of principles of natural justice. Therefore, the order of modifying the date of appointment, withdrawing the financial upgradations under MACP and the order of recovery are arbitrary and unsustainable under law. Accordingly, the applicant has filed the present OA seeking the following relief:

*I. (a) Quash the Senior Superintendent of Post Offices, Bangalore South Division, Bangalore-560041, vide No.B2/MACP/Dlgs/17-18 dated 12.2.2018 vide Annexure-A8*

*(b) Senior superintendent of post office, Bangalore South division, Bangalore-560041, Memo No.B2/MACP I & II/MTS/Dlgs/18-19 dated 3.7.2018 vide Annexure-A9*

*(c) Senior Post Master, Basavanagudi, letter No.A2/ML Dlgs, 18-19 dated.10.7.2018 vide Annexure-A11.*

*II. Consequently direct the respondents to restore the original date of appointment as 1.12.1995 and restore the financial upgradation MACP I & II granted from 1.9.2008 and 17.12.2015*

*III. Grant any other relief as deemed fit into facts and circumstances of the case, in the interest of justice and equity.*

2. The respondents, on the other hand, have submitted in their reply statement that the applicant while working as MTS at Basavanagudi HO was conferred with temporary status Group D vide office letter dtd.7.5.2013 by cancelling the original appointment orders issued vide office letter dtd.23.1.2009 and he was treated on par with the Group D after completion of 3 years of service i.e. from 10.1.2012. The applicant was clearly intimated vide office letter dtd.17.6.2013 that the counting of service for the purpose of pension and terminal benefits of casual labours conferred with temporary status will commence from the date of regularisation. Aggrieved by this, the applicant had approached this Tribunal in OA.No.1436/2014 which is allowed holding that the matter is covered in a similar case in WP.No.11679/2011 of the Hon'ble High Court of Karnataka. Based on the directions received from CPMG, Karnataka Circle vide order dtd.1.7.2016, the order passed by the Tribunal in OA.No.1436/2014 was implemented by taking the date of appointment of the applicant as 1.12.1995 i.e. the date from which he was conferred with temporary status on par with Group D and eligible for pensionary benefits under CCS(Pension) Rules, 1972 vide office memo dtd.22.7.2016. Subsequently, in accordance with the instructions conveyed vide PMG, BG HQ Region letter dtd.27.12.2017, the applicant's case was reviewed by the competent authority in the wake of observations of CIFA intimating that the date of appointment of the applicant as MTS/Gr.D will be the date of entry into Government service and to take corrective action. Accordingly, the date of appointment of the applicant is taken as 10.1.2012 instead of 1.12.1995 vide office memo dtd.12.2.2018 and as per GOI Dept. of Posts letter dtd.30.11.1992 only 50% of service rendered in temporary status is to be counted for the pensionary benefits. Further action for rectifying the erroneous grant of MACP-I &

It had to be initiated in the case of the applicant. Therefore, the matter regarding permission to hold review screening committee meeting was referred to PMG, Bengaluru vide office letter dtd.29.12.2017. Approval of the competent authority for holding review screening committee meeting was received on 9.1.2018. Accordingly, the review screening committee meeting was held on 15.2.2018 for review of financial upgradation granted to the applicant. The minutes of the screening committee was approved by the competent authority vide RO letter dtd.19.6.2018. While conveying the approval of the recommendation of the review screening committee, it was ordered by RO that an opportunity of hearing may be given to the applicant by SSPOs in order to meet natural justice in finalizing the case. The applicant was directed to attend the office on 22.6.2018 for a personal hearing in the case. Accordingly, he attended the office as scheduled. The entire details of the case were explained to him as well as the consequential effect of withdrawal of MACP-I & II granted to him. The applicant pleaded vide minutes of personal hearing dtd.27.6.2018(Annexure-R1) that he is left with hardly one year of service and that any recovery of huge amount from him at this point of time would be a burden for him and requested to bail him out of the present situation. He was informed that after working out the actual amount excess paid amount, the mode of recovery would be decided for which he has agreed to. While bringing the applicant under Old Pension Scheme, his date of appointment was erroneously taken as 1.12.1995 instead of 10.1.2012 and as a result he was granted MACP-I & II erroneously. Accordingly, the financial upgradations of MACP-I & II were withdrawn as the date of entry into regular service as Group D of the applicant is 10.1.2012. Therefore, he is not eligible for any financial upgradation. While implementing the orders, the

Sr.Postmaster, Basavanagudi vide letter dtd.10.7.2018 informed the applicant that the over payment of pay and allowances worked out to Rs.2,06,491/- and same is to be credited under UCR and to intimate the credit particulars, failing which it will be recovered from the pay and allowances commencing from the pay of July-2018. Being aggrieved, the applicant has submitted a petition to the Secretary, DOP, Dak Bhavan, New Delhi and the same was forwarded to PMG (legal cell) but their reply is awaited. As the applicant has not credited the excess paid amount, the Sr.Postmaster, Basavanagudi HPO started recovery from the pay of the applicant at the rate of Rs.5000/- per month.

3. The respondents submit that the financial upgradation is not a promotion to the employees concerned, there shall be no change in the designation, classification or higher status and shall have no relevance to their seniority position. Hence, it cannot be construed as promotion and as such the question of violation of provisions of Article-311(2) of constitution of India does not arise at all as contended by the applicant. The officials will be informed while issuing the orders that the orders of financial upgradation given are liable to be either modified or cancelled at a later date if it is found that they are not found fit or not eligible for such financial upgradation under MACP for any reason at a later stage. Any excess paid amount is liable to be recovered at a later date. Hence, the official should voluntarily credit the amount without giving room for recovery when he is not eligible for that financial upgradation. Instead of preferring appeal to the appellate authority, the applicant has preferred representation directly to the Secretary DOP. Thus the applicant has not exhausted the remedies. Accordingly, the OA is liable to be dismissed.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant's status as an employee with temporary status on par with Group-D w.e.f. 1.12.1995 has been concretized vide order dtd.16.6.2015 issued in OA.No.1436/2014 by this Tribunal and the order passed in WP.No.55888/2015 vide dtd.1.2.2016 by the Hon'ble High Court of Karnataka. Vide Annexure-A6 order dtd.16.8.2016, the applicant is also granted 1<sup>st</sup> MACP w.e.f. 1.9.2008 taking the service w.e.f.1.12.1995. Subsequently vide Annexure-A7, he has also been given 2<sup>nd</sup> MACP w.e.f.17.12.2015. Vide Annexure-A8, the respondents have unilaterally taken the date of appointment of the applicant as 10.1.2012 instead of 1.12.1995 and have also withdrawn the 1<sup>st</sup> and 2<sup>nd</sup> MACP benefits granted vide Annexure-A9 order without any notice to the applicant. Vide Annexure-A11, he has also been directed to credit the excess pay and allowances because of withdrawal of 1<sup>st</sup> & 2<sup>nd</sup> MACP benefits. As already noted, the confirmation of temporary status on par with Group-D has been done w.e.f. 1.12.1995. The two MACPs have been given to the applicant without any juncture from the applicant. The respondents would claim that the orders of upgradation clearly state that these orders are liable to be either modified or cancelled at a later date if it is found that the applicant is not fit or eligible for such financial upgradations under MACP for any reason. They state that in view of this point, the applicant cannot claim the MACP as a matter of right. The applicant would contend that he is clearly coming under the impermissible recoveries as ordered by the Hon'ble Apex Court in the *State of Punjab & others vs. Rafiq Masih(White Washer)*'s case. The applicant also states that he has only one year service to retire. This is also one of the grounds against recovery as ordered by the Hon'ble Apex Court in the case cited (supra).

5. We agree with the contention of the applicant and inasmuch as the two MACPs have been given without any juncture from the applicant, the respondents have erred in withdrawing the same without giving any opportunity to the applicant and therefore the recovery orders issued against the applicant are quashed. Any amount recovered from the salary of the applicant has to be repaid to the applicant within a period of two(2) months from the date of issue of this order.
6. The OA is allowed to this extent. No costs.

(C.V.SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ps/

**Annexures referred by the applicant in OA.No.170/01707/2018**

Annexure-A1: Order dtd.16.6.2015 in OA.No.1436/2014

Annexure-A2: Order dtd.7.4.2015 in WP.11679/2011

Annexure-A3: Order dtd.1.2.2016 in WP.Nos.54224/2015 & batch

Annexure-A4: Letter dtd.1/4.7.2016 of CPMG, Karnataka Circle



Annexure-A5: Letter dtd.22.7.2016 of Supdt. of Post Offices  
Annexure-A6: Memo dtd.16.8.2016 of Sr.Supdt. of Post Offices  
Annexure-A7: Memo dtd.16.8.2016 of Sr.Supdt. of Post Offices  
Annexure-A8: Letter dtd.12.2.2018 of Sr.Supdt. of Post Offices  
Annexure-A9: Memo dtd.3.7.2018 of Sr.Supdt. of Post Offices  
Annexure-A10: Applicant's petition dtd.4.7.2018  
Annexure-A11: Letter dtd.10.7.2018 of Sr.Post Master  
Annexure-A12: Applicant's representation dtd.16.7.2018  
Annexure-A13: Applicant's pay slip for the month of July 2018  
Annexure-A14: Order dtd.2.12.1981 in CA.No.1855-1857/1971  
Annexure-A15: Order dtd.18.12.2014 in CA.No.11527/2014

**Annexures with reply statement:**

Annexure-R1: Copy of the minutes of personal hearing dtd.27.6.2018

\*\*\*\*\*