

(2014) 02 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 18318 of 2013

Union of India and Others

APPELLANT

Vs

Paulbhai

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) 02 GUJ CK 0039

Hon'ble Judges : Vijay Manohar Sahai, J;K.J. Thaker, J

Bench : Division Bench

Advocate : R.V. Acharya, for the Petitioners No. 1-4, for the Appellant;

Final Decision : Dismissed

Judgement

Vijay Manohar Sahai, J.—We have heard Ms. R.V. Acharya, learned advocate appearing for the petitioners. This writ petition has been filed by the petitioners challenging the order of the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad passed in Original Application No. 189 of 2012, decided on 06.08.2013.

2. The brief facts of this case are that the respondent-original applicant was appointed as Postal Assistant on 12.02.1975 and was granted Time Bound One Promotion (TBOP) in grade pay of Rs. 2800/- in 1991 and benefit under Biennial Cadre Review (BCR) in grade pay of Rs. 4200/- in 2001. He was selected and offered promotion on 06.09.2007, which he declined. This was accepted by the Circle Office with the condition that he will lose his chance for promotion to HSG-II, HSG-I. Effective date of MACP is 01.09.2008. Respondent-original applicant retired on 31.12.2008 and prior to his retirement, he was offered once again LSG promotion on 10.12.2008. Although he did not deny it, but he could not avail it because of non-issue of posting orders. He represented to the higher authority for denial of MACP-III Scheme in the grade pay of Rs. 4600/- on the ground of average CR for the year 2004-05, but he was informed that MACP was not being provided to him due to his denial of his LSG promotion in 2007 as per clause 25

of the MACP Scheme. The same view was endorsed by PMG, Vadodara.

According to the MACP Scheme, the respondent-original applicant was not entitled and therefore, the petitioners-original respondents rejected his claim. Subsequently, MACP Scheme, which was produced in the Department of Posts, Gujarat with effect from 01.09.2008 was modified. Paragraph-25 of the Scheme was modified by the petitioners-original respondents vide their Circular dated 18.09.2009 and therefore, the respondent-original applicant was entitled for promotion which has been granted by the Central Administrative Tribunal. Paragraph Nos. 7, 8 and 9 of the judgment of the Tribunal are extracted below:

7. We find that the Scheme of MACP was introduced by the Department of Posts as per the Scheme notified by the Department of Posts and Telegraph which came into effect from 01.09.2008. The salient features of the MACP Scheme circulated by Department of Posts vide their communication dated 18.09.2009 (Annexure-A/6) provides in para-9 of Annexure-I to MACP Scheme that regular service for the purposes of MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Para-13 provides that the earlier Time Bound Promotion Scheme or any other scheme of promotion shall not run concurrently with MACPS. Para-25 of the Scheme provides as under:

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

8. The respondents have thus relied on the provisions of para-25 of the Scheme to deny the MACP-III to the applicant. However, we observe that in column-4 of the clarification issued by the Department of Posts at Annexure-A/7, it is stated as under:

Therefore, the issue raised is already covered under Para 25 and in such cases where due date of financial upgradation precedes the refusal for regular promotion, financial upgradation under MACPS shall be allowed.

(emphasis supplied)

In the light of this clarification, we find that the present applicant had joined service on 12.2.1975 and had completed 30 years of service in February 2005. Thus, the due date of financial upgradation would be the exact date in February 2005. He refused LSG subsequently on 06.09.2007. Thus, the due date of financial upgradation preceded the refusal for regular promotion and hence,

under the said clarification he should be allowed financial upgradation under the MACPS Scheme.

9. In view of above, we find merit in the contentions of the applicant and hold that the stand of the respondents that the applicant is not entitled to MACP-III in view of para-25 of the aforementioned Scheme is not correct, in line with the aforementioned clarification of the Department of Posts. Due date of financial upgradation to the applicant preceded his refusal under LSG cadre and applicant is thus, entitled to benefits claimed by him.

We are agree with the view taken by the Central Administrative Tribunal. Accordingly, this writ petition has no merits and is dismissed summarily.