



**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

13/01/2020

O.A./260/816/2014

BIBHUTI BHUSAN DASH

-V/S-

M/O RAILWAYS

ITEM NO:36

FOR APPLICANTS(S) Adv. : Mr.N.R.Routray

FOR RESPONDENTS(S) Adv.: Mr.D.K.Behera

Notes of The Registry	Order of The Tribunal
	<p>The OA has been filed seeking the following reliefs :</p> <p>"(i) To quash the order of rejection dtd. 28/29.10.2014 under Ann.A/11;</p> <p>(ii) And to direct the Respondents to grant 3rd financial upgradation under the MACP Scheme w.e.f. 1.9.2008 in PB-II with Grade Pay of Rs.4200/- at par with B.K.Otta and Dhoba Sahu applicants in OA No. 377/2010 and 394/2010;</p> <p>(iii) And further directed the Respondents to pay the arrear salary w.e.f. 1.9.2008 with 12% interest for the delayed period of payment.</p> <p>And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.</p> <p>And for which act of your kindness the applicant as in duty</p>

bound shall every pray."

2. The facts in brief are that the applicant who was initially appointed on 23.3.1985, had been promoted by the respondents to the post of EFWM Grade I on 13.5.1994 on ad hoc basis (Ann.A/3) and later on he was regularised vide order dated 10.10.2002 (Ann. A/4). The applicant was thereafter granted the 3rd MACP w.e.f. 10.10.2012 vide order dated 19.6.2013 (Ann.A/6). He claims the benefit of 3rd MACP w.e.f. 1.9.2008 in the light of the order passed by the Tribunal in OA No. 377/2010 vide order dated 22.3.2012 (Ann. A/7) which has been confirmed by Hon'ble High Court in WP(C) No. 12424/2012 (Ann. A/8). It is also the case of the applicant that the respondents have antedated the 3rd MACP benefit of the applicant in the above OAs to 1.9.2008 counting their ad hoc period of promotion.

3. The respondents have filed the Counter opposing the OA and stating that as per the guidelines on MACP the regular service is to be counted. Since the applicant was regularised in the post of EFWM Grade I w.e.f. 10.10.2002 he was allowed the 3rd MACP after ten years of regular service on 10.10.2012. The respondents have taken a stand that the orders of the Tribunal and Hon'ble High Court referred by the applicant in the OA are not applicable to the applicant since these are factually distinguishable.

4. Heard learned counsels for the applicant and the respondents and also considered the pleadings as well as submission by the parties.

5. Applicant's counsel submitted that the decision of the Tribunal in OA No. 377/2010 has been relied upon by the Tribunal in a number of cases and a recent order dated 28.6.2019 passed by the Tribunal in OA No. 826/2014 has been cited by learned counsel. The decision of the Tribunal in OA No. 377/2010 (Bijoy Kumar Otta -vs- UOI & Ors.) has been relied upon by this Tribunal while allowing similar benefits to the applicant in OA No. 826/2014 (Gour Chand Dutta -vs- UOI & Ors.). Copy of the said order dated 28.6.2019 has been furnished by the learned counsel for the applicant.

6. Learned counsel for the respondents reiterated the stand taken in the counter that the facts of the earlier case are not applicable and it was stated that the cited judgments are distinguishable.

7. In OA No. 377/2010, the applicant was promoted on ad hoc basis to HS Grade I from Electric Fitter cum Wireman Grade II after passing the Trade Test on 3.5.1994 and was regularised in the said post on 10.10.2002. The applicant represented for counting of the ad hoc period which was rejected. The applicant has challenged the rejection order in OA No. 377/2010. Similar issue was also considered by this Tribunal in OA No. 826/2014 in which the applicant was given ad hoc promotion on 28.2.1999 after qualifying in the Trade Test and completing other formalities required for promotion. He was regularised on 10.10.2002. The OAs were disposed of with a direction to the respondents to check if the applicant was continuing without break in the said post on ad hoc basis till regularisation and if it is so, the applicant's date of promotion as Technical Grade I is to be taken as on 28.2.1995. In other words the ad hoc period of promotion will be counted for the purpose of MACP benefit which will be allowed after completion of 10 years in the same grade.

8. We are of the considered view that the facts and circumstances of the present OA are similar to that of OA No. 826/2014 and OA No. 377/2010 which have been cited by the applicant, for which the applicant is also entitled for similar benefit. In this OA, the applicant claims that he was promoted on ad hoc basis on 13.5.1994 (Ann. A/3) after passing the Trade Test and such claim has not been contradicted by the respondents.

9. Accordingly, this OA is disposed of with a direction to the respondents to count the ad hoc period for promotion as EFWM Grade I from 13.5.1994, if the applicant was continuing in the post of EFWM Grade I on ad hoc basis from 13.5.1994 without any break till he was regularised on 10.10.2002 and as a consequence, he will be entitled for the benefit of 3rd MACP from 1.9.2008 in place of 10.10.2012, with consequential benefits as per the rules. The respondents are directed to allow such benefit after checking the

facts as stated above subject to fulfilling conditions of MACP Scheme. The entire exercise is to be completed within 90 (ninety) days from the date of receipt of the copy of this order.

10. The OA stands disposed of as above with no order as to costs.

11. Copy of this order be handed over to learned counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

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