

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 77/2015

Reserved on: 03.02.2020
Pronounced on: 06.02.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Pati Ram son of Shri Narottam Singh, aged about 60 years, resident of Village-Ardaya, PO-Achnera, Tehsil-Kirauli, Distt- Agra (UP), at present employed on the post of Mechanical Driver Gd-II in the office SSP (P Way), Bundi, WCR.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.)
2. Divisional Railway Manager, WCR, Kota Division, Kota.

...Respondents.

(By Advocate: Shri M.K.Meena)

ORDER

Per: A.Mukhopadhyaya, Member (A):

Vide the present Original Application, (OA), the applicant has sought the benefit of first financial upgradation under the Assured Career Progression, (ACP), Scheme of the respondents from 29.05.2001 which, he states, is the due date for this, with all consequential benefits including payment of arrears and interest on the same at the rate of 9% per annum.

(2)

2. The relevant contentions of the applicant are that he joined service with the respondents as Vehicle Mechanic on 30.11.1974 on casual basis and was granted temporary status with effect from 01.01.1981. Thereafter, he was regularised in the post of Mechanic Grade-III with effect from 28.10.1997. He avers that the respondent organisation, vide Railway Board RBE No.69/2004 dated 31.03.2004, has issued certain clarifications relating to the ACP Scheme of the respondent and that this RBE directs **"that 50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP Scheme....."**; (Annexure A/4). Even otherwise, since he was granted temporary status on 01.01.1981 and continued in this category for over 16 years till 28.10.1997, he would be entitled to have this period considered as constituting over 8 years of regular service by virtue of RBE No.69/2004 as referred to above. He thus contends that after four more years, i.e. by the year 2001 he had completed the 12 years of service necessary for being granted the first financial upgradation under the ACP Scheme of the respondents. The applicant contends that in response to a representation that he had submitted with regard to his entitlement under the Modified Assured

(3)

Career Progression, (MACP), Scheme, (the successor of the ACP Scheme in question), the respondents have themselves clarified vide their letter of 01.10.2014, (Annexure A/1), that he stands regularised in the service of the respondents from 29.05.1989 itself if his service of over 6 years on casual basis is also taken into account. Thus, he states that there is every force in his contention that on completion of 12 years of service, (whether by 1989 or by 1991), he becomes eligible for grant of the first financial upgradation on 29.05.2001 itself.

3. In their reply, the respondents have not disputed the applicant's appointment as casual labour mechanic on 30.11.1974, the grant of temporary status to him on 01.01.1981 and the regularisation of his services from 28.10.1997. When it comes to the applicant's claim made in para 4(7) of the OA that he had completed 12 years of regular service on 29.05.2001 by reckoning his date of initial regular appointment as 29.05.1989, the reply given by the respondents, [para 4(7) of reply to OA], does not specifically deny or even address this contention and instead refers to the applicant's representation for grant of MACP which is not the subject matter of this OA. This para of the reply focuses entirely on the question of grant of second and third financial upgradations under the MACP

(4)

Scheme which again, as stated earlier, does not relate directly to the relief sought by the applicant which is under the ACP Scheme which predates the MACP Scheme.

4. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Learned counsel for the applicant, in his arguments, reiterated the averments made with regard to grant of the first ACP upgradation under the ACP Scheme on 29.05.2001 and pointed out that this claim had not been specifically denied or countered by the respondents in their reply to the OA.

5. Learned counsel for the respondents, in his arguments, contended that the ACP Scheme was stopped with effect from 01.09.2008, (para 7 of reply to OA), and thereafter the applicant had been given all due benefits under the succeeding MACP Scheme in terms of the instructions of the Railway Board vide its letters of 29.12.2011 and 27.06.2014; (Annexure R/1 refers). He argued that as stated in the reply to the OA, the applicant had failed to substantiate his allegations of any kind of illegality, arbitrariness or violation of any of his rights.

(5)

6. A perusal of the record in this case shows that in their letter dated 01.10.2014, (Annexure A/1), the respondents have themselves stated that the date of regularisation of the applicant's services is 28.10.1997. Even by this count, in terms of their own RBE No.69/2004 dated 31.03.2004, (Annexure A/4), the applicant is able to demonstrate that since he was undisputedly granted temporary status on 01.01.1981, (also recorded in Annexure A/1), he had completed over 16 years of temporary service with the respondents on the date of his regularisation. Accordingly, as per the provisions of RBE No.69/2004 dated 31.03.2004, (Annexure A/4), this would count as over 8 years of regular service. Thereafter, after his admitted regularisation in service on 28.10.1997, if one were to count four more years of regular service, then it follows that the applicant would have rendered 12 years of regular service sometime during 2001 itself. Given that the respondents have not specifically contradicted the applicant's claim that he did so on 29th May of that year, i.e. 2001, there appears to be no reason available in the pleadings or the arguments of the respondents to consider that this claim is unwarranted or incorrect in the facts and circumstances of the case as detailed above.

(6)

7. Given the foregoing position, the OA succeeds. The respondents are directed to allow the applicant the benefit of the first financial upgradation under the erstwhile ACP Scheme from 29.05.2001 along with all consequential benefits flowing thereafter under the ACP Scheme and the succeeding MACP Scheme.

8. There shall be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/