

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00756/2016

Date of Order: 09.01.2020

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



Smt. Meena Srivastava, aged about 54 years, Wife of Late Jai Prakash Srivastwa, Resident of – Haidergunj, Padri Bazar, Pipraich, District-Gorakhpur (Uttar Pradesh).

.... Applicant.

By Advocate: - Mr. P.K. Lal

-Versus-

1. North Eastern Railway, through its General-Manager, Gorakhpur- Pin Code No.- 207301.
2. The General Manager (Personnel), North Eastern Railway, Gorakhpur, Pin Code No. 207301.
3. Divisional Railway Manager (Personnel), North Eastern Railway, Varanasi, Pin Code- 221002.
4. Assistant Divisional Engineer, North Eastern Railway, Siwan, Pin Code- 841226.
5. Section Engineer/Works North Eastern Railway, Siwan, Pin Code- 841226.

.... Respondents.

By Advocate: - Mr. S.K. Ravi, SC for Railways.

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- In the instant OA, the applicant's father (who expired and has been substituted by the present applicant vide order dated 13.05.2019) had prayed for grant of 3rd MACP in terms of Board's decision contained in RBE 36/2010 dated 25.02.2010. He had also prayed for quashing the letter No. E/PN/W/8/12 dated 19.06.2016

whereunder the DRM (Personnel) concluded that the applicant's father having put in only 29 years 5 days of service is not entitled to 3rd MACP.

The applicant's father had also requested for (appropriate orders with respect to) the amount of curtailment made in his salary for August, 2012 and to fix the pension and other post retiral benefits after grant of

3rd MACP to him. The applicant's father had alleged that he was appointed as Helper/Painter/Khalasi in temporary status under the Northern Railway and has been working as such since 16.03.1981. He worked continuously without any break and was regularized w.e.f.

16.01.1986. The Railways has extended the benefit of the scheme relating to Modified Assured Progression Scheme (MACPS) to the Temporary Status casual labour and by letter dated 04.12.2009 allowed

50% of Temporary Status casual labour service on absorption in regular employment to be taken into account towards calculation of the minimum service of 10, 20 and 30 years for the grant of benefits under the MACPS. Later, on representations made by Employees' Union, the Railway Board has decided that the entire temporary status of service of Substitutes, followed by regularisation, is to be taken into account towards calculating the minimum service of 10,20 and 30 years. This decision was circulated through RBE No. 36/2010 dated 25.02.2010. The

applicant's father had claimed that he had been appointed as Helper/Painter/Khalasi with temporary status on 16.03.1981 and his services were regularised on 16.01.1986. Then he had served the Railways continuously without break till 31.08.2012. Thus, he had



completed 30 years of continuous service on 15.03.2011 and was entitled for 3rd MACP on 16.03.2011. The applicant's father also mentioned that he was getting a basic of Rs. 9060/- and Grade Pay of Rs. 2000/- till April, 2012. In the month of May it was increased to Rs. 9430/- as basic and a Grade Pay of Rs. 2400/-. However, he was surprised to find his pay and Grade Pay reduced in the month of August, 2012 to Rs. 5053/- with GP of Rs. 1238/-. Since this reduction was done without any ground or reason, he had represented for correcting this matter. He had also filed complaints before Pension Adalat 2016 but his request was refused stating that he had not completed 30 years of service and hence, this OA.

2. The case was earlier dismissed for default but was later restored on filing of restoration petition.

3. Though no written statement was filed by the respondents the matter was finally heard on 09.01.2020. At the time of hearing, learned counsel for the respondents stated that RBE No. 36/2010, which has been quoted by the applicant's father in support of his claim for counting the entire service for the period he worked as Temporary Status casual labour, applies only to the temporary service of Substitutes. It is nowhere claimed in the OA that the applicant's father was appointed as a substitute and hence the above mentioned RBE is not applicable in case of the deceased employee who, by his own admission, was appointed as Helper/Painter/Khalasi in Temporary Status and not as a



Substitute. It is for this reason that the temporary service of the deceased employee has been given weightage of only 50% for such temporary period. The learned counsel also explained the reason for the higher Grade Pay given in the months of May, June and July, 2012. This was done by mistake (about the employee's eligibility to get 100% weightage of his service under temporary status). This fact was also informed to the deceased employee in the Pension Adalat.



3. The learned counsel for the applicant argued that no specific information was provided to the deceased employee about how his pay was reduced. Since the respondents have not filed a written statement the applicant could also not file a rejoinder. The reduction in his salary is against the principles of natural justice and therefore the reliefs claimed by the applicant in the OA should be granted.

3. After going through the pleadings and hearing the arguments of the learned counsels for the parties, it is clear that the deceased employee was appointed as a Helper/Painter/Khalasi in Temporary Status in the year 1981. His claim for benefit of counting 100% of his temporary service is based on RBE 36/2010 (Annexure-2). It is very clear from this circular that it was meant for the entire temporary service of Substitutes. It is nowhere claimed that the deceased employee was a Substitute. Hence, there can be no doubt about the benefit of this circular not being available to the deceased employee in this OA. The deceased employee was clearly informed through letter dated

19.06.2016 (Anenxure-6) that he was not eligible for the 3rd MACP since he had not completed the required 30 years of service. It is also clear from the letter sent by the deceased employee himself (Annexure - 4 series) that he was aware about the rule regarding not cutting the benefit of temporary service to half with respect to substitute employees (ewazi karmachariyon). It is also clear from the said letter that the benefit of third MACP given to him by the office was reduced because of objection by the Accounts Department. Therefore, the claim of the applicant's father that he was not aware of the circumstances under which the third MACP was not granted does not appear to be correct.

4. Since the whole basis, on which the deceased employee had claimed for grant of 3rd MACP, is found to be not applicable in case of the employee, the prayer for grant of such MACP and correction of his pensionary benefits on that basis cannot be granted. The OA is, therefore, dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member

