



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 812/2015

This the 15th day of January, 2020

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Naresh Chand, 64 years
S/o Sh. Ajit Prasad Jain,
Retired Clerk from Northern Railway,
Delhi Division, New Delhi,
R/o Rama Colony, Nehru Road,
Badot (Bagpat) U.P.

... Applicant

(By Advocate: Sh. Yogesh Sharma)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Dehi.
3. Sr. Divisional Personnel Officer/C,
DRM Office, Northern Railway,
State Entry Road, New Delhi.

... Respondents

(By Advocate: Sh. Kripa Shankar Prasad)

ORDER (Oral)

Hon'ble Mr. Pradeep Kumar, Member (A):

The applicant, herein, was initially engaged as a Khallasi on casual basis on 22.03.1974. Subsequently, he was screened and regularised w.e.f. 04.02.1981. In due course, he was promoted as Material Checking



Clerk on 10.03.1987 on adhoc basis and thereafter he was regularised in this post vide orders dated 27.01.1994. He subsequently retired while working as a clerk in pay scale Rs. 3050-4590 from service on 31.08.2009.

2. The applicant is aggrieved that his casual service during the period 22.03.1974 to 04.02.1981 was not counted and thus he was not granted 2nd ACP benefit for which policy directives were issued in the year 1999 which envisage two financial upgradations. 1st ACP on completion of 12 years of service and 2nd ACP by the end of 24 years, if someone is not promoted in the meanwhile. However, he was not given 2nd ACP benefit. Subsequent to retirement of the applicant, the MACP directives were also issued sometime in 2009 which were made applicable from 01.08.2009.

The MACP policy envisaged three financial upgradations on completion of 10, 20 and 30 years of service, if someone was not promoted. The applicant pleads that 3rd MACP benefit is also due to him.

3. The applicant made a representation on 24.03.2011, i.e., after his superannuation, for grant of 2nd ACP and 3rd MACP benefits. This representation was replied on 13.04.2011 as under:-



"Your case has been examined and it was found that in Casual Labour Card there is over writing in working days which requires verification from issuing office."

4. Thereafter, since his grievance was not redressed, the applicant approached the Tribunal by filing OA No. 3844/2012, which was decided vide judgement dated 19.02.2014. Operative part of the directions reads as under:-

"5. We have heard both the parties. We have also perused all the relevant documents available on record. In our considered view, the respondent ought to have considered the applicant for granting him the benefits of MACP in accordance with Rules. Therefore, we dispose of this OA with the direction to the respondents to place the matter of the applicant before the competent authority for grant of 3rd MACP, in accordance with the rules. In case he is found eligible for the same, he shall be granted the benefits. In any case, the respondents shall pass a reasoned and speaking order in this regard under intimation to the applicant within a period of two months from the date of receipt of a copy of this order."

5. Meanwhile, vide order dated 17.10.2013, which was signed on 21.10.2013, applicant was granted 2nd ACP w.e.f. 01.10.1999 and pay was fixed at Rs. 4500/- in pay scale Rs. 4500-7000. This was subsequently corrected vide order dated 17.01.2014 when his pay was fixed as per 6th CPC w.e.f. 01.01.2006.

Thereafter, the effective date for 2nd ACP was corrected to 06.03.2005, as the applicant completed 24 years regular service on this date, and not on



01.10.1999, which was reckoned earlier. The order was issued on 10.06.2014 where operative part reads as under:-

"In part supersession to this office letter of even no. dated-17/01/2014, Sh. Naresh Chand Jain S/o Sh. Ajit Singh, Ex. Clerk/Engg. working under ADEN/SMQL was given the benefit of ACP w.e.f- 01/10/1999 erroneously. He is completed 24 years service from the date of Appointment on 06/03/2005.

xxx xxx xxx"

6. In compliance to CAT's directions (para 4 supra), the respondents passed a speaking order dated 23.04.2014 and 3rd MACP benefit was denied. The operative part reads as under:-

"xxx xxx xxx"

You were initially appointed as casual Labour on 22/3/74 and you are screened vide letter no. 220E/3-III/Cnst./SSBL dated-04/02/1981. You are appointed in Gr. Rs. 196-232 on 06/03/1981, and further promoted as MCC in Gr. Rs. 260-400 on 10/03/1987 on Adhoc Basis and regularised as Clerk in Gr. Rs. 950-1500 vide letter 758E/178/Pt-IV/P-4 dated-27/01/94 and retired from service on 31/08/2009 as Clerk. You had earlier requested for counting the benefit of 50% casual labour service on 24/03/2011 on your representation regarding counting of 50% Casual Labour service, welfare inspector was nominated to verify the period of casual labour service, rendered by you in Construction organisation under Dy. CE/Const./TKJ under IOW/BTU shahadra sharanpur, Badi line. As per report of the welfare, the record was not traceable in the office of Dy. CE/Const./TKJ under IOW/BTU shahadran Pur, Badi line. In absence of record the benefit of Casual labour service cannot be counted for giving the benefit of IIIrd MACP as you have not completed 30 yrs regular service as well as not spent 10 years regular service in



the PB+GP 2800/- . So your claim of granting of IIIrd MACP is not tenable.”

7. The applicant, however, felt aggrieved that all his grievances in respect of ACP and MACP benefits have not been redressed and his services prior to his regularisation on 04.02.1981, has not been taken into account. Accordingly, he has filed the instant OA, seeking relief that the order dated 23.04.2014 (Annexure A/1) and 10.06.2014 (Annexure A/2) is declared as illegal and that his services prior to 1981 should be counted and he should be granted 3rd MACP benefit and pensionary benefits also as he claims to have completed 30 years of qualifying service.

8. Reliance was also placed upon the policy issued by the Ministry of Railways under RBE No. 36/2010 dated 25.02.2010, which provides that for casual labour, 50% of temporary service is required to be counted towards the minimum service of 10 years, 20 years and 30 years for the grant of benefit under the MACP scheme.

The applicant also claims that he was granted temporary status on completion of 120 days of casual service. It is noted here that no supporting documents for this claim were annexed.



9. The respondents opposed the OA. It was pleaded that the cause of action for the applicant arose in the year 2005 when he completed 24 years of regular service from the date of his regularisation in the year 1981 and when 2nd ACP benefit was not granted to him at that time (para 5 supra). In the instant case, however, the applicant preferred the representation in the year 2011 after his retirement in the year 2009, when it was found that the Casual Labour Card relied upon the applicant was found over-written and this needed verification (para 3 supra).

Thus the OA is barred by limitation.

10. Subsequent efforts to verify such records have not been fruitful, the record being quite old as this pertains to the year 1974 to 1981. In this context, the respondents drew attention to another letter issued to the applicant on 16.03.2012, which was in response to his representation dated 24.03.2011. This reads as under:-

"In reference to your application dated 24.03.2011, it is advised that WLI was deputed to verify the casual labour period but the period has not been verified from the office Dy. CE/C/TKJ due to record not traceable. At the stage the benefit of the MACP can not be given at the stage."



11. It was pleaded that the basic document relied upon by the applicant is his Casual Labour Card, which is over-written and thus verification is necessary but in view of the lapse of time, it has not been possible to verify the same from the original records. Thus, OA needs to be dismissed.

12. Matter has been heard at length. Sh. Yogesh Sharma, learned counsel appeared on behalf of the applicant. Sh. Kripa Shankar Prasad, learned counsel appeared on behalf of the respondents.

13. It is admitted that the applicant, herein, was having regular service w.e.f. 04.02.1981. It is also admitted that prior to this, the applicant had casual service most likely w.e.f. 22.03.1974 onwards. However, the Casual Labour Card as per the photocopied document (Annexure A/6) submitted by the applicant along with the OA, clearly indicates over-writing which has not been authenticated by the issuing office. This document therefore cannot be relied upon.

14. The 1st ACP benefit was due on completion of 12 years of service, if the applicant was not promoted. It is admitted that the applicant had one promotion in the year 1994, which offsets 1st ACP. The applicant was not promoted thereafter. Accordingly, the applicant was due



for 2nd ACP benefit on completion of 24 years of service in the year 2005 if regular service is counted from 1981 or earlier if temporary service was also to be counted. But as per record produced, the applicant had not made any effort whatsoever from the year 2005 and onwards, till he retired, seeking such benefit of 2nd ACP or 3rd MACP.

Had it been done, it might have been possible to locate the record and grant the applicant whatever was due to him.

15. Due to lapse of time and records which pertain to the period 1974-81, the contention of the applicant that the record should still be somehow located and verified, cannot be accepted. The Casual Labour Card cannot be relied upon to verify recorded his service for reasons in para 13 supra.

16. In view of foregoing, the present original application is severely barred by limitation and hence, the Tribunal cannot go into the merits of the case otherwise. It is noted here that when the cause of 2nd ACP arose in 2005, the applicant chose to remain silent till he retired.

It is further noted that even on merit, the applicant has no case as the relied upon document, in



the form of Casual Labour Card, has over-writing (para 3 supra) which is not authenticated by the issuing office, and efforts made for verification of original records had been unsuccessful due to passage of time (para 6 and 10 supra).

17. Accordingly, OA stands dismissed being devoid of merit as well as limitation. No order as to costs.

(Pradeep Kumar)
Member (A)

/akshaya/

(Justice Vijay Lakshmi)
Member (J)