

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/20/1485/2014

Date of C.A.V.: 05.01.2021

Date of Pronouncement of Order: 08.02.2021



Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member

B. Subba Rao, S/o. Yellamandaiah,
Aged 58 years, Occ: Sr. Technician,
O/o. The Senior Section Engineer (M),
Electric Loco Shed,
South Central Railway,
Vijayawada.

...Applicant

(By Advocate : Sri K.R.K.V. Prasad)

Vs.

1. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,
Vijayawada Division,
South Central Railway,
Vijayawada.

....Respondents

(By Advocate : Mrs. A.P. Lakshmi, SC for Rlys)

ORDER
(As per Hon'ble Mr. Ashish Kalia, Judl. Member)



The present O.A. is filed challenging the action of the respondents in withdrawing the MACP benefit granted in favour of the applicant and revising his pay and re-fixing the same in the Grade Pay of Rs.2800/- vide Memo dated 23.9.2014. The applicant has sought for a direction to the respondents to restore the 3rd MACP benefit granted to him earlier in terms of the Office Order dated 2.8.2013 mentioned at reference 1 cited in the impugned Memo.

2. The brief facts of the case are that the applicant was initially appointed as Helper with Grade Pay of Rs.1800/-. Later on, after qualifying in the departmental competitive examination, he was promoted to the post of Helper Gr.I, which carries the Grade Pay of Rs.1900/-. Thereafter, he was granted the Grade Pay of Rs.2800/-, on completion of 10 years service. Respondent No.4 has issued Show Cause Notice dated 27.8.2014 to the applicant, by quoting Office Order dated 2.8.2013. It was mentioned in the said Show Cause Notice that the 3rd financial upgradation granted to the applicant is treated as cancelled as he was promoted as Technician Gr.III against 25% promotional quota and that it is proposed to revise his pay. The applicant has submitted reply thereto on 03.09.2014. According to the applicant, the Show Cause Notice issued to him is a mere formality and the respondents have already decided to withdraw the benefit of 3rd MACP to the Grade Pay of Rs.4200/-. Feeling aggrieved by this, he has approached this Tribunal for redressal of his grievance.

3. Notices were issued and the respondents put appearance through Smt. A.P. Lakshmi, learned Standing Counsel, who filed a detailed reply. It is submitted therein that the applicant was initially appointed as Helper with the Grade Pay of Rs.1800/- in Electrical Department. He was selected and promoted as Technician Gr.III with Grade Pay of Rs.1900/- against 25% LDCE quota. It is further submitted that the respondents have considered the recommendation of the VI Pay Commission for introduction of MACP Scheme and have accepted the same to grant three financial upgradations on completion of 10, 20 & 30 years of continuous regular service. The case of the applicant has been examined in terms of Serial Circular No.99/2012, which stipulates as under:



ö(a) If the relevant Recruitment Rules provide for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/ GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACP Scheme. In such cases, past service rendered in a lower pay scale/ grade pay shall not be counted for the purpose of MACP Scheme.

(b) If the relevant Recruitment Rules prescribe a promotion quota to be filled on the basis of LDCE/ GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACP Scheme and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP Scheme.ö

It is further submitted by the respondents that in terms of Serial Circular No.99/2012, the employees who were selected and promoted as Tech.Gr.III against 25% LDC quota has been extended MACP benefit without counting the past service rendered in the lower pay scale and grade

pay. Accordingly, the department has inadvertently granted undue MACP benefit i.e. from the Grade Pay of Rs.2800/- to the Grade Pay of Rs.4200/- to 40 employees including the applicant in the present O.A. The administration has referred the matter to the CPO/SC for clarification in regard to granting the benefit of MACP to the staff selected and promoted as Tech. Gr.III against 25% LDCE quota in ELS/TRS department. The CPO/SC replied vide letter dated 14.8.2014 (Annex.R-II) stating that evidently 25% is not Direct Recruitment quota but it is Promotional Quota as per the Recruitment Rules and, therefore, has to be treated as promotion for the purpose of MACP and also stands covered vide Point (b) of the Railway Board's letter dated 12.09.2012 (Sl. Circular No.99/2012). It is further stated therein that the financial benefits granted under MACP Scheme for the employees is not in order and hence to be withdrawn. As such, the respondents have issued Show Cause Notice dated 27.08.2014 to all the staff, proposing to revise their pay, withdrawing the benefit granted under MACP. The department has erroneously granted 3rd MACP to the applicant but has withdrawn the same later.



4. Heard Sri KRKV Prasad, learned counsel for the applicant and Smt. A.P. Lakshmi, learned counsel for the respondents at length.

5. On perusal of the legal and the factual position of the case it is evident that the applicant was initially appointed as Helper with the Grade Pay of Rs.1800/- and later got three upgradations i.e. Rs.1900/-, Rs.2800/- & Rs.4200/-. As per the MACP Scheme, an employee who completed 10/20/30 years with stagnation is entitled for financial upgradation to the next Grade Pay in the hierarchy. But in the instant case, the applicant has

got the Grade Pay of Rs.1900/- by way of promotion against 25% LDCE quota. Thus, it should be included and treated as Direct Recruitment. It should be ignored and he is entitled for 3rd MACP to the Grade Pay of Rs.4200/- is the contention of the applicant. Learned counsel for the applicant, during the course of argument, did not point out any legal position. He has simply averred that the Grade Pay earned by him qualifying in the LDCE, is not a promotion. On the contrary, the respondents have contested by citing the Recruitment Rules wherein it is clearly stated that the promotional quota by way of Limited Departmental Competitive Examination cannot be treated as Direct Recruitment. Rather, the Serial Circular has clarified both the conditions which are narrated in para 4(a) & (b) hereinabove. Had there been a case that the applicant had qualified in the Limited Departmental Competitive Examination conducted by Railway Recruitment Board then, it can be treated as Direct Recruitment. In that case, open competition would be there among the candidates from open public to get the said post. But the same is not the case here. The applicant has competed only with the departmental candidates, which in fact, is a qualifying examination and cannot be equated with the examination conducted by Railway Recruitment Board in which open competition prevails.



6. The Honøble Supreme Court in the case of *K.S. Krishna Swamy vs Union of India & Others [2006(13) SCC 215]* held that it is a well settled principle of law that the recommendations of Pay Commissions are subject to acceptance/rejection /modifications of appropriate Government. It is also a well settled principle of law that a policy decision of the Government can

be reviewed/ altered/ modified by executive instructions. Under these circumstances, policy decisions cannot be challenged under the Policy of Estoppel. Thus, the legal position that emerges from the judgement of the Honøble Apex Court is that the Courts shall not interfere in the policy decision taken by the Government. In the given case, it is not the case of the applicant that the respondents have discriminated him amongst the other employees, by withdrawing the benefit of 3rd MACP granted to him. The Railway authorities have cited the policy decision taken by the competent authority pursuant to the recommendations of the VI Pay Commission. Thus, the scope of interference in the said policy decisions is narrowed down by the above judgement of the Honøble Supreme Court.



7. In view of the above, this Tribunal finds no merit in the O.A. and the same is dismissed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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