

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No. 611/2012
M.A. No. 248/2020**

Reserved on : 09.07.2020
Pronounced on : 14.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Surendra Kumar Tingunayat S/o Shri Ramji Lal aged about 63 years, Resident of D-12, Raghunath Vilas, Bisanwala, Panchwala, Sirsi Road, Jaipur. Presently retired from C.L.A., Railway Claim Tribunal, Jaipur.

...Applicant.

(By Advocate: Shri Vinod Goyal)

Versus

Union of India through General Manager (P), North Western Railway, H.Q. Office, Jagatpura, Jaipur.

...Respondent.

(By Advocate: Shri Y.K.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for grant of benefit of MACP with retrospective effect, i.e. from the month of June 2003 and for payment of all differential amount in terms of arrears along with permissible interest. He has also prayed for quashing communications at annexures A/1 and A2 by which he was informed (in response to his RTI queries) that he had already been given 3 promotions, enclosing copies of the notesheet on which this decision was taken.

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2. The applicant was appointed as Constable in the Railway Protection Force on 06.05.1979 and by passage of time he got his next promotion as Sr. Constable w.e.f 07.03.1984 and then as Assistant Sub Inspector w.e.f. 24.02.1990. Subsequently, the applicant was given promotion as Law Assistant on ad-hoc basis w.e.f 30.06.1993 and after rendering services as such on ad-hoc basis was finally absorbed and regularised as CLA in continuation w.e.f. 30.09.1999. Finally, the applicant was promoted as Chief Law Assistant Applicant w.e.f. 14.09.2000 and has been continuing as such. The applicant claims that he has not been given any promotion or higher grade since his "promotion" as Law Assistant on ad-hoc basis with effect from 30.06.1993. As per the recommendations of the 6th CPC accepted by the Railway Board, he deserves to be granted MACP on completion of 10 years in the month of June 2003 and would be further entitled to 2nd financial upgradation in the month of June 2013. The applicant has argued that the post of Law Assistant is an Ex-Cadre post and it should be treated as a movement to a new organization. Since it has not been granted despite his various representations, the applicant has filed this OA.

3. The respondent has denied the claim of the applicant in its reply. The respondent has stated that the benefit of the MACP cannot be given to the applicant as he had already been extended

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three promotions from the date of his initial posting. The respondent has denied that the post of Law Assistant was an Ex-cadre post. The applicant was promoted to this post under promotional quota and he cannot get any benefit of the scheme of MACP granted to a candidate getting selected under direct recruitment quota.

4. The applicant has filed his rejoinder reiterating the points mentioned in his OA. He has stated that he was selected to the post of Law Assistant on 30.06.1993, following a written test and viva voce test. He has also mentioned about his earlier OAs (OA No. 596/96 before CAT Mumbai Bench for not awarding any marks for seniority and OA No. 173/2002 for deleting name of another person from selection panel) which, he alleges, were allowed by the Tribunal's orders enclosed at Annexure A/9 and Annexure A/10 respectively. He has prayed, in this rejoinder, for considering his request for financial upgradation after 10 years w.e.f 1993, **or**, in the alternative from 1996 (when his juniors were included in the panel), **or** from the year 1999, when he was regularized on the post of L.A. The applicant filed another Miscellaneous Application (MA No. 1072/2019) for taking additional documents on record (copies of para 131 of the IREM and the Judgment of Hon'ble Rajasthan High Court dated 21.08.2018 in D.B. Civil Writ Petitions No. 12976/2013 with D.B. Civil Writ Petition No. 12982/2013 in the matter of **D P Gupta Vs**

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Union of India and Another). He has stated that that the D.P. Gupta's case (supra) is on the same footing as that of the applicant. The Railway Board has already implemented that judgment and hence the ratio of that judgment should be applied in this case too. The MA was allowed and these documents are taken on record at Annexures A/12 and A/13 respectively.

5. The respondent filed MA No. 248/2020, in response to the applicant's production of additional documents, in which the respondent has reiterated that the post of Law Assistant is a general selection post and not an ex-cadre post. The applicant has been promoted under 60% promotional quota by general selection from amongst eligible serving employees. The relevant paragraphs of Chapter IV of IREM volume-I are enclosed as annexures R/3 and R/4. The MA was allowed.

6. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. While the learned counsel for the applicant mainly based his case on the decision in D P Gupta's case (supra), the learned counsel for the respondent argued that the facts of this case were different from that of the case decided by the Hon'ble High Court

7. The facts of the case are not materially disputed by either party. It is accepted by both the parties that the applicant did get

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3 promotions during the period he worked for the respondent Railways. In fact, the applicant has himself, at various places in his OA, referred to his selection to the post of Law Assistant as promotion. The documents produced by the respondent (RBE 263/1998, Annexures R/1 and R/2) leave no doubt about the fact that the post of Law assistant is part of "general selection" in the process of "normal channels of promotion". However, the applicant has, in his OA, contested that his "promotion" as Law Assistant should be treated as entry into a new cadre. He has now argued for grant of his prayer on ground of it being similar to the case decided by the Hon'ble High Court in D P Gupta's case (supra). The learned counsel for the respondent has argued that the facts of this case are different from those in D P Gupta's case. Thus, the outcome of this case squarely depends on whether the facts of this case are similar to that of D.P Gupta's case and whether the ratio of that case can be applied in this case to grant him the relief that he has prayed.

8. Therefore, we have gone through the aforementioned decision of the Hon'ble High Court in D.P. Gupta's case detail. We find that that case went before the Hon'ble High Court against an order passed by this Tribunal in which the request of the petitioner therein, for treating his *ad-hoc service* (from 30.10.1998 to 07.01.2003 as Law Assistant) as *regular service*, and for grant of financial upgradation under MACP with effect

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from that date of ad-hoc promotion, was denied by the Tribunal. The Hon'ble High Court, after considering all the aspects and the case law in the matter came to the conclusion that the petitioner therein was "entitled to the benefit of MACPS on completion of 10 years' service counting from the date of entry to the grade pay on the post of Law Assistant on 04.08.1998 with all consequential benefits together with interest @ 6% per annum." In the present case, though the applicant had initially prayed for grant of MACP with effect from the date of his ad-hoc promotion, he has himself agreed for consideration (at para 3 of his rejoinder), "in alternative form", with effect from the date of his next juniors inclusion (1996), or from the date of the applicant's regular promotion to the post of Law Assistant (1999). Thus, while the main issue in the D.P Gupta's case was whether the ad-hoc service period should be considered for counting the period towards eligibility of grant of MACP, the main issue in the present OA, is not that. Here, the issue is whether a person can be given MACP benefits even if he has got 3 promotions in his career. In D.B. Gupta's case, though the promotion was to the same post (of Law Assistant), it was, as can be made out from the reading of that judgment, a second promotion for the petitioner therein (from Sr. Clerk to Head Clerk and from Head Clerk to Law Assistant, following a selection procedure). In the present case, as per the applicant's own admission, his promotion as Law Assistant was third (from Constable to Sr. Constable, from Sr.

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Constable to Assistant Sub Inspector and then, after selection, as Law Assistant). Thus, the decision in D.P. Gupta's case cannot be applied in this case just because the selection, in that case, happened to be for the same post (of Law Assistant) as happens to be in the present OA before us. The ratio of the D.P Gupta's case is to count the ad-hoc service for eligibility for grant of MACP on completion of 10 years of service in the same grade. This would apply if the person is otherwise eligible under the Scheme. Since the Scheme expressly prohibits grant of more than 3 (replacing the earlier 2 under the previous ACP Scheme), financial upgradations under the Scheme in the entire career, we are unable to grant the relief claimed by the applicant in this OA.

9. The OA is, for aforementioned reasons, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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