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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.142 OF 2011
Cuttack this the **11th** day of **December, 2013**

K.Vijayan...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

- 1.Whether it be referred to reporters or not ?
- 2.Whether it be referred to CAT, PB, New Delhi or not ?

(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.142 OF 2011

Cuttack this the 11th day of December, 2013
CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

K.Vijayan,
Son of late K.Nanoo
Aged about 61 years
Retd.Painter Grade-II
Office of Deputy Chief Engineer(Con)/
East Coast Railway
Khurda Road
Permanent resident of Village-Neduvathoor
PO-Neelaswaram
Via-Kottarakara
Dist-Kollam
Kerla-691 506

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Mishra
T.K.Choudhury

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Chief Administrative Officer(Con)
East Coast Railway
Rail Vihar
Chandrasekharpur
Bhubaneswar,
Dist-Khurda
3. Senior Personnel Officer Construction/Coordination
East Coast Railway
Rail Vihar
Chandrasekharpur
Bhubaneswar,



4. Sr.Divisional Financial Manager
East Coast Railway
Khurda Road Division
At/PO/PS-Jatni
Dist-Khurda
5. Deputy Chief Engineer(Con),
East Copast Railway
Khurda Road
At present Qr.No.C-55/G
Rail Vihar
Chandrasekhpur
Bhubaneswar

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant in this Original Application has approached this Tribunal for quashing the speaking order dated 1.2.2011(Annexure-A/6) by virtue of which his representation for grant of financial upgradation under MACP Scheme with effect from 01.09.2008 and consequential benefits thereon has been rejected by the Respondent-Railways and in the circumstances, he has prayed for direction to be issued to the Respondents to grant 2nd and 3rd financial upgradation under the MACP Scheme w.e.f. 01.09.2009 by granting Grade Pay of Rs.2800 and Rs.4200/- and releasing the differential arrear salary, pension, DCRG, commuted value of pension and leave salary with 12% interest.

2. The short facts of the case are that the applicant was engaged as a Casual Labour in the Sough Eastern Railways in the year 1966 and while working as such, his services were regularized with effect from 24.7.1978 which was subsequently, ante-dated to 1.4.1973. While working as Painter, Gr.III, the applicant was promoted to the post of Painter, Gr.II on officiating

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basis with effect from 1.2.1992. The applicant retired from service on 31.8.2009 on attaining the age of superannuation. The PPO issued in his favour mentioned that he was granted GP of Rs.2400/- before his retirement. On the basis of recommendations of 6th CPC, the Railway Board issued MACP Scheme for grant of 1st, 2nd and 3rd financial upgradations subject to completion of 10, 20 and 30 years of service respectively by an employee and this scheme became effective from 1.9.2008. As per the outlines of the scheme, the cases which are ripe for consideration should be referred to the Screening Committee scheduled to be held twice in a year in the month of January and July. The applicant made a representation on 10.8.2009 to the concerned authorities for referring his case to the Screening Committee for sanction of the 2nd and 3rd financial upgradations under MACP Scheme. He also prayed therein for payment of the differential financial benefits on the pensionary benefits consequent upon sanction of MACP. The representation of the applicant did not receive any consideration at the hands of the Respondents and therefore, the applicant approached this Tribunal by filing O.A.No.56 of 2010. This Tribunal on 18.2.2010 disposed of the said O.A. with a direction to Respondent No.3 to consider and decide the representation of the applicant by a reasoned and speaking order. The Respondents have disposed of the representation of the applicant in compliance of the order of this Tribunal, but have rejected the claim of the applicant for granting 3rd financial upgradation under the MACP Scheme on the ground that he has got three promotions. The applicant has challenged this impugned order dated 1.2.2011 which is placed at Annexure-A/6.

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3. The applicant has pleaded that his services in the Railways were regularized twice and he was granted only one ad hoc promotion from Painter, Gr.III to Painter, Gr.II with effect from 1.9.1992. But the Respondents have wrongly taken the ground that the applicant has already been given GP of Rs.2400/- and as such he has already enjoyed GP Rs.1900 and Rs.2000/- as two promotions. This has been specifically refuted by the applicant by mentioning that he has been granted only one ad hoc promotion during his 36 years of service from the post of Painter, Gr.III to the post of Painter, Gr.II. The case of the applicant is that in accordance with the MACP Scheme, he is entitled to 2nd and 3rd financial upgradations which should be sanctioned and accordingly, his retirement benefits revised.

4. The Respondents have filed their counter in which they have stated that the applicant was engaged in the Railways with effect from 4.9.1971 purely on casual basis, granted temporary status with effect from 1.1.1981 and was regularized against PCR Gr.D post with effect from 24.4.1988, which was subsequently ante-dated to 1.4.1973. Further, in obedience to the orders of this Tribunal dated 28.3.2000 in O.A.No.260/97, the applicant was regularized as Painter, Gr.III(PCR). He was again promoted as Painter, Gr.II with an observation that the promotion is issued ~~on~~ as an ad hoc measure and will not confer on him his claim for seniority over his seniors. The applicant retired from the railway on 31.8.2009 on reaching the date of superannuation. The applicant was therefore, regularized against PCR Gr.D post with effect from 1.4.1973, promoted/regularized as Painter, Gr.III ~~on~~ as a regular measure and again promoted as Painter, Gr.II ~~on~~ as an ad hoc measure.

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 Therefore, the applicant has been granted three promotions and is therefore, not entitled to any further financial upgradation. Since he was granted regular promotion as Painter, Gr.III in the scale of Rs.3050-4590 corresponding to GP Rs.1900/- in the 6th CPC, he is due to get 2nd MACP with GP Rs.2000/- and 3rd MACP with GP Rs.2400/-. Since he was already enjoying GP Rs.2400/- on account of his ad hoc promotion as Painter, Gr.II, there was no further financial benefits to which he is entitled ~~to~~ ² under the MACP Scheme. Therefore, his case was not taken to the Screening Committee and a speaking order was issued in compliance with the orders of this Tribunal dated 18.2.2010 in O.A.No.56/2010 rejecting his claim on the above mentioned grounds.

5. The learned counsel for the applicant has filed written note of argument, in which he has reiterated more or less, the grounds that he has taken in the O.A. He has emphatically submitted that he was promoted to the post of Painter, Gr.II on 1.2.1992 and has completed more than 10 years of service in the said post as well as has completed 30 years of service on 1.9.2008, for which he is entitled to 3rd financial upgradation under the MACP Scheme. He has mentioned that though in the O.A. he has prayed for grant of 2nd and 3rd financial upgradations, during hearing, he has confined his prayer only for grant of 3rd financial upgradation under the MACP Scheme, i.e., from GP Rs.2400 to Rs.2800/- in PB-1 Rs.5200-20,200/-.

6. The learned counsel for the Respondents has also submitted his written note of arguments. The main thrust of his written note of argument is that the applicant is getting the benefit in the higher Grade Pay on the

basis of his ad hoc promotion as Painter, Gr.II which is equal to the benefit of MACP. According to Respondents, the applicant was initially regularized in the minimum Grade Pay Rs.1800/- and he had received the next higher Grade Pay in Rs.1900/- because of his placement ~~in the~~ ^{as} Painter, Gr.III. He retired from service in the Grade Pay Rs.2400/- which is one more Grade Pay ahead. Had he not been given ad hoc promotion and would have been considered for financial upgradation as per Condition No.26 in the MACP Scheme then he would have received financial upgradation in GP Rs.2400/- in lieu of two financial upgradations, i.e., Grade Pay of Rs.200⁰ and Rs.2400/- To make the matter more conspicuous, Condition No.26 of the MACP Scheme is quoted below.

“Cases of persons holding higher posts purely on ad hoc basis shall also be considered by the screening committee along with others. They may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-à-vis the pay drawn on ad hoc basis”.

7. The contention of the learned counsel for the Respondents is that this case does not have merit since the matter has been disposed of as per the Condition No.26 of the MACP Scheme as adopted by the Railways.

8. For the purpose of dispensation of justice, It was considered necessary to call for the Service Book of the applicant and in obedience to the orders of this Tribunal, the Respondents did produce the same. On examination of the Service Book of the applicant, the following important facts have emerged.

There is an entry in the Service Book that the applicant was regularized in Group-D PCR post by the Committee duly screened. However, he is allowed to be confirmed in the higher grade due to exigency of work load and his case was under review and will be regularized

accordingly. No date is mentioned in respect of this entry.

Subsequently, it is mentioned that he is absorbed as Khalasi in the scale of Rs.750-940/- against 40% Construction Reserve Post with effect from 24.4.1988. It is again mentioned that he is confirmed as Khalasi in the scale of Rs.750-940/- with effect from 9.1.1988. Thereafter, the Service Book entry shows that in obedience of the Tribunal's order dated 28.3.2000 in O.A.No.260/97, he has been regularized as Painter, Gr.III in the scale of Rs.3050-4590/- with effect from 26.6.1997. It is mentioned that he was promoted as Painter, Gr.II and his pay was fixed at Rs.1200/- with effect from 1.2.1992. As per entry in the Service Book, the applicant as painter, Gr.II in the scale of Rs.5200-20200 in PB -1 has been allowed to retire from service with effect from 31.8.2009 on reaching the age of superannuation.

9. From the above, it is quite clear that he was confirmed as Painter, Gr.III with effect from 26.6.1997 and was promoted as Painter, Gr.II with effect from 1.2.1992 which is said to be ~~an~~ ad hoc promotion. But he continued as such for a period of 17 years till his retirement on 31.8.2009. From the Service Book, it further reveals that he was confirmed as Khalasi in the year 1988, regularized as painter Gr.III in the year 1997 and granted ad hoc promotion as Painter, Gr.II with GP Rs.2400/- in the year 1992. Since 1992 he has been continuing as Painter, Gr.II till he retired on 31.8.2009. The Service Book indicates that there has been only one promotion granted to the applicant which is his promotion from Painter, Gr.III to Painter, Gr.II. There is no mention of any ~~further~~ ^{other} promotion in the Service Book. Strictly speaking confirmation and regularization cannot be taken as promotion given to the applicant. From the year 1992 for a period of 17 years he is continuing in the same grade although it is stated to be on the basis of his ad hoc promotion as Painter, Gr.II. The objective of the MACP Scheme has been summed up in simple words that there shall be

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three financial upgradations from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the MACP Scheme will be admissible when a person has spent 10 years continuously in the same Grade Pay. The learned counsel for the Respondents has stoutly argued that the case has been disposed of as per the Condition No.26 of the MACP Scheme. We have gone through the said Condition, which is quoted above. First of all, this condition lays down that the cases of persons holding higher posts purely on ad hoc basis shall be considered by the Screening Committee whereas in the case of the applicant, his claim was never taken into consideration by the Screening Committee. On the other hand, the Respondents by passing a speaking order made calculation that the applicant would have got Rs.2400/- as per Condition No.26 and therefore, there is no financial benefit accrued to him on which ground the matter was not considered in the Screening Committee. Secondly, the Condition No.26 says that such category of employees may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-à-vis the pay drawn on ad hoc basis. Therefore, it appears that this case has to be interpreted to the benefit of the employees and since in the present case, the applicant was drawing GP Rs.2400 on ad hoc basis, financial upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on adhoc basis should have been considered and in such eventuality, order to that effect granting him 2nd financial upgradation under the MACP Scheme also should have been issued. The contention of the Respondents that

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applicant has got three promotions in his career is not borne by the records and hence this plea is not acceptable. In the counter Respondents have mentioned that the applicant was regularized against Gr.D (PCR) post with effect from 1.4.1973 and was promoted on regular measure as Painter, Gr.III with effect from 26.7.1997 and again was promoted as Painter, Gr.II on ad hoc measure which corresponds to GP Rs.2400/- On the basis of this fact submitted in the counter, it cannot be ~~safely~~ concluded that the applicant has got three promotions, because, regularization being against Gr.D (PCR) post cannot be taken as a promotion, albeit regular promotion as Painter, Gr.III and ad hoc promotion as Painter, Gr.II may be accepted as promotions. Moreover, the applicant was given ad hoc promotion as Painter, Gr.II with effect from 1.2.1992. As indicated above, he was neither reverted to the lower post for the purpose of grant of 2nd MACP nor was his ad hoc promotion as Painter, Gr.II regularized and thereby, he was allowed to continue in the same grade with same Grade Pay for a period of 17 years when he retired from Railway service on superannuation with effect from 31.8.2009. MACP scheme stipulates that there shall be three financial upgradations from the entry grade on completion of 10, 20 and 30 years of service respectively and that financial upgradation will be admissible whenever a person has spent 10 years of service continuously in the same grade. In the aptness of things, It has to be noted that there has to be a holistic interpretation of the MACP Scheme and the conjectural assumptions of the Respondents in denying the benefit of 3rd MACP to the applicant does not stand to reason within the four corners of the Scheme.

10. Having regard to what has been discussed above, we hold that the

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applicant's entry grade being Gr.D(PCR) post in which he was regularized with effect from 1.4.1973, he has only availed of two promotions i.e., Painter, Gr.III and Painter, Gr.II within the span of 36 years' service and therefore, having not earned any further promotion, as per the MACP Scheme, he is entitled to 3rd financial upgradation on completion of 10 years of service as Painter, Gr.II in the GP Rs.2400/-, which should be granted to him within a period of three months from the date of receipt of this order, after following the due procedure of rules. Since the applicant has already retired on superannuation, consequential differential arrears salary and the consequential pensionary benefits shall be paid to him within the aforesaid period. In the circumstances, speaking order dated 1.2.2011(Annexure-A/6) is quashed and set aside.

Ordered accordingly.

In the result, the O.A. is allowed to the extent indicated above. No costs.


 (R.C.MISRA)
 MEMBER(A)


 (A.K.PATNAIK)
 MEMBER(J)

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