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O.A.No.202 of 2010

Order dated 11-05-2011

CORAM
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

No DB. Call this matter on 23.6.2011.


Member (Judicial)

Ordr-11.05.11

For Hearing.
(Reply to rejoinder
b/w, copy sent).


22/06


Order Dt.-23.06-2011.

Coram :-

Hob'ble Mr. C. R. Mohapatra, Administrative Member
&
Hon'ble Mr. A. K. Patnaik, Judicial Member

Ordr-23.06-11

For Hearing.
(DB)


30/06

Call on 01-07-2011.

Judl. Member


Admin. Member

Order Dt.-01-07-2011

Coram :-

Hob'ble Mr. C. R. Mohapatra, Administrative Member


Ordr-01.07.11

For Hearing.


24/07

NO DB. to-day.

Call on 22-07-2011.


Admin. Member

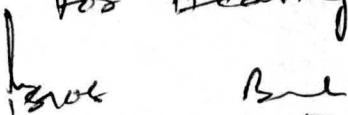
Order Dt.-22-07-2011.

Coram :-

Hob'ble Mr. C. R. Mohapatra, Administrative Member
&
Hon'ble Mr. A. K. Patnaik, Judicial Member

Ordr-22.07.11

For Hearing.


13/08

At request, call on

23-08-2011.


Judl. Member


Admin. Member

O.A. NO. 202 of 2010

Order dated: 23-08-2011

CORAM:

Hon'ble Shri C. R. Mohapatra, Member (Admn.)


Hon'ble Shri A. K. Patnaik, Member (Judl.)

No hearing case was taken up today due to a reference made by C.A.T. Bar, Cuttack on the sad demise of Sri Kshirod Ch. Mishra, Advocate, a member of Bar. Hence, the matter is adjourned to 30-08-2011.


Member (J)


Member (A)

Or. Dt. 23.08.11

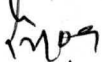
for hearing
by  Btl

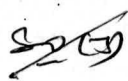
File recd. Bar
in 09.09.11



Or. Dt. 02.09.11

copies of final
order issued to
counsel for
both sides.




by
13/9/11

Order Dt. - 30-08-2011

Coram :-

Hon'ble Mr. C. R. Mohapatra, Administrative Member

&

Hon'ble Mr. A. K. Patnaik, Judicial Member

At the request of Mr N.R.
Rozbray, Id. counsel for the
applicant, call on 02-09-2011.

Judl. Member


Admn. Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.202 of 2010

Chakradhar Gouda Applicant
Vs
UOI & Ors. Respondents

.....

Order dated -02-09-2011.

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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The case of the Applicant is that on 17.05.1973, he joined as Diesel Cleaner in the erstwhile SERailway, on 01-05-1985 regularized as Motor Mechanic Grade III, and on 01-10-1992 was promoted to the post of Motor Mechanic Grade I. The Respondent No.4 issued provisional seniority list of Technician Grade I (Motor Mechanic on 31.03.2007 in which his name was shown at Sl.No.6. On 31.12.2009 the Screening Committee found the Applicant suitable for grant of 3rd financial up-gradation under MACP Scheme issued by the Respondents on 10.06.2009. On 31.12.2009, the Respondent No.4 issued office order for grant of 3rd financial up-gradation w.e.f. 01-08-2008 and on 10.03.2010 withdrew the financial up-gradation granted to the applicant. The Applicant through representations dated 19.3.2010 & 23.3.2010 requested for cancellation of such order



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withdrawing the benefit of financial up-gradation dated 10.3.2010 and there being no action on the said representation he approached this Tribunal in OA No. 124.2010 OA^{which} was disposed of by this Tribunal on 20.3.2010 by directing disposal of the pending representations of the Applicant within a stipulated period. Thereafter, Respondent No.4 rejected the prayer of the applicant and communicated the reason of rejection in a well reasoned order to the Applicant under Annexure-A/7 dated 20.04.2010. This order of rejection under Annexure-A/7 dated 20.04.2010 and the order withdrawing the benefit of financial up gradation under Annexure-A/3 dated 13.3.2010 have been challenged by the Applicant in this second round of litigation with prayer to quash both the above orders so far it relates to the Applicant.

2. Respondents in their counter have stated that the applicant was initially appointed as substitute Diesel Cleaner in the basic pay of Rs.70/- in the scale of pay of Rs.70-85/- on 17.05.1973 which was later on revised to the scale of pay of Rs.196-232/- w.e.f. 1.1.1973. He was made regular substitute Diesel cleaner vide order dated 16.10.1976 w.e.f. 17.5.1973. Thereafter he was appointed as Ty.Diesel Clearner w.e.f. 18.5.1978/01.05.1978. He was promoted as Khalasi Helper in the scale of Pay of Rs.210-290/- w.e.f. 1.8.1978 vide order dated 24.3.1983. While working as such, vide order dated

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01.02.1985, the applicant was transferred in his present capacity from Diesel Shed Waltair to Mancheswar Workshop and was posted as Khalsi Helper. After passing the trade test on 30.09.1985 the applicant was promoted to officiate as Motor Mechanic Gr.III on 1.5.1985 vide order dated 12.06.1985 in CRW/MCS. In other words, it is stand of the Respondents that the applicant has already got three promotions in Gr. C cadre viz; the first promotion was from Khalasi Helper to Tech.III) (MM) in scale of Rs.260-400/- (III PC) equivalent to PB 1+GP1900/-(VIPC) on -5.05.1985; second promotion to Tech.II (MM) in scale of Rs.4000-6000/- (VPC) equivalent to PB1+GP2400/-(VIPC on 10.11.1989 and the third one was to Tech.I (MM) in the scale of pay of Rs.4500-7000/- (VPC) equivalent to PB1+GP2800 (VIPC) on 01.10.1992. It has further been stated that the Applicant misinterpreted the provision of para 28 of the RBE No. 101/2009. Rather in para 2 of the said RBE it has been provided that there shall be three financial up gradation counted from the entry grade at interval of 10,20 and 30 years regular service. Therefore, combined reading of both the aforesaid provisions makes it crystal clear that the benefit of MACP can be availed only in cases where the employee has not got three promotions in his service career. In the instant case as the applicant has already got three promotions he was not entitled to

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the financial up gradation. As the applicant and other employees were erroneously granted the benefit on receipt of clarification under Annexure-R/3, the matter was re examined and accordingly the order under Annexure-3 was issued. On the above grounds Respondents have prayed for dismissal of this OA.

3. The Applicant has filed rejoinder more or less reiterating his stand taken in the OA. Respondents have also filed reply to the rejoinder filed by the Applicant.


4. Upon being heard the Learned Counsel for both sides, perused the materials placed on record.


54. The MACP Scheme is in supersession of ACP scheme. It is a benevolent legislation introduced by the Government on acceptance of the recommendation of the 6th CPC. The scheme MACP envisages that there shall be three financial up-gradations, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial up-gradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay. From the facts recorded above from the counter, supported by records, we have no hesitation to come to the conclusion that the benefit of financial up gradation was granted to the applicant erroneously and can be rectified by the competent authority at any

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point of time. Since the benefit of financial up gradation, though the applicant was not entitled to, in view of the factual position given above, was granted to the applicant erroneously, the same was rightly rectified by the order under Annexure-A/3 which needs no interference by this Tribunal. Consequently his prayer to quash the order of rejection under Annexure-A/7 cannot be accepted. Though he has not specifically prayed in this OA for not effecting any recovery as the benefit has not been paid to the applicant for any misrepresentation on his part, yet this Tribunal holds the view that as per the law laid down by the Hon'ble Apex Court in the cases of **B.J.Akkara v Government of India** (2007) 1 SCC (L&S) 529 (para 27), **Sahib Ram v State of Haryana**, 1995 SCC (L&S) 248, **Shyam Babu Verma v Union of India**, (1994) 2 SCC 521, **Union of India V M.Bhaskar** (1996) 4 SCC 416 and **V.Gangaram V Regional Joint Director**, (1987) 6 SCC 139, the amount paid to the applicant by way of financial up-gradation which was subsequently withdrawn under Annexure-A/3 shall not be recovered from the Applicant. Ordered accordingly.

5. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)