

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 77 of 2010
Cuttack, this the 22nd day of March, 2012

Bijoy Kumar Otta Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal or not?

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


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

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
&
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

....

Bijoy Kumar Otta aged about 51 years son of Late D.C.Otta working as Technician Gr.I/Train Lighting Section under Senior Section Engineer/Train Lighting/Coach Repair Workshop, Mancheswar residing at Shakti Vihar, Gadkana, Plot No.4645/P,PO.Mancheswar Railway Colony, Bhubaneswar-17.

...Applicant
By legal practitioner: Mr.Achintya Das, Counsel
-Versus-

1. Union of India service through Chairman, Railway Board, Rail Bhavan, New Delhi, PIN – 110 001.
2. General Manager, E.Co.Railway, Mancheswar, Bhubaneswar, PIN-751 017.
3. Sr. Assistant Financial Advisor (W), E.Co.Railway, Coach Repair Workshop, Mancheswar, PIN -751 017.
4. Workshop Personnel Officer, E.Co. Railway, Coach Repair Workshop, Mancheswar, PIN-751 017.
5. Chief Personnel Officer, E.Co. Railway, Mancheswar, Bhubaneswar, PIN-751 017.
6. Deputy Director, Pay Commission, Railway Board, Rail Bhavan, New Delhi, PIN- 110 001.

....Respondents
By legal practitioner: Mr.S.K.Ojha, SC (Rly.)

O R D E R
A.K.PATNAIK, MEMBER (JUDICIAL)
It is the case of the Applicant that on completion of training course in different trades vide order under Annexure-

A/1 he was appointed as Skilled Artisan Gr.III w.e.f.

01.02.1986. Subsequently he was provisionally regularized/promoted to High Skilled Gr.II (Electrical Fitter Cum Wire Man) vide order dated 276.4.1993. Thereafter he was promoted on adhoc basis to HS Gr.I (Electrical Fitter Cum Wireman Gr.II after passing the trade test vide order dated 03.05.1994 and was ultimately regularized as Electrician Cum Fitter Wireman Gr.I under Annexure-A/4 dated 10.10.2002. By making representation under Annexure-A/5 applicant prayed for extension of the benefit of MACP when he had completed ten years of continuous service in the same Grade Pay with effect from from 03.05.1994; especially when his juniors S/Shri B.S.Swain and J.K.Ray were granted the benefit under the MACP scheme. The said request of the applicant was rejected and the same was communicated to him vide order dated 26.3.2010. Challenging the said order he has approached this Tribunal by filing the instant Original Application with prayer to direct the Respondents to grant him financial up-gradation under MACP Scheme with effect from 01-09-2008 and pay him the arrears with interest.

2. The stand of the Respondents in their counter is that the Applicant is not entitled to the relief as claimed by him in this Original Application because vide order dated

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13.05.1994 the applicant was promoted to the post of Tech. Gr.I w.e.f. 13.05.1994 purely on adhoc basis in exigency of service but certainly not against any clear cut vacancy with a stipulation that the adhoc promotion will not confer any right over his senior and will not be counted for regularization and seniority with a further condition that he will be reverted back as and when higher grade vacancies are filled up by regular incumbents. The Applicant was empanelled as Trainee Artisan in the scale of Rs.260-400/- . But due to non-availability of Skilled Gr.III, he was offered/appointed as Ty.Khalasi Gr.D and applicant joined as Trainee Skilled in CRW/MCH on 17.01.1985. The Applicant was regularized on 01.02.1986 against working post in scale of Rs.260-400/- . Thereafter, he got promotion as Tech.Gr.II in scale of Rs.1200-2040/- on adhoc measure on 01.02.1989 and subsequently he was regularized in that post w.e.f. 28.2.1993. Applicant got another promotion on adhoc basis as Tech.Gr.I in the scale of pay of Rs.1320-2040/- (4th CPC) w.e.f. 13.05.1994 and on availability of clear cut vacancy he was regularized in the said grade w.e.f. 10.10.2002 against a clear vacancy. Further case of the Respondents is that the MACP Scheme clearly provides grant of the financial up gradation after completion of prescribed year

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of regular service. Since the service of the Applicant was regularized in Tech.Gr.I only w.e.f. 10.10.2002 he would be entitled to third financial up gradation with GP Rs.4200/- under MACPs on completion of 10 years of regular service in the grade of Rs.2800/- only from that date i.e 10.10.2012. As such it is contended by the Respondents that rejection of the claim of the applicant was just, fair and equitable. Accordingly, Respondents have prayed for dismissal of this OA.

3. Applicant filed the rejoinder opposing the stand taken by the Respondents in their counter which would be discussed hereinafter while discussing various contentions made by the Applicant's Counsel in support of his relief as claimed in this OA.

4. It is seen that similar matter came up for consideration in OA 394 of 2010 (Dhoba Sahu Vrs Union of India) and others and the same was disposed of by this Tribunal on 19-03-2010. Relevant portion of the order is quoted herein below:

“10. We have considered the rival submissions of the parties and perused the materials placed on record. The promotion of the applicant to Tech. I vide order dated 13.5.1994 on adhoc basis is not in dispute. It is also not in dispute that the applicant was regularized in the said grade vide order dated 5.5.2001. The crucial

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question for consideration is whether the applicant is entitled to reckon the service which he had rendered on adhoc basis followed by regularization for the purpose of granting the financial up gradation under MACPS. In this regard, we may state that it is an undisputed fact that the applicant was promoted to Tech.Gr.I in the scale of pay of Rs.1320-2040-(4th CPC) w.e.f. 13.05.1994 on adhoc basis and continued in the said post/capacity/pay scale, without any break till he was regularized w.e.f. 05.05.2001. We have not come across any submission of the Respondents, either in the counter or in course of hearing that the ad hoc appointment of the applicant was irregular or illegal in nature de hors the Rules. We find from the order that the ad hoc promotion was not due to any fortuitous circumstances but due to pendency of cases before various Courts/Tribunal and was given effect to only after passing the trade test. Therefore, in our considered view, if the adhoc promotion was given effect to [after the applicant had qualified in the trade test] and the applicant continued in the post till regularization in the said post/grade without any break, non-counting the period of service from the date he was promoted to the said post/grade for the purpose of grant of third MACP is not justified. Since this aspect (continuance of the applicant on adhoc basis without break till regularization is not clear in the pleadings of the Respondents) we deem it fit and proper to direct the Respondents to check this aspect of the matter and if it is found to be in the affirmative, then consider the case of the Applicant for grant of third MACP, of course, subject to his fulfilling the conditions provided in the MACP scheme, by taking into consideration his date of promotion to Tech.Gr.I in the scale of

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pay of Rs.1320-2040/- (4th CPC) w.e.f. 13.05.1994. The entire exercise needs to be completed within a period of 90(ninety) days from the date of receipt of copy of this order. **Ordered accordingly.”**

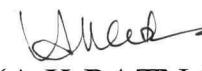
5. On examination of the present case vis-à-vis the case of Dhoba Sahu, we find no distinguished feature to differ from the view already taken in that case. We also find from the order that the adhoc promotion was not due to any fortuitous circumstances but due to pendency of cases before various Courts/Tribunal and was given effect to only after passing of the trade test. Therefore, in our considered view, if the adhoc promotion was given effect to [after the applicant had qualified in the trade test] and the applicant continued in the post till his regularization in the said post/grade without any break, non-counting the period of service from the date he was promoted to the said post/grade even though on an adhoc basis for the purpose of grant of third MACP is not justified. Since this aspect (continuance of the applicant on adhoc basis without break till regularization is not clear in the pleadings of the Respondents) this OA is

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disposed of with direction to the Respondents to check the above aspects of the matter and if it is found to be in the affirmative, then consider the case of the Applicant for grant of third MACP, of course, subject to his fulfilling the conditions provided in the MACP scheme, by taking into consideration his date of promotion to Tech.Gr.I in the scale of pay of Rs.1320-2040/-(4th CPC) w.e.f. 13.05.1994. The entire exercise needs to be completed within a period of 90(ninety) days from the date of receipt of copy of this order.

There shall be no order as to costs.


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


(A.K.PATNAIK)
Member (Admn.)