

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Cuttack Bench, Cuttack

O.A./260/0053/2015

Date of decision : 02-01-2017

Bandhumohan Sahoo Applicants

Mr. R.N.Routray Advocate for the applicant[s]

Versus

Union of India & Ors. Respondents

Mr. S. Barik Advocate for the respondent [s]

CORAM

The Hon'ble Mr. R.C.Misra, Member [A].

The Hon'ble Mr. S.K.Patnaik, Member [J]

FORWARDING

Pre-delivery draft order is being sent herewith for your kind consideration/approval and return please.

FOR REPORTING

1. Whether Reporters of local paper may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

*(S. C. Patnaik
21/1/16)*
Member [J]

Member [A]

*I am to give Hm'ble member [A] & R.C.Misra to pronounce the judgment in order on behalf of in order
I agree*

*04/12/2016 (R.C. M. SRA)
Member (CJM)
On leave as on Today*

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
OA/260/00053/2015

Orders Reserved on : 28.09.2016
Date of orders : 02.01.2017

CORAM

HON'BLE MR.R.C.Misra, MEMBER (A)
HON'BLE MR. S.K. PATTNAIK, MEMBER (J)

Sri Bandhumohan Sahoo, aged about 63 years, son of late Karunakar Sahoo, retired Stock Verifier, O/o F.A. & C.A.O/E.Co. Rly., permanent resident of Vill/P.O. – Pathuripada, P.S. – Banki, District – Cuttack, Odisha.

.....Applicant
By Advocate : Shri N.R.Routray

Versus

1. Union of India, represented through the General Manager, East Coast Railway, E.Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Financial Advisor & Chief Accounts Officer/East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Deputy Director, Pay Commission, Rail Bhawan, Railway Board, New Delhi – 110 001.

..... Respondents.

By Advocates: Shri S. Barik

ORDER

S.K. Pattnaik, Member [J]:- Applicant seeks quashing of speaking order dated 30.07.2014 [Annexure-A/15] communicated, vide letter dated 10.11.2014 [Annexure-A/16] by which his prayer for grant of MACP was rejected, by holding that the post of Stock Verifier in the scale of Rs. 1400-2600 [new PB-2 G.P. Rs. 4200] to the post of Accounts Assistant in the Grade of Rs. 1400-2600 [New P.B.-2, G.P. Rs. 4200] on the basis of seniority and merit, is a promotion from Accounts Assistant to ASV post is a promotion earned in same grade pay.

2. Short question which needs adjudication in this case is-

[a] Whether change of one post to another post in the same pay

S.K. Pattnaik

band and grade pay will be treated as promotion for the purpose of MACP?

- [b] Whether pay enhancement due to cadre restructuring shall be treated as promotion for the purpose of ACP/MACP;
- [c] Whether promotion granted without enhancement of pay or grade pay shall be reckoned for the purpose of ACP/MACP.

3. Applicant's case in short, runs as follows :-

The applicant initially appointed in S.E. Railway on 01.07.1978 as CG-II [now Accounts Clerk]. Subsequently, the applicant was promoted to the post of CG-I in 1982 after passing Appendix-II Examination and further promoted to the post of Sub Head [Accounts] w.e.f. 27.08.1987. Subsequently, the Railway Board issued Establishment Sl.No. 182/1987 [Annexure-A/1] regarding restructuring of Accounts Staff as per recommendations of 4th Central Pay Commission to resolve parity in pay scale of staff in the Organization. The DAO, S.E. Railway, Khurda Road, vide office order dated 15.10.1987 issued an order regarding change of designation of the staff of Accounts Department, i.e. those in grade of Rs. 1200-2040 will be Junior Accounts Assistant [JAA] and those in the grades of Rs. 1400-2600 will be Accounts Assistant [AA] in view of Railway Board's letter dated 27.08.1987. The applicant was granted the benefit of restructuring and became Accounts Assistant [AA] w.e.f. 01.04.1987 in scale of Rs. 1400-2600. In view of restructuring the earlier promotion granted to the applicant to the post of Sub Head [Accounts] w.e.f. 27.08.1987 lost its importance as because his pay fixed in scale of Rs. 1400-2600 w.e.f. 01.04.1987. While the applicant was working as Accounts Assistant, the administration sought for option to work in the post of Stock Verifier with benefit of Rs. 240/- as special pay and from time to time the

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said special pay/allowance enhanced to Rs. 1000/- by the 6th CPC. Finally, the applicant retired from service on 31.07.2010 on attaining the age of superannuation. The special pay/allowance in the post of Stock Verifier, neither added with his basic pay during the course of his service nor any pay fixation made due to switch-over from the post of Accounts Assistant to Stock Verifier, as such the retirement financial benefits paid to the applicant in PB-II with GP of Rs. 4200/- meant for the post of Accounts Assistant. As per the recommendation of 6th CPC, the Railway Board issued modified ACP Scheme for grant of 1st, 2nd and 3rd Financial up-gradation subject to completion of 10, 20 and 30 years of service respectively by an employee who has not got any promotion/financial up-gradation. The MACP Scheme is effective from 01.09.2008. The grievance of the applicant is that even though similarly placed person, namely V. Venkatraman, who approached the Central Administrative Tribunal, Madras Bench, Madras in OA No. 335/2007 challenging the order of rejection not to grant 1st financial up-gradation under ACP Scheme by the Railway authorities treating the restructuring from the post of Junior Accounts Assistant to Accounts Assistant as a promotion. The Madras Bench of the Tribunal vide its order dated 26.08.2008 clearly observed that the restructuring of post where pay scale of Rs. 1200-2040 was revised to Rs. 1400-2600 was no promotion and it was only revision of pay on account of restructuring of post. Aggrieved by the order of CAT, Madras Bench, the official respondents moved before the Hon'ble High Court of Madras by filing Writ Petition No.21112/2009 and the Hon'ble High Court of Madras dismissed the writ petition upholding the order of the Tribunal. The official respondents had also challenged the said order before the Hon'ble Supreme Court, vide Special Leave Appeal [Civil] No. 9422/2011 but the Hon'ble Apex Court also dismissed the Special

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Leave Petition . After dismissal of the said Special Leave Petition by the Hon'ble Supreme Court, the respondents have complied with the order of Madras Bench of the Tribunal. The grievance of the applicant is that even though the applicant cited the said precedent stating that restructuring is not a promotion or financial up-gradation for the purpose of ACP/MACP, still the Department did not oblige his prayer which had compelled him to seek redress before this Tribunal in OA No. 348 of 2014. The Tribunal by order dated 13.05.2014 had directed the respondents to pass a speaking order on the representation of the applicant and disposed of the OA, and thereafter the respondents have passed the impugned order dated 30.07.2014 [Annexure-A/15] treating that the restructuring will be treated as promotion/financial up-gradation, over-looking judicial proceedings. .

4. Respondents contested the case by filing a counter reply. According to the respondents, provisions regarding recruitment and promotions of Accounts Staff are contained in para 171 of IREM Vol. I and as per Para 171[5], the post in the grade of Accounts Assistant in scale of Rs. 1400-2600 will be filled by promotion of Junior Account Assistant in scale of Rs .1200-2040 after they have completed 3 years service in the grade and passed Appendix-II Examination. The respondents further pleaded that JAA's post constitutes as feeder for promotion to AA's post and allowed benefit of pay fixation under FR 22 C as admissible in case of promotion to the post having higher duties and responsibilities. According to the respondents, in terms of clarification issued against Sl. No.31 of Board's letter dated 19.2.2002 [RBE No.24/2002], when only a part of the posts are placed in a higher scale and rest are retained in existing grade thereby involving re-distribution of posts, then it involves creations of another grade in the hierarchy, requiring framing of separate recruitment rules for the upgraded post and placement

go back to the file

of existing incumbents to the extent of up-gradation involve in the upgraded posts will also be treated as promotion/up-gradation and offset against entitlement under ACP Scheme. According to the respondents, ACP/MACP Schemes provides for grant of financial up-gradation to the employee subject to the fulfilment of terms and conditions prescribed for the respective Scheme. Therefore, as per principle of equity any financial up-gradation granted otherwise is required to be taken into account for the purpose of grant of financial up-gradation under the ACP/MACP Scheme. In respect of many other categories, DOP&T, the nodal department of Govt. on ACP/MACP Scheme have clarified that every financial up-gradation is to be counted as up-gradation and offset against the financial up-gradation under the MACPs.

5. The applicant filing a rejoinder, has clarified the factual aspect of the case. The Central Administrative Tribunal, Chandigarh Bench has disposed of OA No.1673/PB/2013, vide order dated 13.11.2014 wherein extension of benefit of order asked for by the applicants, the Tribunal gave the following observations –

"We have given our thoughtful consideration to the matter from the material on record, it is evident that the claim of the applicant in the present OA is distinguishable from the cases of Sh. Venkataraman [supra] and Exnath Walgu Humme [supra] as these relate to persons who were in the service of the Railways prior to 01.04.1987 when restructuring took place and hence there up-gradation to the higher level was not to be treated as promotion. However, in the present case, the applicants joined service after 01.04.1987 and they were promoted through the normal process from JAA to AA. Hence, their appointment as AAs clearly took place as a result of promotion and hence, they cannot claim eligibility for the first ACP. The case of Jarnail Singh [supra] is also distinguishable on facts as that matter relates to a different cadre of staff."

The positive case pleaded in his rejoinder is that the restructuring of

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According to the applicant, he was granted the benefit of restructuring like that of V. Vankatraman and promoted to the post of Accounts Assistant with effect from 01.04.1987 under restructuring scheme, and as such, said restructuring cannot be treated as a regular promotion as the benefit was extended to the entire cadre and not to any individual.

6. Before delving in to the merit of the case, a very short question evolves for adjudication, i.e. –

[i] Whether pay enhancement due to cadre restructuring shall be treated as promotion for the purpose of ACP/MACP. Before answering this pivotal question, the other ancillary question need to be answered first, is that any promotion granted without enhancement of pay or grade pay, shall not be reckoned for the purpose of ACP/MACP. No doubt the promotion can be permitted to a higher post having same grade pay, but if there is no enhancement of pay, that cannot be treated as a promotion at least for the purpose of ACP/MACP. Avoiding financial stagnation is the compelling circumstance for introducing ACP/MACP.

[ii] The spinal issue involved in this case is, whether enhancement of pay due to restructuring, is to be treated as promotion, has already been answered by Hon'ble High Court of Madras in W.P. No.21112/2009, while up-holding the order of CAT, Madras Bench in OA No.335/2007. Once the order of Hon'ble High Court of Madras is upheld by the Hon'ble Apex Court, and rather when it is not reversed, it has a binding effect and any judicial forum is not permitted to ignore the same as not applicable.

[iii] A Coordinate Bench of this Tribunal in the case of Parmeswar Biswal vs. Union of India & Ors. [OA. 247/2014] [Annexure-A/18] passed on 25.07.2016, has affirmatively held that an employee is entitled to financial up-gradation under MACP Scheme treating restructuring of pay of

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Rs. 1200-2040 revised to Rs. 1400-2600 as not to be treated as a promotion to dis-entitle an employee from the benefit of MACP Scheme. Since in the impugned order dated 30.07.2014 [Annexure-A/15] , the respondents have taken a plea that the promotion from AA to ASV, the promotion earned in the same grade pay has to be reckoned for the purpose of MACP is contrary to the judgment of the Hon'ble High Court of Madras, and as such, cannot be up-held. It may be clarified that, if higher pay was granted due to restructuring, it cannot be treated as promotion, as the said relief was given to one and all sundry. For granting the benefit of MACP, the respondents are only to examine, if the applicant was granted regular promotion or time bound promotion during the last 10 years, 20 years and 30 years of service respectively. So, they have to calculate the entitlement of the applicant under MACP Scheme on the basis of actual promotion and not on the basis of enhancement of pay on the basis of restructuring. Hence ordered.

7. The OA is allowed. The speaking order dated 30.07.2014 [Annexure-A/15] and letter dated 10.11.2014 [Annexure-A/16] are hereby quashed. The respondents are directed to examine the case of the applicant in the light of his personal up-gradation and promotion and to pass an order under the prevalent guideline of MACP ignoring the financial up-gradation granted under restructuring as it was not a promotion as has been held authoritatively by the Hon'ble High Court of Madras, since the scale of Rs. 1200-2040 was merged with the scale of Rs. 1400-2600 and this was granted to all coming the umbrella of same cadre under restructuring.

8. Before parting with this judgment, in order to avoid all misinterpretation and misnomer, it is made clear that, if one gets regular promotion and thereafter, if both the posts are merged due to restructuring in that event the promotion shall count towards MACP. But, if one gets higher

80/2015

pay due to merger or restructuring which is availed by all the employees of that cadre, it will not be treated as financial upgradation and shall not be counted for MACP. Likewise, if one gets promotion from one post to another in the same pay scale and same grade pay, it will not be treated as promotion to disentitle him/her for getting MACP as in that event there is no escalation of pay, which is the main ingredient for entitlement to MACP. All the contentious issues raised at para 2[a][b] and [c] are answered in the negative. No costs.

S.K. Pattnaik
[S.K. Pattnaik]

Member [Judicial]

R.C. Misra
[R.C. Misra]
Member [Admn.]

mps/-