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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 455 OF 2012
this the 8th day of September 2016

CORAM

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

Ashok Kumar Swain aged about 62 years S/o Shri Banambar, retired driver, Gr.II under Deputy CE/Con. East Coast Railway, Cuttack. Permanent resident of Vill/PO Fakirpada, Distt. Cuttack, Odisha.

...Applicant

By the Advocate : M/s N.R.Routray, S.Mishra, T.K.Chaudhury, S.K.Mohanty
-VERSUS-

- 1- Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 2- Senior Personnel Officer, Construction, Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 3- F.A. & CAO/Construction, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 4- Deputy Chief Engineer, Construction, East Coast Railway, Station Bazar, PO College Sqaure, Town/District Cuttack.

...Respondents

By the Advocate : Shri D.K.Mohanty

ORDER

R.C.MISRA, MEMBER (A):

Applicant is a retired Railway employee who in this Original Application has approached this Tribunal for a direction to be issued to the respondents to grant him 3rd Financial Up-gradation in the Scale of Rs. 5200-20200 with Grade Pay Rs. 2,800/- in Pay Band – 1 under Modified Career Progression (MACP) Scheme w.e.f. 01.09.2008 and consequently, to pay him differential arrear Salary, DCRG, Commuted Value of Pension, Leave Salary and Arrear Pension along with 12% Interest.

2. Briefly stated, facts of the matter are that initially applicant had been regularised in the Railway as a Khalasi in the scale of Pay of Rs. 750-940 retrospectively w.e.f. 01.04.1973 and was promoted as Casual Truck Driver Grade III in the scale of Pay of Rs. 950-1500 w.e.f. 25.09.1978. He was further promoted as M.V.Driver Grade II in the scale of Pay of Rs. 1200-1800/4000-

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6000 w.e.f. 19.02.1992 on ad hoc measure and while working as such, he retired from Railway service w.e.f. 31.01.2011.

3. It is the case of the applicant that as per MACP Scheme, three financial upgradations are admissible to an employee on completion of 10, 20 and 30 years regular service. Based on this, applicant has contended that during his 37 years qualifying service, he has received two promotions and therefore, on completion of 30 years' service, he is entitled to 3rd financial upgradation under the MACP Scheme.

4. On the other hand, Respondent-Railways have refuted the contentions of applicant by submitting that since he has already availed of three financial upgradations under the MACP Scheme, his prayer for financial upgradation in Grade Pay Rs. 2800/- w.e.f. 01.09.2008 does not arise. To buttress their contentions, it has been submitted that applicant had completed 10, 20 and 30 years of service w.e.f. 31.03.1983, 31.03.1993 and 31.03.2003 respectively, having regard to his initial entry grade as regular Khalasi in the scale of Rs. 2500-3200 w.e.f. 01.04.1973. He was given regular promotion as M.V. Grade III in the scale of Rs. 3050-4590. Thereafter, he was given ad hoc promotion to M.V. Division, Grade II in the scale of Rs. 4000-6000 w.e.f. 19.02.1992 which corresponds to Pay Band Rs. 5200-20200 with Grade Pay Rs. 2400/- and subsequently, retired from service w.e.f. 31.01.2011 with same Grade Pay. In the above backdrop, respondents have submitted that O.A. being devoid of merit, is liable to be dismissed.

5. We upon perusal of pleadings, have heard the learned counsel for both the sides. We have also perused rejoinder filed by the applicant and written notes of submissions filed by both sides.

6. MACP Scheme lays down that "*there shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively.*" It is also stipulated that financial upgradation under the Scheme would be admissible whenever a person has spent 10 years continuously in the same grade pay.



7. Undisputedly, applicant's entry grade is Grade D which is reckoned w.e.f. 01.04.1973 for all purposes. It is an admitted position that from Grade D post, applicant was promoted as a regular measure to the grade of M.V. Driver Grade-III in the scale of Rs. 950-1500 w.e.f. 25.09.1978. He was further promoted as M.V. Driver Grade II in the scale of Rs. 1200-1800 / 4000-6000 w.e.f. 19.02.1992 on ad hoc measure, and while working as such, he retired from Railway service w.e.f. 31.01.2011. From the above analysis, it is quite clear that by the time ACP Scheme of 1999 came to be operational, applicant had already availed of two promotions i.e. M.V. Grade III as a regular measure and Grade – II on ad hoc basis in the years 1978 and 1992 respectively. Since the prayer of the applicant is for grant of third financial upgradation, the following illustration under Condition No. 28(C) of the MACP Scheme, quoted below, has been brought to our notice :

"If a Railway servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of October, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy."

8. The sum and substance of the submission of the learned counsel for applicant is that the applicant completed 10 years, 20 years and 30 years of service w.e.f. 31.03.1983, 31.03.1993 and 31.03.2003 respectively taking into consideration his initial entry grade as regular Khalasi in Scale of Rs. 2550-3200 w.e.f. 01.04.1973. He was granted one regular promotion as M.V. Grade-III in the scale of pay Rs. 3050-4590 w.e.f. 25.09.1978 as per 5th Pay Commission. The applicant was granted ad hoc promotion as M.V. Grade – II in the scale of Rs. 4000/- to Rs. 6000/- w.e.f. 19.02.1992 which corresponds to pay band of Rs. 5200-20200 and grade pay of Rs. 2400/- as per 6th Pay Commission w.e.f. 01.01.2006. He retired from service on 31.01.2011 in the above pay band and grade pay. Admittedly, he had completed 30 years of service as on 01.09.2008, and 10 years of service in the earlier Grade Pay. Therefore, applicant was entitled to 3rd financial upgradation as per the MACP Scheme in Pay Band-1 with Grade Pay of Rs. 2800/-. The contention of the learned counsel is also that similar facts were involved in OA No. 142/2013 which was disposed of by this Tribunal on 11.12.2013, directing

respondents to grant 3rd financial upgradation in favour of the applicant in that O.A. The orders of the Tribunal have been complied with by respondents by an order No. 64/2015 dated 09.06.2015. The learned counsel for applicant thus prays that similar orders may be passed by the Tribunal in respect of this O.A.

9. In terms of the facts, respondents agree with submission of applicant. But they oppose the prayer of the applicant taking the ground that applicant has already been benefited by three financial upgradation under the scheme, therefore, he is not entitled to 3rd financial upgradation in the Grade Pay of Rs. 2800/-. If he would avail benefit of MACP, he is to be reverted to the substantive post of Grade-III where the Grade Pay is Rs. 1900/-.

10. Since the O.A. No. 142/2011 disposed of by an order dated 11.12.2013 is said to be having similar facts and issues, we will now advert to facts and circumstances of that O.A. In that O.A., the applicant was regularised against Group – D (PCR) post w.e.f. 01.04.1973 and was promoted as regular measure as Painter Grade III w.e.f. 26.07.1997 and was again promoted as Painter Grade II on ad hoc basis. He was neither reverted to the lower post for the purpose of grant of 2nd MACP nor was his ad hoc promotion as Painter Grade-II regularised, but he was allowed to continue in that Grade Pay for 17 years till his retirement from service. But the Tribunal based upon a holistic interpretation of the Scheme held that the applicant was entitled to grant of third MACP considering the fact that he had earned one promotion and one ad hoc promotion in his 36 years of service.

11. The factual matrix of this case is similar to that of O.A. No. 142 of 2011 which has already been allowed by the Tribunal. The applicant in the present O.A. was allowed one regular promotion and one ad hoc promotion. He was given ad hoc promotion as M.V. Grade II in the year 1992 and continued till his retirement on 31.01.2011, without the promotion being regularised, nor he being given any further financial upgradation. The most fundamental principle of consideration of MACP is that “there shall be three financial upgradation³ under the MACPS counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial

upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay". There is no dispute in the present case about the fact that applicant had spent more than 10 years in the same Grade Pay by the time the MACP Scheme came into force. Even otherwise, by the date of retirement he had spent more than 37 years of service from the date of his regular entry in the Railways, therefore, the applicant is entitled for 3rd financial upgradation. Apparently, the second promotion given to him was not a regular promotion. It may be argued by quoting para 26 of the MACP Scheme that cases of persons holding higher posts purely on ad hoc basis, shall also be considered by screening committee along with others, and they may be allowed the benefit of financial upgradation on reversion to lower post or if it is beneficial vis-à-vis the pay drawn on ad hoc basis. The applicant was not reverted to the lower post. But this argument would be relevant if the screening committee had considered his case for 2nd financial upgradation under MACP. But, that is not the case here, and the applicant has prayed for consideration for 3rd financial upgradation. So applicant's submission for consideration of his 3rd financial upgradation, is valid and justified under the circumstances. In the

O.A. No. 142 of 2011 containing similar facts, the Tribunal had allowed the claim, and it is brought to our notice that orders of the Tribunal in that O.A. have also been implemented and resultant benefits have been awarded to the applicant in that O.A. by order dated 09.06.2015, by the respondents.

12. In the result, respondents are, therefore, directed to grant Third Financial Up-gradation to applicant under MACP Scheme w.e.f. 01.09.2008 in accordance with extant rules within a period of three months from the date of receipt of this order. The applicant being a retired employee the consequential Pensionary benefits, as well as arrears of Salary and Pension, be actually paid to him expeditiously, and in any case within Six Months of receiving a copy of the order. The O.A. is thus allowed with no order as to costs.


(R.C.MISRA)
Member(A)

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(A.K.PATNAIK)
Member(J)