

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.No.482 of 2012

Cuttack this the 7th day of January, 2014

Muralidhar Behera...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

15

CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack this the 7th day of January, 2014
CORAM

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

Muralidhar Behera
Aged about 62 years
Son of late Anadi Charan Behera
Retired Gas Cuter Grade-I
O/o. Dy.Chief Engineer/Con/
East Coast railway, JJKR
Permanent resident of Khandayat Sahi
PO-Gopalpur
PS-Sadar
Dist-Cuttack
PIN – 753 011

...Applicant

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

-VERSUS-

Union of India represented through

1. 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. Deputy Chief Engineer(Con)
East Coast Railway
Rail Vihar
Chandrasekharpur
Bhubaneswar,
Dist-Khurda

Routray

16

4. Financial Advisor & Chief Accounts Officer/Con.
 East Coast Railway
 Rail Vihar
 Chandrasekharpur
 Bhubaneswar,
 Dist-Khurda

5. Chief Administrative Officer/Con/
 East Coast Railway
 Rail Vihar
 Chandrasekharpur
 Bhubaneswar,
 Dist-Khurda

...Respondents
 By the Advocate(s)-Mr.T.K.Mandal

ORDER

R.C.MISRA, MEMBER(A)

The applicant, a retired employee of the East Coast Railways has come to this Tribunal making a prayer that the Respondents, i.e., the authorities of the Railways may be directed to grant him 2nd financial up-gradation under MACP Scheme w.e.f. 1.9.2008, and release the resultant financial benefits to him, as also to quash the order dated 5.2.2012 by which the representation for conferment of such benefits has been rejected by the concerned authorities.

2. The facts that are relevant to the consideration of this case are that the applicant was engaged in the S.E. Railways w.e.f. 1.1.1981 as a Skilled Gas Cutter, Gr.II in the scale of Rs.290-500/-, which was subsequently revised by the 4th Pay Commission, and the 5th Pay Commission. The service of the applicant was regularized retrospectively w.e.f. 1.4.1988 as Gas Cutter Grade-III (PCR) in the scale of Rs.950-1500/-. He was brought over to regular establishment with effect from 1.4.1990. While working as Technician (Grinder)-I from 6.6.1997 in the scale of Rs.1320-2040/-, the



applicant retired from Government service on 31.5.2010 on reaching the age of superannuation.

3. The crux of the grievance of the applicant pertains to grant of MACP under the scheme which became effective from 1.9.2008. The applicant, after his retirement submitted a detailed representation on 13.12.2010 to the Respondent No.2 putting forth his claim for grant of 2nd financial upgradation since he had put in a total period of 25 years and 9 months qualifying service for the purpose of pension. Allegedly, no action was taken by Respondent No.2 on the representation. The applicant, therefore approached this Tribunal by filing O.A.No.648 of 2011, which was disposed of on 26.9.2011, at the stage of admission directing Respondent No.2 to consider the pending representation, and pass a reasoned order. As per directions issued by the Tribunal, the Respondent No.2 passed a speaking order dated 5.2.2012 by which the claim made by the applicant was rejected. That is the order challenged by the applicant in the present O.A.

4. The ground on which the applicant's representation was rejected is that he has been granted two regular promotions and one ad hoc promotion in his service period of 25 years. Challenging this ground, the applicant states that he was granted temporary status on 1.1.1981 in the scale of Rs.250-500. His services were regularized as Technician Grade-III w.e.f. 1.4.1988 in the scale of Rs.3050-4590/-, and also as Technician Grade-II w.e.f. 1.4.1990 in the scale of Rs.4000-6000/- retrospectively. However, those were not promotions, since the same were not supported by administrative orders. Hence, the ground of two regular promotions having been granted to him was baseless. He was granted only one ad hoc



18
promotion with effect from 1.10.1996, and by virtue of this promotion his scale of pay was enhanced from Rs.4000-6000/- to Rs.4500-7000/-. As on 1.9.2008, the applicant had completed 20 years of qualifying service and was granted only one ad hoc promotion. Therefore, he was eminently eligible for grant of 2nd financial upgradation in accordance with the MACP guidelines, claims the applicant.

5. The applicant brings to the notice of this Tribunal that one T.Sivadasan whose service was regularized w.e.f. 1.4.1990 in the post of Technician, Grade-II approached this Tribunal by filing O.A.No.309/2009 with a prayer to grant 1st financial upgradation under the ACP Scheme. This Tribunal had allowed the prayer of T.Sivadasan. The same T.Sivadasan again filed O.A.No.731 of 2010 with a prayer to grant 2nd financial upgradation under MACP. This Tribunal directed the Railway authorities to consider the pending representation in this regard. The Railway authorities complied with the directions of this Tribunal and granted Sri Sivadasan the second financial upgradation under M.A.C.P.

6. The contention of the applicant is that his case is similar to that of Sri Sivadasan, and therefore, similar benefit should be granted to him by the Railway authorities.

7. The Respondents in their counter affidavit have contested the claim of the applicant by stating that he was initially engaged as Semi-Skilled Gas Cutter on 24.11.1975 on daily rate basis. He was granted Temporary Status on 1.1.1981 and absorbed against PCR Group D post on 1.4.1988. He was promoted on regular basis as Gas Cutter, Grade-III(PCR) on 1.4.1988. He was given another promotion as Gas Cutter, Grade-II w.e.f. 1.4.1990.

19
 Finally, he was granted ad hoc promotion as Gas Cutter, Grade-I on 1.1.1996. To sum it up, therefore, the applicant enjoyed three promotions during his service period of 25 years 9 months and 16 days. In compliance of the direction of the Tribunal in O.A.No.648 of 2011, a speaking order was passed on 5.2.2012 by which this status was communicated to the applicant, rejecting his prayer for grant of 2nd financial upgradation under MACP Scheme.

7. It is pertinent here to examine the Speaking Order dated 5.2.2012. It has been communicated in the same order to the applicant that he was granted two regular promotions as Gas Cutter, Gr.III and Gas Cutter, Gr.II and later on, was given promotion as Gas Cutter, Gr.I as an ad hoc measure. On application of the guidelines of the MACP Scheme, he was found to be ineligible for grant of 2nd financial upgradation under the Scheme.

8. In course of hearing of this matter, this Tribunal had directed the Respondents to produce the Service Book of the applicant, so that the claims and counter-claims regarding the promotion of the applicant can be subjected to verification. Accordingly, the Service Book is here before us for examination. Page-2 of the Service book of Muralidhar Behera, the applicant which contains the “**particulars of service**” is quite revealing. The date of first appointment is shown as 1.1.1984/1.1.1981. This is confusing as to which date is to be taken as date of appointment. However, in the counter affidavit, the Respondents have mentioned that the applicant was conferred temporary status on 01.01.1981. So, this dispute is settled. Against the Column, ‘Capacity on appointment’, is mentioned, ‘Gas Cutter HS, Gr.II. In the speaking order dated 5.2.2012, the ground taken by

Respondents is that the applicant was granted two regular promotions as Gas Cutter Grade-III and then Grade-II. This ground is in direct conflict with the entry in the Service Book which mentions that the capacity on appointment was Gas Cutter, HS, Gr.II. Promotion from this level could only be to Gr.I. Turning to Page-3 of the Service Book, it mentions that the applicant was promoted as Skilled Gas Cutter, Gr.I on 1.10.1996. Again, on Page-14 of the Service Book, it is mentioned that with the approval of the competent authority Sri M.D.Behera ^{is d} promoted as ad hoc Gas Cutter Skilled Gr.I in Scale Rs.1320-2040/- w.e.f. 1.10.1996 vide this office letter dated 6.6.1997. The Service Book record reveals only one promotion as Skilled Gas Cutter, Grade-I on ad hoc basis.

9. In the counter affidavit, the Respondents have pleaded that the applicant was promoted as Gas Cutter, Grade-III and then as Gas Cutter, Grade-II. They have annexed two orders as Annexure-R/4 and Annexure-R/5 purported to have been issued in this regard. Annexure-R/4 is an office order No.112/2000 by which the applicant and seven others were regularized as Gas Cutter, Grade-III, having passed the necessary trade test. Annexure-R/5 is an order of absorption against 60% PCR sanctioned cadres of CE (C)11/BBS(Bridge Unit) in the Artisan posts as regular measure. In this order, the applicant is shown to have been regularized as Gas Cutter-cum-Welder, Grade-II w.e.f. 01.04.1990. These orders are orders of regularization and absorption, and not of promotion. The Respondents have filed Annexure-R/6 which is photocopy of a page of the Service Book of the applicant mentioning that the applicant was promoted as ad hoc Gas Cutter Grade-I w.e.f. 01.10.1996. Nothing further is revealed from

21
 Annexure-R/6 which would add to the contention of the Respondents. This entry has already been discussed in course of the examination of the Service Book of the applicant. Altogether, the Service record reveals that the applicant enjoyed one ad hoc promotion to the grade of Gas Cutter, Grade-I.

10. It may be seen, therefore, that after hearing the rival contentions of learned counsels for both parties, we have also perused and examined the relevant service records. The learned counsels have also filed their written notes of argument which have been perused. The result of examination of service records unmistakably points out the fact that applicant was granted only one ad hoc promotion as Gas Cutter, Gr.I. The contention of the Respondents that two earlier regular promotions were granted is not borne out by records. Whenever there is a promotion, there has to be an administrative order, and also a corresponding entry in the Service Book. In the absence of both, it becomes difficult for us to accept the contention of the Respondents.

11. There is another aspect of this case that we would like to touch upon. The learned counsel for the applicant has submitted that similarly placed employees, T.Sivadasan and V.D.Vincent had approached the Tribunal in O.A.Nos.302 and 309 of 2009 praying for grant of 1st financial upgradation under ACP Scheme. The Tribunal directed the Respondents to grant 1st ACP on the ground that no promotion was given to them, and they were granted replacement scale only. The Respondents had implemented the orders of this Tribunal. The same two employees further approached the Tribunal for grant of 2nd financial upgradation under MACP Scheme on



22
 completion of ~~two~~ ^{twent} years of qualifying service. The Tribunal had directed the Respondents to dispose of their pending representation. The Respondents complied with the orders of the Tribunal and granted 2nd financial upgradation to these two employees. The substance of the argument of the learned counsel is that the present applicant is similarly placed and is entitled to the same benefits.

12. In his written note of arguments, the learned counsel for the Respondents has, on the other hand submitted that Sri Sadasivan was not given MACP, but ACP benefit as per directions of this Tribunal. In respect of Sri V.D.Vincent's case, as per directions of the Tribunal in O.A.No.238/2012, the MACP case was put up before the Screening Committee which opposed the grant of MACP, but with the decision of the competent authority he was granted MACP in GP Rs.4200/- w.e.f. 1.9.2008.

13. The learned counsel for the applicant has filed copies of the orders of the Tribunal in the above mentioned OAs. In O.A.No.302 of 2009, the Railway authorities were directed to consider grant of ACP benefit in favour of one V.D.Vincent, on the basis of the ratio of earlier order of the Tribunal in O.A.No.309 of 2009. One T.Sivadasan was the applicant in O.A.No.309 of 2009. In O.A.No.238 of 2012 in which V.D.Vincent was the applicant, the Tribunal directed the Respondents to consider the pending representation regarding grant of 2nd financial upgradation under MACP Scheme and pass a reasoned order. The speaking order dated 14.5.2012 at Annexure-A/10 mentions that Sri V.D.Vincent is eligible for grant of 2nd MACP in GP Rs.4200/- w.e.f. 01.09.2008, and his case would be put up to the Screening



Committee for approval. This was in compliance of the orders of this Tribunal in O.A.no.238 of 2012.

14. The sum and substance of the argument placed by the learned counsel for the applicant in respect of the earlier cases decided by the Tribunal is that the applicant in the present O.A. stands on the same footing, and is eligible to be granted 2nd financial upgradation under MACP Scheme.

15. At this stage, it is necessary to discuss the essence of the MACP Scheme. Vide letter dated 10.6.2009, the scheme was circulated by the Railway Board to all General Managers of Indian Railways for implementation. The Modified Assured Career Progression Scheme (MACPS) was formulated by the Government of India on the basis of the recommendations of the Sixth Central Pay Commission. This scheme was issued in supersession of previous ACP Scheme. Under the MACPS three financial upgradations are granted to an employee at intervals of 10, 20 and 30 years of continuous regular service. Financial upgradation under the scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. A holistic interpretation of MACP Scheme would indicate that this has been designed and implemented with a view to relieving the Government employees of the ~~vigor~~ ^{Rigour} of stagnation that may visit their service career due to lack of promotional opportunities. This provides a safety valve to employees who would otherwise linger in the same Grade Pay for long periods. Ultimately, the scheme is aimed at protecting and maintaining the morale and motivation of Government employees.

16. Coming back to the facts of the present case, having considered the rival contentions of both sides, and on examination of service record, we have come to the conclusion that the applicant was granted only one promotion, i.e, to the post of Gas Cutter Grade-I. The contention of the Respondents that two other regular promotions were granted is specious, since the entries in the Service Book of the applicant do not support such a claim. Neither do we find any administrative orders on record to substantiate such promotions. In the circumstances, the impugned speaking order dated 5/6.2.2012 (Annexure-A/6) is quashed and set aside. Resultantly, the Respondents are directed to grant the 2nd financial upgradation under MACP Scheme in favour of the applicant w.e.f. 01.09.2008 after following due procedure in this regard. The consequential benefits be released within a period of three months from the date of receipt of copy of this order.

The O.A. as a result is allowed with no order as to costs.

Patnaik
(A.K.PATNAIK)
MEMBER(J)

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