

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.783 OF 2012
this the 6th of December 2016

CORAM:

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

C.Benjamin, aged about 57 years, S/o.late J.Benjamin, retired Gas Cutter, Gr.I, O/O.Dy.C.E./Con/E.Co.Rly, Cuttack – resident of New Colony, Birat Bazar, Charbatia, Dist-Cuttack, Odisha.

By the Advocate(s)-M/s.N.R.Routray,S.Mishra, T.K.Choudhury ...Applicant
-Vs.-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.RSadan, 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, Station Bazar, Dist-Cuttack.
4. Financial Advisor & Chief Accounts Officer/Construction/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.N.K.Singh

O R D E R

R.C.MISRA, MEMBER(A):

Applicant is a retired Railway employee, who has voluntarily retired from service with effect from 31.10.2011. In this Original Application his grievance is directed against the order dated 17.09.2012(A/7) in which his request for grant of 2nd financial upgradation under the MACP Scheme in the scale of Rs.5200-20200 with GP Rs.4200/- has been turned down by the respondents.

2. Factual matrix of this matter, as revealed in the O.A. runs thus: Initially, applicant had been engaged in the erstwhile S.E. Railway as casual B.T.Mistry(Skilled) on 24.11.1975. He was granted temporary status on 01.01.1981 in the scale of Rs.330-560/- which was revised to Rs.1200-1800/- with effect from 1.1.1986 as per 4th CPC and from Rs.1200-2040/- to Rs.4000-6000/- by 5th CPC with effect from 1.1.1996. Applicant was promoted from Gas Cutter, Gr.II to Gas Cutter, Gr.I with effect from 24.03.1997 and was granted scale of Rs.4500-7000/- which corresponds to Rs.5200-20200/- with GP Rs.2800/- as per 6th CPC. While working as such, applicant was brought over to regular establishment and his service was regularized retrospectively with effect from 14.05.1993 against 60% post of Gas Cutter Gr.II in the scale of

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 Rs.4500-7000 vide A/1 dated 16.09.2003. However, applicant took voluntary retirement from service with effect from 31.10.2011 and has received his retirement dues. At the time of taking voluntary retirement, applicant was working as Gas Cutter Gr.-I, and paid retirement dues according to PB-1 of Rs. 5200-20200 with Grade Pay of Rs. 2,800/-.

3. It is the case of the applicant that since during his service career he had been granted only one promotion in the grade of Gas Cutter, Gr.I with effect from 24.03.1997 and as he had rendered more than 20 years of regular/qualifying service as on 1.9.2008, he submitted a representation dated 2.12.2011 to respondent no.2 for grant of 2nd financial upgradation under the MACP Scheme in his favour. There being no response, applicant moved this Tribunal in O.A.No.391 of 2012. This Tribunal vide order dated 16.05.2012 disposed of the O.A. with direction to respondent no.2 to consider the pending representation and pass a reasoned order. It was further directed that in case the competent authority found that the claim of the applicant was admissible under the rules/instructions, then he should be paid the consequential benefits. In the meantime, in compliance with the aforesaid direction of the Tribunal, respondent-railways issued a speaking order date 17.09.2012(A/7) rejecting the claim of the applicant. Hence, being aggrieved, applicant has moved this Tribunal in this O.A. in which he has prayed for quashing the impugned order dated 17.09.2012(A/7) with direction to respondents to grant him the 2nd financial upgradation under the MACP Scheme in the scale of Rs.5200-20200 with GP Rs.4200/- with effect from 1.9.2008 with consequential financial benefits.

4. Applicant has assailed the impugned order dated 17.09.2012(A/7) by stating that the respondents have erred in law by rejecting the claim of 2nd financial upgradation under the MACP Scheme on the ground that he had already been granted two regular promotions and that he had not completed 30 years of qualifying service. It is the case of the applicant that in the speaking order, respondents having admitted that the services of the applicant were regularized in the post of Gas Cutter, Gr.III and Gas Cutter, Gr.II with effect from 01.04.1990 and 14.05.1993 respectively, and that he has been granted one promotion to the post of B.T.M. Gr.I with effect from 24.03.1997. In the face of this admission, the order of rejection is not tenable, so pleads the applicant.

5. The further ground urged by the applicant is that he having been given one promotion from Gas Cutter, Gr.II to Gas Cutter, Gr.I with effect from 24.03.1997 and having completed more than 20 years qualifying service as on 1.9.2008 is entitled to 2nd financial upgradation



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under the MACP Scheme. To strengthen his contention, applicant has stated that Para-1 of the MACP Scheme envisages that financial upgradation under the MACP Scheme will be admissible whenever a person has spent 10 years continuously in the same grade.

6. With these submissions, applicant has reiterated his prayer for reliefs sought for in the O.A.

7. Respondents have filed their counter resisting the relief sought for in the O.A. In the counter. While they have not disputed applicant's initial casual engagement as B.T.M.(Skilled) with effect from 24.11.1975 and consequent grant of temporary status with effect from 01.01.1981, they have brought to the notice of the Tribunal that applicant was regularized against 40%/60% PCR cadre post in Gr.D category in the scale of Rs.196-232/750-940/- with effect from 01.04.1988 vide Memorandum dated 30.12.1992. After such regularization, applicant was given 1st promotion in the PCR cadre post as Gas Cutter, Gr.III with effect from 01.04.1990, 2nd promotion as Gas Cutter, Gr.II with effect from 14.05.1993 and 3rd promotion as B.T.M. Gr.I, re-designated as Cutter, Gr.I on ad hoc basis with effect from 24.03.1997 and while continuing as such, he voluntarily retired from service with effect from 31.10.2011 after rendering 23 years 7 months as regular period of service. Respondents have stoutly denied the plea of the applicant that till 24.03.1997 he was given only one promotion. On the other hand, they have stated that by that date, applicant had been given two regular promotions and one ad hoc promotion. It has been submitted that applicant has suppressed the fact that he had been regularized and brought over to regular establishment in a Group D post with effect from 01.04.1988 and not with effect from 14.05.1993 whereas on 14.05.1993 he was confirmed in his 2nd promotion.

8. Applicant has filed rejoinder to the counter which reiterates the averments as made in the O.A.

9. Consequent upon perusal of records, we have heard the learned counsel for both the sides. We have perused the written notes of submissions filed by both the sides as well as the relevant provisions of the MACP Scheme. The main thrust of the MACP Scheme is that there shall be three financial upgradations 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. Therefore, within this frame work, the Tribunal is to consider and decide the entitlement of the applicant to 2nd financial upgradation under the MACP Scheme.



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10. Admitted facts of the matter are that applicant had initially been engaged as casual B.T.Mistry(Skilled) in the year 1975. He was granted temporary status with effect from 01.01.1981. However, the fact that applicant's service was regularized against 40%/60% PCR cadre post in Gr.D category in the scale of Rs.196-232/750-940/- with effect from 01.04.1988 vide Memorandum dated 30.12.1992 which is a turning point, has not been disputed by the applicant. After such regularization, applicant was given 1st promotion in ~~the~~ as Gas Cutter, Gr.III in the year, 1990, 2nd promotion as Gas Cutter, Gr.II in the year, 1993 and 3rd promotion as B.T.M. Gr.I, re-designated as Cutter, Gr.I on ad hoc basis with effect from 24.03.1997 and while continuing as such, he voluntarily retired from service with effect from 31.10.2011. If the plea of the applicant that he had been given only one promotion from Gas Cutter, Gr.II to Gr.I, the service being regularized as Gas Cutter, Gr.II with effect from 14.5.1993, is accepted, then a pertinent question arising for consideration is what was the status of the applicant prior to 14.5.1993. Was it casual service with temporary status or regular service in the cadre of Gr.D category followed by promotion as Gas Cutter, Gr.III ? It is not the case of the applicant that his direct entry grade is Gas Cutter, Gr.II. He has also not even called in question the assertion made by the respondents that his service had been regularized in Gr.D category in the year 1988, followed by promotion to Gr.III in the year 1990. Since applicant's direct entry grade indisputably is Gr.D category which is reckonable for the purpose of grant of financial upgradation under the MACP Scheme, the relevant point to be determined is whether applicant had availed of any promotion in lieu of which he is entitled to the benefit of financial upgradations. No doubt Gr.D post stands in the feeder grade for promotion to Gr.III. As held above, since the applicant's direct entry grade is not Gas Cutter, Gr.II, it goes without saying that prior to Gas Cutter, Gr.II, he had been inducted in Gr.III category on being promoted from Gr.D. In other words, applicant's regularization in Gr.III, Gr.II and Gr.I are to be held as promotions and on this score, he cannot be said to have stagnated in a particular grade so as to make him eligible for grant of financial upgradations under the ACP or MACP Scheme, as the case may be. Accordingly, we hold that applicant has been granted three promotions from the direct entry grade which makes him disentitled to any financial upgradations under the MACP Scheme.

11. The learned counsel for applicant in his written notes of submission has mentioned that in similar matters in the past, the Tribunal has granted relief. He has enclosed orders of the Hon'ble High Court dated 18.5.2016 in Writ Petition (C) No. 13867 of 2015 by which Respondents-Railways had challenged the orders of the Tribunal in the case of one **Shri**



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Laxmidhar Dash in O.A. No. 831 of 2012. The order of the Tribunal in **O.A.No. 831/2012** has not been enclosed. In our view, by merely claiming that the facts are similar in two cases, the applicant cannot establish the same, unless it is specifically established in course of hearing, and through production of records, that the service records indeed are similar. ACP/MACP benefits are considered in reference to individual service records of employees. In the present case, similarity of facts in reference to service records is not established. We do not consider it appropriate to grant the relief claimed since the applicant on the basis of his own service records has not succeeded in proving his claim.

12. In view of the above, we are of the opinion that applicant is not entitled to any benefit under the MACP Scheme. The O.A. being devoid of merit is accordingly dismissed with no order as to cost to the parties.

R.C. Misra
(R.C.MISRA)
MEMBER(A)

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

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