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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.829 of 2012

Cuttack this the 9th day of ~~September~~, 2015

V. Endeen Kutty ...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 for being circulated to various Benches of the Tribunal or not? *yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.829 of 2012

Cuttack this the 7th day of September, 2015

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

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

V. Endeen Kutty aged about 61 years S/o Md. Koya, R/o Kallad Meethil House East, PO Faroke College, District Kozhikode, Kerala - 763 632, retired Technician Gr. I, O/o Dy. C.E./ Con. / E.Co. Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

S.Mishra

T.K.Chaudhury

1. Union of India represented through the General Manager
East Coast Railway, E.Co.R.Sadan, 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, District Khurda.
4. Financial Advisor & Chief Accounts Officer/Con./ E. Co.Rly., Rail
Vihar, Chandrasekharpur, Bhubaneswar, District Khurda.
5. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan
Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr. **M.K. Das**

ORDER

R.C.MISRA, MEMBER(A):

Applicant is a retired employee under the Railways. In this Original Application, he has assailed the speaking order dated 15.10.2012(A/10) whereby and whereunder respondent-railways have rejected his claim for grant of 2nd financial upgradation under the MACP Scheme with effect from 01.09.2008.



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2. As revealed from the record, earlier applicant had approached this Tribunal in O.A.No.366 of 2012 for direction to be issued to respondent-railways to grant him 2nd financial upgradation under the MACP Scheme with effect from 01.09.2008 in the scale of Rs.5200-20200(PB-1) Grade Pay Rs.4200/-. This Tribunal, vide order dated 09.05.2012 disposed of the said O.A. with a direction to the railway authorities to take a decision first on the pending representation and pass a reasoned and speaking order within 90 days from the date of receipt of the order. In compliance of the aforesaid direction of this Tribunal, Senior Personnel Officer(Con.)/Coordination issued a speaking order dated 17.09.2012(A/9) disclosing therein that upon examination, the matter is being put up before the Screening Committee for scrutiny and consideration. While the matter stood thus, a further speaking order 15.10.2012(A/10) in compliance of the orders of this Tribunal was issued by the railway authorities rejecting the claim of the applicant on the ground that he has received two promotions over his initial appointment in Gr.D and one financial upgradation under the ACP Scheme. This speaking order(A/10) is impugned herein and under challenge. In the above background, applicant has sought for the following relief.

"a) To quash the order of rejection dtd. 15.10.2012 under Annexure-A/10.

b) And to direct the Respondents to grant 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 in PB-1 of Rs.5200-20200 with GP Rs.4200 and pay the differential arrear salary, DCRG, commuted value of pension, leave salary and pension with 12% interest for delayed period of payment,

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice."

3. It is the case of the applicant that initially he had been engaged in the S.E. Railway in the year 1972 and was granted temporary status with effect from 01.01.1981 in the scale of Rs.330-560/- as a Skilled Saranga

Gr.II, later on revised to Rs.1200-2040 with effect from 01.01.1986 as per 4th CPC, which was further revised to Rs.4000-6000 with effect from 01.01.1996 as per 5th CPC. While the matter stood thus, applicant was promoted to Technician, Gr. I in the year 1997 in the scale of Rs. 4500-7000 revised to Rs. 5200-20200 (PB-1) with Grade Pay Rs. 2800/-. Vide order dated 30.11.2001 applicant was brought over to regular establishment being his services regularized w.e.f. 01.04.1990 against 60% PCR post of Technician, Gr. I carrying the scale of Rs. 4500-7000. It has been submitted that the applicant while working as Technician (Bridge Erector) in the scale of Rs. 5200-20100 (PB-1) with Grade Pay Rs. 2800/- retired on superannuation in March, 2012 and accordingly, his retiral dues have been settled. It has been submitted that MACP Scheme, which came into effect from 01.09.2008 lays down that there shall be three financial upgradations on completion of 10, 20 and 30 years of service respectively. Grievance of the applicant is that since he has availed of only one promotion to Technician, Gr.I in the year, 1997 and as on 01.09.2008, he had completed more than 20 years regular service, he is entitled to 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008.

4. The basic facts inputted by the respondent- railways is that applicant was initially engaged as H.S. Sarang, Gr. II w.e.f. 16.08.1973 on casual daily rate basis and while working as such, he was granted temporary status w.e.f. 01.01.1981. He was brought over to regular establishment by regularizing his service against 60% PCR cadre Gr. D post in the scale of Rs. 750-940 w.e.f. 01.04.1988. Thereafter, he was regularized on PCR cadre post as Sarang / Revittor, Gr. III in the scale of Rs. 3050-4590 w.e.f. 01.04.1988 and again regularized as Sarang, Gr. II in



the scale of Rs. 4000-6000 w.e.f. 01.04.1990. Thereafter, he was promoted to Sarang Gr. I in the scale of Rs. 4500-7000 w.e.f. 24.03.1997 on ad hoc basis and retired from Railway service on superannuation w.e.f. 31.03.2012 with Grade Pay Rs. 2800/-. In the above backdrop, it is the case of the respondents that regular service for the purpose of MACPS commences from the date of joining in a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption / re-employment basis. It has been contended that as per item No. 28(c) of the MACPS, if a Railway servant has been granted either two regular promotions or two financial upgradations under the ACP Scheme of October 1999 after completion of 20 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 3rd promotion in the hierarchy. Based on the above, it is the case of the respondents that since the applicant has availed of two regular promotions over his initial grade, i.e. Group D post within 20 years of service, he will only be eligible for 3rd MACP on completion of 30 years of service. As the applicant has rendered 27 years 7 months & 15 days regular service, under the provisions of MACPS, he is not entitled to financial upgradation. With the above submissions, respondents have opposed the prayer of the applicant.

5. Applicant has not filed any rejoinder to the counter.
6. Heard the learned counsel for both the sides and perused the records.
7. From the pleadings of the parties, the short point to be decided in the first instance is what is the direct entry grade in regular service in so far as applicant is concerned ?

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8. The uncontroverted facts are that applicant was brought over to regular establishment and consequently, his service was regularized in 60% PCR Grade D post w.e.f. 01.04.1988 in the scale of Rs. 750-940. Thereafter, he was regularized in PCR cadre post as Sarang / Revittor, Gr. III in the scale of Rs. 3050-4590 w.e.f. 01.04.1988, i.e. the date of his regularization in Gr. D post. Therefore, regularization of the applicant against two different posts, i.e. Gr. D and Sarang / Revittor, Gr. III on a particular date, i.e. 01.04.1988 makes the matter implicitly clear that applicant's direct entry grade in regular service has to be treated as Sarang / Revittor, Gr. III inasmuch as on one date there can never be any promotion from Gr. D to Gr. III. This view we have taken in OA No. **830/2012** decided by this Tribunal on 25th August, 2015. Therefore, the plea of the respondents that applicant has availed of his regular promotions over his initial grade, i.e. Gr. D does not hold any water and the applicant's direct entry grade for the purpose of MACP has to be taken into account w.e.f. 01.04.1988 in the cadre of Sarang / Revittor, Gr. III.

9. No doubt applicant has availed of further promotions to Gr. II and Gr. I w.e.f. 01.04.1990 and on 24.03.1997 respectively and to that effect, grant of benefit under the ACP Scheme is barred. But the fact remains that MACP Scheme provides that there shall be three financial upgradations counting from the direct entry grade on completion of 10, 20 and 30 years of service respectively. It further provides that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay. As mentioned above, applicant's direct entry grade being Sarang / Revittor, Gr. III, he has availed of two promotions to the Gr. II and Gr. I in the year, 1990 and

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1997 respectively. Therefore, under the MACP Scheme, on completion of 10 years continuous service in the grade of Sarang, Gr. I, he is entitled to 3rd financial upgradation even though he has not completed 30 years of service, as the basic object of the scheme is that an employee has to complete ten years service in a particular grade pay so as to make him entitled to financial upgradation, provided that he has not earned any promotion in the meantime. In view of the aforesaid, the applicant would be entitled to 3rd MACP in the year 2007, that is, after completion of 10 years from the year 1997, the year of promotion as 'Sarang Grade-I'. However, MACP Scheme having become operational w.e.f. 01.09.2008, the applicant shall be granted 3rd financial upgradation w.e.f. 01.09.2008. The applicant has repeatedly drawn analogy of his case to the case of *T. Sadasivan* and *V.D. Vincent* in *O.A. No.; 731/2010* and *O.A. No. 238/2012*, already decided by the Tribunal. We did not consider it necessary to refer to the facts of these cases, since the analysis of the factual matrix of the facts of the present case was adequate for us to lead us to our conclusion.

10. For the reasons aforesaid, we quash the impugned speaking order dated 15.10.2012 (Annex.A/10) and direct the respondents to grant 3rd financial upgradation under the MACP Scheme in favour of the applicant w.e.f. 01.09.2008 subject to fulfillment of course of the other conditions of the Scheme. This exercise shall be completed within a period of 120 days from the date of receipt of this order.

11. In the result, the O.A. is **allowed**. No costs.


(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)