



CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.830 of 2012

Cuttack this the 25th day of August, 2015

Sukanta Moharana...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Y*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *Y*



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)

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

Sukanta Moharana
Aged about 61 years
Son of late Dhobei Moharana
Vill/PO-Kayalapada,
Via-Chasapada, Dist-Cuttack
Retired Technician, Gr.II
O/o. Deputy Chief Engineer (Construction)
E.Co.Rly., Station Bazar, Cuttack

...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
Station Bazar, Cuttack

4. Financial Advisor & Chief Accounts Officer/Con./
E.Co.Rly.,
Rail Vihar
Chandrasekharpur
Bhubaneswar, Dist-Khurda

5. Chief Personnel Officer
East Coast Railway
E.Co.R.Sadan
Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents
By the Advocate(s)-Mr.R.N.Pal

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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/9) 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.

2. As revealed from the record, earlier applicant had approached this Tribunal in O.A.No.390 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 16.5.2012 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/8) 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/9) 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

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over his initial appointment in Gr.D and one financial upgradation under the ACP Scheme. This speaking order(A/9) is impugned herein and under challenge. In the above background, applicant has sought for the following relief.

- a) To quash the order of rejection dated 15.10.2013 under Annexure-A/9.
- b) And to direct the Respondents to grant 2nd financial upgradation under the MACP Scheme with effect from 01.09.2008 in PB-1 of Rs.5200-20200 with GP Rs.4200 and pay the differential arrear salary, pension, DCRG, commuted value of pension and leave salary with 12% interest for delayed period of payment

And pass any other order as deemed 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.330-480/- as a Skilled SarangaGr.II which was later on revised to Rs.1200-1800 with effect from 01.01.1986 as per 4thCPC, which was further revised to Rs.4000-6000 with effect from 01.01.1996 as per 5th CPC. Applicant had earlier filed O.A.No.390 of 2012. Similarly placed persons T.Sivdasan and V.D.Vincent had also filed O.A.Nos.731 of 2010 and 291 of 2012. They were all granted temporary status with effect from 01.01.1981 in the scale of Rs.330-480/- and for the first time, their services were regularized in Group D and Grade III w.e.f. 01.04.1988, and further in Grade-II with effect from 01.04.1990.

Applicant T.Sivdasan and V.D.Vincent were granted 1st financial





upgradation under the ACP Scheme by virtue of order dated 21.09.2010 and 03.12.2010 of this Tribunal in O.A.Nos.302 of 2009 and 764 of 2010 and therefore, applicant being similarly placed is entitled to the 2nd financial upgradation under the MACP Scheme at par with the said T.Sivdasan and V.D.Vincent. It has been pointed out that the service of the applicant was regularized retrospectively with effect from 01.04.1990 in the scale of Rs.4000-6000/- whereas for the retrospective period, no arrear salary has been paid to the applicant. Moreover, it has been contended that the applicant having been granted 1st financial upgradation under the ACP Scheme with effect from 01.10.1999 in the scale of Rs.4500-7000, as on 01.09.2008, he has already completed more than 20 years qualifying service by taking into account 100% regular and 50% temporary status service as per the Railway Board's circular. Therefore, the respondents without applying their mind to the provisions of the Scheme, ought not to have turned down the claim of the applicant for grant of 2nd MACP with effect from 01.09.2008.

4. The basic facts inputted by the respondent-railways is that applicant was initially recruited as Casual Skilled Gas-Cutter-cum-Welder w.e.f. 24.11.1975 which was a semi skilled post. He was granted temporary status with effect from 01.01.1981 as Casual Highly Skilled Gas-Cutter Grade-II and continued to work in casual capacity. Consequent upon a decision taken by the railways, applicant was absorbed in Gr. D post as a regular measure against the PCR posts with effect from 01.04.1988, and on the same day, he has been shown as a regular Gas Cutter Gr.III against the PCR posts. Subsequently, he has been regularized as Gas-Cutter Gr. II w.e.f. 01.04.1990. He was granted 1st financial upgradation under ACP Scheme w.e.f. 01.10.1999 in the scale of Rs. 4500-7000. In obedience to order of the Tribunal dated 03.12.2010 in O.A. No. 764/2010, and retired on 31.03.2012 after rendering 27 years 7 months



and 15 days of qualifying service. He was granted 1st financial upgradation under the ACP Scheme with effect from 1.10.1999 in the scale of Rs.4500-7000 in obedience to orders of the Tribunal dated 3.12.2010 in O.A.No.764 of 2010, and retired on 31.3.2012 after rendering 27 years 7 months and 15 days of qualifying service. According to respondents, ACP is to be given to the regular railway employees who have put in more than 12 years of service in the same grade provided they have not been promoted during that period. Since applicant became a regular staff in Gr. D with effect from 01.04.1988 and subsequently, he has been promoted to Skilled Artisan Gr.III(Group-C), Gr. II (Group-C) etc., as per normal rule of ACP, he is not entitled to such benefit inasmuch as he has already got more than one promotion in the cadre. However, it has been submitted that the benefit of ACP having been given to him in the past on the basis of wrong policy or order, they did not consider it fit to recover the same but they are not inclined to extend any further benefit. Finally, it has been pleaded that the applicant having availed of two regular promotions to the higher grades and 1st financial upgradation under the ACP Scheme over his initial recruitment as Group-D within 20 years of service, he will only be entitled to 3rd MACP on completion of 30 years'service and since he has completed 27 years 7 months and 15 days qualifying service, he is not entitled to 3rd MACP. Accordingly, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has not filed any rejoinder to the counter. However, Sri N.R. Routray, learned counsel for applicant has submitted in course of hearing of this O.A. that this matter is covered by the decision of the Tribunal in the **O.A. No. 482/2012** disposed of on 07.01.2014.





6. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the written notes of submission filed by the parties as well as the decision of this Tribunal dated 7.1.2014 in O.A.No.482 of 2012 (MuralidharBeheravs.UOI). On a close scrutiny of the applicability of the provisions of MACP Scheme(A/2), we find that Clause-9 of the MACP Scheme speaks of '**regular service**' for the purpose of grant of benefit under the Scheme. It lays down that '**regular service**' shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/reemployment basis. At Item No.28© of the same annexure, it has been further provided that "*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 MACPSon completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy*".

Railway Board's letter dated 10.6.2009, makes a mention that *the financial upgradation under the MACP Scheme shall be counted from the direct entry grade in the regular post and has no relevance to casual/ ad hoc service*".

7. From the above, the cardinal point that is to be decided in the first instance is what should be the direct entry grade in the regular post reckonable for the purpose of MACP.



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8. Indisputably, applicant had been engaged in the Railways as Casual Skilled Gas Cutter cum Welder with effect from 14.11.1975, and while working as such he was promoted to Gas Cutter cum Welder, HS, Gr.II with effect from 24.12.1978 carrying the scale of Rs.330-480/- (3rd P.C.). Thereafter, he was conferred with temporary status with effect from 01.01.1981. Service of the applicant was regularized against 60% PCR cadre Gr.D post in the scale of Rs.750-940 (4th P.C.) with effect from 01.04.1988 and subsequently, regularized on PCR cadre post Gas Cutter Gr.III in the scale of Rs.3050-4590 (5th P.C.) with effect from 01.04.1988 and further, he was regularized as Gas Cutter, Gr.II in the scale of Rs.4000-6000 with effect from 01.04.1990. Applicant was granted 1st financial benefits under the ACP Scheme in the scale of Rs.4500-7000 with effect from 01.10.1999. Applicant retired from railway service on attaining the age of superannuation with effect from 31.03.2012 rendering 27 years 07 months and 15 days qualifying service.

9. No doubt during the course of his service as Casual Skilled Gas Cutter cum Welder with effect from 14.11.1975 applicant was promoted to Gas Cutter cum Welder, HS, Gr.II with effect from 24.12.1978 and thereafter, he was conferred with temporary status with effect from 01.01.1981. However, the fact remains that applicant's service was regularized against 60% PCR cadre Gr.D post in the scale of Rs.750-940 whereas Skilled Artisan, Gr.III and Gr.II against which respondents claim that applicant has been promoted are Group - C posts. Since

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the applicant was already in the promoted post of Gas Cutter cum Welder, HS, Gr.II with effect from 24.12.1978, which is a Group-C post carrying higher scale of pay his service having been regularized in 60% Gr.D post with effect from 01.04.1988, there was no scope for the respondents to fix his pay in Gr.III and Gr.II with effect from 01.04.1988 and 01.04.1990 respectively and therefore, the submission of the applicant that his pay should have been fixed and arrears thereof drawn and disbursed when he was promoted to Gr.III and Gr.II holds no water. In addition to the above, applicant has also not questioned his regularization against 60% PCR cadre Gr.D post with effect from 01.04.1988, notwithstanding the fact that he was then holding Gr.II post in Group-C cadre. This being the backdrop of the issue, it is the case of the Respondents that applicant's regularization in Gr.D post with effect from 01.04.1988 is the direct entry grade for the purpose of grant of benefit under the MACP Scheme and this is why it has been contended that the applicant has been granted two regular promotions over his initial grade of appointment, besides one ACP.

10. We have given our consideration threadbare to the facts of this O.A. Before considering this matter, we may make it clear that grant of benefit under the ACP or MACP Scheme, as the case may be, is purely personal and wholly depends on the service profile of the employee concerned. Therefore, even if the facts of a particular case are similar to the facts of another



case, in the matter of grant of benefit under the MACP, each service profile needs to be individually examined, to discern the merits of the same. In the instant case, the point to be determined is regarding direct entry grade for the purpose of financial upgradation under the MACP whereas in ***Muralidhar Behera*** case, cited supra, no such consideration was made. The issue therein was the distinction between an order of promotion and an order of regularization. Therefore, the point in issue in the instant O.A. being dissimilar to that of ***Muralidhar Behera*** case, the same is of no help to the applicant.

11. No doubt the Scheme envisages that regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption basis. Admittedly, applicant's service as Gr.D was regularized with effect from 01.04.1988. At the same time, his service was further regularized against Gas Cutter Gr.III (Group-C) with effect from 01.04.1988. Considered from this angle, there cannot be two direct entry grades against two different cadres on a particular date, i.e., one in Gr.D post and other is Group-C. Therefore, applicant's service as direct entry grade is deemed to be considered with effect from 01.04.1988 in the post of Gas Cutter, Gr.III(Group-C).

12. Coming to the next point, we would like to mention that from Gas Cutter, Gr.III applicant has been promoted to Gas Cutter, Gr.II with effect from 01.04.1990 and thereafter, he has been granted one financial upgradation under the APC Scheme

with effect from 01.10.1999. Clause-1 of the MACP Scheme lays down that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuous in the same Grade Pay. Admittedly, applicant had been granted 1st ACP in the scale of Rs.4500-7000 with effect from 01.10.1999 and while he was in receipt of the same, he retired from service with effect from 31.03.2012, thus spending more than ten years regular service in the grade pay which corresponds to Rs.4500-7000 (pre-revised). Therefore, applicant is entitled to 3rd financial upgradation under the MACP Scheme on completion of 10 years regular service from 01.10.1999.

13. While dealing with the case, we have noted a number of failings and discrepancies in maintenance of service records of the applicant. Similar mistakes have been noted in other cases also. There cannot be various dates of regularization in respect of an employee who was initially recruited on a casual basis. For computation of upgradation benefits like ACP or MACP, one direct entry point in the regular post is to be considered without any relevance given to ad hoc or casual service. The confusion regarding the benefits will persist unless the Railway-Respondents in maintaining the records of the personnel identify and record one and only one direct entry of an employee in a regular post. We hope that this issue will receive attention at the level of Respondent No.1, viz., the General Manager, E.Co. Railways, who may issue suitable direction to the Personnel Department in the matter.

14. Last but not the least, it has come to our notice that in the speaking order dated 15.10.2012, the respondents have remarked 'that the applicant has been wrongly given the benefits of ACP, while in the letter dated 17.09.2012, they have mentioned that ACP benefit was conferred in pursuance of Tribunal's order dated 03.12.2010 in O.A. No. 764/2010. This is a contemptuous remark, and respondents should take care to desist from making such remarks. The decision of the Tribunal that has attained finality cannot be termed as wrong, whereas the respondents are always at liberty to challenge an order in the higher Court.

15. For the foregoing discussions, we quash the impugned order dated 15.10.2012(A/9) and direct the Respondents to take into account 10 years' regular service rendered by the applicant with effect from 01.10.1999 for the purpose of MACP and consider grant of 3rd financial upgradation in the next grade pay in his favour subject to fulfilling other terms and conditions as laid down under the MACP Scheme. In such eventuality applicant shall be granted the consequential financial benefits within a period of three months of receiving this order.

16. The O.A. is allowed to the extent indicated above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)