

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.831 of 2012

Cuttack this the 3rd day of February, 2015


Laxmidhar Dash...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)

18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.831 of 2012

Cuttack this the 3rd day of February, 2015

CORAM

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

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

Laxmidhar Dash
Aged about 62 years
S/o. late Bharat Dash
Resident of Nazarpur,
Jagatsinghpur
Retired Gas Cutter, Gr.I
O/o. Dy.C.E./Con./E.Co.Rly.
Cuttack

...Applicant

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

-VERSUS-

Union of India represented through

1. The General Manager
East Coast railway
E.Co.R.Sadan
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Senior Personnel Officer, Con./Coordination
East Coast Railway, Rail Vihar, Chandrasekharapur
Bhubaneswar
Dist-Khurda
3. Deputy Chief Engineer(Con.)
East Coast railway
Station Bazar
Dist-Cuttack
4. Financial Advisor & Chief Accounts Officer/Con./
East Coast Railway
Rail Vihar



19

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.D.M.Mohanty

ORDER

R.C.MISRA, MEMBER(A):

Applicant is a retired Railway employee. His grievance is directed against the order dated 15.10.2012(A/8) whereby and whereunder, his request for grant of 2nd financial benefit under the Modified Assured Career Progression (MACP) Scheme with effect from 01.09.2008, has been rejected by the Respondent-Railways. In the circumstances, he has sought for the following relief.

- i) To quash the order of rejection dated 15.10.2012 under Annexure-A/8.
- ii) And direct the respondents to grant 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 to PB-1 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 the delayed period.
- iii) And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.



20

2. Facts of the matter according to applicant, are that he was initially engaged in S.E. Railways on 24.1.1976 and was granted Temporary Status with effect from 1.1.1981 in the scale of Rs.330-480/- as a High Skilled Gas Cutter, Gr.II. Based on the recommendations of 4th CPC, scale of Rs.330-480/- stood revised to Rs.1200-1800/- with effect from 01.01.1986 which was further revised to Rs.4000-6000/- with effect from 01.01.1996 as per 5th CPC's recommendations. Thereafter, applicant was promoted from Gas Cutter, Gr.II to Gas Cutter, Gr.I with effect from 24.3.1997 carrying the scale of Rs.4500-7000/- which was revised to Rs.5200-20200/- in PB-1 with GP Rs.2800/- as per the 6th CPC's recommendations. It has been submitted that while working as such, applicant was brought over to regular establishment vide order dated 30.11.2001 and was given retrospective regularization with effect from 1.4.1990 against 60% PCR post of Gas Cutter, Gr.II in the scale of Rs.4500-7000/-.

3. Based on the recommendations of 6th CPC, Railway Board issued MACP Scheme for grant of 1st, 2nd and 3rd financial upgradation under ^{the Scheme} at the intervals of 10, 20 and 30 years of service to the employees in lieu of promotion, which came into effect from 01.09.2008. According to applicant, he had availed only one promotion in the grade of Gas Cutter, Gr.I with effect from 24.03.1997 and as on 1.9.2008, he having completed 20 years of regular/qualifying service was eligible to 2nd financial

81

upgradation under the MACP Scheme with effect from 1.9.2008. Agitating his grievance, applicant made a representation dated 2.6.2011 to Respondent No.2, inter alia, stating that one T.Sivdasan, whose service had been regularized with effect from 01.04.1990 ^{as Technician Gr.II} had approached this Tribunal in O.A.No.731/2010 and pursuant to the direction of the Tribunal, the Respondents while considering his case, granted him the 2nd financial upgradation under the MACP Scheme, with effect from 1.9.2008 and therefore, he being similarly circumstanced, should be granted the same benefit. While the matter stood thus, applicant retired from Railway service with effect from 31.03.2012. Since the applicant did not receive any response, he moved this Tribunal in O.A.No.389 of 2012. This Tribunal disposed of the said O.A. vide order dated 16.5.2012 with direction to Respondents to consider and dispose of the aforesaid representation within a stipulated time frame. In the above background, Respondent No.2 vide order dated 17.09.2012 (A/7) saying that the matter had been put up before the Screening Committee for scrutiny and consideration which would depend upon his working report of past years and satisfactory service. In continuation of this communication, Respondent No.2 again issued a speaking order dated 15.10.2012(A/8) rejecting the claim of the applicant, which is impugned herein and called in question. Hence, this Original Application.



22

4. It is the case of the applicant that he along with one T.Sivdasan and V.D.Vincent were granted Temporary Status with effect from 01.01.1981 in the scale of Rs.330-480/-, regularized for the first time in Group-D and Grade-III with effect from 01.04.1988 and further in Grade-II with effect from 01.04.1990. The said T.Sivdasan and V.D.Vincent were granted 1st financial upgradation under ACP Scheme by virtue of order/judgment dated 21.09.2010 and dated 03.12.2010 of this Tribunal in O.A.Nos.302/2009 and 768⁴²/2010 respectively whereas the present applicant was promoted to the post of Gas Cutter, Gr.I in the scale of Rs.4500-7000/- with effect from 24.03.1997. In the circumstances, it is the submission of the applicant that he being similarly situated with T.Sivdasan as well as V.D.Vincent is entitled to 2nd financial upgradation under the MACP Scheme as he has completed more than 20 years qualifying service as on 01.09.2008 by taking into account 100% regular service and 50% temporary status service.

5. It is the contention of the applicant that the Respondents by holding that the applicant has been promoted to Skilled Artisan Grade-III(Group-C), Grade-II(Group-C) etc. and thus, having availed of two promotions, is not entitled to 2nd MACP, have committed error. According to applicant, Respondents having admitted that the service of the applicant had been regularized thrice, i.e., in Group-D and grade-III with effect from 01.04.1988 and Grade-II with effect from 01.04.1990, rejection

23

of the claim of the applicant for 2nd MACP on the ground that the orders of regularization are orders of promotion is bad in law.

6. Respondents have filed their counter opposing the prayer of the applicant. It has been submitted that initially applicant had been engaged in the Railways on 24.11.1975 as Semi Skilled Gas Cutter-cum-Welder on casual daily rate basis. While working as such, he was promoted to the post of Skilled Gas Cutter cum Welder with effect from 24.01.1976 and again promoted to the post of High Skilled Gas Cutter cum Welder with effect from 24.12.1980 in the scale of Rs.330-480/-. He was granted temporary Status with effect from 1.1.1981. He was brought over to regular establishment and absorbed against Gr.D PCR post in the scale of Rs.740-950/- with effect from 1.04.1988. He was further regularized against PCR post as Gas Cutter, Gr.III w.e.f. 1.4.1988 in the scale of Rs.3050-4590/- Again, his service was regularized as Gas Cutter cum Welder, Gr.II in the scale of Rs.4000-6000/- with effect from 1.4.1990. He was, thereafter, promoted purely on ad hoc basis as Gas Cutter cum Welder, Gr.I w.e.f. 24.3.1997 in the scale of Rs.4500-7000/-. Respondents have brought to the notice of Item No.9 of MACP Scheme, which lays down 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/re-employment basis.
7. It is the case of the Respondents that applicant was granted Temporary Status with effect from 01.01.1981 and

24

absorbed in the regular establishment against PCR Cadre post as Khalasi(Group-D) in the scale of Rs.750-940/- with effect from 1.04.1988. Subsequently, he has availed 1st promotion(regularized) to the higher post in the PCR cadre on regular measure as Gas Cutter cum Welder/Fitter, Gr.III in the scale of Rs.3050-4590/- with effect from 01.04.1988 and 2nd promotion (regularized) as Gas Cutter cum Welder, Gr.II in the scale of Rs.4000-6000/- with effect from 01.04.1990. In view of this, it has been submitted that since the applicant has availed of two regular promotions over his initial recruitment Grade, i.e., Gr.D post within 20 years of service, he shall be eligible for 3rd financial upgradation after completion of 30 years of regular service. However, before that the applicant has already retired from service.

8. As regards grant of benefit under MACP to one T.Sivdasan, Respondents have submitted that he has been granted the benefit of ACP in the scale of Rs.5000-8000/- with effect from 16.08.2008 as per direction of the Tribunal in O.A.No.731/2010. Similarly, in so far as similarity^{is} as claimed by the applicant with one V.D.Vincent, it has been submitted that as per direction of the Tribunal in O.A.No.238/12 and on the decision of the competent authority, he was granted MACP in GP Rs.4200/- with effect from 01.09.2008.

9. In the rejoinder, applicant has basically made out two points, as under.



25

- i) Firstly, it is his submission that had he been granted any other promotion than Gas Cutter cum Welder Gr.I with effect from 24.3.1997, then his pay ought to have been fixed under Rule-1313(FR-22)(I)(a)(1)-RII in respect of those promotions.
- ii) Secondly, it has been submitted that applicant's entry in Railway Service being Grade-II he has availed only one promotion to Grade-I with effect from 24.3.1997 and therefore, he is entitled to 2nd MACP.

10. In the reply to rejoinder, Respondents have replied as under:

- i) It is not clear basing on which status he is claiming his pay ought to have been fixed whereas he discharged duties in the post of Gas Cutter cum Welder, Gr.I w.e.f. 24.03.1997 only in the scale of Rs.4500-7000/-. The fixation of pay has not been disputed by him while enjoying the grade while in service. Since his present claim of awarding grade pay of Rs.4200/- in scale of Rs.5200-20200/- has been denied by Railways in the counter, which is not a dispute originated in O.A.No.389/2012 as well as in the present O.A. As such this allegation is totally denied and no way related to the subject matter.
- ii) The applicant has been given two regular promotions, i.e., higher grade regularization over his initial recruitment grade, i.e., G.D post within 20 years of service and retired from Railway service from 31.01.2011 rendering 27 years 5 months and 16 days qualifying service. Therefore, he is not entitled for financial upgradation under the MACP Scheme.



11. We have heard the learned counsel for both the sides and perused the records.

12. The sum and substance of the points raised by the applicant in support of his case are as under.

- i) Applicant is similarly situated as one T.Sivdasan and another V.D.Vincent.
- ii) He is entitled to 2nd financial upgradation under the MACP Scheme as he has completed more than 20 years qualifying service as on 01.09.2008 by taking into account 100% regular service and 50% temporary status service.
- iii) Had the applicant been granted any other promotion than Gas Cutter cum Welder Gr.I with effect from 24.3.1997, his pay ought to have been fixed under Rule-1313(FR-22)(I)(a)(1)-RII in respect of those promotions.
- iii) Applicant's entry in Railway Service being Grade-II he has availed of only one promotion to Grade-I with effect from 24.3.1997 and therefore, he is entitled to 2nd MACP.

13. Admittedly, applicant along with one T.Sivdasan and another V.D.Vincent were granted Temporary Status with effect from 01.01.1981 in the scale of Rs.330-480/-, regularized in Group-D and Grade-III with effect from 01.04.1988 and further in Grade-II with effect from 01.04.1990. But the fact remains, the said T.Sivdasan was granted 1st financial upgradation under ACP Scheme by virtue of order/judgment of the Tribunal in O.A.No.731/2010. In case of Sri V.D.Vincent, his MACP was granted under the orders of the Tribunal in O.A.No.238/2012,

27

even though as the counter reply of Respondents mentions, the Screening Committee opposed the grant of MACP in favour of Sri Vincent. The Respondents while pointing out the difference in the service profile of the applicant vis-à-vis Sri Sivadasan and Sri Vincent, have also averred that such precedents cannot be followed by the Railways.

14. As regards counting of 100% Temporary Status service plus 50% regular service for the purpose of grant of MACP, we have examined the relevant provisions of the MACP Scheme. Paragraph-3 thereof unequivocally lays down that "*casual employees, including those granted 'temporary status' and employees appointed only on ad hoc or contract basis shall not qualify for benefits under the aforesaid Scheme*".

15. Viewed from this, the submission of the applicant that had the 50% Temporary Status service + 100% regular service been taken into account he would have been entitled to 2nd MACP with effect from 01.09.2008 is discountenanced to the provisions of the Scheme and therefore, applicant cannot lay a claim for counting 100% regular service and 50% Temporary Status service for the purpose.

16. The next submission of the applicant^{is} if he had been promoted to any other grade than Gas Cutter, Gr.I his pay ought to have been fixed as per relevant provisions of F.R. It is the case of the Respondents that the applicant having accepted his pay fixation without a demur is estopped from raising this point

28

at this stage particularly when this is not the subject matter of this O.A. We are in agreement with the Respondents in this regard. As noted above, the entitlement of the applicant to MACP has to be adjudged only within the provisions of the Scheme.

17. It is the case of the applicant that his initial entry grade is Gas Cutter, Gr.II wherefrom he has availed only one promotion to Gr.I whereas it is the case of the Respondents that the applicant's initial entry grade is Gr.D over which applicant has earned two promotions. In this connection, we had called for the Service Book in respect of the applicant, which the Respondents had produced for our perusal. Record of Service of the applicant is as under.

18. The important entries in the Service Book are that (i) applicant was absorbed against group D PCR post w.e.f. 1.4.1988, (ii) Confirmed against group-D PCR post with effect from 10.4.1989, (iii) Regularized as Gas Cutter cum Welder/Fitter Gr.III w.e.f. 1.4.1988, (iv) regularized as Gas Cutter cum Welder, Gr.II w.e.f. 1.4.1990, and (v) Promoted as Gas Cutter, Gr.I with effect from ^{4.3.97}23.4.1997. Except the promotion as Gas Cutter, Gr.I, no other event in his career has been recorded in the Service Book as promotion; they have been treated as absorption, confirmation and regularization. Even if in the counter reply, Respondents submitted ^{that} these are two promotions, such submission cannot gain greater

11

29


credibility over the records in the Service Book, which are authentic. It is, therefore, difficult for us to accept the ^{proposition} promotion that except the promotion as Gr.I any other event can be construed strictly as a promotion for the purpose of consideration under M.A.C.P.

19. The important record of the Service Book on its first page mentions that "**Capacity on Appointment is Rs.330/- Gas Cutter HS, Gr.II**". Date of ^{first} appointment is shown as CPC 1.1.1984/1.1.1981. A specific mention made in the Service Book that the capacity on appointment is Gas Cutter, HS, Gr.II can just not be overlooked by the Tribunal, even though Respondents may take resort to any defence in order to challenge the claim of the applicant. So, the capacity on appointment being Gas Cutter, HS Gr.II, his promotion can only be to Gr.I, which has been granted as per record. The Respondent-authorities may have had any reason to make more than one regularizations, and we do not intend to go into such intricacies. What we are seeing on the records in the Service Book can just not be brushed aside since they are hard facts. We need not go into the similarities and dissimilarities of the ^{case} case and other two cases decided by the Tribunal. MACP is a personal entitlement of the applicant, and this has to be considered on the basis of service records of the applicant, in the light of the provisions laid down under the Scheme.



30

20. Having held that the applicant got his first promotion as Gas Cutter, HS, Gr.I w.e.f. 24.3.1997, we also hold that he is entitled to grant of 2nd MACP on completion of twenty years from the date of regular appointment as per service records. The Respondents are, therefore, directed to confer the benefit of 2nd MACP on the applicant within a period of ninety days from the date of receipt of this order, after observing the due formalities in this regard. In the circumstances, the impugned order of rejection dated 15.10.2012(Annexure-A/8) is quashed and set aside.


(R.C.MISRA)
MEMBER(A)

The O.A. is thus allowed. No costs.


(A.K.PATNAIK)
MEMBER(J)

BKS