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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.905 of 2012

Cuttack this the 13th day of January, 2015

P.K.Chatterjee...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)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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CORAM

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

P.KChatterjee
Aged about 59 years
S/o. late Jaatbandhu Chatterjee
At present working as Gasu Cutter Grade-I
O/o. Executive Engioneer/Con./East Coast Railway
At-Angul Railway Station(Raniguda)
PO-Turang,
Town/Dist-Angul
Permanent resident of Vill-Bisanikharida
Po/Via-Charampa,
Dist-Bhadrak
Odisha

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Mishra

T.K.Choudhury

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/Coordination
E.Co.Rly., Rail Vihar, Chandrasekharpur
Bhubaneswar
Dist-Khurda
3. Chief Administrative Officer/Con./East Coast railway
Rail Vihar, Chandrasekharpur
Bhubaneswar, Dist-Khurda

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4. Deputy Chief Engineer/Con./East Coast Railway
Cuttack , at present Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda
5. Financial Advisor & Chief Accounts Officer/Construction
East Coast Railway, Rail Vihar, Chandrasekharpur
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s)-Smt.S.Rajguru(Res.1 to 4)

ORDER

R.C.MISRA, MEMBER(A):

Applicant is presently working as Gas Cutter, Gr.I in the O/o. Executive Engineer/Con./East Coast Railway, Angul. He had earlier moved this Tribunal in O.A.No.765 of 2012 for direction to be issued to Respondent-Railways to grant him 2nd financial upgradation under Modified Assured Career Progression (in short MACP) Scheme with effect from 1.9.2008 in PB-1 (Rs.5200-20200/-) with GP Rs.4200/-. The Tribunal vide order dated 12.12.2012 disposed of the matter with direction to Respondent No.2 to consider the pending representation and pass a reasoned and speaking order within a stipulated time. Complying with the above direction of the Tribunal, Respondent No. 2 vide speaking order dated 6.11.2012(A/7) rejected the claim of the applicant. Hence, this Original Application seeking the following relief.

- i) To quash the order of rejection dated 06.11.2012 under Annexure-A/7.



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- ii) And to 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 with 12% interest for the delayed period.

2. As disclosed, facts of the matter are that initially applicant was engaged as Casual Gas Cutter-cum-Welder on daily rated basis w.e.f. 04.09.1975 and was subsequently, granted Temporary Status with effect from 01.01.1981. While working as Gas Cutter, HS, Gr.II in the scale of Rs.330-480/-, applicant was brought over to regular establishment by way of regularization of his services and was absorbed in Gr.D PCR cadre post with effect from 01.04.1988 in the scale of Rs.750-940/-. Thereafter, his service was regularized against PCR post of Gas Cutter-cum-Welder/Fitter, Gr.III in the scale of Rs.950-1500/- / Rs.3050-4590/- with effect from 01.04.1988 and thereafter, as Gas Cutter-cum-Welder/Fitter, Gr.II in the scale of Rs.4000-6000/- with effect from 01.04.1990. Further, applicant was promoted as gas Cutter, Gr.I on ad hoc basis with effect from 24.03.1997 in the scale of rs.4500-7000/-.

3. As per the recommendations of the 6th CPC, Railway Board issued MACP Scheme for grant of 1st, 2nd and 3rd financial upgradations at the intervals of 10, 20 and 30 years of regular service, which came into force with effect from 01.09.2008. It is the case of the applicant that as on 01.09.2008, he has already completed 20 years regular service and thus, eligible for 2nd MACP. Applicant has brought to the notice of the Tribunal that

22 similarly placed employees, viz., T.Sibdasan and V.D.Vincent, who had approached this Tribunal and in consideration of their representations, as per the direction of the Tribunal, Respondent-Railways have decided to refer the matter to the Screening Committee for grant of 2nd MACP with effect from 01.09.2008 vide A/4. Therefore, in the same analogy, applicant's case for grant of 2nd MACP should have been referred to the Screening Committee.

4. Applicant has urged that by virtue of regularization, he has not received any financial benefits in the matter of pay fixation as he was already enjoying the scale of pay meant for Gas Cutter, Gr.II with effect from 01.01.1981 and only, he was promoted to Gas Cutter, Gr.I on ad hoc basis with effect from 24.02.1997. Applicant has pointed out that A/7 dated 06.11.2012 which mentions that he had been granted two regular promotions to Skilled/Artisan, Gr.III and Gr.II is false and fabricated. According to him, having regard to 50% Temporary Status service and 100% regular service, he attains 20 years regular service as on 01.09.2008 and therefore, 2nd financial upgradation is due to him with effect from 01.09.2008 and in the circumstances, it has been submitted that the Respondents in their order at A/7 have admitted that the service of the applicant had been regularized ^{once} ~~three~~, i.e., Gr.D, Grade-III with effect from 01.04.1988 and Gr.II with effect from 01.04.1990. In the face of this admission, the rejection of the

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claim by the Respondents that the applicant had been promoted to Skilled Artisan, Gr.III(Group-C) and Gr.II(Group-C) is nothing but with a malicious intent to frustrate his claim.

5. Respondent-Railways have filed a detailed counter-reply. In the counter-reply, they have taken the same stand point as in the speaking order at A/7. However, the sum and substance of their submission is that the applicant was granted Temporary status with effect from 01.01.1981 and was brought to regular establishment with effect from 01.04.1988 in PCR Gr.D post in the scale of Rs.750-940/- and promoted (regularized) in the rank of Sarang/Revittor Gr.III in the scale of rs.3050-4590/- with effect from 01.04.1988. He was promoted to the next higher grade of Sarang, Gr.II with effect from 01.04.1990 in the scale of Rs.4000-6000/-. Thus, according to Respondents, applicant having been granted two promotions over his initial recruitment in Gr.D post within 20 years of service, is not entitled to 2nd MACP. Respondents have submitted that the benefits of ACP/MACP are available to regular employees and therefore, applicant cannot claim the said benefit by counting his service outside the regular employment.

6. With these submissions, Respondents have opposed the relief sought by the applicant.

7. In the rejoinder to counter, the submission of the applicant is almost the same as in the Original Application. However, it has been submitted that if the applicant was



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 granted any other promotion prior to his promotions as Gas Cutter cum Welder, Gr.I with effect from 24.03.1997, his pay ought to have been fixed under Rule-1313 (FR-22)(I)(a)(1)-RII with effect from the date(s) of such promotion. The Respondents having not justified that position, cannot deny the benefit of 2nd MACP in the garb of promotion. Further, it has been pointed out that had the applicant not been granted ad hoc promotion to Gas Cutter, Gr.I with effect from 24.03.1997, he would have been entitled to 1st ACP with effect from 01.10.1999 at par with T.Sivadasan and V.D.Vincent and subsequently, the 2nd MACP. However, in the end, applicant has submitted that in the post of Gas Cutter, Gr.I he has already completed 10 years' service for which he is entitled to financial upgradation under the MACP Scheme.

8. We have heard the learned counsel for both the sides and also gone through the pleadings of the parties..

9. Applicant has made out a case that 50% Temporary Status service + 100% regular service if taken together, he would be entitled to 2nd MACP with effect from 01.09.2008. In this respect, we have examined the relevant provisions of the MACPS(A/3). 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"*.

10. With a view to determining the entitlement of the

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 applicant to MACP, commencement of *regular service* is the criterion. In this regard, we would like to refer to Condition No.9 of the MACP Scheme, which is germane to the issue, reads as under:

" 'Regular Service' for the purpose of the MACPS 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".

11. In order to determine the commencement of regular service, the service profile of the applicant is the guiding factor, which reads as under.

- i) Engagement as Casual Skilled Gas Cutter-cum-Welder on daily rated basis with effect from 04.09.1975, and conferred Temporary Status w.e.f. 01.01.1981.
- ii) Regularized in Group - D with effect from 01.04.1988
- iii) Regularized as Gas Cutter-cum-Welder/Fitter, Gr.III with effect from 01.04.1988
- iv) Regularized as Gas Cutter-cum-Welder, Gr.II with effect from 01.04.1990
- v) Promoted as Gas Cutter, Gr.I on ad hoc basis with effect from 24.03.1997

12. It is the case of the Respondents that the applicant having been granted two regular promotions over his initial recruitment as Gr.D post within 20 years of service is not entitled to 2nd MACP. On the other hand, it is the contention of the applicant that had he been promoted, his pay ought to have

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28 been fixed under Rule-1313 (FR-22)(i) (a)(1)-RII with effect from the date(s) of promotion. According to applicant, he has been granted only one ad hoc promotion to Gas Cutter, Gr.I with effect from 24.3.1997.

13. During the course of hearing, learned counsel for the applicant submitted that this matter is covered by the decision of this Tribunal in O.A.No.482 of 2012 (Muralidhar Behera vs.UOI) decided on 07.01.2014. We have gone through the said decision. In that matter, the Tribunal came to a finding that the initial appointment/entry grade of the applicant was Gas Cutter HS, Gr.II and accordingly, held that promotion from this level could be to Gr.I. In the above background, the Tribunal came to the conclusion that the applicant therein had been granted only one promotion, i.e., to the post of Gas Cutter Grade-I.

14. In the case of Muralidhar Behera(supra) the Tribunal had directed production of Service Book of the applicant, which on examination revealed that against the Column, '**capacity on appointment**', it was mentioned, "**Gas Cutter HS Grade-II**". The contention in the speaking order was found to be in direct conflict with the entry in the Service Book. Since according to the Service Book, Shri Behera was appointed in the capacity of Gas Cutter Gr.II, promotion ^{from} this level could be only to the level of Gr.I, and this promotion was given on ad hoc basis w.e.f. 1.10.1996. The conclusion reached by the Tribunal was that Sri Behera was granted only one promotion, and that the

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contention of Respondents that two regular promotions were given was specious. On that basis, direction was issued to Respondent-authorities to grant 2nd financial upgradation under the MACPS in favour of the applicant in that case w.e.f. 1.9.2008 after following due procedure in this regard.

15. In the present O.A., the applicant has submitted that his services were regularized w.e.f. 1.4.1988 as Gas Cutter Grade-III. The Respondents have also contended in the counter reply that there was regularization as Gas Cutter, Gr.III w.e.f. 1.4.1988, and again as Gas Cutter, Gr.II w.e.f. 1.4.1990. Subsequently, there was promotion on ad hoc basis as Gas Cutter, Gr.I w.e.f. 24.3.1997. This does not indisputably reveal the capacity in which the applicant was regularly appointed. This is a crucial point which was verified from the service Book in case of Muralidhar Behera(Supra). In the present case, the Service Book has not been examined. If in the Service Book, the applicant's capacity on appointment is Grade-II, then like in the case of Muralidhar Behera, it will be held that only one promotion to Grade-I was given. On the contrary, if it is Grade-III, it will be construed that the applicant has availed of two promotions, i.e., one as Grade-II and another to Gr.I. This will make a world of difference to the claims made by the applicant.

16. In the counter reply referring to the precedent cases allowed by the Respondents, it has been pleaded that the applicant has placed reliance on the instances where relief was



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wrongly granted, and that one wrong decision would not justify taking another wrong decision. We are not on that point. We would make it clear that grant of financial upgradation under ACP or MACP is purely personal and is entirely dependent on the service profile of the concerned employee. This service profile has to be examined against the provisions of the scheme in order to decide the admissibility or otherwise of the financial upgradation.

17. In the light of above discussions, therefore, it is incumbent upon the Respondents to examine the Service Book of the applicant in order to verify what was the capacity on appointment of the applicant on regular basis. It has to be determined whether the present applicant has availed of the benefit of one promotion, or two promotions since his date of regular appointment. That determination will incidentally lead to the correct decision as to whether the applicant is eligible for grant of 2nd financial upgradation under MACP as per the prayer made in this O.A.

18. In view of the above discussions, and the deficiency in the speaking order in not covering the above aspect, we think it appropriate to remit the matter back to the Respondents with a direction to carefully scrutinize this factual aspect, and after reconsidering the matter, pass a reasoned order, within a period of ninety days and communicate this to the applicant.



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19. The matter is thus disposed of with the above observations and directions. No costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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