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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.644 of 2013

Cuttack this the 17<sup>th</sup> day of August, 2015

Panchanan...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *No*

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.644 of 2013**

Cuttack this the 17<sup>th</sup> day of August, 2015  
CORAM

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

Panchanan  
Aged about 62 years  
Son of late Baidhara  
Retired Tech (Bridge Erector)/III,  
O/o. Deputy Chief Signal & Telecom Engineer/Construction  
East Coast Railway  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar  
Permanent resident of Vill-Nuapatna  
PO-Babalpur  
Via-Manjuri Road  
PS-Bhandaripokhari  
Dist-Bhadrak

...Applicant

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

Union of India represented through

1. 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 Signal & Telecom Engineer(Con.)/  
E.Co.Rly.,  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar  
Dist-Khurda



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4. Financial Advisor & Chief Accounts Officer/Con./  
E.Co.Rly.,  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar  
Dist-Khurda
5. Mr.Rasbihari Jena  
Senior Personnel Officer/Construction/Coordination  
E.Co.Rly.,  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar  
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.B.B.Pattnaik

**ORDER**

**R.C.MISRA, MEMBER(A):**

Applicant is a retired employee under the Railways. His grievance is directed against order dated 27.8.2013 (A/13) by virtue of which his claim for grant of 2<sup>nd</sup> financial upgradation under the MACP Scheme has been rejected by the Railway Administration.

2. Facts of the matter in brief are that applicant was initially engaged as Khalasi in the year 1972 under the Railways. Subsequently, he was granted temporary status with effect from 01.01.1981 and his service was regularized in the post of Bridge Khalasi on 01.04.1984 against 60% PCR sanctioned post. Again his service was regularized as Bridge Khalasi with effect from 01.04.1988 in the scale of Rs.3050-4590 vide order dated 11.6.1999. Applicant was granted 1<sup>st</sup> financial upgradation under the Assured Career Progression (ACP) Scheme with



effect from 1.4.2000 vide order dated 8.10.2003. While the matter stood as such, vide order dated 22.06.2005, the said benefit was withdrawn on the ground that applicant had not completed 24 years qualifying service thus treating the said benefit as 2<sup>nd</sup> financial upgradation under the ACP Scheme. Aggrieved with the above, O.A.Nos. 660, 663 and 740 of 2005 were filed before this Tribunal, which were allowed vide order dated 22.11.2007 with an observation that upgradation granted under the ACP Scheme was the first and not second and accordingly, it was directed to restore the beneficiaries to their upgraded scale. Against this order, the Respondent-Railways moved the Hon'ble High Court of Orissa in WPC No.7429 of 2008 which was dismissed vide order dated 8.7.2008. According to applicant, he being a similarly situated person as that of one Rathi Sahoo in O.A.No.660 of 2006 disposed of on 22.11.2007, made a representation dated 12.5.2009 to the authorities in the Railways to restore the financial upgradation that had already been granted to him as per order dated 8.10.2003(A/2). Since no action was taken, applicant moved this Tribunal in O.A.No.469 of 2010. This Tribunal vide order dated 7.9.2010 disposed of the said O.A. with direction to Respondents to consider the pending representation and issue a reasoned order. In compliance of the above order, Respondents restored back the upgraded scale of Rs.4000-6000/- with effect from 1.4.2000. On the basis of 6<sup>th</sup> CPC



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recommendations, Modified Assured Career Progression (MACP) Scheme came into effect from 1.9.2008. As per the provisions of MACPS, an employee is entitled to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradation on completion of 10, 20, and 30 years of regular service. Applicant retired on superannuation with effect from 31.03.2012. At that point of time, he was in receipt of Rs.5200-20200(PB-1) GP Rs.2400/- and accordingly, he has already been paid his retirement dues. It is the case of the applicant that he has rendered 28 years, 2 months and 14 days qualifying service and during his service career, he has been granted only one financial upgradation under the ACP Scheme with effect from 1.4.2000 in the scale of Rs.4000-6000/-.

According to him, on 1.9.2008, i.e., the effective date of MACPS, he has completed more than 20 years qualifying service and therefore, he is entitled to 2<sup>nd</sup> MACP. Since his representation dated 19.11.2012 made in this regard did not evoke any fruitful result, he moved this Tribunal in O.A.No.530 of 2013 and this Tribunal, vide order dated 7.8.2013 directed the Railway authorities to consider and dispose of the representation dated 9.12.2012 in accordance with the extant rules and instruction and communicate the same to the applicant through a speaking order. In obedience of the order of the Tribunal, Respondents, vide speaking order dated 27.8.2013 rejected the claim of the applicant for grant of 2<sup>nd</sup> MACP on the ground that the service of the applicant was regularized in the higher grade PCR Post

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(regular promotion) as Bridge Khalasi in the scale of Rs.3050-4590 with effect from 1.4.1988 and again ACP benefit was granted in the scale of Rs.4000-6000 with effect from 1.4.2000. Order of regularization in the post of Bridge Khalasi with effect from 1.4.1988 was treated as promotion and therefore, benefit of financial upgradation that had been granted to the applicant with effect from 1.4.2000 was the 2<sup>nd</sup> ACP. In the circumstances, applicant is entitled to 3<sup>rd</sup> MACP on completion of 30 years qualifying service. In the above background, applicant has invoked the jurisdiction of the Tribunal in this Original Application under Section 19 of the A.T.Act, 1985, wherein he has sought for the following relief.

- a) To quash the order of rejection dated 27.08.2013 under Annexure-A/13.
- b) And to direct the Respondents to grant 2<sup>nd</sup> financial upgradation under the MACP Scheme with effect from 01.09.2008 in PB-1 of Rs.5200-202000 with GP Rs.2800 and pay the differential arrear salary, pension, DCRG, commuted value of pension and leave salary with 12% interest for delayed period of payment
- c) And to direct the respondents to pay Rs.20,000 towards harassment by recovering the same from the slary of Respondent No.5.

And pass any other order as deemed fit and proper in the interest of justice.

3. In support of his case, applicant has pleaded that his service was regularized in the scale of Rs.3050-4590 with effect from 1.4.1988 vide order dated 11.6.1999 and on completion of 12 years of service, he was granted 1<sup>st</sup> ACP in the scale of

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Rs.4000-6000/- with effect from 1.4.2000. Therefore, applicant having retired from service with effect from 31.3.2012 is governed under the MACP Scheme and is entitled to 2<sup>nd</sup> financial upgradation under the said Scheme. Based on the above, it is submitted by the applicant that the submission of Respondents that he having not completed 30 years is not entitled to 3<sup>rd</sup> MACP does not stand to reason.

4. Resisting the claims of the applicant, a counter reply has been filed by the Respondent-Railways. It has been submitted that as per his service particulars, applicant was engaged as casual Khalasi on daily rate basis in BRI(Reg.), S.E. Railways, KNPR with effect from 5.12.1992(sic). While working as such, he was promoted as casual Bridge Khalasi in the scale of Rs.210-290 with effect from 24.12.1980. He was granted temporary status with effect from 1.1.1981 and subsequently, he was absorbed against 40% Gr.D post in the scale of Rs.750-940/- with effect from 1.4.1984 vide DEN(Reg.)CTC's Memorandum dated 16.7.1992. Though the applicant was absorbed in Gr.D PCR post, he was allowed to continue to work in the post of Bridge Khalasi on ad hoc basis in the scale of Rs.950-1500 due to exigency of work. Further, applicant was regularized in the post of Bridge Khalasi in the scale of Rs.950-1500/3050-4590 with effect from 1.4.1988 vide letter dated 11.6.1999. Thereafter, applicant was granted financial upgradation under the ACP Scheme in the scale of Rs.4000-

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6000 with effect from 1.4.2000 by virtue of Court's order. The main thrust of the counter, according to Respondents is that upon absorption of the applicant in Gr.D PCR post in the scale of Rs.750-940/- with effect from 1.4.1984, he was regularized (by promoting) in the post of Bridge Khalasi in the scale of Rs.950-1500/3050-4590 from 1.4.1988. It is the contention of the Respondents that applicant has been given one promotion by taking into account his Gr.D status in the scale of Rs.750-940 as per his eligibility and later on, he was granted 1<sup>st</sup> financial benefit under the ACP Scheme in the scale of Rs.4000-6000 with effect from 14.2000. Benefit under the MACP Scheme is counted from the direct entry grade on completion of 30 years' service, whereas, applicant retired from service with effect from 31.3.2012 on completion of 28 years, 2 months and 19 days qualifying service in the scale of Rs.4000-6000/- which corresponds to Rs.5200-20200 with GP Rs.2400 as per the 6<sup>th</sup> CPC. In other words, it is the submission of the Respondents that applicant has received one promotion from Gr.D post to Bridge Khalasi in the year 1988 and subsequently, he has been granted the benefit of ACP on completion of 12 years regular service as Bridge Khalasi and therefore, he is entitled to 3<sup>rd</sup> MACP on completion of 30 years' service. As the applicant retired on 31.3.2012 having rendered 28 years, 2 months and 19 days qualifying service, he is not entitled to 3<sup>rd</sup> MACP.

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5. No rejoinder has been filed by the applicant refuting the above contentions of the Respondent-Railways.

6. In the written notes of submission, applicant has brought to the notice of the Tribunal that withdrawal of financial upgradation under the ACP Scheme dated 22.06.2005 was the subject matter of challenge before this Tribunal in O.A.Nos. 660, 663 and 740 of 2005. This Tribunal vide order dated 22.11.2007(A/4) held that the financial upgradation granted to the applicant is the first and accordingly, quashed the order dated 22.6.2005. This order of the Tribunal, on being appealed of in WPC No.7429 of 2008, the same was dismissed by the Hon'ble High Court of Orissa vide order dated 08.07.2008 and consequently, the Respondent-Railways vide order dated 08.11.2010 under A/8 restored the financial upgradation of the applicant with effect from 01.04.2000. It is the case of the applicant, he having been granted 1<sup>st</sup> ACP with effect from 1.4.2000 is entitled to 2<sup>nd</sup> MACP with effect from 01.09.2008 as he has already completed more than 20 years qualifying service.

7. Written notes of submission filed by the Respondent-Railways are the reiteration of facts as set out in their counter-reply to O.A.

8. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the speaking order dated 27.8.2013(A/13) which is impugned



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in this O.A. As defined in Item No.9 (Annexure-A/9) with regard to MACP, '**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/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 2<sup>nd</sup> financial upgradation under the ACP Scheme of October, 1999 after completion of 24 years of regular service then only 3<sup>rd</sup> financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned 3<sup>rd</sup> 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***".

9. From the above, the leading point to be decided by the Tribunal is whether absorption of the applicant in Gr.D with effect from 01.04.1984 or regularization of service in grade of Bridge Khalasi with effect from 01.04.1988 is the direct entry grade in regular post.

10. Uncontroverted facts of the matter are that initially applicant had been engaged in the Railways as casual Khalasi on daily rate basis in the year 1972 and while working as such, he was promoted as casual Bridge Khalasi in the scale of

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Rs.210-290 with effect from 24.12.1980. He was granted temporary status with effect from 1.1.1981 and subsequently, absorbed against 40% Gr.D PCR post in the scale of Rs.750-940 with effect from 1.4.1984. However, he was allowed to work on officiating/ad hoc basis as Bridge Khalasi carrying the scale of Rs.950-1500 due to exigency of work in which post he was regularized with effect from 1.4.1988. Thereafter, he was granted the benefit of financial upgradation under the ACP Scheme in the scale of Rs.4000-6000 with effect from 1.4.2000 on completion of 12 years' service, which according to applicant is the 1<sup>st</sup> ACP. In other words, Bridge Khalasi being the commencement of regular service is the direct entry grade of the applicant. Here, a question arises for consideration is that if at all Bridge Khalasi is considered as the direct entry grade, then a further question arises therefrom is what was the status of the applicant prior to 1.4.1988 ? Answer to this is very simple. Prior to 1.4.1988, applicant's status was undoubtedly Gr.D with effect from 1.4.1984. This being position, it is to be held that there can never be two direct entry points into two different cadres or grades in the hierarchy. The corollary of this is that for the purpose of grant of benefit under the MACP Scheme, direct entry grade in the post of Gr.D with effect from 1.4.1984 has to be reckoned in so far as applicant is concerned.

11. When direct entry point is to be counted from 1.4.1984, it is to be consequently accepted that applicant's regularization in



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the post of Bridge Khalasi in the scale of pay Rs.950-1500/3050-4590 from 1.4.1988 is by way of promotion, which is the claim made by the respondents in the counter-affidavit. The applicant was given 1<sup>st</sup> ACP benefit in the scale Rs.4000-6000/- from 1.4.2000. Therefore, taking 1.4.1984 as the entry point, one promotion given to the applicant was followed by one financial upgradation.

12. Next question to be answered is whether the applicant is entitled to one more financial upgradation under the MACP Scheme which was made operational with effect from 1.9.2008 by the Railways under the Railway Board's letter dated 10.6.2009. In the impugned order dated 27.8.2013 the authorities have decided that the applicant retired before completion of 30 years of regular service, and therefore, was not entitled to 3<sup>rd</sup> financial upgradation. Clause - 28(C) of the guidelines with regard to MACPS lays down that "*if a Railway servant has been granted either two regular promotions or 2<sup>nd</sup> financial upgradation under the ACP Scheme of October, 1999 after completion of 24 years of regular service, then only 3<sup>rd</sup> financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy*". In the present case, applicant had completed 28 years 2 months and 19 days of qualifying service by the time he retired on superannuation



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on 31.3.2012. However, Clause-1 of the MACP Scheme provides as under.

"There shall be three financial upgradation under the MACPS counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay".

13. In the present case, ACP benefit given with effect from 1.4.2000 will be counted as the 2<sup>nd</sup> MACP, since there has been one earlier promotion, and that is the reason why the applicant cannot make a claim to 2<sup>nd</sup> MACP. But, by the time he retired in the year 2012, he has already spent 10 years continuously in the same Grade Pay. Therefore, even though he did not complete 30 years of service, his entitlement to 3<sup>rd</sup> MACP with effect from 31.3.2010, the date on which he completed 10 years of continuous service in the same Grade Pay cannot be denied.

14. For the reasons discussed above, we quash the impugned order dated 27.8.2013(A/13) and direct the Respondents to consider grant of 3<sup>rd</sup> financial upgradation with effect from 31.3.2010 to the applicant subject to fulfilling other terms and conditions as laid down under the MACP Scheme. In the event that he is granted the 3<sup>rd</sup> MACP, consequential financial benefits shall be sanctioned and disbursed to the applicant within a period of three months of receiving this order.



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

*Q.C.*  
**(R.C.MISRA)**  
**MEMBER(A)**

*Abu*  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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