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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.83 of 2013

Cuttack this the 2nd day of August 2016

K.Chandran...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)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.83 of 2013

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CORAM

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

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

K.Chandran
Aged about 61 years
S/o. late Unnichoyi
Resident at-Veerppingal House
PO-Vallikunnu
Via-K.Nagaram
Dist-Mallapuram
Kerala
Retired technician, Gr.I
O/o.Dy.C.E./Con./E.Co.Rly.
Khurda
At present Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda
Odisha

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Mishra
S.K.Mohanty
Ms.J.Pradhan

-VERSUS-

Union of India represented through:

1. The General Manager
E.Co.Rly.
E.Co.R.Sadan
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Senior Personnel Officer, Con./Co-Ord.,
East Coast Railway
Rail Vihar



Chandrasekhapur
Bhubaneswar
Dist-Khurda

3. Deputy Chief Engineer(Con.)
E.Co.Rly.
Khurda
At present Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda
4. Financial Advisor & Chief Accounts Officer/Con./E.Co.Rly.
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda
5. Chief Administrative Officer(Con.)
East Coast railway,
Khurda
At present Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s) Mr.T.Rath Mr. T.K. Mandal

* corrected
vide order
of Hon'ble Court
dt. 26.10.17.

[Signature]
26.10.17
(A. Misra)
Section Officer
(Judicial)

ORDER

R.C.MISRA, MEMBER(A):

Applicant herein is a retired Technician, Gr.I, who has retired from railway service on attaining the age of superannuation with effect from 30.6.2012. He has invoked the jurisdiction of this Tribunal being aggrieved by the order dated 17.1.2013(A/9) issued by the Railway Administration in compliance with an earlier order of this Tribunal in O.A.No.931 of 2012, whereby his claim for grant of 2nd financial upgradation with effect from 1.9.2008 under the Modified

[Signature]

21 Assured Career Progression(MACP) Scheme, has ^{been} turned down. 2

In the circumstances, he has sought for the following relief.

- i) To quash the order of rejection dated 17.01.2013 under Annexure-A/9.
- ii) And to direct the respondents to grant 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 to PB-I Rs.5200-20200/- with GP Rs.4200/- at par with T.Sivadasan and V.D.Vincent under Ann.A/7 and pay the differential arrear salary, DCRG, Commuted value of pension, leave salary and pension with 12% interest for the delayed period.

2. Facts of the matter as revealed from the O.A. are thus:

Initially, applicant had been engaged in the S.E. Railways on 26.2.1973 and was granted temporary status with effect from 1.1.1982 in the scale of Rs.330-480/- as H.S.Sarang, Gr.II. He was promoted from the post of Technician, Gr.II to Gr.I with effect from 24.3.1997 carrying the scale of Rs.4500-7000/-. According to applicant, for the first time, his service was regularized in the scale of Rs.750-940/- with effect from 1.4.1988 as Skd.Sarang, Gr.II and again vide order dated 7.6.1999, his service was regularized retrospectively with effect from 1.4.1988 in the post of Sarang, Gr.II in the scale of Rs.3050-4590/-. Finally, his service was regularized retrospectively, with effect from 1.4.1990 against 60% post of Tech., G.II in the scale of Rs.4000-6000/-. Grievance of the applicant is that as per the norms of MACP Scheme, he having availed of one promotion to the post of Tech., Gr.I(ad hoc) is entitled to 2nd financial upgradation with effect from 1.9.2008

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as he has already completed more than ten years' service from 24.3.1997 till the date of his retirement on 30.6.2012. It is the case of the applicant that in the impugned order dated 17.1.2013(A/9), respondent-railways have admitted that he had been granted temporary status as H.S.Sarang, Gr.II and his service was regularized thrice, i.e., in Gr.D with effect from 1.4.1988, H.S.Gr.III with effect from 1.4.1988 and Sarang, Gr.II with effect from 1.4.1990. Therefore, according to their own admission, respondents have given one promotion to the applicant to Tech.Gr.I with effect from 24.3.1997, thus making him entitled to 2nd financial upgradation under the MACP Scheme.

3. To buttress his contention, applicant has relied on the decisions of this Tribunal in O.A.Nos.731 of 2010 and 328 of 2012 wherein similarly situated persons, viz., T.Sivadasan and V.D.Vincent, respectively, have been granted the same benefit and in the circumstances, applicant has demanded equal treatment.

4. Opposing the prayer of the applicant, respondents have filed their counter. The sequence of events as detailed in the counter is that initially, applicant had been engaged in the Railways as casual Revittor on daily rated basis with effect from 26.02.1973 and thereafter, he was promoted to casual Saranga, Gr.II with effect from 24.02.1974. While working as casual H.S.Sarang, Gr.II in the scale of Rs.330-480/-, he was granted



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temporary status with effect from 01.01.1982. He was, thereafter, brought over to regular establishment ~~being~~ his service ^{being} regularized and absorbed against Gr.D. PCR cadre post with effect from 1.4.1988. Subsequently, his service was regularized (promoted) against 60% PCR post of Sarang, Gr.III with effect from 1.4.1988 and again regularized in the higher grade 60% PCR post(promoted) as Sarang, Gr.II with effect from 1.4.1990. It has been submitted that though applicant's service was regularized in PCR Gr.D category, yet, he was allowed to continue to work in the higher scale on officiating basis as Sarang Gr.III and Gr.II prior to his regular promotion(Regularization as Sarang.III and Gr.II). Later, applicant was promoted as Sarang, Gr.I with effect from 24.3.1997 purely on ad hoc basis and while working as such, he retired from service with effect from 30.6.2012 by rendering 27 years 04 months qualifying service.

5. Having brought out the above facts in the counter, it has been contended by the respondents that the direct entry grade of the applicant on appointment to regular post is Gr.D in PCR cadre and from that grade he has already availed of two regular promotions, (i.e. regularization of Sarang Gr.III and Sarang, gr.II) and one ad hoc promotion as Sarang Gr.I(Technical) within two years of service.

6. As regards the similar benefit granted to one T.Sadasivan, it has been stated that the said Sadasivan has not been given

MACP, rather he has been granted ACP as per direction of this Tribunal in O.A.No.731 of 2010. Similarly, in case of V.D.Vincent, it has been submitted that he has been granted the benefit of MACP in obedience to the direction of this Tribunal in O.A.No.238 of 2012.

7. In the above premises, respondents have pleaded that applicant is not entitled to further financial upgradation under the MACP Scheme and therefore, the O.A. being devoid of merit is liable to be dismissed.

8. Applicant has filed a rejoinder to the counter. In the rejoinder, he has pleaded that had he been granted promotion to Sarang, Gr.III and Gr.II, his pay ought to have been fixed under Rule-1313 (FR-22)(1)(a)(1)-RII with effect from the date such promotions were granted. Applicant has urged that in a similar matter in O.A.No.482 of 2012, this Tribunal had directed the respondents for grant of 2nd financial upgradation under the MACP Scheme to the applicant therein and the present applicant is similarly circumstanced.

9. Upon perusal of the pleadings, we have heard the learned counsels for both the sides. We have also gone through the written notes of submissions filed by the parties as well as perused the service profiles submitted by the applicant.


10. From the elucidated facts, the short point for consideration crops up for consideration is what is direct entry



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grade of the applicant which is reckonable for the purpose of financial benefits under the MACP Scheme.

11. The basic intent of the MACP Scheme is to grant of three financial upgradations at intervals of 10, 20 and 30 years of continuing regular service. Paragraph-9 of the Scheme has outlined '**regular service**' for the purpose of MACPS. It states that **regular service for the purpose of 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.** Therefore, for the purpose of adjudication in the matter of entitlement of applicant to 2nd financial upgradation under the MACP Scheme, the turning point is the direct entry grade on a regular basis either on direct recruitment or on absorption basis and these conditions have to be satisfied by the applicant.

12. Coming to the facts in issue, it is to be noted that initially, applicant had ~~had~~ been engaged as Casual Revittor, Gr.II on daily rated basis with effect from 26.2.1973 and was subsequently, promoted as casual Sarang, Gr.II with effect from 24.2.1974. Thereafter, he was conferred with temporary status with effect from 1.1.1982 and absorbed against Gr.D 40%/60% PCR post with effect from 1.4.1988. His service was regularized(promotion) against 60% PCR post of Sarang, Gr.III with effect from 1.4.1988. Again, he was regularized (promotion) against 60% PCR post as Sarang, Gr.II with effect



from 1.4.1990 and promoted as Sarang, Gr.I with effect from 24.3.1997.

13. Applicant has urged that except one promotion to Technician, Gr.I with effect from 24.3.1997, he has never availed of any promotion till his retirement on superannuation on 30.6.2012 and therefore, he having completed more ^{than} 10 years' service in the Gr.I carrying the same Grade Pay is entitled to 2nd financial upgradation under the MACP Scheme.

14. On the other hand, in their counter respondent-railways have made it clear that on his regularization and/or absorption, the direct entry grade of the applicant commences from Gr.D PCR cadre which is reckonable for the purpose of MACP. This point has not been retaliated by the applicant in his rejoinder.

15. In order to decide the matter, the Tribunal, in the first instance, is required to hold an opinion as to what is applicant's direct entry grade on a regular basis either on direct recruitment or on absorption basis to be reckoned as commencement of regular service for the purpose of grant of benefits under the MACP.

16. In keeping with the provisions of the MACP Scheme, we would like to examine the grievance of the applicant. MACP Scheme lays down that three financial upgradations are admissible at intervals of 10, 20 and 30 years of continuing regular service, provided that an employee has not earned any promotion in the meantime. If at all applicant's plea for grant of

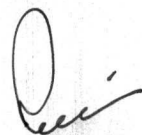
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2nd financial upgradation ²which under the provisions of the Scheme is due on completion of 20 years' regular service is considered wholesome, then his direct entry grade on regularization or absorption basis, as the case may be, would commence only with effect from 1.4.1990, when his service as Sarang, Gr.II was regularized. But, factually this is not the true state of affairs. Prior to his regularization as Sarang, Gr.II, he having been conferred with temporary status, his service was regularized in Gr.D PCR post with effect from 1.4.1988, followed by further regularization in Sarang, Gr.III with effect from 1.4.1988. Thus, the status of the applicant in Sarang, Gr.II remain unaltered notwithstanding his regularization in Gr.D PCR post followed by further regularization in Sarang, Gr.III. Therefore, there was no scope left for fixation of pay under the relevant rules in the promoted post, i.e., Sarang, Gr.III as emphasized by the applicant. This ^{a 2}part, it is not in dispute that applicant, while working as Revittor, Gr.II with effect from 26.2.1973 or for that matter Sarang, Gr.II with effect from 24.2.1974 on daily rate basis, ¹²he had been conferred with temporary status with effect from 1.1.198^{2 2}1. It is not the case of the applicant that while working as casual Revittor or Sarang, Gr.II on daily rate basis, he was entitled to conferment of temporary status. It is also not the case of the applicant that Group-D post and Gr.II Revittor/Gr. II Sarang stands on the same pedestal in the hierarchy. From the above analysis, it is

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quite clear that even though applicant had been initially engaged as Casual Revittor, Gr.II and/or Sarang, Gr.II on daily rate basis, his service has never been regularized in that grade – rather, his service was regularized against Gr.D PCR post with effect from 1.4.1988. However, the fact remains that subsequent to his regularization in Gr.D PCR post, applicant has further been regularized in Sarang Gr.III with effect from 1.4.1988 carrying the scale of Rs.950-1500/Rs.3050-4590/-. Since regularizations of the applicant both in Gr.D PCR post and Sarang, Gr.III are synchronized on one date, i.e., 1.4.1988, respondents were not justified in ignoring the direct entry grade of the applicant as Sarang, Gr.III on direct recruitment basis or on absorption basis, as the case may be, and on the other hand, taking into account the Gr.D post as the direct entry for the purpose of grant of benefit under the MACP Scheme. At the cost of repetition we would say that since regularization of applicant both in Gr.D and Gr.III has taken place on 1.4.1988, respondents were bound to reckon the entry grade of the applicant as Gr.III for the purpose of grant of benefit under the MACP Scheme.

17. From the above discussions, we would answer the point in issue that that applicant's direct entry grade on a regular basis either on direct recruitment or on absorption basis to be reckoned as the commencement of regular service for the



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purpose of grant of benefits under the MACP is Sarang, Gr.III with effect from 1.4.1988.

18. Since applicant's regular service either on regularization or absorption basis commences from 1.4.1988 in the post of Sarang, Gr.III, further regularization of his service as Sarang, Gr.II with effect from 1.4.1990 has to be treated as promotion for the purpose of MACP. Thereafter, applicant has earned one more promotion to Technician, Gr.I with effect from 24.3.1997. As already indicated above, three financial upgradations are admissible at intervals of 10, 20 and 30 years of continuing regular service and as the applicant has already availed of two promotions, i.e., Gr.II and Gr.I within 20 years, he is due to 3rd financial upgradation under the MACP Scheme only on completion of 30 years regular service. However, in the instant case applicant having rendered 27 years and 4 months, has retired from service on superannuation on 30.6.2012. In this respect, we have gone through the relevant provisions of the MACP Scheme. While mentioning benefit of three financial upgradations under the MACP Scheme has to be counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively, it has been indicated therein that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. There is no such pleadings in the O.A. made by either of the parties ~~in~~ commensurate with the provisions of the Scheme.

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However, the fact remains that applicant has been promoted to Tech.I with effect from 24.3.1997 and while working as such, he retired from service with effect from 30.6.2012. Therefore, it goes without saying that financial upgradation is admissible in case of the applicant since he has completed more than 10 years' service in the grade of Gr.I carrying the same grade pay.

19. Having regard to what has been discussed above, we quash the impugned order of rejection dated 17.01.2013(A/9) and direct the respondents to consider grant of financial benefits in favour of the applicant in the light of the observations made above and pass ~~an~~ appropriate orders within a period of three months from the date of receipt of this order.

20. With the observations and direction as aforesaid, this O.A. is disposed of, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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