

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.90 of 2013**

Cuttack this the 3rd day of August 2016

CORAM

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

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

P.V.Modeen Kutty  
Aged about 62 years  
S/o. late Saidali  
Resident at-Puthiya Veettill House  
PO-Vallikunnu  
Via-K.Nagaram  
Dist-Mallapuram  
Kerala  
Retired technician, Gr.I  
O/o.Dy.C.E./Con./E.Co.Rly.  
Cuttack, Odisha

...Applicant

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

S.Mishra

S.K.Mohanty

-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  
Chandrasekharpur  
Bhubaneswar  
Dist-Khurda
3. Deputy Chief Engineer(Con.)

E.Co.Rly.  
Khurda  
At -Station Bazar, PO-College Square  
Town/Dist-Cuttack

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.B.B.Pattnaik

### 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 31.05.2011. 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.934 of 2012, whereby his claim for grant of 2<sup>nd</sup> financial upgradation with effect from 1.9.2008 under the Modified Assured Career Progression(MACP) Scheme, has been turned down. 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.

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ii) And to direct the respondents to grant 2<sup>nd</sup> 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. Relevant facts which are necessary for deciding the matter are that initially, applicant had been engaged in the Railways as casual Revittor-II on daily rated basis with effect from 16.08.1973 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/-/Rs.1200-1800/-, he was granted temporary status with effect from 01.01.1981 and subsequently absorbed against Gr.D. PCR cadre post(direct entry grade) with effect from 1.4.1988. Thereafter he was promoted against 60% PCR post of Sarang, Gr.III with effect from 1.4.1988 and again promoted against 60% PCR post 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 and Sarang Gr.III, yet, he was allowed to continue to work in the higher scale on officiating basis as Sarang Gr.II due to exigency of work. Further, 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 31.05.2011 by rendering 26 years 09 months qualifying service.

5. MACP Scheme envisages three financial upgradations counted from the direct entry grade upon completion of 10, 20 and 30 years of regular service respectively. Financial upgradation is admissible to an employee upon completion of 10 years of continuous service in the same grade pay and not otherwise. 'Regular service' has been defined as the date of joining of a post in direct entry grade selected on a regular basis either through direct recruitment or on absorption/re-employment basis. Further, it has been provided therein that if a railway servant has been granted either two regular promotions or 2<sup>nd</sup> financial upgradation under ACP Scheme of October, 1999 after completion of twenty years of regular service then only 3<sup>rd</sup> financial upgradation would be admissible to him under MACP Scheme on completion of 30 years of service provided that the employee concerned has not earned 3<sup>rd</sup> promotion in the hierarchy. Applicant is said to have already availed two regular promotions to Sarang, Gr.III and II over and above his initial recruitment grade, i.e., Group-D post within 20 years of service and in the above background, he will only be eligible for 3<sup>rd</sup> financial upgradation after completion of 30 years of service and not prior to that. Therefore, the claim of the applicant has been resisted on the ground that as he has not completed 30 years regular service, he is not entitled to any further financial upgradation under the MACP Scheme.



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8. Applicant has filed a rejoinder to the counter in which he has more or less reiterated the same averments as in the O.A.

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. Recently, this Tribunal has decided and disposed of a similar matter on 2016 in O.A.No.83 of 2013. In that O.A. regularization of the applicant in Gr.D PCR post and Sarang, Gr.III had taken place with effect from 1.4.1988 as that of the applicant in the instant O.A. Having regard to this, the Tribunal in O.A.No.83 of 2013 in the first instance held an opinion regarding the direct entry grade on regularization basis or on absorption basis as the case may be, for the purpose of grant of benefit under the MACP Scheme. After an elaborate discussion, the Tribunal came to the conclusion as under.

"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.

From the above discussions, we would answer the point in issue that that applicant's direct entry

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 grade on a regular basis either on direct recruitment or on absorption basis to be reckoned as the commencement of regular service for the purpose of grant of benefits under the MACP is Sarang, Gr.III with effect from 1.4.1988.

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 3<sup>rd</sup> 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. 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".

The Tribunal having held so quashed the impugned order of rejection and directed the respondents to consider grant of financial benefits in favour of the applicant in the light of the

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observations made above and pass an appropriate orders within a stipulated time. This being the position, we are not inclined to make a departure from the view already taken, especially when the facts and circumstances of the instant O.A. are quite akin to the facts in O.A.No.83 of 2013.

11. For the reasons discussed above, we quash the impugned order 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.

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

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

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

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