

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

ORIGINAL APPLICATION NO. 247/2014

Date of Arguments : 19 July, 2016.
Date of Order 25, July, 2016.

CORAM
HON'BLE SHRI R.C. MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Parameswar Biswal aged about 57 years S/o Shri Sanatan Biswal at present working as a S.S.O. (Accounts) O/o F.A. & C.A.O. / E.Co.Rly. / E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, resident of Plot No. 108, Premier Residency, Shree Vihar, Patia, Bhubaneswar, Odisha.

.....Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Financial Advisor & Chief Accounts Officer, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Director Finance (CCA), Room No. 425, Rail Bhawan, Railway Board, New Delhi- 110001
4. Deputy Director, Pay Commission-V, Rail Bhawan, Railway Board, New Delhi – 110 001.

.... Respondents

PRESENT:

Advocate for Applicant : Shri N.R.Routray

Advocate for respondents : Shri S.Barik

O R D E R

PER S. K. PATTNAIK:

In a second round of litigation, the applicant challenges the speaking order dated 13th March, 2014 (Annex.A/15) passed by the General Manager, East Coast Railway, in pursuance to the direction imparted in the earlier O.A. bearing No. 922 of 2013. The applicant also seeks for quashing of the clarificatory letter dated 24th February, 2014 (Annex.A/14) issued by the Railway Board. The applicant further prays for a direction to the respondents to grant 3rd Financial Up-gradation under MACP Scheme treating the order dated 17th August, 2010 (Annex.A/4) as 2nd MACP. The applicant positively claims

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for a direction to respondents to grant 3rd financial upgradation under MACP Scheme w.e.f. 1st September, 2008 in Pay Band – III with Grade Pay Rs. 5400/- and for payment of arrears with admissible interest by extending similar benefits as per order passed in O.A. No. 335 of 2007.

2. In a case of this nature, before advertiring to the factual and legal aspect of the claim of the applicant, it is necessary to understand and examine the correctness of the speaking order dated 13th March, 2014. The General Manager has not assigned any cogent reason for refusing the claim of the applicant and has passed a slipshod order and the relevant portion of his conclusion may be extracted below for better understanding of the wisdom of the General Manager.

"In this connection a reply has been received from Pay Commission Directorate, Railway Board, New Delhi vide letter No. PC-V/2014/CC8/E.Co.Rly. dated 24.02.2014 while disposing off the case of Shri R.N.Parida in O.A. No. 904 of 2013 which is identical in nature & who is also a co-applicant with you in the combined appeal. In that matter Pay Commission Directorate / Railway Board, the competent authority, has decided that claim of the applicant is not feasible for acceptance. The copy of the above mentioned reply issued by Pay Commission Directorate, Railway Board is enclosed herewith for your information.

In view of the latest clarification from Railway Board, I do not consider your case fit for 3rd financial up-gradation under MACP as demanded by you."

3. From the above order, it is apparently clear that the respondents are not willing to extend similar benefits to the present applicant in view of the clarificatory letter dated 24th February, 2014 issued by the Railway Board. The relevant portion of the observation of the Railway Board, as enumerated in Para 2(v) may be extracted below :

"(v) From the factual position brought out in para (i) – (iv) above it is evident that :

- (a) In term of statutory provisions the appointment from Junior Account Assistant (JAA) post to Accountant Assistants (AA) post is promotion.*
- (b) That as per the extent instruction regarding ACP/MACP Scheme it is not only promotion but upgradation as well are to be taken into account for the purpose these Schemes.*

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(c) As the ACP/MACP Scheme provides for placement in higher scale / grade along with benefit of pay fixation, therefore, financial upgradation given under any other dispensation is also, as per principle of equity, requires to be taken into account, in addition to promotion, for the purpose of ACP / MACP Scheme and this has been clarified in respect of several categories.

As the aforementioned factual rule position and relevant instructions were not brought to the cognizance of Hon'ble Tribunal/Hon'ble High Court (in the matter of V. Venkatraman – O.A. No. 335/2007), therefore, the same cannot be relied upon as a precedent being a decision given per-incuriam."

4. Applicant's case in short, runs as follows :

The applicant was initially appointed as a Clerk Grade – I in the scale of Rs. 330-560 on 15.02.1983. Railway Board issued orders on 03.07.1987 (Annex.A/1) regarding re-structuring of Account Staff as per the Recommendations of 4th Central Pay Commission and passed an order that scale of pay of Rs. 1400-2600 and 2000-3200 may be treated as Functional Grade. The Assistant Accounts Officer (CRW), SE Railway, Mancheswar, vide order dated 25.02.1988 (Annex.A/2) re-designated the applicant as Accounts Assistant in the scale of Rs. 1400-2600 under re-structuring cadre w.e.f. 01.04.1987. The applicant while working as Accounts Assistant was promoted to the post of S.O.(A) w.e.f. 13.02.1990 in the scale of Rs. 1640-2900 and was subsequently promoted to the post of Sr. S.O. (A) in the scale of Rs. 2000-3200 w.e.f. 28.02.1994. Further case of the applicant is that as per the Recommendations of the 6th Pay Commission, the original ACP Scheme was modified as MACP vide RBE No. 101/2009 (Annex.A/3) and as per the said scheme, an employee is entitled for three financial upgradations after completion of 10, 20 and 30 years of service. According to the applicant as per Para 5 of the MACP Scheme, the post of SO(A) and Sr. S.O.(A) were merged

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together in Pay Band – 2 in the Grade Pay of Rs. 4800/- for which the applicant was granted first financial upgradation under MACP Scheme w.e.f. 01.09.2008 in Pay Band – 2 with Grade Pay Rs. 5400/- vide order dated 17.08.2010. The cause of action in the present case arose as because the respondents in the order dated 17.08.2010 (Annex.A/4) described the financial upgradation as 3rd whereas, it was 2nd upgradation. The applicant submitted his application for grant of 3rd financial upgradation w.e.f. 01.09.2008. According to him, similarly placed persons who have approached CAT, Chennai Bench in OA No. 335/2007 challenging the order of rejection not to grant First financial upgradation under ACP Scheme by the Railway Authorities treating the re-structuring from the post of Junior Accounts Assistant to Accounts Assistant as promotion. However, the Tribunal, vide order dated 26.08.2008 (Annex. A/6) held that re-structuring of post in the pay scale of Rs. 1200-2040 revised to Rs. 1400-2600, was no promotion and it was only revision of pay on account of restructuring of post. The CAT, Madras Bench, directed the respondents to grant First financial upgradation under ACP Scheme w.e.f. 01.10.1999. The respondents challenged the order of CAT, Madras Bench before the Hon'ble High Court of Madras by filing Writ Petition No. 21112/2009 and finally, the Hon'ble High Court vide judgment dated 19.10.2010 not only dismissed the Writ Petition but, categorically observed that they did not find any reason to interfere with the order passed by the Tribunal. The respondents even challenged the said order of the High Court before the Hon'ble Supreme Court in Special Leave Petition (Civil)CC No. 9422/2011 and the Hon'ble Supreme Court vide its

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order dated 04.01.2012 (Annex.A/8) dismissed the SLP holding that they did not find merit in the SLP. Further case of the applicant is that after dismissal of the SLP to appeal, the respondents implemented the order passed by the CAT, Madras Bench dated 26.08.2008 (Annex.A/6) giving 1st ACP from 01.10.1999 and 2nd ACP from 04.08.2007 and 2nd MACP on 01.09.2008 raising Grade Pay from Rs. 4800/- to Rs. 5400/- . The grievance of the applicant is that in spite of settling down of legal position that there was no promotion and only revision of pay on account of re- structuring of post, still arbitrarily, the respondents have rejected the claim.

5. Respondents have contested the case by filing a waiving counter not answering the contentious issues and taking a divergent stand not approved in the annals of judicial history. According to the respondents, the applicant has already availed 3rd financial upgradation. According to the respondents, provisions regarding recruitment and promotions of Accounts Staff are contained in Para 171 of IREM Vol.I and as per Para 171(5), the post in the grade of Accounts Assistants in scale of pay Rs. 1400-2600 will be filled by promotion of Junior Account Assistant in scale of pay Rs. 1200-2040 after they have completed 3 years service in the grade and passed Appendix-II examination. This is a statutory provision regarding appointment to Accountant Assistant's grade which categorically stipulates that this is not only promotion but also lays down the eligibility criteria of 3 years service in Junior Account Assistant grade for the said promotion. It also establishes that Junior Account Assistant's post constitutes as the feeder grade for promotion to the post of Accountant Assistant. Further, on appointment to Accountant

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Assistant grade from Junior Account Assistant grade, the employees are also allowed benefit of pay fixation under FR 22-C as admissible in case of promotion to the post having higher duties and responsibilities. In the case of the applicant, upon his promotion from Junior Account Assistant to Accountant Assistant the fixation has been done vide Office Order No. 10/88 dated 25.02.1988.

Further case of the respondents is that while providing for introduction of higher functional scale of Rs. 1400-2600 in Accounts Cadre to the extent of 80% of the post of Clerk Grade-I (Rs.1200-2040) (including existing sub heads), also laid down that staff in Grade Rs. 1200-2040 will be eligible for promotion to the higher grade after minimum 3 years service in Rs. 1200-2040 provided they have to pass Appendix-IIA examination. Further case of the respondents is that appointment from Junior Account Assistant post to Accountant Assistant is a promotion. That as per the extant instruction regarding ACP/MACP Scheme, it is not only promotion but upgradation as well which need to be taken into account for the purpose of these Schemes.

Further case of the respondents is that the dismissal of the SLP filed under Article 136 of the Constitution does not amount to upholding of the order from which leave to appeal, is sought. Thus, the contention that Hon'ble Supreme Court has upheld the orders of Madras High Court in *V. Venkataraman's* case (Writ Petition No. 21112/2009) is not correct.

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6. Less spoken about the attitude of the respondents including Railway Board is better. The respondents are not legally equipped and authorized to criticize a judgment of the Hon'ble High Court affirmed by the Hon'ble Supreme Court as per-incuriam for which they need to be taught judicial discipline. Any finding of the Tribunal approved by the Hon'ble High Court and further affirmed by the Hon'ble Apex Court is binding on all concerned. Any willful disobedience shall amount to Contempt of Court. By way of judicial restraint, we refrain from passing any comment on the attitude and temperament of the official respondents.

7. It may not be out of place to mention here that both the impugned orders Annex. A/15 and Annex. A/14 have been passed due to mis-reading and mis-construction of judicial pronouncements. A similar matter had cropped up before the C.A.T., Madras Bench in OA No.335 of 2007 – **V. Venkata Raman Vs. UOI and Ors.** The Hon'ble Members, vide their order dated 26th August, 2008, allowed the claim of the applicant clearly observing that the re-structuring of post in the pay scale of Rs. 1200-2040 revised to Rs. 1400-2600 was not a promotion and such revision of pay was on account of restructuring of post.

However, for better understanding of the dispute in controversy, the relevant portion of the observation of the CAT, Madras Bench, as rendered in Paras 8, 9 and 10 are extracted below :-

“8. We have once again gone through the entire materials placed on record. We are satisfied that the post of Sub-Heads with the scale of pay of Rs. 1400-2600 was re-designated as Accounts Assistant and therefore, it cannot be said that as per proceedings dated 03.07.1987, he was given promotion. In paragraph No. 3 of the order dated 03.07.1987 pertaining to the restructuring of the Accounts Staff of the Southern Railway, it is stated thus :-

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(i) Section Officers (A/cs), Rs.2000-60-2300-EB-75-3200 80.00%
Inspector of Stores Accounts

(IEA), Inspector of Station Rs.1640-60-2600-EB-75-2900 20.00%
Accounts (TTA),

(ii) Clerks Grade I (including Rs.1400-40-1600-50-2300-EB 80.00%
Existing Sub Heads 60-2600
 Rs. 1200-30-1560-EB-40-2040 20.00%

9. When the Clerk Grade I including the existing Sub Heads were replaced with the scale of pay of Rs. 1400-2600 of 80% by redesignating the above Sub Heads, as per proceedings dated 03.07.1987, it cannot be said that the second respondent was given promotion and hence, he is not entitled for the benefits under the ACP Scheme. During the course of arguments, when we asked the learned counsel appearing for the petitioners that during the period from 1983 till the completion of 24 years of service, any promotion was given to the second respondent other than restructuring the post, he was not in a position to indicate the promotion post. When no promotion is given to the second respondent till the completion of 24 years of service, it is not fair on the part of the petitioners to deny the benefit under the ACP Scheme."

8. Since the respondents were not satisfied with the order of CAT, Madras Bench as well, it was challenged before the Hon'ble High Court of Judicature for Tamilnadu at Madras in Writ Petition No. 21112 of 2009 (Annex.A/7) and Their Lordships vide order dated 19th October, 2010 not only have dismissed the Writ Petition but also observed that they do not find any reason to interfere with the order passed by the Tribunal. However, for better understanding of the dispute, the relevant observation of Their Lordship rendered in Paras 8 and 9 are extracted below :

8. In the light of the submissions made, the point for consideration that arises is whether the restructuring of post does amount to promotion if not applicant is entitled for the benefit of ACP scheme? What orders.

9. It is well settled principles that time and again the Hon'ble Apex Court has held that if any restructuring of posts takes place it does not amount to promotion. Therefore, the contention of the learned counsel for the respondents that restructuring of posts amounts to promotion is without any merit.

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This makes clear that due to restructuring of post the pay scale of Rs. 1200-2040 was revised to Rs. 1400-2600. Therefore, it is clear that there is no promotion and it is only revision of pay on account of restructuring of post. That apart the Railway Board's letter No. PC-III/2005/CRC/4 dated 30.11.2006 regard cadre restructuring of certain Group 'C' – Accounts and Medical Department."

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In spite of such authoritative pronouncement of the Hon'ble High Court of Madras, the Department did not understand their mistake and still burdened the Exchequer by filing a Special Leave Petition to Appeal before the Hon'ble Apex Court in Special Leave Petition (Civil) No. 9422 of 2011. Their Lordships of the Hon'ble Apex Court vide their order dated 4th January, 2012 dismissed the SLP giving a categorical observation. They have considered the pleadings and the materials placed on record and submission of learned counsel and they did not find any merit in the SLP and accordingly, dismiss the same vide Annex. A/8. So once a matter has been set at rest by the Hon'ble Apex Court and the ratio of contention issue, is answered, there is nothing left for this Tribunal to adjudicate and the respondents are duty bound to hold that the re-structuring of post as per Recommendation of the 4th CPC and consequential effect of re-designation of Assistant Accounts Officer as Accounts Assistant in the scale of Rs. 1400-2600 under re-structuring of cadre w.e.f. 1.4.1987, cannot be treated as promotion and can only be treated as revision of pay on account of re-structuring of post of 1200-2040 merging with 1400-2600. Since the impugned order has been passed without taking into account the legal background and judicial pronouncement, the same are liable to be quashed in the interest of justice and equity. Hence order :

10. The O.A. is allowed and the speaking orders dated 13.03.2014 (Annex.A/15) and the clarificatory letter dated 24.02.2014 (Annex.A/14), issued by the Railway Board, are quashed. The respondents are directed to consider the case of the applicant for 3rd Financial Up-gradation under MACP Scheme treating the re-structuring of pay scale of Rs. 1200-2040 revised to Rs. 1400-2600 as a revision of pay due to re-structuring

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and not tantamounting to promotion and to give effect to the applicant in the light of judgment of CAT, Madras Bench, as has been upheld up to the Hon'ble Apex Court, referred above. Compliance be made preferably within a period of three months.

11. There is no order as to costs.

S.K.Pattnaik
(S.K.Pattnaik)

Member (J)

R.C.Misra
(R.C.Misra)
Member (A)

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