

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No.281/2013

Reserved on : 07.05.2015

Jodhpur, this the 15th day of May, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Krishan Kumar Rastogi s/o Shri Badri Prasad, aged about 60 years
r/o L-3, Kuri Bhagtasni Housing Board, Jodhpur retired from the post
of SSE (C&W), Diesel Shed, Bhagat Ki Kothi, North Western Railway,
Jodhpur.

.....Applicant

By Advocate: Mr. S.K.Malik

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur
4. The Chief Workshop Manager (Carriage Workshop), North Western Railway, Jodhpur.

.....Respondents

By Advocate : Mr. Girish Sankhla

ORDER

The applicant has filed this OA u/s 19 of the Administrative Tribunal Act, 1985 challenging the action of the respondents reducing his pay at the time of retirement and recovery from the retiral benefits and seeking the following reliefs:-

(i) By an appropriate writ order or direction respondents may be directed to restore the basic pay of the applicant as Rs. 23970/- + Rs. 5400/- grade pay as on 01.07.12 and accordingly issue revised PPO on said basic pay + grade pay.


(ii) By an order or direction respondents may be directed to calculate all the retrial benefits on the basic pay of Rs. 23970 + Rs. 5400 grade pay like commutation of pension, DCRG and leave encashment and make payment of difference along with interest @ 18% per annum till the date of payment.

(iii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.


(iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. The facts of the case, as averred by the applicant, are that he was initially appointed on the post of Chargeman -B w.e.f. 25.5.1984 and after completion of training he was posted at Jagadhari Workshop where he joined on 26.6.1986 in the scale of Rs. 425-700. He was promoted to the post of Chargman-A (MW) grade Rs. 1600-2660 vide order dated 18.8.1989 and thereafter to the post of DSS (MW) in the pay scale of Rs. 2000-3200 vide order dated 20.7.1991. The applicant was further promoted on the post of SSE(MW) in the scale of Rs. 7450-11500 vide order dated 12.9.06 under restructuring w.e.f. 1.11.2003. In the recommendation of the 6th Central Pay Commission (CPC) the pay scale of Chargeman-A and Chargeman-B i.e. Rs. 5000-8000 and Rs. 5500-9000 have been merged and have

and SSE have been merged i.e. pay scale of Rs. 6500-10500 and Rs. 7450-11500 have been merged and granted grade pay of Rs. 4600. After recommendations of 6th CPC the respondent vide RBE-101 dated 10.6.2009 issued MACP scheme for granting benefit of three financial upgradations on completion of 10, 20 and 30 years of service. The applicant was granted grade pay of Rs. 4800 in second MACP w.e.f. 1.9.2008 and third MACP in the grade pay of Rs. 5400 w.e.f. 18.7.2011 on completion of requisite number of years of service. Thereafter, on completion of 29 years of service the applicant retired on superannuation on 30.4.2013 while receiving basic pay of Rs. 23970 + Rs. 5400 grade pay totaling to Rs. 29370/-. The applicant was issued PPO dated 30.4.2013 on superannuation but the basic pay of the applicant has been reduced and shown as Rs. 23100 and Rs. 4800 grade pay totaling Rs. 27900 and on the basis of this amount pension and other retiral benefits have been calculated and even recovery has been effected from DCRG and Leave Encashment without there being any notice for reduction of pay. Therefore, aggrieved of the action of the respondents which is illegal and flouts the principles of natural justice and due process of law, the applicant has filed this OA praying for the reliefs as stated in para-1 above.



3. In reply to the OA, the stand of the respondents is that the applicant was granted benefit of second MACPS in grade pay of Rs. 4800 w.e.f. 1.9.2008 vide letter dated 20.9.2010 and third MACPS was granted in grade pay of Rs. 5400 w.e.f. 18.7.2011 but after investigation and inquiry by the competent authority, it was found that third MACP which has been given w.e.f. 18.7.2011 is not legal and proper as per said scheme because the applicant has completed only 24 years of services whereas the benefit of third MACP can only be granted after completion of 30 years regular service or 10 years service from last promotion. Therefore, as provided under the rule mentioned in MACP scheme the benefit of third MACP was wrongly given to the applicant which has been withdrawn and his pay fixation has been notified vide letter No.656E/P3/MACPS/Supr./Mech/2013/168 dated 18.4.2013 issued by the competent authority and the said letter has been issued to the present applicant through the endorsement of Sr. DME/DSL BGKT. Therefore, the applicant cannot be granted the benefit of third MACP scheme and the pension and retirement benefits have been given as due and Ann.A/5 and A/6 are correct and valid and in accordance with the rules, hence the OA is liable to be dismissed.



4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

5. Heard both the parties. Counsel for applicant referred to various provisions of Modified Assured Career Progression Scheme (hereinafter referred to as the Scheme) for Railway employees as per Railway Board's RBE No. 101/2009 (Annex. A/2) and invited attention to para-2 of the letter which provides for grant of three financial upgradations under the Scheme at intervals of 10, 20 and 30 years of continuous regular service and he further referred to para -1 of the Annexure of the Scheme which also says that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. He further invited attention to para -5 of Annexure which states that promotions earned/upgradations granted under the ACP Scheme in the past to the grades which now carry the same Grade Pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of grant of upgradations under the Modified ACPS and further as per para -8 of the Annexure, the Scheme would be operational w.e.f. 01.09.2008 and financial upgradations as per the provisions of the earlier ACP Scheme (of October, 1999) would

submitted that as per para- 17 of the Annexure, it is applicable to Group 'A' officers also. Counsel for the applicant also referred to illustrations given in para- 28 of the Scheme. Counsel for applicant further submitted that prior to Sixth Pay Commission, there were 26 pay scales which have subsequently been merged into four slabs with Grade Pay and that in accordance with provisions of the Scheme, the applicant was granted 2nd MACP w.e.f. 01.09.2008 vide communication dated 09.07.2010 (Annex. A/3) and 3rd MACP vide Annex. A/4 dated 20.09.2011. The applicant was rightly granted 3rd MACP from 18.07.2011 in accordance with the Scheme and his pay was accordingly fixed and further as may be seen from salary slips of the applicant for the month of March and April, 2013 (submitted by the counsel for the applicant to the Tribunal on 29.04.2013) which are just prior to his retirement as he retired at the end of April, 2013, the basic pay of the applicant has been correctly shown as Rs. 23,970/- and Grade Pay Rs 5400/-. However, all of sudden in the Pension Payment Order (PPO) dated 30.04.2013 (Annex. A/5) his last pay has been shown Rs 23100 and Grade Pay Rs 4800/- instead of Rs 23,970/- and Grade Pay Rs 5400/- and even in the Particulars of Pension (at page 21 of the OA), the Death Cum Retirement Gratuity (DCRG) and Leave Encashment has been changed from Rs.

respectively by making changes in handwriting. Thus, the applicant has been deprived of his due pension and other retiral benefits without there being any valid/legal ground and show-cause notice or order in this regard. Counsel for applicant further submitted that though in the reply at para-1 (internal page 4 of the reply), it has been mentioned that the applicant had completed 24 years of service, but this is not true and correct, as can be seen from document of the respondents at Annex. A/5 which itself mentions qualifying service as 29 years and the date of appointment as 25.05.1984 and pension starting date as 01.05.2013.

Referring to facts brought out in para-4 of the OA, counsel for applicant submitted that he was appointed as Chargeman-B w.e.f. 25.05.1984 and he was promoted to the post of Chargeman-A (MW) in pay scale of Rs 1600-2660 on 18.08.1989 and further promoted as DSS (MW) in the pay scale of Rs 2000-3200 and thereafter on the post of SSE (MW) in the pay scale of Rs 7450-11500. Later on, the posts of Chargeman 'A' & Chargeman 'B' were merged and granted the Grade Pay of Rs 4200/- and likewise posts of SE and SSE were merged and granted the Grade Pay of Rs 4600/-. In view of merger and as per para- 5 of Annexure to the Scheme, the service of the

the same Grade Pay and from 2001 to 2011 another 10 years also fall in the grade pay of Rs 4600/-, therefore, the applicant was rightly granted 3rd MACP vide Annex. A/4 dated 20.09.2011 w.e.f. 18.07.2011 and his pay slips were issued accordingly and the applicant met the conditions prescribed in para-1 of the Annexure that whenever a person has spent 10 years continuously in the same Grade Pay, he can be granted the benefit of 3rd MACP. Counsel for applicant further reiterated that without any notice, the pay of the applicant in the PPO has been reduced and the applicant has been deprived of his due pension for the last two years and recoveries have also been made and the applicant has even been paid less DCRG and Leave Encashment. In support of his contentions, counsel for the applicant referred to the judgment of Hon'ble Apex Court passed in Bhagwan Shukla vs UOI & Ors reported in (1994) 6 SCC 154 in which it has been held that order of reduction passed without affording an opportunity of hearing is violative of principle of natural justice. He thus prayed for allowing the OA.

6. Per contra, counsel for respondents contended that as brought out in detail in para -1 of the reply that the benefits of 3rd MACP was wrongly given to the applicant. The applicant

w.e.f. 01.09.2008 vide letter dated 20.09.2010 and 3rd MACP was granted in grade pay of Rs 5400 w.e.f. 18.07.2011 but after having investigation and inquiry by the competent authority it was found that the 3rd MACP granted to the applicant w.e.f. 18.07.2011 is not legal. Therefore, the benefit of 3rd MACP wrongly given to the applicant has been withdrawn vide SPO/WS-JU's letter No. 656E/P3/MACPS/Supr./Mech/2013/168 dated 18.04.2013 issued by the competent authority. On pointing out by counsel for applicant that the applicant never received the letter nor the same has been enclosed with the reply or produced alongwith any additional affidavit despite being given several opportunities to file the same, counsel for respondents said that the letter dated 18.4.2013 is not available readily. Counsel for respondents further contended that the matter regarding grant of MACP is not a subject matter to be decided by the Single Bench of this Tribunal and as far as any wrongful deduction or entries in PPO dated 30.04.2013 (Annex. A/5) is concerned, the applicant never represented before the respondent-department and has directly approached to this Tribunal and if he submits any representation in this regard, the respondent-department can decide the same in accordance with the rules.

7. Considered the rival contentions of both the parties and perused the record. It is noted that though the relief sought in the OA mainly relates to restoring the basic pay of the applicant as Rs. 23970/- + Rs. 5400 as grade pay on 1.7.2012 and accordingly issue revised PPO and retiral benefits, much has been said in the OA and the reply regarding the grant of MACPS. So far as matter of grant of MACP and its correctness or otherwise is concerned, it is a matter that can be adjudicated by the Division Bench of the Central Administrative Tribunal and not by a Single Bench and further no relief has also been sought directly regarding the MACPS. However, it is seen from the record that vide Annex. A/3 and A/4, the applicant was granted the benefits of 2nd & 3rd MACP in Grade Pay of Rs. 4800 and Rs. 5400 respectively and in the pay slips for the month of March and April, 2013 also issued just before his retirement, the basic pay of the applicant has been shown as Rs 23,970/- and Grade Pay Rs 5400/-. The same have been changed and reduced vide PPO dated 30.04.2013 (Annex. A/5) (which was issued on the date of retirement of the applicant) and his last pay has been shown as Rs 27900/- while his last pay slips show it as Rs. 29,370/- and grade pay as Rs.4800, though as per Ann.A/4 and pay slips of March and April, 2013, it is Rs. 5400. Further, while the qualifying service of the applicant has been

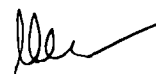
has been mentioned that he has only completed 24 years of service, which is also a discrepancy as pointed by the counsel for the applicant. Moreover, letter dated 18.04.2013 said to have been issued and communicated to the applicant by the respondents, has not been produced by the respondents and counsel for respondents also submitted during the course of arguments that it is not readily available. Thus, it seems clear that the PPO and the other benefits of the applicant are at variance with the MACP granted to the applicant vide orders Annex. A/3 and A/4 as well as of the last pay slips of the applicant and further before making the downward reduction adversely affecting the applicant, no show cause notice or any information indicating the reasons has been produced by the respondents.

8. In view of the above position and analysis, it is proposed to dispose of this OA with certain directions.

Accordingly, the respondents are directed to give an opportunity of hearing to the applicant with regard to basis on which the PPO dated 30.04.2013 Annex. A/5 and other retiral benefits of the applicant have been issued, which are clearly at variance with the benefits of MACPS granted to the applicant earlier and pay slips issued for March and April, 2013, just prior to the applicant's retirement.

the issues raised in the OA and decide entitlements of pension etc. of the applicant by a reasoned and speaking order at the earliest preferably within 3 months from the date of receipt of this order. Thereafter, if any grievance remains to the applicant, he may approach the appropriate forum as per law.

The OA stands disposed of in above terms with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member

R/ss

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~~19.5.15~~
S. K. Malhotra
Adv
19/5/15