

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 458 of 2012

Reserved on 2.3.2015

Pronounced on 4th March, 2015

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Vinod Kumar Singh, aged about 55 years, S/o Sri Jagdish Singh Somvanshi, R/o N-326 Sector N, Ashiyana Colony, Lucknow.

.....Applicant

By Advocate : Sri Mayankar. Singh

Versus.

1. Union of India through its General Manager, Ministry of Railways, Northern Railway, Baroda House, Delhi.
2. The Chief Work Shop Manager, Loco Workshop, NR, Charbagh, Lucknow.
3. Deputy Chief Electrical Engineer, Loco Workshop, NR, Lucknow.
4. Deputy Chief Personnel Officer, Loco Workshop, NR, Charbagh, Lucknow.

.....Respondents.

By Advocate : Sri Rajendra Singh

ORDER

By Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- "(i) *That this Hon'ble Tribunal may be pleased to direct the Opposite parties to provide the benefits of II/III MACP w.e.f. 22.6.2002 and 22.6.2012 respectively as per the MACP scheme dated 10.6.2009 alongwith all the consequential benefits.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to direct the Opposite party no.2 to pay arrears of the difference of salary on account of aforesaid re-fixation together with the interest @ 18% p.a. from the date it became due till the date of its actual payment.*
- (iii) *Any other relief deemed fit just and proper of the case may also be allowed in favour of the applicant.*
- (iv) *allow the cost of the case in favour of the applicant against the Opposite parties."*

J. Chandra

2. The facts, as emerged in the O.A., are that the applicant joined on the post of Chargeman Gr. 'B' w.e.f. 1.6.1986. He was promoted on the post of Chargeman Gr. 'A' by means of order dated 19.5.1989. Subsequently the post of Chargeman Gr. 'A' and 'B' were merged together into a single post namely Junior Engineer having a single pay scale and such promotion of the applicant cannot be treated to be a promotion. The applicant was promoted on the post of Deputy Shop Superintendent in the pay scale of Rs. 2000-3200/- by order dated 22.6.1992. After implementation of 6th Pay Commission, Modified Assured Progression Scheme (MACPS) was introduced vide letter dated 10.6.2009 (Annexure-4). As per this scheme, all employees are entitled three financial up-gradation after completion of 10, 20 and 30 years of service or 10 years of continuous service in the same grade, which ever is earlier. As per the scheme, the applicant was entitled to the benefit of IIInd MACP w.e.f. 22.6.2002, which became due after completion of 10 years service on the promoted post of Deputy Shop Superintendent. The applicant was given the benefit of 2nd MACP only w.e.f. 1.9.2008 as the said MACP came into force on that date. Having been denied 2nd MACP w.e.f. 22.6.2002, he is now being denied the benefit of 3rd MACP w.e.f. 22.6.2012. He had approached the respondents by his letter dated 23.4.2012, but the respondents did not pay any heed. The applicant preferred an application dated 20.5.2012 under Right to Information Act, 2005 and he was informed by letter dated 8.8.2012 that one Sri Prem Kishore has been given 3rd financial up-gradation under MACP on completion of 30 years of service on 29.5.2011. More-over, many others have been given the similar benefit of Ist, IIInd and IIIInd MACP on completion of 10, 20 and 30 years of service. The said Sri Prem Kishore was provided Ist and IIInd MACP retrospectively, therefore, there is no reason why the applicant cannot be similarly benefited. He gave another two representations dated 25.9.2012 and 25.10.2012 requesting therein that he may be granted IIInd MACP w.e.f. 22.6.2002 and IIIInd MACP w.e.f. 22.6.2012, but till date no decision has been taken thereon. Hence, this O.A.

3. The respondents, by means of their Counter Reply, have stated that the applicant has been granted 2nd MACP w.e.f.

1.9.2008 i.e. from the date of introduction of the scheme. The 3rd MACP would be admissible on completion of 30 years of service i.e. or ten years from the date of 2nd MACP w.e.f. 1.9.2008, which ever is earlier. According to Service Profile of the applicant, he was appointed as Junior Engineer in the pay scale of Rs. 1400-2600/- on 1.6.1986. The 1st promotion of Section Engineer in the grade of Rs. 6500-10500/- was availed by the petitioner on 22.6.1992. He was given IIInd MACP w.e.f. 1.9.2008 i.e. from the date of introduction of the scheme. Prior to the said scheme, the ACP scheme was in operation and the applicant had not become entitled for any financial upgradation under the ACP Scheme. He is now entitled for 3rd MACP on completion of 30 years of service and the same was conveyed to him by letter dated 27.4.2012 (Annexure CR-3).

4. Coming to the question of Sri Prem Kishore, the respondents have stated that he was also allowed 2nd financial upgradation w.e.f. 1.9.2008 vide office order no. 122 dated 10.12.2009. Sri Prem Kishore has been allowed 3rd financial upgradation under MACP w.e.f. 29.5.2011 on completion of 30 years of service. However, the dates shown in the assessment chart against the column 1st and 2nd financial up-gradation under MACP as 29.5.1991 and 29.5.2001 respectively are only to mention the dates on which Sri Prem Kishore had completed 10 and 20 years of service.

5. The applicant has filed Rejoinder reply reiterating more or less the averments already made in the Original Application and denied the contentions made by the respondents in their Counter Reply. He has affixed many other persons who have been given the IIIrd MACP on various dates

6. We have heard the learned counsel for the parties and have also seen the pleadings available on record.

7. It is seen from the relief(s) clause that the applicant has sought the benefit of 2nd MACP w.e.f. 22.6.2002; whereas this O.A. has been filed on 22.11.2012 and as such the O.A. suffers from delay and latches. He has failed to challenge the order by which he was granted the 2nd MACP w.e.f. 1.9.2008. More-over, by

means of this O.A, he is not seeking to quash of the said order, therefore, the present O.A. suffers from technical defects namely (a) delay in so far as seeking the remedy against 2nd MACP is concerned; and (b) not seeking the prayer for quashing of order granting II MACP .

8. Coming to merits of the case, it is clear from the MACP Scheme that the same is to be implemented w.e.f. 1.9.2008. There is no clause in the scheme which allows retrospective implementation. Rather, it is made clear that prior to implementation of MACP, the benefit of ACP scheme was to be implemented. Therefore, so far as the relief by way of grant of 2nd MACP w.e.f. 22.6.2002 is concerned, the same deserves to be dismissed on the ground of merits also.

9. Coming to the relief with regard to grant of 3rd MACP w.e.f. 22.6.2012 is concerned, it is very clear from the scheme that 3rd MACP has to be accorded after 30 years of service or 10 years in one grade, which ever is earlier. The applicant joined the service in the year 1986 and as such he completes 30 years of service on 22.6.2016. He has been granted IIInd financial up-gradation under MACP w.e.f. 1.9.2008 as such he completes 10 years service in that grade on 1.9.2018. The respondents have already informed the applicant that his case is due for consideration for grant of 3rd financial up-gradation under MACP on 226.2016 which is after 30 years of service. This appears to be just and fair communication.

10. Coming to the question of Sri Prem Kishore, it is clear from the order dated 10.12.2009 that he was allowed 2nd financial up-gradation w.e.f. 1.9.2008. He was allowed 3rd financial upgradation under MACP on completion of 30 years of service from the date of his initial appointment i.e. 29.5.2011. Therefore, the case of Sri Prem Kishore is separate and distinct from that of the applicant in so far as service period is concerned. More-over, there has been no retrospective sanction of 2nd MACP in his case. The applicant has also not been able to establish any parity with any of the others mentioned inasmuch as they entered the service on the same date as he did.

J. Chandra

11. In view of the above discussions, the O.A. has no merit and the same is accordingly dismissed. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Girish/-