

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 18.08.2015.

Pronounced on 21.8.2015.

Original Application No.211/2011

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Mr. U.K. Bansal, Member (A)

Jalees Iqbal son of late Iqbal Hussain aged about 57 years resident of 529/207 Martin purwa, Khurram Nagar, Lucknow presently posted as Chief Controller in the office of Divisional Railway Manager Northern Railway, Hazratganj, Lucknow.

-Applicant.

By Advocate: Sri S.M.S. Saxena.

Versus.

1. Union of India through Secretary Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Chief Personnel Officer, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

-Respondents.

By Advocate: Sri Rajendra Singh.

ORDER

By Mr. U.K. Bansal, Member (A)

The applicant, herein, is working on the post of Chief Controller in the department of respondents. He has filed this O.A. seeking the following reliefs:-

"(i) to grant financial up-gradation in terms of Assured Career Progressive Scheme read with MACP by providing Grade pay Rs.4800/- in PB-2 from the date the applicant has completed 10 years service in the same grade pay in PB-2 with al consequential benefits as the applicant has put in 10 years continuous regular service on 12.04.2008 in the same Grade Pay of Rs.4600/- i.e. from 13.04.1998.

(ii). Pay interest on the aforesaid arrears of 12% p.a. till the actual date of payment.



(iii). *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*

(iv). *Cost of the application be awarded to the applicant."*

2. Notably, no Counter reply was filed in this case on behalf of the respondents, and hence by an order dated 5.9.2012 opportunity to file Counter Reply was closed and the matter was listed for ex-parte hearing on 21.11.2012. Thereafter, the case was listed on number of occasions, but for various reasons, hearing could not take place. Today, during the hearing of this matter, the respondents were represented by their counsel. On the outset, an objection was raised by the counsel for the applicant that since the matter was listed on 21.11.2012 for ex-parte hearing, hence counsel for the respondents should not be given an opportunity of hearing at this stage. In support of his claim, applicant's counsel referred to the following Court's orders:-

(i) **Dr. Dinesh Singh Vs. State of U.P. & others (Writ Petition no. 4176 (S/S) of 1996)** decided on 21.9.2006. In this matter, no Counter Affidavit was filed by the respondents till the date of hearing, Court denied any further opportunity for filing the Counter Affidavit. However, respondents' counsel was present during hearing and was duly heard. The Court decided the matter after hearing counsel for both sides and perusal of records.

(ii) The applicant's counsel also referred to the case of **Chokst Tube Company Ltd. Vs. Union of India & Others reported in (1997) 11 SCC 179**. In this matter also, the omission to file Counter Affidavit despite Court's order was taken note of by the Court, which observed as follows:-

".....The Court noted that no Counter affidavit had been filed to the Writ petition; that having regard to the averments in the writ petition, a counter affidavit was necessary; and that the counter affidavit should be filed within 8 weeks. No affidavit having been filed, the matter was adjourned"

However, respondents' counsel was not debarred from hearing, even though adverse inference was drawn against the respondents since they had not stated their case on paper. Another reference was made by the counsel for the applicant to the case of **Smt. Naseem Bano Vs. State of U.P. & Others reported in AIR 1993 SC 2592** where in reference to Article 226 of Constitution of India -Writ petition - procedure - certain averments made in the petition by the petitioner - averments not



controverted by the respondents – High Court should proceed on the basis that the averments had been admitted by the respondents.

3. After close examination of case laws referred to by the learned counsel for the applicant, it was found that though counsel for the respondents was not allowed to make any written averments after closure of the opportunity to file Counter Reply, he was not debarred from hearing and hence in this matter also, we proceed to hear oral arguments of both sides.

4. Giving the nature of the case and documents already on record, oral arguments presented by the respondents' counsel can also be examined in the light of extant rules position. Admittedly, the applicant, herein, started his career in the Railways as Trains Clerk in May, 1977. His career progression has been as follows:-

- (i) 24.5.1977 joined at TNC equivalent GP of Rs. 1900/
- (ii) 15.11.1978 promoted as Sr. TNC equivalent GP of Rs. 2400
- (iii) 1985 promoted as Guard equivalent GP of Rs. 2800/-
- (iv) 1.3.1993 promoted as Sr. Guard equivalent GP of Rs.4200
- (v) 26.2.96 promoted as Sr. Controller equivalent GP of Rs.4200
- (vi) 13.4.98 promoted as Dy. Chief Controller equivalent GP of Rs. 4600

It is the contention of the applicant that he is working in Pay Band-II of Rs. 9300-34800/- with Grade Pay of Rs. 4600/- since 13.4.1998 and has been denied financial up-gradation. The applicant makes a reference to para 5 of Annexure no.1 to the Railway Board's circular dated 10.6.2009 in respect of MACP scheme where it has been stated as follows:-

"Promotions earned/up-gradations granted under the ACP scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales/up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradation under Modified ACPs."

5. The emphasis of the applicant is that according to Railway Board's circular "financial up-gradation under the scheme will be admissible whenever a member has spent 10 years continuously in the same Grade Pay." Since the applicant has completed 10 years of service in the Grade Pay of Rs. 4600/- in April, 2008, he becomes eligible for this financial up-gradation to Grade pay of Rs.



4800/-. Further his contention is that the claim of MACP lays down that promotion earned/up-gradation under ACP scheme in the posts on those grades, which now carry the same Grade Pay due to merger of pay-scale/up-gradation of posts recommended by 6th Central Pay Commission (CPC) shall be ignored for the purposes of granting Grade Pay under MACP due to non-availability of next higher post in his hierarchal cadre/category. The applicant has been stagnated on the same post in the same pay scale and Grade Pay despite having put in 10 years of service in that scale.

6. The applicant also submits that three financial up-gradations in whole service career are minimum for those suffering due to non-existence of promotion avenues resulting in stagnation, but there is no restriction in extending 4th and 5th financial up-gradation.

7. During the course of hearing, learned counsel for the applicant argued largely on the lines of his pleadings and emphasized that MACP scheme, as adopted by the Railways department, provided for financial up-gradation in the hierarchy of an employee after completion of 10 years in a particular post/Scale/Grade Pay subject to his fulfilling certain conditions.

8. Counsel for the respondents stated that the applicant had joined the service directly as Trains Clerk in the year 1977 and has availed four regular promotions in normal course. The MACP Scheme has been devised in supersession of earlier ACP scheme to ameliorate the hardships of such employees, who are unable to secure promotion and financial up-gradation due to delay in normal promotion. Since the applicant, herein, has already availed four regular promotions during his service career, he is not eligible for any further benefit under the MACP scheme, although he has completed 10 years of regular service in Grade Pay of Rs. 4600/-.

9. Counsel for the respondents also made a reference to the order of this Bench of the Tribunal in O.A. no. 217 of 2011 decided on 5.3.2015 where almost in an identical matter, the benefit of MACP was denied. Reference made by the counsel for the applicant to the order of CAT (Ernakulam Bench) in O.A. no.



175 of 2001 decided on 12.4.2002 was not found relevant in this case. Another case decided by CAT (Hyderabad Bench) in O.A. no. 58 of 2002 and connected O.As was also referred to by the learned counsel for the applicant. This matter relates to benefit under ACP scheme without passing Limited Departmental Competitive Examination and deals with the matter relating to merger of feeder and promotion grade cadres. The orders in the aforesaid O.A. are not relevant to the case, in question, before us.

10. The MACP scheme states at the outset as follows:-

There shall be three financial up-gradations under MACP Scheme **granted from the direct entry grade** on completion of 10th, 20th and 30 years of service respectively. It clearly envisages financial up-gradation to alleviate financial hardships due to lack of timely promotion and provides for three such financial up-gradation in the entire service career to a Government employee, counting from the entry grade. The applicant, herein, has admittedly availed four regular promotions from his entry grade, which was Trains Clerk with equivalent Grade Pay of Rs. 1900/-. His progression in service has already been mentioned earlier in this order. It is not the intent of the MACP scheme to provide financial up-gradation in such matters where an employee has already availed up-gradations of both posts and pay in the normal course. The stagnation, being referred to by the applicant at Grade Pay of Rs. 4600/-, has occurred after he has already availed more than three promotions and consequent financial up-gradation. Further regular service has been defined for the purpose of MACP scheme by stating that "regular service shall commence from the date of joining of a post in direct entry grade on regular basis either on direct recruitment or by absorption/ re-employment....." The order passed by this Bench in O.A. no. 217 of 2011, which was referred to by the counsel for the respondents during the course of hearing, was also examined. In this case also, the applicant had a similar career progression as the applicant of the O.A., herein, and after joining as Trains Clerk, he achieved four promotions and became Deputy Chief Controller. The relief claimed by the applicant in that case and the applicant, herein, are also similar. It was held in the referred case that the purpose of MACP Scheme is that those employees, who do not get



promotions in their service career, they will be compensated by granting three financial up-gradations on completion of 10th, 20th and 30 years of regular service. The order in O.A. no. 217 of 2011 also refers to the clarification provided in Swami Compilation on Seniority and Promotion where it is stated that if Government servant has already earned three promotions and is stagnating in one grade for more than 10 years, then he is not entitled to any further up-gradation under MACP Scheme since he has already earned three promotions.

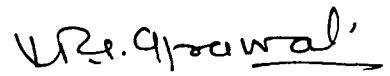
11. On the basis of records before us and after careful examination of arguments during the course of hearing, we find that the prayer made by the applicant is untenable under the provisions of MACP scheme as the applicant has already earned four regular promotions before the issuance of the scheme.

12. In view of the above, O.A. fails and is accordingly dismissed.

No order as to costs.



(U.K. Bansal)
Member(A)



(Navneet Kumar)
Member-J

Girish/-