

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.7.2011

OA 120/2010

Mr. Amit Mathur, counsel for applicant.
None present for respondents.

Put up on 2.9.2011, as prayed for by learned counsel
for the applicant.

Anil Kumar

(Anil Kumar)
Member (A)

J.C. S. Rathore

(Justice K.S. Rathore)
Member (J)

vk

Somn

02/09/2011 (OA 120/2010)

Mr. A.N. Mathur, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondent.

Heard.

The O.A. is disposed of by a
separate order on the separate sheet
for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

J.C. S. Rathore

[Justice K.S. Rathore]
Member (J)

Somn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of September, 2011

Original Application No.120/2010

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

D.P.Gupta
s/o Shri Ramjilal Gupta,
r/o 41, Surya Nagar,
Taroon Ki Kunt, Jaipur
Presently working as
Chief Legal Assistant,
NW Railway, Jaipur

.. Applicant

(By Advocate: Shri A.N. Mathur)

Versus

1. Union of India through
General Manager,
North Western Railway,
Hasanpura,
Jaipur

.. Respondent

(By Advocate: Shri Anupam Agarwal)

O R D E R (ORAL)

The short controversy involved in this OA is that benefit of financial upgradation under the Modified Assured Career



Progression (MACP) Scheme has not been granted to the applicant treating him as employee working in the grade pay of Rs. 4600/- w.e.f. 30.10.1998 continuously and also to allow him grade pay of Rs. 4800/-.

2. The brief facts of the case are that the applicant was initially appointed in the office of respondents in the year 1989 through Railway Recruitment Board. On 1.1.1996, he was promoted as Head Clerk. Thereafter he was promoted as Legal Assistant in the scale of Rs. 6500-10500. The aforesaid promotion was made vide order dated 16.10.1998. In pursuance to that an order was passed on 28.10.1998 by the Western Railway and further on 30.10.1998 the applicant gave joining on the promotional post of Legal Assistant.

3. The case of the applicant is that the applicant qualified the selection test and empanelled for the post of Legal Assistant in the scale of Rs. 6500-10500 which now falls in the pay band of Rs. 4600/-. The respondents finally regularized the service of the applicant on the promotional post of Legal Assistant w.e.f. 8.1.2003. Thus, the applicant is entitled to be given the benefit of first MACP on completion of 10 years service counting from the date of entry as Legal Assistant i.e. 30.10.1998 because as per the MACP Scheme, financial upgradation will be given after 10 years continuous service in the same grade pay.



4. The learned counsel for the applicant referred to provisions of MACP scheme. According to Clause-1 of MACP scheme, there shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. He also referred Ann.A/8, submitted alongwith the rejoinder, which is clarification regarding MACP Scheme for Railway employees issued vide order dated 29.9.2010 and as per clause 4 – 'whether the benefit of MACPS would be granted from the date of entry grade or from the date of their regular service/approved service counted under various service rules ?' is clarified in the terms that 'the benefit under the MACPS would be available from the date of actual joining of the post in the entry grade'. Thus, placing reliance on this clarification the submissions made on behalf of the applicant is that he has entered as Legal Assistant in the year 1998 and has completed requisite 10 years of service for the purpose of benefit under the MACP only in 2008. He also referred to the recommendations of the 6th Central Pay Commission for railway employees issued by the Additional Member (Staff) on 12.3.2010 whereby it is clarified that the bench mark for awarding required MACP benefits cannot be higher to that of



bench mark required for normal promotions. Therefore, staff eligible for normal promotion should not be debarred for awarding MACP on account of Confidential Reports rating.

5. In support of his submissions, he also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of A.Janardhana vs. Union of India and ors, reported at AIR 1983 SC 769 and Chandra Prakash and others vs. State of U.P. and another, reported at 2002 SCC (L&S) 496.

6. Per contra, the learned counsel appearing for the respondents has emphatically denied the submissions made on behalf of the applicant and submits that the applicant is not entitled to the benefit of MACP and referred to clause-9 of the scheme which speaks about regular service and according to which, regular service for the purpose of MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. After referring clause-9 of the MACP scheme, he submits that the applicant was admittedly placed in the panel of Legal Assistant on 1.1.2003 and he resumed his duties as confirmed Legal Assistant on 8.1.2003. He was promoted as Chief Law Assistant on his turn vide order dated 13/20.12.2005 w.e.f.



1.11.2003. The Government after consideration of recommendations of the 6th CPC which introduced the MACP Scheme has accepted the same with further modification to grant 3 upgradations at the intervals of 10, 20 and 30 years of continuous regular service and counting 10 years from 8.1.2003, when the applicant was made regular on the post of Legal Assistant, he has not completed the requisite 10 years service. Therefore, the respondents have rightly not extended the benefit of MACP scheme to the applicant. He further referred clause-3 of Ann.R/1 wherein it is provided that the Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group 'A', 'B' and 'C' Railway employees except officers of the Organised Group 'A' service. The status of Group 'D' employees would cease on their completion of prescribed training, as recommended by the 6th CPC and would be treated as Group 'C' employee. Casual employees, including those granted 'temporary status' and employees appointed in the Railways only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme.

7. Having heard the rival submissions of the respective parties and carefully perused the material available on record as also the MACP Scheme for the railway employees along with the clarification issued by the respondents from time to



time and also carefully screened the judgment relied upon by the applicant.

8. The Hon'ble Supreme Court in the case of Chandra Prakash (supra) observed as under:-

"Seniority-Inter se Seniority-Temporary appointees and regular recruits-Doctors having necessary qualifications, temporarily appointed in U.P. PMS in consultation with PSC against substantive vacancies and never treated as ad hoc appointees-After a very long period, State Government framing Regularisation Rules and seeking to give such temporary appointees seniority from the date of regularization under the said Rules-Meanwhile, during various years, PSC making selections and recommending the names of selectees-On appointment of such selectees, question arising as to inter se seniority between temporary appointees and selectees-On facts, High Court holding the temporary appointees to be entitled to seniority from the date of their initial appointment- A three-Judge Bench of Supreme Court, although noticing the Regularisation Rules, upholding the High Court's judgment by a reasoned order and dismissing SLP - Moreover, in another case of similarly situated temporary doctors a division Bench of Supreme Court affirming the said view-Subsequently, a two-Judge Bench of Supreme Court holding such temporary appointees to be entitled to seniority not from the date of their initial appointment but from the date of their regularization under the Regularisation Rules - Such view of the two judge Bench, held directly conflicted with the view taken by the three-Judge Bench- Hence, not good law- Seniority-Particular instances of rules - U.P. Regularisation of Ad hoc appointment (On Posts within the Purview of the Public Service Commission) Rules, 1979.

The controversy before the Hon'ble Supreme Court was altogether different. In that case, the Hon'ble High Court held the temporary appointees to be entitled to seniority from the date of initial appointment. A three-Judge Bench of the



Hon'ble Supreme Court, although noticing the Regularisation Rules, upheld the High Court's judgment by a reasoned order and dismissing the SLP. In another case of similarly situated temporary doctors, a Division Bench of Supreme Court affirming the said view. Subsequently, a two- Judge Bench of Supreme Court held that such temporary appointees to be entitled to seniority not from the date of their initial appointment but from the date of their regularization under the Regularisation Rules. Therefore, a Larger Bench was constituted for resolving the issue and the matter has been dealt with by the Larger Bench and the matter was referred to three- Judges Bench to resolve the controversy as confronting view was taken by the Supreme Court. This ratio decided by the Hon'ble Supreme Court is not applicable to the facts and circumstances of the present case.

The case referred to by the learned counsel appearing for the applicant in the case of A.Janardhan (supra) with regard to the seniority in the facts and circumstances is also not applicable to the present controversy.

9. Having considered the MACP scheme which clearly indicates that benefit of the scheme can only be given to those persons who have completed 10 years continuous regular service in same grade pay and admittedly, the applicant was regularized w.e.f. 8.1.2003 and has not



completed 10 years requisite service for the purpose of benefit under MACP scheme. Consequently, we find no merit in this OA and the OA being devoid of merit deserves to be dismissed, which is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/