

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 625/2012

Order reserved on : 10.2.2015

Date of Order: 17.3.2015

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL
MEMBER**

Udaiveer Singh S/o Ram Sahai, aged 43 years, working as Enquiry-cum-Reservation Clerk, under Station Superintendent, W.C. Railway Gangapur city Kota Division in scale 5200-20200 grade pay 2800, Resident of D-78, Ranjeet Nagar, Bharatpur (Raj.)

.....Applicant

(By Advocate Mr. Nand Kishore)

VERSUS

1. Union of India, through General Manager, West Central Railway, Jabalpur.

2. Divisional Railway Manager, West Central Railway, Kota.

.....Respondents

(By Advocate Mr. Y.K.Sharma)

ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicant has filed the present OA praying for the following reliefs:-

8.(i) In view of the above facts and grounds the entire record of the case may kindly be called and after examination of the same and the respondents letter dated 15.5.2012 vide which the claim of applicant have been

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rejected, may be declared bad in law, arbitrary and quashed and set aside and;

(ii) The respondents may further be directed to give second promotion as per provisions of the Railway Board circular RBE No.101/2009 with all consequential benefits.

(iii) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. The brief facts of the case as stated by the learned counsel for the applicant are that the applicant was appointed as Constable through direct recruitment in the pay scale of Rs.825-1200. That the grade of the Constable was revised to Rs.3050-4590 after the 5th Pay Commission. It was further revised to Rs.3200-4900.

3. The applicant applied for general departmental competitive examination in the pay scale of Rs.3200-4900 and qualified for the same. Thereafter the applicant was offered appointment for the post of Commercial Clerk in the pay scale of Rs.3200-4900 vide letter dated 15.5.2002 (Ann.A/4).

4. Subsequently, the applicant having qualified for the post of ECRC in the pay scale of Rs.4500-7000 was promoted and posted under SS Kota Bharatpur vide letter dated 27.11.2006 (Ann.A/5). The applicant applied for the benefit of Modified Assured Career Progression Scheme through Right to Information Act vide letter dated 4.12.2011

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(Ann.A/6). However, the respondents have rejected the request of the applicant vide their letter dated 15.5.2012 (Ann.A/1). In this letter the respondents have stated that the applicant was given first promotion in the pay scale of Rs.3200-4900 as Commercial Clerk. This has been treated as first promotion of the applicant. Thereafter he was promoted as ECRC in the pay band of Rs.5200-20200 with grade pay Rs.2800 on 30.11.2006. That the applicant was appointed as constable in the pay scale of Rs.825-1200 w.e.f. 17.3.1989 thus the applicant has not completed 30 years of service nor he has completed 10 years of service from the date of his 2nd promotion i.e. 30.11.2006, therefore, the applicant is not entitled to the benefit of 3rd MACP.

5. The applicant has stated that since the grade of the constable as well as commercial clerk is one and same i.e. Rs.3200-4900 and as such cannot be treated as promotion as alleged by the respondents. That the applicant has completed more than 24 years service and, therefore, he is entitled to 2nd upgradation as per provisions of MACP. That the applicant has got only one promotion vide letter dated 27.11.2006 (Ann.A/5), therefore, he has prayed that the respondents be directed to give 2nd promotion as per provisions of Railway Board circular RBE No.101/2009 with all consequential benefits.

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6. On the other hand, the respondents have submitted their written reply. The respondents in their written reply have admitted that the applicant was initially appointed as constable in the pay scale of Rs.825-1200 which was subsequently revised to Rs.3050-4590 after the 5th Pay Commission. The applicant earned promotion in the grade of Rs.950-1500 which was revised in the pay scale of Rs.3200-4900. Thereafter, the applicant was selected as ACC against direct recruitment quota in the pay scale of Rs.3200-4900 vide order dated 13.5.2002. The respondents admitted that applicant was promoted to the post of ECRC in the pay scale of Rs.4500-7000 vide order dated 27.11.2006. With regard to RTI application submitted by the applicant with regard to grant of MACP to the applicant, respondents have submitted that the RTI is not a forum to represent the case as complaint.

7. The respondents have stated that it is accepted that the merger of pay scale shall be ignored as per para 5 of RBE No.101/2009 and accordingly the promotion earned by the applicant in the grade of Rs.950-1500 has been ignored. However, the promotion of the applicant to the post of ACC in the pay scale of Rs.3200-4900 is neither merger of grade nor upgradation but it is clearly a case of promotion, therefore, in view of these facts the applicant is not entitled

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to another MACP. The applicant has been informed accordingly vide letter dated 15.5.2012 (Ann.A/1).

8. The respondents have submitted that contents of para 4(vi) of the OA are nothing else but except a mention of provision given in Para No.5 of RBE No.101/2009 which is not relevant for the purpose of relief claimed by the applicant as this case is not covered under those provisions.

9. The respondents have further submitted that the applicant has not counted his promotion on the post of ACC in the pay scale of Rs.3200-4900 on 13.5.2002 which was under direct recruitment promotion quota and the applicant subsequently also earned one more promotion as ECRC on 30.11.2006. As such, the applicant is not entitled to MACP as per law. Therefore, this OA is liable to be dismissed having no merits.

10. The applicant has filed rejoinder and the respondents have filed additional reply to the rejoinder.

11. Heard the learned counsel for parties and perused the documents on record. The learned counsel for the applicant reiterated the facts as stated in the OA. He vehemently argued that the applicant was working in the pay scale of Rs.3200-4900 as Constable and he was selected for the post of Commercial Clerk in the same pay scale i.e. Rs.3200-4900 and as such it cannot be treated as promotion as

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alleged by the respondents. Therefore, since the applicant has completed more than 24 years service, he is entitled to 2nd upgradation as per the provisions of the MACP. That the applicant has earned only one promotion on the post of ECRC vide order dated 27.11.2006 and, therefore, he is entitled for another promotion under the MACP Scheme.

12. On the other hand, the Ld. Counsel for the respondents argued that though the applicant was working as constable in the pay scale of Rs.3200-4900 but he was promoted through selection to the post of ACC vide order dated 13.5.2002. The Ld. Counsel for respondents argued that the selection of the applicant on the post of ACC from the post of Constable is the first promotion of the applicant though pay scales of both the posts are same i.e. Rs.3200-4900.

13. Thus the short controversy involved in the present OA is whether the selection of the applicant from the post of constable in the pay scale of Rs.3200-4900 to the post of ACC through selection process in the same pay scale i.e. Rs.3200-4900 would be treated as promotion or a lateral shift. We have carefully perused the documents on record. It is not disputed between the parties that the applicant was selected to the post of ACC through GDEC. Since the applicant was selected through competitive examination, therefore, his appointment on the post of Assistant Commercial Clerk (RSRP) vide order dated 13.5.2002 cannot

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be said to be lateral shift. It is either a promotion or at best it can be treated as direct recruitment. From the perusal of letter dated 13.5.2002(Ann.A/4) it appears that the posting of the applicant to the post of ACC (RSRP) was a direct recruitment. The respondents in their reply in Para 4(ii) have also stated that the applicant was selected as ACC against direct recruitment quota. If the applicant's appointment on the post of ACC is the direct recruitment then as per the provisions of RBE No. 100/2012(Ann.R/1) the past service rendered in a lower pay scale or grade pay shall not be counted for the purpose of MACP. But in this case the applicant was not working in the lower pay scale or grade pay, therefore, the provisions of Para 1 of the circular dated 12.9.2012 shall not be applicable to the applicant. Para (ii) of the circular provides that if the relevant recruitment rules prescribed for promotion quota to be filled on the basis of LDCE/GDCE such appointment would be treated as promotion for the purpose of benefit under MACPS and in such case past regular service shall also be counted for further benefit, if any, under the MACP Scheme. In the present case, respondents are treating that the applicant was promoted to the post of ACC through selection process but they have not placed on record the relevant recruitment rules which provide for promotion quota and that the applicant was promoted/appointed under that promotion

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quota through selection process. On the contrary, the respondents have stated that applicant was selected as ACC against direct recruitment quota(Para 4(ii) of reply). However, respondents in para 4 (viii) of the reply have stated that the applicant was promoted on the post of ACC in the pay scale of Rs.3200-4900 on 13.5.2002 which was under direct recruitment promotion quota. Thus there is discrepancy in the reply of respondents themselves as to whether the selection of the applicant as ACC(Assistant Commercial Clerk) was a direct recruitment or a promotion. The respondents need to be clear on this point. The respondents have not given the rule position in this regard.

14. Therefore, the respondents are directed to re-examine the case of the applicant for grant of MACP after deciding the issue of the selection of the applicant to the post of ACC(RSRP) was on the basis of direct recruitment or on the basis of promotion. After examining the issue according to the rules, the respondents shall pass afresh reasoned and speaking order according to provisions of law expeditiously but not later than 3 months from the date of receipt of the copy of this order. If the applicant would be aggrieved by the order so passed by the respondents then he would be at liberty to redress his grievance by filing a fresh OA if so advised.

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15. With these observations and directions the OA is disposed of.

Chameli Majumdar
(MRS.CHAMELI MAJUMDAR)
JUDICIAL MEMBER

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/