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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00813/2014

Date of Decision : 27.7.2015

Reserved on: 17.07.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

V.K. Saxena, son of Sh. Om Parkash Saxena, aged 60 years, R/o D-20,
Dial Bagh Colony, Ambala Cantt., Ex. Kanoongo under respondent no.3.

Applicant

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala Cantt.
3. Senior DPO, Northern Railway, Ambala Cantt.

Respondents

Present: Mr. Karnail Singh, counsel for the applicant
Mr. Suresh Verma, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- 8.1 Quashing of the impugned order dated 13.12.2013 (Annexure A-1) issued by the respondent in a arbitrary manner.
- 8.2 Grant of the second financial benefit under MACPS Scheme in scale of Rs.9300-34800 with Grade Pay of Rs.4200 w.e.f. 01.09.2008 whereas it has been shown as granted with Grade Pay of Rs.2800 only.

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- 8.3 Grant of the third financial benefit under ACP Scheme in scale of Rs.9300-34800 with Grade Pay of Rs.4600 w.e.f. 23.08.2012.
- 8.4 Payment of difference of Death cum Retirement Gratuity (DCRG), Leave Encashment, Commutation of Pension etc. paid and due by granting the above ACP / MACP benefits.
- 8.5 12% interest be allowed on the release of arrears.
- 8.6 Cost of Rs.10,000 of this case in favour of the applicant against the respondents.

2. Averment has been made in the OA that the applicant was appointed as Patwari (Lekhpal) by UP Govt. on 23.08.1982 in the scale of Rs.330-560. The applicant was appointed in the respondent Department as Patwari Clerk in the scale of Rs.260-400 in March, 1984 on deputation and thereafter was absorbed in the service of the respondents and posted under respondent no.2 at Ambala. He was later promoted to officiate as Kanoongo in the scale of Rs. 330-560 w.e.f. 10.10.2005 and continued to perform the duties as Kanoongo. The Modified Assured Career Progression Scheme (MACPS) was circulated in 2009 (Annexure A-2), but the respondents did not grant him the benefit under the Scheme due to which he filed OA No.1239/HR/2013 which was disposed of by the Tribunal with direction to the respondents to take final decision with respect to the representation of the applicant regarding grant of MACP. Since the order of the Tribunal was not implemented, the applicant filed a CP in this regard. The Tribunal granted liberty to the applicant vide order

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dated 13.01.2014 passed in the CP to challenge the impugned order dated 13.12.2013.

3. It has further been stated that the respondent vide Pension Pay Order No.011317079, dated 30.12.2013, retired the applicant on superannuation on 31.12.2013 with qualifying service of 31 years but the respondent failed to grant the third MACP benefit to the applicant as due. The hierarchy of post and scale on account of merging as per the 6th Pay Commission report are as under:

- (a) Patwari Clerk (5200-20200 + GP 2000)
- (b) Kanoongo Clerk (5200-20200 + GP 2800)
- (c) Asstt. Land Control Inspector / Land Control Inspector (9300-34800 + GP 4200)
- (d) Chief Land Control Inspector / Chief Surveyor (9300-34800 + GP 4600).

4. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed and it has been stated that the impugned order at Annexure A-1 has been passed by respondent no.3 after examining the case of the applicant from all angles and the 2nd MACP has been granted legally and rightly. The applicant was absorbed as Patwari Clerk in Grade 200-400 / 950-1500 / 3050-4590 / 5200-20200 + GP 1900 (RSP), from the date of joining in Railways Department i.e. 16.03.1984. It is further stated that the applicant before he was absorbed as Patwari Clerk in the Railway Department, he was appointed on

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23.08.1982 as Patwari in the State of Uttar Pradesh. The extant rules on the subject i.e. item no.10 of the MACP Scheme (Annexure A-2 to the OA) provides as under:-

“10. Past service rendered by a Railway employee in a State Government / Statutory Body / Autonomous Body / Public Organization, before appointment in the Railway shall not be counted towards regular service.”

As provided in item no.10 of the MACP Scheme, the past service rendered by the applicant in State Government Organization, before appointment in the Railway shall not be counted towards regular service, for the purpose of grant of benefits under the MACP Scheme. Therefore, the applicant is not entitled for 3rd MACP as he has not completed 30 years of service in the Railways before retirement as the applicant stood retired on 31.12.2013.

5. Arguments advanced by the learned counsel for the parties have been heard. Learned counsel for the applicant narrated the background of the matter and drew attention to DOPT OM 35034/10/2011-Estt.(D), dated 13.06.2015 through which clarifications had been issued on MACPS. Item No.4 of the same reads as follows:-

“4. Where a person is appointed on direct recruitment / deputation basis for another post in the same grade, then past regular service as well as past promotions / ACP, in the earlier post, will be counted for the purpose of MACPS.”

He also referred to judgment of the Tribunal dated 04.04.2013 in OA No.658/CH/2012 Sh. Rajpal Vs. Secy. Dept. of Personnel, GOI & others.,

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wherein it had been held that in the case of a State Govt. employee later absorbed in Central Government, the services rendered in State Government in the same scale will be counted for MACP. Learned counsel stated that the applicant was working as Patwari with the UP Government since August, 1982 and had come on deputation to the respondent Department as Patwari Clerk in March, 1984 and was absorbed in service in the year 2000. Hence as per the clarification under MACPS and the judgment of the Tribunal, the service since 23.08.1982 had to be counted for grant of MACP benefits. When the applicant retired from service on attaining the age of superannuation on 31.12.2013, he was given the full benefit of qualifying service of 31 years from August, 1982. Hence his service period since August, 1982 should be counted for MACP also.

6. Learned counsel for the respondents reiterated the content of the written statement and expressed ignorance regarding the clarification on the MACPS issued by the DOPT.

7. We have given our careful consideration to the matter. From the material on record, it is evident that the applicant was in the service of the UP Government since 23.08.1982 and as per the clarification issued by DOPT vide OM dated 09.09.2010, the service in the previous post is to be counted for the purpose of MACPS. The Coordinate Bench of this Tribunal has also taken this view in OA No.658/CH/2012 dated 04.04.2013. Hence,

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(OA.No.060/00813/2014) titled (V.K. SAXENA VS. UOI & ORS.)

we are of the view that the claim of the applicant in the OA for counting of service since August, 1982 for MACP is justified. Hence, the impugned order dated 13.12.2013 (Annexure A-1) is quashed and the applicant will be entitled to the grant of financial benefit under ACP/MACPS counting the service from August 1982. While the 2nd financial upgradation has been granted in the scale of Rs.9300-34800 with GP of Rs.2800, the applicant would also be entitled to 3rd MACP on completion of 30 years of service from August 1982. The respondents are directed to review the case of the applicant for grant of 2nd and 3rd financial upgradations under ACP / MACP Schemes and consequential benefit of release of arrears on account of difference in salary/revision of pension and other retiral benefits may be released to the applicant within a period of three months from the date of receipt of a certified copy of this order being served upon the respondents.

No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 27.7.2015.

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