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

O.A.No.060/00885/2014

Date of Decision : 16.9.2015

Reserved on: 11.09.2015

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

Harbans Singh, son of Tiulsa Singh, aged 62 years, retired as Mason from the office of Chief Inspector of Works, Phagwara, Punjab, resident of House No.118, Street No.2, Bharat Pura (Opposite Railway Station) Phagwara, District Kapurthala.

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Applicant

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, Firozepur.
3. Sr. DME / DSL / Northern Railway, Ludhiana.

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Respondents

Present: Mr. D.R.Sharma, counsel for the applicant
Mr. Yogesh Putney, 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 (ii) The reply letter dated 20.09.2012 (Annexure A-4) given by the respondents before the Central Government Pensioners Welfare Association (CGPWA) be quashed and set aside.

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(iii) It be directed that the qualifying service length of applicant is 26 years and 06 months and not 17 years 02 months 14 days as wrongly calculated by the respondents vide letter dated 20.09.2012, and as such he deserves to be granted 2nd MACP which was due with effect from before his date of retirement on 31.12.2011 and provide full complementary pass / AELHS and refix his pensionary benefits accordingly, by correctly counting his qualifying service for the purpose.

(iv) The applicant be held entitled to all consequential benefits / reliefs including interest."

2. The background of the matter is that the applicant joined the Railways in the year 1977 and worked as Casual Mason. W.e.f. 01.02.1986, he was appointed as Mason-III in the pay scale of Rs.260-400. The applicant was screened by APO-FZR vide letter No.220E/194/P2B dated June, 1989 and was given Panel No.353. On 17.05.1990, the applicant was offered appointment on the post of Gangman which he refused. He was given revised scale after completion of 120 days service w.e.f. 13.07.1982, his pay was fixed in new scale of pay Rs.950-1500 w.e.f. 01.01.1986 pursuant to 4th CPC and he was placed in scale of Rs.3050-2590 w.e.f. 01.01.1996 pursuant to 5th CPC. Pursuant to 6th CPC the pay of applicant was revised w.e.f. 01.01.2006 in the pay scale of Rs.5200-20200 GP 1900. A copy of service book supplied to applicant under RTI Act, 2005 is annexed (Annexure A-8).

3. It is also stated that as a result of Trade Test held on 18.11.2006, 04.12.2006, 18.12.2006, and 27.12.2006, the applicant was declared passed and found suitable for the post of Mason Grade-III. The name of applicant figured at sl no.9 in the result of Casual Artisan Staff declared vide letter dated

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16.01.2007 issued by respondent No.2 (Annexure A-7). The services of the applicant were regularized on the post of Mason Grade-III w.e.f. 18.01.2007 vide DRM/FZR letter No.961-E/47/PNM/NRMU dated 03.11.2006 and vide ADEN/LDH letter No.E/358, dated 18.01.2007(Annexure A-6). The applicant was granted 1st MACP w.e.f. 01.09.2008 in the Pay Scale of Rs.5200-20200 + GP Rs.2000 vide ADEN/LDH letter No.E/29B dated 08.05.2010. At the time of retirement of the applicant on 31.12.2011, the office counted the qualifying service of applicant w.e.f. 13.07.1982 to 31.12.2011 except LWP(4) days with the last pay drawn of Rs.12,620 in the Pay Scale of Rs.5200-20200 + GP Rs.2000. A copy of PPO and Comprehensive Service Profile dated 31.12.2011 is annexed as Annexure A-5.

4. It is further stated that in response to the representation of the applicant before the Central Government Pensioners Welfare Association (CGPWA) to grant him 2nd MACP and complementary pass/AELHS, the APO/FZR vide letter dated 20.09.2012 informed CGPWA that the total service period of the applicant is 29 years 05 months 18 days i.e. during the period 13.07.1982 to 18.01.2007 but after deducting non-qualifying 50% service of 12 years 03 months 04 days, the qualifying service of the applicant comes to 17 years 02 months and 14 days which is less than 20 years as such the 2nd MACP cannot be granted to the applicant. A copy of reply letter dated 20.09.2012 is at Annexure A-4. The applicant submitted representation dated 20.02.2014 before

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respondent no. 2 that he was appointed as Mason on 13.07.1982 and screened by the APO-FZR vide letter No.220E/194/P2B dated June, 1989 and was given Panel No.353 and as such in the light of order issued by DRM.NR/FZR vide Sr. DPO/FZR letter No.961-E/47-union cell dated 28.05.1987 of PNM meeting minutes para No.11.16, it is not necessary to screen him again, therefore, his regular services deserves to be counted from June, 1989 instead of 17.01.2007 and as such the total length of service comes to 26 years 06 months as detailed below:-

13.01.1982 to 06.06.1989	=	08 years	= 50% (4 years)
06.06.1989 to 31.12.2011	=	22 years	= 22 years and 06 months
Total service length	=	26 years and 7 months	

A copy of order issued by DRM.NR/FZR vide Sr.DPO/FZR letter No.961-E/47 union cell dated 28.05.1987 of PNM meeting minutes para No.11.16 is annexed as Annexure A-3. The registered and recognized Union called Uttariya Railway Mazdoor Union (URMU) vide letter dated 20.02.2014 also requested the respondent No.2 to consider the qualifying service of applicant for pensionary benefits (Annexure A-2). The representations made by the applicant and Union are without any response from the side of respondents and he was denied the benefit of 2nd MACP which was due before retirement by counting 20 years service and full complementary pass/AELHS and correct refixation of his pensionary benefits. Hence this OA.

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5. In the grounds for relief, it has been stated as follows:-

- i) The qualifying service length of the applicant is 26 years and 06 months and not 17 years 02 months 14 days as wrongly calculated by the respondents.
- ii) The applicant was appointed as Mason on 13.07.1982 and screened by the APO-FZR vide letter No.220-E/194/P2B dated June, 1989 and was given Panel No.353. Admittedly the applicant had refused on 17.05.1990 the appointment / promotion on the post of Gangman as such in the light of Order issued by DRM.NR/FZR vide Sr. DPO/FZR letter No.961-E/47-union cell dated 28.05.1987 of PNM meeting minutes para No.11.16 "the casual labours who have been screened as Gangman but are not willing to accept the post of Gangman in the existing or in future vacancies, it is not necessary to screen him again" therefore, his regular services deserves to be counted from June/1989 instead of 17.01.2007 and as such the total length of service comes to 26 years & 6 months as detailed below:-

 $13.01.1982 \text{ to } 06.06.1989 = 08 \text{ years} = 50\% \text{ (4 years)}$
 $06.06.1989 \text{ to } 31.12.2011 = 22 \text{ years} = 22 \text{ years & 06 months}$

Total service length = 26 years and 06 months
- iii) The decision of the DRM/FZR has already been implemented in whole division and all the staff including the colleagues have been given benefits accordingly.

6. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It is further stated that the applicant has not disputed the contents of the letter dated 09/2012, or his engagement as Mason throughout and regularization of his service with effect from 18.01.2007, and retirement on superannuation on 31.12.2011. It is also not disputed that he was trade tested in the Mason Trade as per letter dated 03.11.2006 and regularized with effect from 18.01.2007. His date of appointment as Casual Mason w.e.f. 13.07.1982 is also not in dispute. It is also not in dispute that 50%

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of the casual/contingent continuous service rendered prior to regularization shall count for purposes of pension. It is also not disputed that proper pension, as admissible for the total service qualifying for pension i.e. 17 years, 02 months and 14 days was paid and is being received by the applicant with effect from 01.01.2012 i.e.

50% of casual / contingent service from 13.07.1982 to 17.01.2007 +	12 years, 3 months, 4 days
Regular service from 18.01.2007 to 31.12.2011	4 years, 11 months, 13 days
Total qualifying service	17 years, 2 months, 17 days

The sheet anchor for claiming the relief(s) is the circular (Annexure A-3), specifically item No.16 at page 20 of the paper book. The same reads as under:-

““Regularization of IOW Khalasis in FZR Division.

Casual labours who have been screened as Gangmen but are not willing to accept the post of Gangman will be absorbed against vacancies of Khalasis in the existing or in future vacancies. It is not necessary to screen them again.”

This decision was taken in the PNM meeting held on 26.05.1987. It is the case of the applicant that he was screened in 1989, offered the post of Gangman on 17.05.1990 which he refused, and was not required to be Trade Tested again in 2006. Therefore, he should be deemed to have been regularized from 1989. This is a grave misconception on the part of the applicant. The applicant was not working as IOW (Khalasi) during any period of his service. The decision of 1987 relates to and concerns IOW (Khalasi) and not to Masons. His service was not

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regularized as Khalasi. Also this decision was applicable to the persons who were already screened as Gangman as on 26.05.1987. The applicant was screened as Gangman in June, 1989 i.e. after the date of decision. Hence no benefit can be drawn of the same by the applicant.

7. It is further stated that the applicant is conscious of the fact that he was regularized with effect from 18.01.2007 and this is not in dispute. However, he is basing his claim of regularization from June, 1989 when he was first screened but refused to join. The applicant wants his casual service to be treated as regular and in a different trade. No provision has been quoted, nor is there any such provision except that 50% of the service was and could be counted for the specific purpose of grant of pension under the Railway Servant (Pension) Rules, 1993. But for this provision, the applicant would not have been entitled to pension even, his regular service being less than 10 years – minimum length of regular qualifying service required for grant of pension. Under the ACP/MACP, only regular service is reckoned for grant of financial upgradation. The applicant was regularized from 18.01.2007 and retired on 31.12.2011. There is no residual regular service of the applicant. As per the Modified Assured Career Progression Scheme (MACP) only regular service shall be taken into consideration for the purpose of MACP. Regular service has been defined in Annexure to the MACP Scheme under clause 9 which envisages that the service rendered prior to regular appointment on adhoc / contract basis shall not be

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taken into reckoning for the purpose of grant of MACP and undisputedly the applicant was regularized on 18.01.2007. Thus he was not eligible even for 1st MACP with effect from 01.09.2008 much less eligible for second MACP as he retired on 31.12.2011.

8. In the rejoinder filed on behalf of the applicant, it is stated that while calculating the service of the applicant for pensionary benefits, the respondents have calculated 50% of the temporary status service and his total qualifying service for pension was counted as 17 years, 02 months and 14 days. Once the applicant was granted the temporary status w.e.f. 13.07.1982, his entire temporary status service was required to be counted for the purpose of determining pensionary benefits and grant of MACP and ACP benefits. Thus, the action of the respondents in denying the benefit of the aforesaid service is illegal and arbitrary and cannot be sustained in the eyes of law. It is claimed that the case of the applicant is squarely covered by the decision of the CAT, Principal Bench in the case of Ram Saran Vs. Union of India, O.A. No.2639/2013 decided on 26.05.2014 (Annexure A-9).

9. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the background of the matter. He also referred to judgment in Ram Saran Vs. UOI & Ors. to support his claim regarding counting of his regular service from June, 1989 instead of

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17.01.2007 so that the total length of service would come to 26 years and 06 months as claimed in the OA.

10. Learned counsel for the respondents stated that as per the MACP Scheme only regular service had to be counted for this purpose. The services of the applicant had been regularized w.e.f. 2007 and he had retired from service in 2011 and hence he was not entitled to any benefit under MACPS. Regarding counting of casual / temporary status for pensionary benefits, learned counsel stated that as per Master Circular 46 to 50 para 11.2 (c) read as follows:-

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(c) to count half of the service rendered (i) in the case of open line casual labour after 1-1-61 (after attaining temporary status) and (ii) in the case of Project casual labour (after attaining temporary status) after 1-1-81, towards qualifying service for pensionary benefits on their eventual absorption in a regular post."

He stated that the qualifying service for pensionary benefits had rightly been calculated in the case of the applicant and hence no relief was admissible to him on this account. Learned counsel also cited in UOI & Ors. Vs. Sri Raghavendra R, in WP No.45466 of 2013 (S-CAT), decided on 23.04.2015, passed by the Hon'ble High Court of Karnataka at Bangalore, wherein para 6 reads as follows:-

"6. In terms of the office memorandum with regard to the Assured Career Progression Scheme dated 09.08.1999 produced as Annexure R-1 the same would not come to the benefit of the respondent. Para 3.1 of the said memorandum would narrate that all those appointed as casual employees, ad-hoc employees or contract employees shall not qualify for the benefits under the aforesaid scheme. So also in the memorandum dated 19.05.2009 with respect to the Modified Assured Career Progression Scheme,

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vide Annexure R-2, it is stated in para 3 therein that the casual employees and those appointed on ad-hoc or contract basis shall not qualify for the benefit of the aforesaid scheme. Therefore, the situation is that ad-hoc employees are not entitled for the benefit of the said scheme. Therefore when undisputedly the respondent was on ad-hoc basis from 10.01.1980 to 30.06.1985, for that period he will not be entitled to any benefit under the Scheme. Therefore based on these facts the plea of the respondent would have to fail."

Learned counsel stated that when a Scheme or Rules envisage a particular thing to be done in a particular manner it had to be done in that manner only and could not be done differently by re-interpreting the Scheme / Rules.

11. We have given our careful consideration to the matter. Although in Ram Saran (supra) it was directed that the entire period of casual service be counted as qualifying service for granting retirement benefits but this case could be distinguishable on facts. The Master Circular 46 to 50 issued by the Ministry of Railways has not been set aside by the Tribunal / Courts. As stated above, para 11.2 specifically states that half of the service rendered after attaining temporary status shall be counted as qualifying service for pensionary benefits. Further, Para 9 of the MACP Scheme reads as follows:-

“9. ‘Regular service’ for the purpose of the 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. However, past continuous regular service in another Government / Department in a post carrying same Grade Pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purpose of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be

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considered till the satisfactory completion of the probation period in the new post."

Keeping in view the clear direction in the Master Circular as well as MACPS, we conclude that the respondent Department has rightly counted only 50% of the period served by the applicant in temporary status for qualifying service for pensionary benefits and the applicant has been held to be not eligible for 2nd financial upgradation under MACPS. Hence there is no merit in the claim of the applicant and the same is rejected.

12. No costs.

**(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.**

**(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER**

Place: Chandigarh

Dated: 16.9.2015

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