

(Reserved on 25.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00015/2016

This the **08th** day of **May, 2018**

**HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)**

Satya Prakash Nigam, son of Late H.S. Nigam, Resident of Manas Vihar Colony Jungle Saligram, Vatsalya Road Near Fatima Hospital, Padari Bazar, City & District Gorakhpur.

.....Applicant

By Advocate: Shri H.P. Gupta

Versus

1. Union of India through Secretary Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, Personnel, North Central Railway, Gorakhpur.
3. Chief workshop Manager / Personnel, North Eastern Railway, Gorakhpur.
4. Senior Works Manager Workshop, North Eastern Railway, Gorakhpur.

.....Respondents

By Advocate : Sri Sher Bahadur Singh

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for following main reliefs:-

“(i)to quash the impugned order dated 29.04.2014 (Annexure No. 4 to the compilation -I) and 29.09.2015 (Annexure No. 6 to the compilation -I) passed by the respondent no. 3.

(ii)to direct the respondents particularly respondent no. 3 to ensure 3rd ACP in favour of applicant w.e.f. 26.10.2012 and accordingly revising pension in favour of the applicant.

(iii).to direct to the respondents to ensure the arrears of salary to difference providing 3rd MACPS from 26.10.2012 till 30.04.2014 with admissible interest.”

2. The facts of the case, as claimed by the applicant, are that the applicant was initially appointed as Junior Engineer /Pain/W.S, under North Eastern Railway, Gorakhpur on 26.10.1982 in pay scale of Rs. 425-700. He was promoted on 04.06.1986 in pay scale of Rs. 550-750 and thereafter on 01.03.1993 in pay scale of Rs. 700-900. After completion of 30 years of service on 27.10.2012, as per the guidelines of MACP Scheme implemented w.e.f. 01.09.2008, the applicant was given financial up-gradation w.e.f. 01.03.2013 vide order dated 07.09.2013 (Annexure No. 3 to the O.A) allowing the grade pay of Rs. 5400/- in pay band Rs. 9300-34800. However, taking account the Railway Board order dated 02.07.2013 (Annexure A-5), the respondent No. 3 passed the impugned order dated 29.02.2014 (Annexure No. 4 to the O.A) i.e. one day before retirement of the applicant withdrawing the benefit of MACP granted to the applicant vide order dated 07.09.2013. Therafter, the applicant submitted an application, in response to which

the Deputy Chief Works manager passed the impugned order dated 29.09.2015 (Annexure No. 6 to the O.A) stating that 3rd MACP was due to the applicant from 20.04.2015 after completion of 30 years from the date of joining as JE/Paint w.e.f. 20.04.1985. Aggrieved, the applicant has filed the instant OA on the ground that the benefit of MACP given to the applicant has been withdrawn without any notice or opportunity. It is stated that as per Railway Board order dated 02.07.2013, 3rd financial up-gradation would be granted after 30 years of service from the date of initial appointment or after 10 years of service after being promotion awarded, whichever is earlier. It is stated that since the initial date of appointment of the applicant i.e. 26.10.1982, therefore, he had completed 30 years service in October 2012. Hence, providing 3rd financial up-gradation vide order dated 07.09.2013 w.e.f. 01.03.2013 was not contrary to the Railway Board order dated 02.07.2013. It is further stated that the applicant had completed 30 years of service on 25.10.2012 i.e. much before attaining the age of superannuation on 30.04.2014, therefore, the applicant was entitled for 3rd MACP as per Railway Board order dated 10.06.2009 by which MACP Scheme was allowed to the Railway employees which provides 1st financial up-gradation under MACP Scheme after completion of 10 years service, 2nd on completion of 20 years and 3rd on completion of 30 years of service. It is stated that the respondent No. 3 has wrongly treated the initial date of appointment of the applicant w.e.f. 20.04.1985 for the benefit of 3rd ACP.

3. The respondents have filed Counter Reply. It is stated that on 26.10.1982, the applicant was appointed as Apprentice Mechanic on stipend pay scale of Rs. 380-392. The applicant was appointed as Chargeman B in pay scale of Rs. 425-700 on

20.04.1985 (Annexure CA-1). The 3rd financial up-gradation was withdrawn vide order dated 29.04.2014 on the ground that the applicant did not complete 30 years regular service. It is stated that due to mistake, his service period was counted including training period and he was given benefit of 3rd financial up-gradation wrongly. On detection of the mistake, in pursuance to the Railway Board letter dated 10.06.2009 (Annexure CA-2) which clearly stated that for the purpose of financial up-gradation, the training before appointment or contract basis period will not be counted. Hence, the regular service period of the applicant was less than 30 years as such 3rd financial up-gradation was withdrawn. The services of the applicant was counted from 20.04.1985 from which he joined the regular post of Junior Engineer after completing the training. Hence, for the purpose of financial up-gradation the date of regular appointment i.e. 20.04.1985 is to be considered, not from 26.10.1982. .

4. The applicant has filed Rejoinder reiterating the facts mentioned in the O.A.

5. Heard learned counsel for the applicant, who reiterated the stand taken in the OA and stated that as per the MACP Scheme guidelines of the Railway Board, the applicant will be eligible for 3rd financial upgradation after completion of 30 years of service including the initial training for two years followed by regular appointment. It was also stated that the applicant was allowed the 3rd MACP benefit, but the same was withdrawn vide the impugned order dated 29.04.2014 just before one day of superannuation of the applicant, without any prior notice to the applicant, on the ground that the training period was counted by mistake while considering 3rd MACP

benefit for the applicant. It is submitted that as per Railway Board letter dated 29.12.2011 (Annexure CA-3 to the Counter) it is stated that 30 year period will be calculated from the date of initial appointment of the applicant which is 26.10.1982. It was submitted that as per the PPO issued to the applicant (copy at Annexure no. 6 to the OA), the appointment date of the applicant has been shown to be 26.10.1982, which is to be considered for the purpose of MACP. Learned counsel also cited the judgment of Calcutta High Court dated 6.09.2013 in W.P.C.T. No.80 of 2013, copy of which is attached to the Rejoinder Affidavit filed by the applicant.

6. The learned counsel for the respondents submitted that the initial training period before joining in regular post cannot be counted for the purpose of MACP. It was submitted that as per the guidelines of Railway Board for MACP Scheme, only regular service is required to be counted. Hence, there was an error in assessing the date from which the applicant would be eligible for third MACP, which was detected and the mistake in allowing MACP benefit to the applicant as well to some other employees was corrected by issue of the order dated 29.04.2014, which is as per the guidelines for MACP.

7. We have perused the material on record and considered the submissions of the parties. Main issue to be decided in this case is whether as per existing rules/ guidelines of Railway board, the initial training period of the applicant can be counted for the purpose of MACP eligibility or not.

8. Vide para 5 of the counter reply, the respondents have stated that applicant had joined in Railway service on 26.10.1982 as Apprentice Mechanic on stipend pay scale Rs.

380-392 as stated in the Counter and during training period, the applicant was paid a stipend of Rs. 380 w.e.f. 26.10.1982 and Rs. 392/- w.e.f. 1.10.1983 and then, he was appointed as Chargeman B grade on 20.04.1985 in the pay scale of Rs. 425-700. The applicant in his Rejoinder contradicts this contention, reiterating his contention in para 4.1 of the OA stating that the applicant was appointed on 26.10.1982 in the pay scale of Rs. 425-700. We notice that the applicant, apart from the copy of the PPO (Annexure no. 6), has not furnished any evidence like his initial appointment letter in support of his contention in para 4.1 of the OA that he was first appointed w.e.f. 26.10.1982 in pay scale of Rs. 425-700. The copy of the PPO does not indicate his initial post and pay as on 26.10.1982 and based on the PPO, the contention in para 4.1 of the OA cannot be said to be correct. The respondents, on the other hand, have enclosed a copy of the applicant's service book at Annexure CA-1, which clearly shows the date of appointment of the applicant in the pay scale of Rs. 425-700 to be 5.4.1985 and on 26.10.1982 he was appointed as Apprentice Mechanic. There is nothing on record to show that the applicant has contested these entries in the service book which mentioned his date of appointment in pay scale Rs. 425-700 to be 05.04.1985. Hence, from the evidence/material available on record, it is clear that the date of appointment of the applicant in pay scale of Rs. 425-700 is 5.4.1985 as recorded in his service book, and it is not 26.10.1982 as claimed by the applicant.

9. In fact, the applicant was appointed first on 26.10.1982 as Apprentice Mechanic at a stipend of Rs. 380 per month initially and then Rs. 392 per month from 1.10.1983. The para 5 of the counter reply in this regard states as under:-

“5. That, the contents of para 4.1 of the original application are not admitted as stated. In reply, it is stated that on 26.10.1982 the applicant was appointed as Apprentice Mechanic on stipend pay scale of Rs. 380-392 and during the training period of two years he was paid stipend of TRs. 380 on 26.10.1982 and Rs. 392 on 1.10.1983.....”

From above contentions in the Counter Reply and entries in Service Book (Annexure CA-1), it is clear that the applicant was appointed as an Apprentice Mechanic from 26.10.1982 during which he was paid a stipend and after completion of training, he was appointed in the regular post as Chargeman from 5.4.1985 in the pay scale of Rs. 425-700. There is no record to prove that the applicant was allowed to function as a Chargeman on any date prior to 5.4.1985.

10. In the light of above facts, it is to be decided whether the training period of the applicant from 26.10.1982 till 4.4.1985, prior to his regular appointment as Chageman B on 5.4.1985, can be counted as regular service for the purpose of the benefits under MACP. The para 9 of the guidelines of the Railway Board on MACP Scheme vide the letter dated 10.06.2009 enclosed at Annexure no. 1 of the OA states as under:-

"9. 'Regular service' for the purposes 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 purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

From the guidelines of the Railway Board as extracted above, it is clear that the service rendered on adhoc/contract basis before regular appointment on pre-appointment training is not to be counted for the purpose of MACP. Examining the facts in the case of the applicant as discussed in para 8 and 9 of this order in the light of these guidelines, it would be obvious that the applicant's service prior to 5.4.1985 was as an Apprentice Mechanic and he was on pre-appointment training with a stipend prior to his appointment as Chargeman w.e.f. 5.4.1985 and service during this period of training from 26.10.1982 till regular appointment on 5.4.1985 will not be counted for the purpose of MACP. Had the applicant been appointed as a Chargeman and then imparted training after the appointment, then the training period would not be considered to be pre-appointment training and that case, the service rendered during post-appointment period for MACP could have been considered for MACP. Since such as such post-training period is not specifically barred under the guidelines on MACP Scheme. But this is clearly not the case of the applicant.

11. While examining the judgment cited by the applicant in the Rejoinder reply in W.P.C.T. No. 80 of 2013 by Hon'ble Calcutta High Court, it is seen that in that case, the railway employee had joined for training of two years prior to appointment as Chargeman and was posted as Chargeman prior to completion of two years of training due to reduction or curtailment of training period from two years due to administrative reasons. The dispute in that case was whether for MACP, the date of actual joining as Chargeman would be considered, as claimed by the employee, or the date of regular appointment of Chargeman as the applicable pay scale after two years from the date of joining as trainee would be

considered, as claimed by the respondents. The Railways had counted the date after two years of training without considering the actual date of joining after curtailment of the training since regular pay scale was allowed only after two years. The Railways had approached Hon'ble Calcutta High Court against order of the Tribunal allowing the claim of the employee. Hon'ble Calcutta High Court in the cited judgment has held as under:-

“That is no dispute that the respondent employee was supposed to undergo a training for a period of two years from 20th January, 1981. The said training period was curtailed and the respondent employee was posted against working post of Chargeman “B” on 28th April, 1981.

The learned advocate of the petitioners submits that the said respondent was absorbed in the regular post of Chargeman “B” on 20th January, 1983.

The learned advocate representing the petitioners further submits that the respondent employee was receiving stipend before regular absorption in the post of Chargeman “B” in the year 1983.

.....

In the present case, after curtailment of training period due to exigency of service, the respondent employee was asked to join the post on 28th April, 1981 and therefore the said date, i.e. 28th April, 1981 should be reckoned as the date of actual joining of the post of the respondent employee in the entry grade for the purpose of computing benefits under MACPS specifically in view of the aforesaid decisions and clarifications of the Railway Board.”

We are unable to find any decision in the above judgment to support the case of the applicant that the period of training prior to posting as Chargeman would be counted for the purpose of MACP. It is not the case of the applicant that he was allowed to function against a regular post of Chargeman from the date of his joining as a trainee on 26.10.1982 and there is no evidence furnished by the applicant to show that his training period was curtailed or he was allowed to function as Chargeman prior to his regular appointment on 5.4.1985.

Hence, the judgment cited by the applicant will not be of any assistance for the applicant's case.

12. The applicant in para 4.16 has stated that as per the Railway Board order, training period would be counted as service period. The Railway Board letters dated 4.2.1991, 22.10.1990 and 18.4.2012 are attached at Annexure no. 8 of the OA in support of the contention. The letter dated 4.2.1991 stated that the instructions in letter dated 22.10.1990 will be applicable to non-gazetted railway employees. Letter 22.10.1990 provided that

“.....where a person has been selected for regular appointment and before formally taking over charge of the post for which selected, the person is required to undergo training, training period undergone by such Government servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments.”

13. The above instructions of Railway Board mentioned about increments. It does not mention whether such period is to be counted for ACP/MACP Scheme. Moreover, the letter dated 22.10.1990 covered the cases where an employee was selected for the post, then had to undergo training, i.e. the training is post-appointment training. This is not the case of the applicant, as he joined as an Apprentice Mechanic (not as Chargeman) on 26.10.1982 and after completing the training, he was posted as Chargeman B on 5.4.1985. There is nothing on record to show that the applicant was selected initially as a Chargeman on 26.12.1982 and then given the training. Hence, the above instructions/letters of the Railway Board are not applicable to the applicant's case. The letter dated 18.4.2012 appears to be a letter from Chief Workshop Manager/Personnel (respondent no.3), which seeks guidance regarding implementation of

MACP in view of above instructions of Railway Board. Hence, this letter dated 18.4.2012 cannot be taken to be a guideline on implementation of MACP and hence, it is also of no help to the applicant's case.

14. From the above decisions, it is obvious that the applicant was wrongly allowed 3rd MACP benefit w.e.f. 01.03.2013 by the respondents vide order dated 07.09.2013 (Annexure A-3) and it is not permissible as per the Railway Board letter dated 10.06.2009 (Annexure A-1) read with the Railway Board letter dated 04.02.1991 and 22.10.1990 (Annexure A-8). The respondents are competent to rectify the error / mistake in allowing the financial up-gradation under MACP Scheme for which the applicant was legally not entitled.

15. In the circumstances, we are of the considered view that this case does not warrant any interference of this Tribunal and the OA, lacks merit and is liable to be dismissed. Accordingly, the OA is dismissed. There is no order as to the costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...