

**Central Administrative Tribunal
Principal Bench**

OA No.2158/2015

Reserved on : 17.09.2015
Pronounced on : 06.10.2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

Jayant Kumar
Aged 57 years,
S/o Late Ram Niwas Gupta
Accounts Assistant
O/o Traffic Accounts Office,
Northern Railway,
State Entry Road,
New Delhi.

Residential Address:-
L-173, Shastri Nagar,
Near Naag Mandir,
Delhi 110 052.

.... Applicant.

(By Advocate : Shri G. D. Bhandari)

Versus

Union of India through

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
2. The FA & CAO
Northern Railway,
Baroda House,
New Delhi.
3. Dy. C.A.O. (T)
Traffic Accounts Office,
Northern Railway,
State Entry Road,
New Delhi. Respondents.

(By Advocate : Shri Shailendra Tiwary)

: O R D E R :

P. K. Basu, Member (A) :

The applicant was appointed as a Clerk Gr.II in the Railways on 20.02.1978 in the pay scale of Rs.260-400/-. As per the Railway Rules, Clerk Gr.II has to pass Appendix-II-A, IREM Exam for promotion to the next higher post of Clerk Gr.I in the pay scale of Rs.330-560/-. The applicant appeared in the said exam and was promoted as Clerk Gr.I in March, 1979. He was thereafter promoted as Sub-Head/Account Assistant in the then pay scale of Rs.1400-2600/-.

2. It is stated that the Railway Board vide letter dated 10.10.1997 issued policy directions regarding filling up the post of Stock Verifier and the relevant part thereof is reproduced below:-

“Promotion of persons holding the post of Accounts Assistant in Grade Rs.1400-2000 in the Office of Financial Adviser & Chief Accounts Officer to the rank of Stock Verifiers, will be on the considerations of seniority and merit including fitness for outdoor works, failing which persons holding substantively the posts of Junior Accounts Assistants in Grade Rs.1200-2040 with a minimum of 2 years service in that grade, may be considered on the same basis. In the case of Junior Accounts Assistants, promotion to the rank of Stock Verifiers will not be made unless they have passed the examination prescribed in Appendix-1 (IREM). The condition of passing the examination prescribed in Appendix-2 (IREM) by JAAs holding the post substantively with a minimum of 2 years service in that grade before they can be promoted to the rank of Stock Verifiers, may be relaxed in special cases under the sanction of the General Manager.”

3. It was further clarified vide letter dated 29.02.2009 that the staff appointed as Account Stock Verifier will be required to pass the Appendix-4 IREM examination within three chances to be availed within a period of 4 years of their joining of the post of Account Stock Verifier, failing which they will be reverted to the parent cadre.

4. In terms of the prescribed policy, the incumbents of the post of Sub-Head were asked to submit their application for the post of Stock Verifier, as there was a dearth of Stock Verifiers, carrying the same pay of Rs.1400-2600, same as Sub Head/Account Assistant. The applicant had applied and was selected. He joined as Stock Verifier on 18.09.1993. After a few months, he was reverted back to the post of Sub-Head/Account Assistant. The 6th Central Pay Commission Modified Assured Career Progression Scheme (MACP Scheme) provides for granting three financial upgradations after ten, twenty and thirty years of regular service. The applicant's grievance is that he was granted third financial upgradation under MACP Scheme in the pay scale of Rs.9300-34800 (PB-1) from Grade Pay of Rs.4200 to Grade Pay of Rs.4600 vide order dated 16.04.2010. However, vide order dated 07.11.2014, this was withdrawn by citing Board's letter dated 10.06.2009 that promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACP. Vide letter dated

29.12.2014, it was further clarified that the post of Account Assistant (1400-2300/- now GP 4200/-PB-1) is the feeder post for the post of Stock Verifier (1400-2300/- now GP 4200/- PB-1) and that the post of Stock Verifier is to be filled up by promoting the persons holding the post of Account Assistant. The norms for said promotion are seniority and merit including fitness for outdoor works.

5. Therefore, in case of the applicant, his first promotion would be from Clerk Gr.II to Clerk Grade.I; second promotion from Clerk Gr.I to Sub-Head/Account Assistant and his third promotion, as per the clarification under the MACP Scheme cited above, is a Stock Verifier.

6. Learned counsel for the applicant drew our attention to the order of CAT, Ernakulam Bench in the matter of **M. S. Jose vs. Union of India & ors.**, decided on 13.03.2013 in OA No.463/2011. In that OA, the applicants who were Clerks Gr.I in the accounts department, Southern Railway approached the Tribunal as in their cases also their posting as Stock Verifier from Accounts Assistant was being treated as promotion and, therefore, they were denied the third financial upgradation under the MACP Scheme. The OA was allowed relying on para 5 of the MACP Scheme, which reads as under :-

“5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades, which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth

Pay Commission, shall be ignored for the purpose of granting upgradations under Modified ACPS.”

Learned counsel for the applicant, therefore, argues that being similarly placed the ratio of the aforesaid order of Ernakulam Bench should be applicable in the instant case as well. He further relied on the judgment of coordinate Bench of this Tribunal in the matter of **Madan Mohan Bhatt & others vs. Union of India & Ors.**, OA No.747/2014 decided on 29.06.2015. This is a case of Junior Hindi Translators. However, we find that in this case the issue arose out of merger of pay scales and hence the facts are not same as in the present case. Therefore, the order of the Tribunal in the aforesaid OA No.747/2014 will not apply in the present matter.

7. Learned counsel for the respondents pointed out that as per provisions contained in Appendix-II-A, IREM, the post of Stock Verifier is to be filled up by promotion from a person holding the post of Accounts Assistant. Therefore, it is a promotional avenue for Accounts Assistant and as is clear from the facts already stated, the applicant has earned three promotions. He further eluded to para 8 of MACP Scheme and Board’s instructions dated 10.06.2009 which have been cited above. Para 8 of MACP Scheme reads as under:-

“8. Promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, Grade Pay of Rs.5400 is now in two pay Bands viz., PB-2 and PB-3. The Grade Pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate Grade Pays for the purpose of grant of upgradations under MACPS.”

8. Learned counsel for the respondents, therefore, stated that the applicant having got three promotions in his career is not entitled for third MACP and that is why the impugned order has been issued. It has been further stated that in the matter of ***Anil Parmar & Ors. vs. Union of India & Ors.*** vide order dated 28.10.2014 in OA No.1673/F3/2013, the Hon'ble CAT, Chandigarh Bench has held that :-

“We are of the considered view that an administrative error can be rectified. The absence of issuance of show cause notice to the applicants does not vitiate the proceedings and does not cause any prejudice to the applicants, given the facts of this case since the outcome thereafter would still be the same. We find support from our views in the orders of the Hon'ble Punjab & Haryana High Court in the case of Chottu Ram versus Union of India & Ors. (C.W.P. No.14607 of 2011) decided on August, 24, 2012 and from the order dated 17.08.2012 passed by the Hon'ble Supreme Court of India in the case of Chandi Prasad Uniyal & Ors. versus State of Uttrakhand & Ors. In the case of Chhotu Rarm (supra), it had been stated as follows:-

“After hearing learned counsel for the parties, we are of the opinion that the aforesaid contention is not acceptable in view of the latest decision of the Hon'ble Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttrakhand and Others, (Civil Appeal No.5899 of 2012 decided on August 17, 2012), where it has been held that except in few cases of extreme hardship, recovery of the excess amount paid to a employee due to wrong/irregular pay fixation cannot be waived off.”

It is thus concluded by learned counsel for the respondents that whatever steps the respondents have taken are as per the provisions of Board's circulars, MACP Scheme and settled law.

9. We have heard learned counsel for the parties and perused the relevant rules and judgments cited by the parties.

10. As regards application of the aforesaid judgment of Ernakulam Bench, it is seen that the Tribunal in that case had examined the issue from the point of view of merger of scales and the fact of same grade pay. However, the present case has nothing to do with the merger of scales. Moreover, para 171 (8) of IREM Vol.1 etc. was also not examined by the learned Ernakulam Bench. Therefore, according to the judgment of the Supreme Court in **V. KISHAN RAO vs. NIKHIL SUPER SPECIALITY HOSPITAL & ANOTHER** 2010 (5) SCC 513, this could be treated as per incuriam decision as the supreme court has held that when a judgment is rendered ignoring provisions of statutes, such decision is per incuriam and the judgment is not a binding precedent. Similarly, in the matter of **UNION OF INDIA & ANR vs. MANIK LAL BANERJEE** 2006 (9) SCC 643, the Hon'ble Supreme Court has reiterated this position by holding that the judgment rendered without taking into consideration statutory provisions relevant for determining the issue render the judgment per incuriam. Therefore, we are of the opinion that

the order of the Ernakulam Bench being per incuriam will not apply in this case.

11. Thus, the applicant clearly has received three promotions and is hence not eligible for any upgradation under the MACP Scheme. The orders dated 07.11.2014 and 29.12.2014 are, therefore, legally valid. The OA is hence dismissed. No costs.

(P. K. Basu)
Member (A)

/pj/

(Syed Rafat Alam)
Chairman