

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3617/2012
MA 3080/2012
MA 3022/2015

Reserved on: 20.02.2017
Pronounced on: 27.02.2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Jai Bhan, Conductor, B.No.15108, SPD
S/o Late Shri Om Prakash
R/o Village Nasirpur, P.O. Ratdhana,
District Sonepat, Haryana Applicant

(Through Shri Anil Mittal, Advocate)

Versus

Delhi Transport Corporation
I.P. Estate,
New Delhi-110002
(Through Chairman-cum-Managing Director) Respondent

(None represented)

ORDER

Mr. P.K. Basu, Member (A)

This is a matter pertaining to the year 2012 and despite several opportunities, respondents counsel has not appeared. The learned counsel for the applicant was, therefore, heard and based on his arguments and on the basis of the pleadings available on record, the order is being passed.

2. The applicant was appointed in the year 1982 as Conductor. He was removed from service on 7.10.1994. He raised Industrial Dispute and the Labour Court vide its Award dated 1.02.2010 set aside the removal order and the management was directed to reinstate the applicant in service without back wages but with continuity of service and also to pay Rs.20,000/- as litigation charges to him. Pursuant to the Award, the applicant was reinstated in service vide order dated 11.08.2010. The Labour Court thereafter vide order dated 6.06.2013 in ID No.58/13/96 granted 50% back wages as well. The management had fixed his basic pay at the lowest stage i.e. the stage at which a newly appointed Conductor is fixed whereas, as per his seniority, he should be drawing basic salary of Rs.15100/-. The applicant states that this has happened because he has been denied his increments and other benefits of continuity of service, as was directed by the Labour Court. In January 2011, the applicant made a representation. He also filed an RTI application dated 25.05.2011. Vide letter dated 30.05.2011, the respondents informed him that his pay was fixed as per Court's order and was in order. The applicant's grievance is that no reason whatsoever has been given as to why he was denied his increments and other benefits of continuity of service, which he should have been given as per the Award dated 1.02.2010. His further grievance is that he has not been given the benefit of second and third MACP although he has completed 30 years of service.

3. The applicant had filed an application under Section 33 (C) (1) of the Industrial Disputes Act before the Labour Commissioner for proper implementation of the Award. However, the Labour Commissioner refused to interfere in the matter. Being aggrieved by such developments, the applicant has filed this OA seeking the following reliefs:

- (i) Quash order dt. 30.05.2011 (Annexure A.1);
- (ii) Direct the respondent to fix the basic pay of the applicant after giving him the benefit of annual increments for the year 1994 till 2010 as if the applicant had continued in service without any break and to pay other benefits accordingly;
- (iii) Extend the benefit of second and third ACP after completion of 20 and 30 years of service respectively and to re-fix his pay accordingly;
- (iv) Direct the respondent to pay arrears of salary to the applicant from the date of his reinstatement till payment with interest after fixing his basic pay and other benefits as per prayer no.ii and iii above.

4. Learned counsel for the applicant argued that the very fact of grant of continuity of service denotes that the applicant has to be treated as if he has continued in service without any break and his basic pay has to be fixed accordingly. It is further argued that in case the benefit of continuity of service is not granted, this would affect the pensionary benefits as well.

5. Lastly, it is argued that the applicant is entitled to grant of benefit under the MACP Scheme and should be granted the benefit of second and third upgradation under MACP (erroneously mentioned as ACP in para 5 of the OA).

6. Learned counsel for the applicant further placed before us the order of the Hon'ble High Court in W.P. (C) 100/2014, which had been filed by the DTC against the Award of the Labour Court whereby 50% back wages had been awarded by the Labour Court. Though the back wages worked out to be Rs.6,07,800/- which was deposited by the petitioner in the Court, the Hon'ble High Court has held that the respondent (i.e. the applicant in this case) was entitled to back wages of Rupees four lakh. It is argued that now that the back wages have also been paid, though 50% of it, it is all the more reason that the applicant should be granted pay fixation benefit after giving him the benefit of annual increments for the year 1994 till 2010 as if the applicant had continued in service without any break and to pay other benefits accordingly, as well as second and third MACP after completion of 20 and 30 years of service. The applicant has also prayed for interest.

7. The respondents in their reply have stated that the applicant has sought relief under Section 33 (C) (1) of the ID Act by filing a claim before the Labour Commissioner who declined to grant the relief. Being unsuccessful, the applicant has now filed the instant OA without making the Labour Commissioner a party. The appropriate remedy lied in the form of a Writ Petition and

not the OA and the Tribunal does not have jurisdiction to entertain the instant OA. It is also argued by the learned counsel for the respondents that the OA is barred by limitation as it has been filed beyond the limitation period as stipulated under Section 21 of the Administrative Tribunals Act. The impugned order challenged is dated 30.05.2011 whereas the OA has been filed on 30.09.2012 beyond the period of one year and hence this OA deserves to be dismissed.

8. In their reply, the respondents have explained the background leading to removal, however, this is not relevant as after the Labour Court has given the Award, the applicant has already been reinstated. It is stated that the Labour Commissioner in his order dated 24.07.2011 recorded as follows:

"In view of the above it appears that the management has reinstated the workman with continuity of service and also paid Rs.20,000/- towards the litigation expenses as directed by Hon'ble Labour Court vide award dated 1.02.2010. Since the main award is implemented and if the workman is having any further confusion he may approach the Hon'ble Court for the clarification in this regard, so that this office may proceed further in accordance with the direction of the Hon'ble Court."

It is argued by the respondents in their reply that in case the applicant was aggrieved by this order, he should have approached the High Court and not the Tribunal.

9. We have heard the learned counsel for the parties and gone through the pleadings available on record.

10. The original order of the Labour Court was as follows:

"The management is directed to reinstate the workman with continuity of service, since the order of removal is not justified in the circumstances.

No back wages are granted but litigation expenses of Rs.20,000/- (Rupees twenty thousand only) may be paid by the management to the workman within 30 days after publication of this award."

Later on, in the order dated 6.06.2013 by the Labour Court, only 50% back wages have been allowed and nothing more.

11. Question, therefore, is whether continuity of service includes ipso facto grant of increments and counting of service for the purpose of MACP. The benefits under MACP clearly cannot be granted as those benefits have to be granted strictly in accordance with the MACP guidelines, which provide as follows:

"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)....."

12. Clearly the applicant was not in regular service for a particular period. Therefore, the grant of second and third upgradation under MACP is clearly not admissible.

13. As regards increments, these are also earned based on service rendered. In this case, the applicant was out of service for some period. The Award of the Labour Court does not speak about continuity of service, giving notional benefits to the applicant of pay fixation, MACP etc. Therefore, clearly 'continuity of service' is purely for the purpose that the period may not be treated as 'break in service.'

14. In absence of such specific direction by the Labour Court, no benefits of increments or fixation of pay can be granted to the applicant. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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