

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4410/2012

Reserved on: 25.11.2016
Pronounced on: 1.12.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Hari Chand Sharma
Aged about 60 years
Son of Shri Inder Singh
Working as Station Superintendent in Group 'C'
At Ballabhgarh, Delhi Division, Northern Railway:

Resident of : 609, Gali No.18, Ward No.34,
Ballabhgarh District Faridabad (Har.) ...Applicant

(Through Shri H.P. Chakravorty, Advocate)

Versus

1. Union of India through
The General Manager
Northern Railway, Baroda House
New Delhi-01
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi-110055 ... Respondents

(Through Shri Kripa Shankar Prasad, Advocate)

ORDER

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

The applicant is aggrieved by the Show Cause Notice (SCN) dated 18.06.2012 and the final order passed pursuant to that SCN dated 3.09.2012 by which the respondents have

withdrawn the third financial upgradation under Modified Assured Career Progression Scheme (MACPS) in Grade Pay of Rs.5400/- with effect from 1.09.2008 on the ground that as on that date neither had he completed 10 years service in the earlier Grade Pay of Rs.4800/- nor completed 30 years from the date of direct entry in service i.e. as Traffic Apprentice and before completion of 10/30 years of service, the applicant will be retired from service on 31.12.2012 on attaining the age of superannuation.

2. According to the respondents, the applicant's brief service history is as follows:

<u>"Apptt./Promotion</u>	<u>Grade</u>	<u>Date</u>
Goods Clerk	260-430	11/01/78
Traffic App (DQ)	425-455/1400-2300 455-700/1400-2300	18/02/80 As Trainee 12/3/83 On Regular basis
Promotion	550-750	29/6/84
4 th Pay Commission	1600-2660 (Revised)	01/01/86
Promotion (Ist)	2000-3200	07/09/87
Promotion (IInd)	2375-3500	01/03/93
5 th Pay Commission	7450-11500 (Revised)	01/01/96
6 th Pay Commission	9300-34800 (Revised) GP 4600	01/01/06
MACP (IInd)	GP 4800	01/9/08
(Due to merger of Gr.6500-10500, 7450-11500 in GP 4600/- under 6 th Pay Commission)."		

3. The respondents' case is that according to MACP guidelines, the applicant has to complete 30 years of regular service to be eligible for third upgradation or he has to complete 10 years service in the previous Grade Pay. The dispute arises because though the applicant joined as a Traffic Apprentice on 18.02.1980, he was appointed on a regular basis on 12.03.1983.

Therefore, the respondents contend that counting from 12.03.1983, the applicant completes 30 years in the year 2013 whereas he has retired on 31.12.2012 without completing 30 years. Secondly, he was granted second MACP on 1.09.2008 in the Grade Pay of Rs.4800/-. Therefore, he doesn't complete 10 years service in Grade Pay Rs.4800/- till the time he retires. On both counts, therefore, the applicant is not eligible for third upgradation under MACPS. Per contra, the applicant argues that since he joined as Traffic Apprentice on 18.02.1980, his service should be counted from that date, in which case he completes 30 years of service on 18.02.2010 and, therefore, is eligible for third upgradation, which was earlier granted in Grade Pay Rs.5400/- with effect from 1.09.2008.

4. The second line of argument of the respondents is that the applicant was promoted from the scale of Rs.1400-2300 to the scale of Rs.2000-3200 with effect from 7.09.1987. Thereafter, he received second promotion to the scale of Rs.2375-3500 with effect from 1.03.1993. Thus, he had already received two promotions prior to 1.10.1999, the date from which ACP Scheme, the precursor to MACPS, was introduced. Since the applicant had already obtained two promotions before 1.10.1999, he was not entitled to any other upgradation under ACP Scheme.

5. The applicant's argument is that the training period cannot be ignored for the purpose of ACP. In this regard, he has cited the judgment dated 15.01.2014 in **Divisional Railway Manager Vs. Dinesh Kumar Sharma and others**, W.P. No.5415/2007 decided by the Hon'ble High Court of Madhya Pradesh. The question here was whether the apprentice period should be counted for the purpose of upgradation under ACP Scheme. In the light of the clarification dated 14.12.2004 by the railways in consultation with the Department of Personnel and Training (DoP&T), the training period which is pre-appointment in nature, shall not count towards 12/24 years of regular service for the purpose of ACPS. The Writ filed before the Hon'ble High Court was against the order of the Tribunal which held that the petitioner shall be eligible for the benefit of the aforesaid period for ACP benefit. The Hon'ble High Court concurred with the view of the Tribunal and upheld its decision.

6. It is further contended that the respondents have wrongly indicated the pay of the applicant as Rs.455-700/1400-2300 as on 12.03.1983 whereas he was promoted to grade Rs.700-900/2000-3200 with effect from 1.08.1983 in accordance with the decision of this Tribunal and accordingly his pay was revised and as seen from the copy of the service book filed before us, his pay was fixed in grade Rs.700-900 (revised Rs.2000-3200) with effect from 1.08.1982 on proforma basis and from 1.08.1983 on actual basis. Vide letter dated 27.06.2012, the Northern Railway informed the applicant that in letter dated

18.06.2012 his date of promotion in grade Rs.2000-3200 written as 7.09.1987 was inadvertent and the same may be read as 1.08.1982 instead of 7.09.1987.

7. The other argument of the learned counsel for the applicant is that in the first schedule (Annexure-A) to the order of pay revision issued by the Ministry of Railways dated 18.07.2012, the erstwhile scales of 6500-10500 and 7450-11500 have been merged in PB-2 i.e. Rs.9300-34800 with Grade Pay Rs.4600, Rs.4800 and Rs.5400 and, therefore, the second promotion from the scale of Rs.2000-3200 to Rs.2375-3500 should be ignored. In that case, effectively, the applicant got only one promotion in the pay scale of Rs.2000-3200 with effect from 1.08.1982 and hence he is entitled to second upgradation under MACP, as has been granted earlier.

8. To summarize, the applicant's case is as follows:-

- (i) He has received only one promotion in his career, namely the promotion granted from 1.08.1982 in the scale of Rs.2000-3200;
- (ii) The promotion from the pay scale Rs.2000-3200 to Rs. 2375-3500 has to be ignored as according to the applicant, the scales were merged;
- (iii) The training period between 1980 and 1983 has to be included for the purpose of calculating eligibility period for MACP, in which case the

applicant completes 30 years in 2010, i.e. before his retirement in 2012; and

- (iv) In view of (i), (ii) and (iii) above, the applicant has to be granted second upgradation under MACPS in grade pay Rs.4800 on 1.09.2008 and third upgradation under MACPS in grade pay Rs.5400 on 18.02.2010 on completion of 30 years of service.

9. Learned counsel for the respondents states that the claim of the applicant that pay scales of Rs.6500-10500 and Rs.7450-11500 have been merged and placed in PB-2 in Grade Pay Rs.4600/-, Rs.4800/0 and Rs.5400/- is incorrect. The 6th CPC had only recommended merger of pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 in PB-2 with grade pay Rs.4200/- and the pay scale of Rs.7450-11500 was granted the replacement scale of Rs.9300-34800 in PB-2. Therefore, there is no question of ignoring promotion from the pay scale of Rs.2000-3200 to Rs.2375-3500. Regarding counting of training period, the learned counsel has placed before us copy of judgment of the Hon'ble High Court of Delhi dated 7.03.2006 in Civil Writ Nos. 9428-29/2005, **Union of India and Another Vs. Afroz Ahmed and Others** where it has been held as follows:

"11.....Therefore, we feel that Id. Tribunal has erred in its decision. Kuttiyappan's case (supra) relied upon by Id. Tribunal does not support the stand of the respondents. In the said case, Supreme Court had examined both paras 302 and 306 and pointed out that they operated in different situations.

However, while interpreting para 302 it was held that if training was one of the conditions of the selection process, then unless training was complete, the appointment did not take place on regular basis. This is in consonance with the view taken by us.

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13. Learned counsel for the respondent in the written submission filed after the arguments were heard, has submitted that the [Apprenticeship Act, 1961](#) was/is not applicable to the respondents and the respondents were wrongly designated and regarded as Apprentice. This submission of the learned Counsel for the respondent has to be rejected. We are, in the present matter, not concerned with the question whether the [Apprenticeship Act, 1961](#) was applicable or not at the time when recruitment was made. It is clear from the recruitment process itself and the Agreement that was entered into between the respondents and the petitioner that after selection, the respondents were to undergo training for a period of 24 months as apprentices. The short question is whether this period of training of 24 months should be counted as the period spent in service and therefore counted for the purpose of seniority and ACP Scheme.

14. In view of our findings given above, we allow the present Writ Petitions and set aside the impugned Orders dated 3rd February, 2005 and 7th April, 2005 and hold that the training period of 24 months is not to be reckoned and counted for the purpose of seniority and the ACP Scheme. The seniority of the respondents will be counted from the date they successfully completed their training and in terms of Clause 18 of the Agreement as quoted above and in terms of note to para 302 of IREM. The respondents will be in service from the date they successfully completed their training period for the purpose of ACP Scheme and seniority. Accordingly, the writ petitions are allowed and the impugned orders are modified to the extent indicated above. In the facts and circumstances of the case, there will be no order as to costs."

It is contended that in view of the clear finding of the Hon'ble High Court of Delhi, the period of training cannot be counted for the purpose of ACP and, therefore, the respondents have rightly counted the eligibility period from 12.03.1983.

10. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

11. There is no difference of opinion between the counsels on the fact that the applicant was promoted to the pay scale of Rs.700-900 (Rs.2000-3200) with effect from 1.08.1982 (proforma basis) and on 1.08.1983 on regular basis. From the service book, it appears that the applicant was appointed as Trainee on 18.02.1980 as Traffic Apprentice in the scale of Rs.425-455. He was promoted to the scale of Rs.700-900 on proforma basis with effect from 1.08.1982 and on regular basis from 1.08.1983. Therefore, he had received one clear promotion in his career upto that point and there is no dispute regarding this either. His second promotion from Rs.2000-3200 (Rs.6500-10,500) to Rs.2375-3500 (Rs.7450-11500) should not be counted as a promotion as according to the applicant, all posts in the pay scale of Rs.6500-10500 were granted the replacement pay scale Rs.9300-34800 with grade pay Rs.4600/-. The applicant has not produced this order. But the Ministry of Finance, Department of Expenditure had indeed issued an OM

dated 13.11.2009 whereby it granted the grade pay of Rs.4600/- in PB-2 to those posts which were in the erstwhile pay scale of Rs.6500-10500. Further, the applicant did produce copy of Railway Board's order of 2008 (Annexure A-3) introducing the new pay scales in which Deputy Station Superintendent in the erstwhile scale of Rs.6500-10500 has been indicated to be in the grade pay of Rs.4600/- in PB-2. Therefore, there can be no doubt that both pay scales namely Rs.6500-10500 and Rs.7450-11500 were granted the same revised grade pay of Rs.4600/- and in accordance with para 5 of MACP guidelines, this has to be ignored. Para 5 is quoted below for easy reference:

"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/upgradation of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs."

12. The only issue that remains now is whether the service has to be counted from the date the applicant joined on training or from the date he was confirmed. We have two views before us on this same issue, namely one view expressed by the Hon'ble High Court of Delhi in Afroz Ahmed (supra) and the other view expressed by the Hon'ble High Court of Madhya Pradesh in Dinesh Kumar Sharma (supra). In Dinesh Kumar Sharma (supra), the Hon'ble High Court has relied on the judgment of Hon'ble Supreme Court in **Haryana Power Generation Corporation Ltd. Vs. Harkesh Chand**, (2013) 2 SCC 29. In

para 28 of the judgment in the aforesaid case, the Hon'ble Supreme Court held as follows:

"28. We have referred to the aforesaid pronouncements solely for the purpose that an apprentice does not have a statutory right to claim an appointment and the employer is not under any statutory obligation to give him employment. However, if the terms of the contract of apprenticeship lay down a condition that on successful completion of apprenticeship an employer would offer him an employment, then it is obligatory on his part to do so. In the absence of such a condition, there is no obligation. It depends on the terms of the contract. In the case at hand, as the letter of appointment would show, the employer had only stated that on successful completion of the training the apprentice may be appointed as Plant Attendant/Technician Grade II. Thus, it was not a mandatory term incorporated in the agreement casting an obligation on the employer to appoint him."

Therefore, it appears that it will depend upon facts involved in a particular case.

13. In the appointment letter dated 29.01.1980, the following clause is incorporated:

"6. After completion of the training satisfactorily, and after you passed the requisite examinations, you will be **appointed** as a Traffic Apprentice grade Rs.425/- on the Division, subject to vacancies being available and on the following conditions."

14. This will show that the appointment as Traffic Apprentice was promised to be made only after the applicant completes training satisfactorily and after he passes the requisite examination and further subject to availability of vacancies.

15. The above would show that the appointment would take place only on successful completion of training and on passing requisite examination. In other words, if he failed to complete training satisfactorily or failed to pass requisite examination, there would be no appointment. Viewed in this light and in the light of the judgment of the Hon'ble Delhi High Court specifically holding that training period is not to be counted for the purpose of seniority and ACP, we are of the opinion that this contention of the applicant that training period should be counted for the purpose of MACP, has to be rejected. Therefore, what emerges is as follows:

- (i) The applicant has been granted only one promotion namely in the pay scale of Rs.700-900 (Rs.2000-3200). The other promotion in the pay scale of Rs.2375-3500 has to be ignored.
- (ii) The applicant is entitled for second upgradation under MACPS from 1.09.2008, the date when the said Scheme was introduced.
- (iii) Since his promotion to the grade of Rs.2000-3500 is with effect from 1.08.1982 (clearly stated in Northern Railway letter dated 27.06.2012), he completes 30 years of service on 1.08.2012 and the third upgradation falls due on that date i.e. 1.08.2012, which falls

before his retirement on 31.12.2012. As such, the applicant would be eligible for third upgradation under MACPS to grade pay Rs.5400/- also with effect from 1.08.2012.

17. The OA is thus disposed as above with a direction to the respondents to grant the applicant his 2nd and 3rd upgradation in accordance with the above finding with all consequential benefits within 90 days of receipt of a certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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