

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3780/2013

Order Reserved on: 09.10.2015
Order pronounced on: 16.10.2015

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

Shri Rajendra Pal Singh
S/o Late Sh. Kamar Pal Singh
Aged about 59 years
R/o Bhura Kisan Gadi, P.O.Adhon
Dist. Aligarh (UP). ... Applicant

(By Advocate: Ms. Pragnya Routray)

Versus

1. The Secretary
Government of India
Ministry of Urban Development
Nirman Bhawan
New Delhi – 110 001.

2. The Director
Directorate of Printing
Government of India Press
Ministry of Urban Development
'B' Wing, Nirman Bhawan
New Delhi – 110 001.

3. The Manager
Government of India Press
Dist. Aligarh (UP). ... Respondents

(By Advocate: Shri Manjeet Singh Reen)

ORDER**By V. Ajay Kumar, Member (J):**

The applicant, an Offset Machineman, in the 3rd Respondent, Govt. of India Press, Aligarh, filed the OA seeking a direction to the respondents to grant him the 3rd MACP, on completion of his 30 years of service, in the Grade Pay of Rs.4600/-, with interest and consequential benefits.

2. Heard, Ms. Pragnya Routray, the learned counsel for the applicant and Shri Manjeet Singh Reen, the learned counsel for the respondents and perused the pleadings on record.
3. The applicant was initially appointed as Machine Attendant in the pay scale of Rs.210-290 (revised scale of Rs.800-1150) on ad hoc basis vide Annexure A1 dated 22.10.1977. He was promoted as Machine Assistant in the pay scale of Rs.950-1500 vide Annexure A2 dated 21.10.1988. Later he was promoted from the post of Machine Assistant of Letter Press to Offset Machine Assistant in the pay scale of Rs.1200-1800, for 11 months, vide Annexure A3 dated 3.12.1992. Thereafter, he was regularised as Offset Machine Assistant in the said pay scale vide Annexure A4, dated 26.10.1993 by way of 'Transfer'. He was again promoted to the post of Offset Machineman in the pay scale of Rs.4500-7000 with Grade Pay of Rs.4200 (pre revised Rs.1400-2300), vide Annexure A5 dated 22.02.2007.

4. The applicant submits that after the introduction of Modified Assured Progression Scheme vide Office Memorandum dated 19.05.2009, and even after the applicant completed service of 30 years, when the respondents have not considered his case for granting of 3rd MACP in terms of the said Scheme, he made an application under RTI Act, on 03.04.2013 seeking clarification why he was not granted the 3rd MACP benefit. The respondents vide Annexure A7, dated 10.05.2013 informed him that the applicant had received three higher pay scales during his service and hence, he is not entitled to any further benefit under MACP Scheme.

5. The learned counsel for the applicant submits that the applicant, who was originally appointed as Machine Attendant in the year 1977, got only two promotions, i.e., one as Machine Assistant in the year 1988 and thereafter as Offset Machineman in the year 2007. He was not promoted as Offset Machine Assistant in the year 1993, but he was only appointed as such, by way of Transfer, in terms of the Recruitment Rules of 1993. The learned counsel while drawing the attention of the Tribunal to the Annexure A4 dated 26.10.1993 (The Hindi original of this document is not filed), wherein it is mentioned that the applicant along with other Machine Assistants has been transferred as Offset Machine Assistant, and to the Recruitment Rules, submits that his appointment to the post of Offset Machine Assistant, by way of transfer, cannot be equated to promotion.

6. The learned counsel for the applicant further submits that the respondents granted the MACP benefits to the juniors of the applicant but denied the same to him and the said action is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. Per contra, the respondents categorically submitted in Para 4.8 of their counter that the applicant was appointed as Machine Attendant on 28.10.1977 in the pay scale of Rs.210-290/- which was further revised to Rs.800-1150/-. The applicant was promoted to the post of Machine Asstt. w.e.f. 01.07.1988 in the pay scale of Rs.950-1400/- (sic. Rs.950-1500) (1st Promotion). He again promoted to the post of Offset Machine Asstt. From 25.11.1992 in the pay scale of Rs.1200-1800/- (2nd Promotion) and was regularized in the same post from 26.10.1993 and the applicant was promoted to the post of Machine Man Offset w.e.f. 15.01.2007 vide Office Order dated 22.02.2007 in the pay scale of Rs.4500-7000/- (3rd Promotion) [Annexure A5]. Accordingly, the learned counsel for the respondents submitted that the ACP/MACP upgradations are granted only to those Government servants who do not get the promotions in the normal course. Since the applicant got three promotions, as stated above, he is not entitled for granting of the Grade Pay of Rs.4600/-, as claimed by him, as a 3rd MACP.

8. The learned counsel for the respondents further submits that the OA is liable to be dismissed as the same is barred by limitation. The respondents vide Office Order dated 24.08.2011 and 19.01.2012 have

informed to the applicant about his non-entitlement of any benefit under the MACP Scheme, whereas the applicant filed the OA on 09.09.2013, i.e., after the period of limitation has been expired.

9. The learned counsel while denying the contention of the applicant that junior to the applicant was given the 3rd MACP benefit, vide Annexure R3 comparative statement of the applicant and one Shri Mahender Singh, who is junior to the applicant, submitted that since the said Mahender Singh, who was though appointed initially as Machine Attendant in the year 1981, but later reappointed in the year 1982 as Machine Assistant, got only one promotion, i.e., as Machineman in the year 1989 and hence, was granted with 2nd ACP w.e.f. 09.08.2006 on completion of 24 years and 3rd MACP w.e.f. 09.08.2012, in the Grade Pay of Rs.4600. Since the applicant got three promotions, he cannot compare him with the said Mahender Singh.

10. As per the Government of India Press (Group 'C' and Group 'D' Industrial Posts) Recruitment Rules, 1993, which came into force w.e.f 14.09.1993, copies of which are produced by the applicant's counsel, the relevant hierarchical structure, in ascending order, from the post of Machine Attendant to the post of Machine Man and from the post of Offset Machine Attendant to the post of Offset Machine Man, such as Name of post, scale of pay, method/modes of recruitment, etc, [as shown in Columns 1, 4, 11 and 12 of the said Recruitment Rules, 1993] are as under:

Hierarchical structure from the post of Machine Attendant to Machine Man:

Name of post 1	Scale of Pay 4	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of vacancies to be filled by various methods. 11	In case of recruitment by promotion/ deputation, transfer grades from which promotion/ deputation/ transfer to be made 12
Machine Attendant	Rs.800-15-1010-EB-20-1150 (pre revised Rs.210-290)	(i) 50% by promotion failing which by deputation. (ii) 50% by direct recruitment failing which by promotion.	<p>Promotion: Labourer with four years regular service in the grade subject to qualifying in a trade test.</p> <p>Deputation: Machine Attendant from other Government of India Presses failing which Labourer with four years regular service in the grade from other Government of India Presses subject to qualifying in a trade test. (Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/ department of the Central Government shall ordinarily not exceed three years).</p>
Machine Assistant	Rs.950-20-1150-EB-25-1500	(i) 75% by Promotion failing which by deputation. (ii) 25% by direct recruitment failing which by promotion.	<p>Promotion: Machine Attendant with five years regular service in the grade subject to qualifying in a trade test.</p> <p>Deputation Proof Pressman Grade I subject to qualifying in a trade test failing which Machine Assistant from other Government of India Presses failing which Machine Attendants with five years regular service in</p>

			<p>the grade from other Government of India Presses subject to qualifying in a trade test.</p> <p>(Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the central Government shall ordinarily not exceed three years).</p>
Machine Man	Rs.1320-30-1560-EB-40-2040	<p>By promotion failing which by deputation failing which by direct recruitment.</p>	<p><u>Promotion:</u></p> <p>(i) Machine Assistant with seven years regular service in the grade failing which Machine Assistant with a combined regular service of twelve years in that grade and in the grade of Machine Attendant subject to qualifying at a trade test in either case.</p> <p>(ii) Machine Attendant with twelve years regular service in the grade subject to qualifying at a trade test in the Presses where the post of Machine Assistant does not exist.</p> <p><u>Deputation:</u></p> <p>Machine man from other Government of India Presses failing which Machine Assistant with seven years regular service in the grade from other Government of India Presses, subject to qualifying at a trade test.</p> <p>(Period of deputation including the period, of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed</p>

		three years).
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Hierarchical structure from the post of Offset Machine Attendant to Offset Machine Man:

Name of post	Scale of Pay	Method of recruitment whether by direct recruitment or by promotion or by deputation/ transfer and percentage of vacancies to be filled by various methods.	In case of recruitment by promotion/ deputation, transfer grades from which promotion/ deputation/ transfer to be made
1 Offset Machine Attendant	4 Rs.950-20-1150-EB-25-1500	11 In the case of Photolitho Press. (i) 50% by promotion failing which by deputation. (ii) 50% by direct recruitment failing which by promotion. In the case of Letter Press under modernisation: 100% by transfer failing which 50% by direct recruitment.	12 Promotion: Labourer with nine years regular service in the grade subject to qualifying in a trade test. Deputation: Offset Machine Attendant of other Government of India Presses (Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed three years). Transfer: Machine Attendant of Letter Press with five years regular service in the grade who have successfully undergone a course of training in offset technology for a period of six months and have qualified in the trade test.
Offset Machine Assistant	Rs.1200-30-1440-EB-30-1800	In the case of Photolitho Press: (i) 50% by promotion failing which by deputation. (ii) 50% by transfer failing which by	Promotion: Offset Machine Attendant with six years regular service in the grade subject to qualifying at a trade test.

		<p>direct recruitment.</p> <p>In the case of Letter Press under modernisation:</p> <p>100% by transfer failing which 50% by promotion and 50% by direct recruitment.</p>	<p><u>Deputation</u></p> <p>Offset Machine Assistant of other Government of India Presses failing which Offset Machine Attendant with six years regular service in the grade of other Government of India Presses subject to qualifying in a trade test.</p> <p>(Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed three years).</p> <p><u>Transfer:</u></p> <p>Machine Assistant of Letter Press with six years regular service in the grade who have successfully undergone a course of training for a period of six months in offset printing technology and have qualified in a trade test.</p>
Offset Machineman	Rs.1400-40-1800-EB-50-2300	<p>In the case of Photolitho Press:</p> <p>(i) 50% by Promotion failing which by deputation.</p> <p>(ii) 25% by direct recruitment failing which by promotion.</p> <p>(iii) 25% by transfer failing which by direct recruitment failing which by promotion.</p> <p>In the case of letter Press under modernnisation:</p> <p>100% by transfer failing which 50% by by promotion and 50% by direct recruitment.</p>	<p><u>Promotion:</u></p> <p>(i) Offset Machine Assistant with seven years regular service in the grade failing which Offset Machine Assistant with 13 years combined service in that grade and in the grade of Offset Machine Attendant subject to qualifying in a trade test failing both Offset Machine Attendant with 13 years regular service in the grade subject to qualifying in a trade test.</p> <p><u>Deputation:</u></p> <p>Offset Machineman of other Government of India Presses failing which Offset Machine</p>

			<p>Assistant with 13 years regular service in the grade from other Government of India Presses subject to qualifying in a trade test. (Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed three years).</p> <p>TRANSFER:</p> <p>Machineman of Letter Press with five years experience in the grade and with six months training in the operation of offset printing machine subject to qualifying in a trade test.</p>
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11. In the backdrop of the rival contentions coupled with the aforesaid Recruitment Rules, and the available record, it is revealed that the applicant while working as Machine Assistant in the pay scale of Rs.950-1500 (pre revised) was transferred as Offset Machine Assistant in the pay scale of Rs.1200-1800 (pre revised). The learned counsel for the applicant strenuously submitted that Column No.12 of the Recruitment Rules for the post of Offset Machine Assistant, provides for appointment as Offset Machine Assistant by way 'transfer', as one of the mode, from the post of Machine Assistants, in addition to the modes of 'promotion' and 'deputation'. The modes of deputation and transfer cannot be treated as Promotion, though the applicant by virtue of his transfer from the post of Machine Assistant to

the post of Offset Machine Assistant got the higher pay scale of Rs.1200-1800, as per the Recruitment Rules. Hence, as the applicant got only two promotions, i.e., to the post of Machine Assistant and Offset Machine Man, he is entitled for the 3rd MACP in the Grade Pay of Rs.4600/- w.e.f. the due date, i.e., on completion of 30 years service.

12. The learned counsel further submits that the Orders dated 24.08.2011 and 19.01.2012, under which the applicant was said to have informed about the non-entitlement of 3rd MACP benefit, were never received by him. It is also further submitted that not granting pay or part of pay or wrong fixation of pay are continuous cause of actions, and hence, the OA is within the period of limitation.

13. The applicant also placed reliance on the decisions of the Hon'ble Apex Court in **M.R.Gupta v. Union of India & Others**, (1995) 5 SCC 628 and the Judgement of the Hon'ble High Court of Delhi in W.P.(C) No.13849/2009 in **Union of India & Others v. Sh. Ramesh Chander Pal**, decided on 04.08.2014.

14. In **Ramesh Chandra Pal** (supra), the issue was that whether the *in-situ* promotion or upgradation given to him can be considered as one of the promotions, while granting ACP/MACP benefits. It was held by the Hon'ble High Court of Delhi that any promotion/upgradation, which is unsupported by the Rules and is outside the hierarchy of posts, is to be ignored for the purposes of grant of ACP benefits, by following its earlier decision in WP(C) No.16598-600 of 2006, in **Union of India & Others v. Sahab Singh**. Since in the present case the

promotion to the post of Offset Machine Assistant, is supported by the rules and is within the hierarchy of posts, the said decision has no application.

15. In view of the fact that the respondents have not placed any record to the effect that the orders dated 24.08.2011 and 19.01.2012 were served on the applicant, and that in view of the law laid down by the Hon'ble Apex Court in **M.R.Gupta** (supra), we reject the contention of the respondents with regard to limitation.

16. However, it is to be seen that a 'transfer' is one of the accepted mode of promotion under service jurisprudence. The relevant Rule with regard to the post of Offset Machine Assistant, also provides for transfer as one of the mode for appointment from a lower grade to the grade of Offset Machine Assistant, in addition to the modes of 'promotion' and 'deputation'.

17. It is not in dispute that the applicant while working in the lower grade of Machine Assistant in the scale of Rs.950-1500 was transferred and appointed as Offset Machine Assistant in the pay scale of Rs.1200-1800. Hence, as rightly contended by the respondents' counsel and as per the Recruitment Rules, the appointment of the applicant as Offset Machine Assistant is one of the promotion/upgradation acquired by the applicant. Accordingly, it is clear that the applicant got three promotions/upgradations in his service in terms of Recruitment Rules and within the hierarchy of posts and hence, he is not entitled for granting of 3rd MACP in the Grade Pay of Rs.4600/-.

18. The contention of the applicant that his junior - Mahender Singh - was granted with the 3rd MACP benefit, is also unsustainable as the said Mahender Singh was granted with the 2nd ACP and 3rd MACP as he had got only one promotion.

19. In the circumstances and for the aforesaid reasons, the OA is devoid of any merit and is accordingly dismissed. No order as to costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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