

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

O.A. No.1092 of 2015

This the 11th day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Biteshwar (Aged about 04 years)
s/o Sh. D.C. Prasad,
Retd. H.P.C. (P.S.) N.Rly., Jagadhari,
C/o Arvind Kumar, H.No.146,
Pillanji, Sarojini Nagar, New Delhi.

....Applicant

(By Advocate : Shri S.P. Sethi)

VERSUS

Union of India through

1. General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Ambala Division, Ambala Cantt.

.....Respondents

(By Advocate : Shri S.M. Arif)

ORDER (Oral)

Heard Shri S.P. Sethi, learned counsel for the applicant and
Shri S.M. Arif, learned counsel for the respondents.

2. The applicant has filed this OA under Section 19 of the
Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(i) Direct the respondents to issue revised P.P.O. on the basis of last pay drawn Rs.20480/- basic pay i.e. Rs.10240/- basic pension w.e.f. 1.1.2012 with arrears of pension difference calculated accordingly with 12% interest thereon.
- “(ii) Direct the respondents to pay other retiral benefits as admissible in terms of Railway Board's orders dated 17.12.2008 with interest 12% p.a.

(iii) Pass any other order/directions in interest of justice which this Hon'ble Tribunal deem and proper in the facts and circumstances of the case."

3. The grievance of the applicant is that his pension had wrongly refixed at Rs.9940/- on the basis of last pay drawn as Rs.19880/- whereas he is entitled to basic pension @ Rs.10240/- on the basis of last pay drawn as Rs.20480/- because as per the provision of payment of pension of the respondents' department, 50% of the emoluments of pay last drawn or 50% of average emoluments received during the last 10 months whichever is more beneficial to the retiring employee shall be applicable to all Government servants retiring on or after 1.1.2006.

3.1 Being aggrieved by the same, the applicant submitted his representation dated 4.6.2014 to the respondents but when no action had been taken by the respondents nor any reply has been received by the applicant, the applicant through his advocate sent a legal notice dated 19.9.2014 but to the same has also not been responded to by the respondents. Therefore, he has filed this OA seeking the reliefs as quoted above.

4. In the reply, the respondents have stated that as per service records, the applicant was appointed in the Railway Deptt. as Coaching Clerk on 23.4.1983 in pay scale of Rs.110-200 (Revised to Rs.260-400) and (Rs.5200-20200/1900) as per 6th CPC. After his appointment, the applicant earned the following promotions:-

- i. Promoted as Sr. Booking Clerk (G.P.-2800) on 23.6.1983 (1st promotion);
- ii. Promoted as Head Booking Clerk (G.P.-4200) on 11.09.1987 (2nd promotion).

The applicant finally retired from Railway service on 31.12.2011, while in Pay Band Rs.9300-34800 + (4200 GP) with last pay as Rs.19880/-. As per Railway Board instruction dated 10.06.2009. The applicant is found fit for 3rd MACP benefit of GP 4600 from GP 4200/- in Pay Band of Rs.9300-34800/- and was granted the same w.e.f. 9.10.2011 vide Order dated 12.8.2015.

4.1 However, while in service, the applicant was awarded a punishment of reduction in the same Pay Band in the same pay scale by two steps for 2 years with cumulative effect by letter dated 8.10.2009. But the said punishment was overlooked at the time of grant of MACP benefit of Rs.4600 GP as claimed by the applicant. Accordingly, his pay already fixed was revised vide notice dated 11.8.2015 from 1.7.2011 @ Rs.19880/- to Rs.18730/- w.e.f. 8.10.2011. On account of revision, Rs.54,237/- excess paid to the applicant is to be recovered. Accordingly, the applicant vide letter dated 28.3.2016 has been advised to deposit the said amount.

4.2 The applicant has retired from Railway service on 31.12.2011 & is receiving pension since then on the basis of last pay drawn @ Rs.19880/- which is higher than the pension which he is now due on the basis of pay revised @ 18730/-. Therefore, he has no right for any difference of pensionary benefits as claimed in the present OA. On the contrary, the applicant is duty bound to refund the access payment of Rs.54237/- to the respondents.

4.3 Respondents further stated that after giving benefit of MACP w.e.f. 9.10.2011, the pay of the applicant was fixed as Rs.18730/- vide letter dated 12.8.2015. It is relevant to note that while in service, the applicant was awarded a punishment of reduction in

the same pay band in the same pay scale by two steps for two years with cumulative effect by letter dated 8.10.2009 (to be effected from 8.10.2009 to 7.10.2011), however, this punishment was overlooked at the time of his retirement on 31.12.2011 & came to notice only at the time of granting MACP benefit of Rs.4600 G.P. claimed by the applicant through OA No.4119/2014. Accordingly, his pay already fixed was revised vide notice dated 11.8.2015 from 1.7.2011 @ 19880 to 18730/- w.e.f. 08.10.2011. Therefore, on account of revision, Rs.54237, is to be recovered being excess payment made to him.

5. In the rejoinder, the applicant has stated that he had already filed OA 1235/2015 against the said punishment order 8.10.2009 as his appeal against the said punishment order has not been decided by the respondents. The applicant again reiterated that he was drawing Rs.20480/- at the time of his retirement. After getting 3rd MACP, the applicant is entitled to fixation of his pay at Rs.20480/- + MACP benefit in GP 4600/-. Consequently, the respondents are required to refix his pension accordingly w.e.f. 1.1.2012 and arrange payment of arrears along with minimum 12% interest thereon.

6. During the course of hearing, learned counsel for the parties reiterated their stands as stated by them in their respective pleadings.

7. It is an admitted fact that the punishment, which was awarded to the applicant vide letter dated 8.10.2009 whereby punishment of reduction in the same Pay Band in the same Pay Scale by two steps for two years with cumulative effect imposed

upon the applicant, was overlooked at the time of granting MACP benefit of Rs.4600 GP as claimed by the applicant. In fact the said punishment was not given effect to at the relevant point of time but the same was given effect to vide Notice dated 11.8.2015 as the applicant was retired on 31.12.2011 and accordingly, re-fixation was done as under:-

Already fixed			Now Fixed		
Date	Pay (In Rs.)	Pay-Band	Date	Pay (In Rs.)	Pay-Band
01-7-08	18180/-	9300-34800+4200	01-7-08	18180/-	9300-34800+4200
01-7-09	18730/-	9300-34800+4200	01-7-09	18730/-	9300-34800+4200
01-7-10	19300/-		08-10-09 To 07-10.11	17650/-	Red. by two step for Two year with cumulative effect dt. 08.10.09
01-7-11	19880/-		08-10-11	18730/-	

From the averment mentioned in the rejoinder, this Court finds that the applicant has challenged the said punishment Order dated 8.10.2009 by filing OA No.1235/2015 seeking the following reliefs:-

- (i) Direct the respondents to consider the appeal dated 16.12.2009(Annexure A-1) submitted by the applicant against the order dated 08.10.2009 passed by the Disciplinary Authority (Annexure A-2) being illegal.
- (ii) Pass any other order or directions in the interest of justice which this Hon'ble Tribunal deem fit and proper.

As the applicant submitted that he had preferred an appeal dated 16.12.2009 against the order dated 08.10.2009 of the Disciplinary Authority, but the same has not been decided till date and the respondents, in their reply to the said OA, have also not given any

clear indication regarding disposal of the appeal, this Tribunal vide Order dated 29.8.2017 disposed of the said OA with a direction to the respondents to decide the appeal of the applicant, in case it has not already been decided, within 12 weeks from the date of receipt of a certified copy of the said Order. The decision shall be communicated to the applicant by means of a reasoned and speaking order.

8. In view of the fact that the said OA 1235/2015 has been disposed of by this Tribunal vide Order dated 29.8.2017, i.e., during the pendency of this OA and none of the parties have brought on record what is the status of the said appeal dated 16.12.2009 which was filed by the applicant against the said punishment order dated 8.10.2009 and this Tribunal had directed vide Order dated 29.8.2017 to the respondents to decide the same or if the same had already been decided, the decision on the same should be communicated to the applicant with a stipulated time, as stated above,, as the same has the bearing on the issue involved in this case.

9. However, it is also pertinent to note here that applicant had also filed OA 4119/2014 seeking grant of 3rd MACP, GP-4600/- in PB-9300-34800 on completion of 30 years of service and the said OA is still pending for adjudication. However, in the counter affidavit filed in the instant OA, the respondents have stated that the applicant is found fit for 3rd MACP benefit of GP 4600/- from GP 4200/- in pay band of Rs.9300-34800 and was granted the same w.e.f. 9.1.2011 vide Order dated 12.8.2015 (Annexure R-1). But the fact that the said OA 4119/2014 is still pending for

adjudication and the next date of hearing is 19.11.2018. It is also pertinent to mention here that vide Notice dated 11.8.2015 (Annexure R-2), as quoted above, the respondents have given effect to the said punishment, which was imposed upon the applicant vide letter dated 8.10.2009.

10. The entire dispute in this case has been adjudicated in previous OA 1235/2015 and OA 4119/2014 and previous Order dated 29.8.2017 passed in OA 1235/2015 has in fact has not been complied with in which direction has been given to the respondents to decide the appeal of the applicant within 12 weeks from the date of receipt of certified copy of the said Order. Quite clearly the applicant instead of filing this OA had another option to ensure implementation of the previous Order instead he must have been legally advised to file OA. Hence, as an exception, the respondents are again directed to communicate their decision to the applicant on the appeal filed by him especially keeping in view the grounds taken by him which is that the grant of MACP to him was in fact well thought out decision and they have no ground to take back the same now.

11. It is pertinent to mention that during arguments, the applicant had also drawn our attention to the discrepancy in the due and drawn statement with regard to his last pay and had shown that his last pay is shown as less than that actually drawn by him. The speaking order shall contain specific statement of fact on this issue also.

12. With the above directions, the instant OA is allowed in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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