

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3382/2017

Reserved on : 31.07.2018.

Pronounced on : 10.10.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. S.B.S. Sharma, 61 years
S/o Sh. Khyali,
Retired Senior Section Engineer/Elect/C/Drg.
From Northern Railway, New Delhi,
R/o 50B, PKT-B, Sidharatha Extension,
New Delhi-14. Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Deputy Chief Electrical Engineer/Const.,
Northern Railway, Shivaji Bridge,
New Delhi. Respondents

(through Sh. Kripa Shankar, Advocate)

O R D E R

The current O.A. has been filed seeking the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dt. 24.4.2017 (A/1) and order dated 21.3.2016 (A/2), declaring to the effect that the same are illegal, unjust and arbitrary and consequently, pass and order directing the respondents to restore the 3rd financial upgradation of the applicant under MACP scheme w.e.f. 2.3.2013 as per earlier order dated 4.3.2014 with all the consequential benefits, including revision of retirement benefits with interest and refund of recovered amount from the gratuity with interest.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. Brief facts of the current O.A. are that the applicant was initially appointed to the post of Sr. Draughtsman on 06.07.1984. In the year 1986, he was promoted to the post of Head Draughtsman and further to the post of Section Engineer and Sr. Section Engineer. He retired from the office of respondent No.2 as Sr. Section Engineer on 30.04.2016 on attaining the age of retirement. The applicant submits that the post of Sr. Draughtsman and Head Draughtsman merged w.e.f. 01.01.2006 and at the same time, the post of Section Engineer and Senior Section Engineer also merged. Therefore, for the purpose of ACP/MACP Scheme, only one promotion was given to the applicant.

3. The applicant further avers that MACP Scheme introduced on 01.09.2008 provides for three financial upgradations on completion of 10, 20 and 30 years of service in case no regular promotion is granted. However, Illustration in para-28 of the aforesaid Scheme reads as follows:-

"(i) If a Railway servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).

(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 29 years (8+10+10)."

Para-5 of the MACP Scheme provides the following-

"Promotions earned/upgradation granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales/up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradations under Modified ACPS."

4. The applicant furthers avers that after ignoring the first promotion to the post of Head Draughtsman as per para-5 of the MACP Scheme after merger of the post, he was granted first promotion only to the post of Section Engineer .w.e.f. 01.03.1993 and therefore completed 20 years of his service w.e.f. 01.03.2013 and became entitled for grant of 3rd financial upgradation under MACP, which was granted vide order dated 04.03.2014.

5. Respondent No. 2 issued a show cause notice to the applicant on 19.02.2016 for withdrawing the 3rd financial upgradation on the basis of Railway Board letter dated 27.06.2014. Since the applicant not provided a copy of the same, it is contended that vide order dated 21.03.2016, the respondents have withdrawn the 3rd financial upgradation of the applicant w.e.f. 02.03.2013 and granted the same w.e.f. 05.07.2015 and refixed his pay accordingly.

6. The respondents have also ordered recovery of Rs.170737/- from his retirement benefits vide order dated 24.04.2017. The applicant made a detailed representation dated 08.09.2017 relying upon the Railway Board Circular dated 22.06.2016, issued in compliance of Hon'ble Supreme Court judgment in the case of **State**

of Punjab & Ors. Vs. Rafiq Masih (Civil Appeal No. 11527) but got no result.

7. The applicant has relied on the decision of Full Bench of the Tribunal in OA-1288/2014 (**Smt. Manju Vasistha Vs. UOI & Ors.**) dated 23.05.2016, which has been upheld by the Hon'ble High Court of Delhi on 03.02.2016 in **WP(C)-11826/2016**. As per rule 15(4)(iv)(b) of Railway Service (Pension) Rules, 1993, recovery can be adjusted only within a period of three months from the date of retirement of the railway servant whereas recovery has been ordered to be adjusted in the applicant's case after more than one year, which is not permissible under law. The applicant has further relied upon the following cases to strengthen his case:-

- (i) **S. Leikh Abdul Rashid & Ors. Vs. State of J&K**, JT 2008(1)SC 127.
- (ii) **Union of India Vs. Narendra Singh**, 2008(1)SCC(L&S) 547.
- (iii) **Duryodhan Lal Jatav Vs. State of U.P. & Anrv.**, 2005(3)ATJ 56.
- (iv) **State of Orissa Vs. Advail Charan Mohandy**, 1995 Supp.(1)SCC 470.
- (v) **UOI Vs. Sita Ram Dheer**, 1994 SCC(L&S) 1445.
- (vi) **Nand Kishore Sharma Vs. State of Bihar**, 1995 Supp.(3)SCC 722.
- (vii) **State of Karnataka Vs. Mangalore University Non-Teaching Employees Assn.**, 2002(3)SCC 302.
- (viii) **Babu Lal Jain Vs. State of M.P. & Ors.**, (2006) 6 SCC.

8. In reply, the respondents without disputing the facts of the case submit that the applicant did not submitted any representation to the show cause notice dated 27.06.2014. In the show cause notice, it was mentioned that if no representation is submitted within 10

days, it will be presumed that he has nothing to say and his pay will be revised accordingly and recovery of excess payment of salary if any will also be made from his pay. Accordingly, pay of the applicant was refixed on 21.03.2016, which resulted in recovery of excess payment. However, over payment on account of revision of 3rd MACP has been mentioned in the NDC in Office Order dated 27.04.2017. Hence, the respondents submitted that current O.A. is misconceived and is not maintainable. The same is liable to be dismissed.

9. I have gone through the facts of the case carefully and considered the rival submissions.

9.1 The applicant in the O.A. has challenged the order dated 21.03.2016 vide which the 3rd financial upgradation under MACP Scheme w.e.f. 02.03.2013 has been revised to 05.07.2015. The respondents, as a result, have also recovered an amount of Rs. 1,70,737/- as over payment on account of revision of 3rd MACP. The issue raised in the O.A. regarding determining the actual date of 3rd MACP has been discussed succinctly in the Full Bench judgment in **OA-1288/2014** (Manju Vashistha & Ors. Vs. UOI & Ors.) dated 23.05.2016. In the case of **Manju Vashistha** (supra). It has been held therein that the MACP introduced by the Government w.e.f. 01.09.2008 provides for three financial up-gradations on completion of 10, 20 and 30 years of service. However, if an employee is able to

earn promotion prior to completing 10 years, this benefit is carried over while commuting his eligibility for the next financial upgradation under the Scheme. In this regard, reliance has been placed on illustration in para-28 of the aforesaid Scheme, as elaborated at para-3 above. It is reiterated that if the employee gets first promotion in less than 10 years time (i.e. 08 years or 07 years) whatever the case may be, then he need not wait upto 20 years for getting the second financial upgradation under the Scheme and will be entitled to get it in 18 years or 17 years (as the case may be) after expiry of 10 years from the date of his promotion. Thereafter, for getting the benefit of 3rd financial upgradation under the MACP, he need not wait for completion of 30 years of service and can (hypothetically speaking) get the same on completion of 28 years or 27 years.

10. It is admitted by the respondents in their counter that for the purpose of MACP, only one promotion was given to the applicant w.e.f. 01.01.1993 in Grade Pay of Rs.2000-3200/revised Grade Pay of Rs.9300-34800+4600 at the time of merger of posts w.e.f. 01.01.2006. Determining date for grant of 3rd financial upgradation is based on the date of regular promotion, which admittedly in the case of the applicant, is 01.03.1993. Therefore, the 3rd financial upgradation under the MACP Scheme benefit should be rightfully given to the applicant after 20 years of service after counting from 01.03.1993.

Thus, in my view, the 3rd financial upgradation of the applicant granted to her w.e.f. 02.03.2013 vide order dated 04.03.2014 was correctly granted by the respondents since the date of her 1st regular service was 01.03.1993. Respectfully following the reasoning given by the Full Bench of the Tribunal in **Smt. Manju Vaishistha's** case (supra), which judgment has also been upheld by the Hon'ble High Court of Delhi in WP(C)-11826/2016 dated 03.02.2017, I allow this OA.

11. The impugned orders dated 24.04.2017 and 21.03.2016 revising the 3rd financial upgradation under the MACP Scheme of the applicant and ordering/recovering over payment of Rs. 1,70,737/- from the applicant on account of revision of the 3rd financial upgradation under the MACP Scheme are set aside. The respondents are directed to restore the 3rd financial upgradation given to the applicant under the MACP Scheme w.e.f. 02.03.2013 as ordered vide order dated 04.03.2014. These directions shall be complied with within a span of three months from the date of receipt of a certified copy of this order. O.A. is allowed accordingly. No costs.

**(Praveen Mahajan)
Member (A)**

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