CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00089/2017

DATED THIS THE 06TH DAY OF JUNE, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sripathy Upadya,
S/o V. Narayana Upadya,
Aged about 58 years,
Working as Senior Section Engineer/OHE,
Construction Wing,
South Western Railway,
Millers Road,
Bangalore – 560 046 ...Applicant

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. Union of India,
Represented by General Manager,
South Western Railway,
Headquarters Office,
Gadag Road,
Hubli – 580 020.

2. The Chief Personnel Officer,
Personnel Branch,
South Western Railway,
Headquarters Office,
Gadag Road,
Hubli – 580 020.

3. The Chief Administrative Officer,
Personnel Branch,
Construction,
South Western Railway,
Bangalore Cantonment,
Millers Road,
Bangalore – 560 046

4. Deputy Chief Engineer,
General/Construction,
South Western Railway,
No. 18, Miller's Road,
Bangalore – 560 046 ...Respondents

(By Shri. N. Amaresh, Senior Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The applicant was appointed in service after selection through the Railway Recruitment Board on 05.12.1981. The respondents would say that he was appointed as an Apprentice even though in a work charge establishment therefore they would say that his appointment would have to be taken as from 27.07.1984 onwards only. The applicant produces Master Circular No. 54 which we quote below:

"5. Counting of period spent on training

5.1 The service as an Apprentice does not count towards *qualifying service. With effect from 22.12.1983, in the case of Group C & D employees who are required to undergo departmental training relating to jobs before they are put on regular employment, the period of training shall count towards qualifying service if the training is followed immediately by an appointment. The benefit is also admissible to such of those Group C & D employees who are subsequently promoted to the gazetted posts.*

[Authority: Letter Nos. (i) <u>F(P)58 PN 1/14 dated 03.03.1960,</u> (ii) <u>F(E)III/79/PN 1/20 dated 17.04.1984, 27.07.1984, 13.10.1986, 09.08.1988</u> (RBE 159/1988) and <u>14.09.1988</u> (RBE 202/88)]"

Therefore according to the Master Circular issued by the Railway Board, his service as Apprentice will not count as a qualifying service with effect from 22.12.1983 but the respondents relies on Annexure-RA1 which we quote below:

"Sub: - Extension of benefit under MACPS-Counting of induction training period – clarifications regarding.

Ref: - S.E.C. Rly's letter No. P-HQ/RUL/105/9/2651 dated 06/07.10.2015

The matter referred by S.E.C.Rly's vide letter under reference has been examined and it stated that in terms of para-9 of the Annexure to Board's letter dt. 10.06.09 <u>training period is not taken into account for the purpose of MACPS</u>. Only regular service has to be taken into account from the date of actual joining of the post in the entry grade. Further, in terms of para-4 Board's instructions dt<u>. 29.09.2010</u> (RBE No. 143/2010), the benefit of MACPS would be available <u>from the date of actual joining of the post in the entry grade</u>. Board's instructions dt. <u>12.2011</u> are for appreciation of the existing instructions only and it does not alter the basic criteria of MACPS as contained in Board's policy instructions dt. <u>10.06.09</u> (RBE No. 101/2009). Thus, training period would not be counted for the purpose of any financial upgradation under MACPS

Further, the MACP Scheme is regulated by its own set of instructions and the instructions issued for any other purpose are not relevant for MACPS.

Sd/-

(N.P. Singh)

Dy. Director, Pay Commission – V

Railway Board"

2. But then here also there is no clear cut definition of what would constitute employment and what would constitute apprenticeship. The applicant was apparently in a work charge establishment and was not under any sort of training at all from 1981 onwards even though the nomenclature indicated stipendiary apprentice. Therefore the question would be then whether the applicant would have been entitled to grant of MACP from which point onwards. If we calculate from 1981, he should be eligible for it from 2011 in which case the presence or not of the major penalty charge sheet against him will have any relevance to it but if the subsequent date in 1984 is to be taken then his right would have arisen in 2014 then we will have to examine the validity and credibility of the inquiry which apparently has not yet been concluded by the Disciplinary Authority. In order to look into the matter further we had examined the report and find that the only charge against the applicant seems to be that at the time of weighment of certain scrap articles linear measurements were taken and not weight. Apparently somebody assessed the weight on the basis of linear measurement which is not equivalent to the cubic measurements. That being so the alleged presence of scrap of certain quantum is only in the imagination of such a person and not otherwise and therefore the Inquiry

Officer had held that the charge against the applicant as not proved. We do not know what kind of the stand the Disciplinary Authority can also take in the matter because it is admitted by everyone that only linear measurement were taken at the time of depiction of scrap. Without any doubt that is not correct procedure but if everyone concerned had taken it only on the basis of linear measurement, may be on the basis of practical considerations at that point of time, nobody can ascribe any fault on the applicant’s side also. Therefore we hold that prima facie there may not be anything in the charge sheet at all. M/s Raja Steel had actually measured and found the linear measurement were correct. It has come out in evidence that the empty lorry was not weighed in the presence of witnesses. Therefore it appears that this is a challenge put up by the apparent purchaser which probably may not be correct after all because if he wanted to get things based on weighment alone then he should have insisted on weighment at the first instance itself and not on linear measurement. Having acceded to linear measurement he may now be estopped from claiming otherwise. Therefore on both these counts the cloud against the applicant does not seem to be worthwhile.

3. Going by the Master Circular No. 54, it appears that the service of the Apprentice was not considered as a qualifying service till 1983 but thereafter it was. The qualifying service is for pension and other benefits also so, therefore, based on the Master Circular No. 54, applicant is eligible to be considered as having been appointed from 1981 onwards and not from 1984 as claimed for by the Railways. Therefore the OA is allowed. Mandate is issued to the Railways to grant him MACP from 2011 onwards.

4. The OA is allowed as above. No order as to costs.

(PRASANNA KUMAR PRADHAN)	(DR.K.B.SURESH)
MEMBER (A)	MEMBER (J)

/ksk/

Annexures referred to by the applicants in OA No. 170/00089/2017

Annexure A1 Copy of first page of Service Book of the applicant.

Annexure A2 Copy of office order No. 78/TR/87 dated 03.03.1987

Annexure A3 Copy of memorandum dated 22.03.2012

Annexure A4 Copy of RBE No. 101/2009 regarding MACP scheme

Annexure A5 Copy of Railway Board letter dated 29.12.2011

Annexure A6 Copy of representation dated 03.03.2014

Annexure A7 Copy of application under RTI dated 22.05.2015

Annexure A8 Copy of impugned communication dated 31.03.2016

Annexure A9 Copy of forwarding letter dated 07.04.2016

Annexure A10 Copy of application under RTI dated 15.04.2016

Annexure A11 Copy of reply of 4th respondent dated 16.06.2016

Annexure A12 Copy of RBE No. 25/1991 dated 04.02.1991

Annexure A13 Copy of order dated 23.11.2011 in O.A. No. 870/2010 passed by Ernakulam Bench of the Tribunal

Annexures with reply statement

Annexure R1 Copy of Railway Board letter dated 29.10.2015

Annexure R2 Copy of South Western Railway letter dated 11.11.2016

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