

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00400/2016

DATED THIS THE DAY OF 5TH SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH

...MEMBER (J)

HON'BLE SHRI DINESH SHARMA

...MEMBER(A)

D.M.Rudreshi,
S/o T.Mallappa,
Aged about 50 years,
Reservation Supervisor I
Bangalore Division,
South Western Railway,
Bengaluru-560 023.

...Applicant

(By Advocate M/S.Ratio Legis)

Vs.

1. Union of India,
Represented by the General Manager,
South West Railway,
Headquarters Office,
Hubli.
2. The Sr. Divisional Personnel Officer,
Bangalore Division,
South West Railway,
Bangalore.
3. The Secretary,
Ministry of Railways, Railway Board,
New Delhi – 110 001.

....Respondents

(By Railway Standing Counsel Shri J.Bhaskar for Reddy Respondents)

ORDER

HON'BLE SHRI DINESH SHARMA

...MEMBER(A)

The case of the applicant is that he was recruited as Ticket Collector in 1991 and was promoted as Senior Ticket Examiner in 1998. After that, through a

written examination, by way of a positive act of selection, he was selected as Enquiry cum Reservation Clerk-II (ECRC-II) in the year 1999. He has been promoted as ECRC-I in the year 2005. His request is that since he has been given only one promotion after his selection as ECRC-II, he should be granted second MACP, on par with his contemporaries with effect 22.04.2011. The selection to the post of ECRC-II should not be considered as an act of promotion because it was an appointment on selection as a result of an examination in which he appeared along with other eligible candidates.

2. The respondents have denied the claim of the petitioner and have alleged that the selection to the post of ECRC was in fact a promotion against the promotion quota provided under the Rules. They have also alleged that Rules regarding MACP make it very clear that this is a benefit purely personal to the individual and the petitioner cannot claim MACP on the ground that someone junior to him was given a benefit which resulted in increasing his/her pay above the applicant. According to the respondents the applicant has already availed three promotions.

3. The main ground taken by the applicant, in his rejoinder, is what he refers to as the "Law settled in a catena of cases" by different benches of CAT, which were affirmed by the Hon'ble High Court and the Hon'ble Apex Court. The decisions of OA No.382/2011 of CAT, Jodhpur Bench and OA No.1088/2011 of CAT, Madras Bench, W.P.No.11709/2013 of Hon'ble High Court of Rajasthan, W.P.(C) No.4131/2014 of Hon'ble High Court of Delhi and the decision of the Apex Court in SLP No.4848/2016 related to Postal Department where it was held that a

selection on the basis of Limited Departmental Competitive Examination (LDCE) cannot be counted as promotion. This matter was upheld by the Hon'ble High Court of New Delhi in Union of India and Ors. vs. Shakeel Ahmad Burney and the SLP against the decision was not entertained by the Hon'ble Apex Court. However, the question of law was kept open.

4. Regarding the decisions of CAT, Jodhpur and Madras Benches and those of Hon'ble High Court and the Hon'ble Apex Court the respondents have argued that the dismissal of the Special Leave Petition was without a speaking order and therefore, it cannot be taken as a declaration of law by the Hon'ble Supreme Court.

5. After going through the pleadings and hearing the arguments on both sides, it is very clear that the major issue which needs to be decided by us is whether the decisions of the CAT, Jodhpur and Madras Benches and those of the Hon'ble High Courts quoted above are applicable to the facts of this case. It is true that those decisions related to a different department but the subject matter in issue is very much the same. The decision of the CAT, treating the promotion based on Limited Departmental Examination as not promotion but selection, is based on very sound reasoning given in those decisions. A relevant portion of the order of CAT, Jodhpur Bench is quoted below:

"16. Any advancement in career which is based on a process of selection especially undertaken for that purpose cannot be called as a promotion. A promotion has to be in higher category in the same cadre, or service, or through a prescribed avenue of promotion, but without an element of a process of selection, through tests or examinations etc."

6. Applying this logic, the selection to the post of ECRC, which happened after an examination, cannot be considered as promotion, but as an appointment through selection to that post. If it is to be taken as such, applying the ratio of CAT decision cited above in toto, his service for the purpose of calculating MACP can be counted only from the date of such selection. He has already been given one promotion from this post in the year 2005. Thus, the next promotion under the MACP has become due only in the year 2015. The applicant cannot claim MACP treating his service as continuing from 1991 and also seek benefit of considering his selection in 1999 to the post of ECRC as an appointment through selection. Hence the OA is allowed to the extent that the applicant is eligible for second MACP on completion of 10 years from his last promotion as ECRC-I in 2005. Appropriate orders may be issued by the respondents within two month of this order. No costs.

(DINESH SHARMA)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the applicant in OA No. 170/00400/2016

1. Annexure A1 : Copy of the representation dated 12.08.2014.
2. Annexure A2 : Copy of the representation dated 09.09.2014.

Annexures referred to by the Respondents

1. Annexure R1 : Copy of RBE-101/2009 dated 10.06.2009.
2. Annexure R2 : Copy of comparative statement of applicant and Respondent.
3. Annexure R3 : Copy of Para 129 of IREM Vol.I
