

OA.No.170/01725/2015/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01725/2015

DATED THIS THE 02nd DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Suma B.V
 Aged 48 years
 W/o. P.Raviprakash
 Commercial Controller/South Western Railway
 Bangalore Divisional Office
 Bangalore-560 023.
 Residing at: No.1656, 16th Main
 BSK I Stage, Bangalore-560 050. ... Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India
 Represented by the General Manager
 South Western Railway HQ
 Hubli P.O., Dharwar District
 Karnataka. PIN:580 020.
2. The Divisional Railway Manager
 South Western Railway
 Bangalore Division
 Bangalore-560 023.
3. The Sr.Divisional Personnel Officer
 South Western Railway HQ
 Bangalore Division
 Bangalore-560 023.
4. The Sr.Divisional Commercial Manager
 South Western Railway HQ
 Bangalore Division
 Bangalore-560 023. ... Respondents

(By Advocate Shri N.Amaresh)

ORDER

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

The applicant has filed the present OA seeking the following relief:

- i. Direct the respondents to grant the applicant the benefit of the 3rd financial upgradation under the MACP scheme in PB-2 + GP Rs.4,600/- with effect from 01.09.2008 and direct further to grant all the consequential benefits including arrears of pay and allowances arising therefrom.*
- ii. Call for the records leading to the issue of A10 order bearing No.B/P.524/II/Comm/CC/Restg/2013 dated 17.02.2015 issued by the 3rd respondent and quash the same to the extent it relates to the applicant.*
- iii. Declare that the reduction of the applicant's pay from the month of January 2015, is illegal and unconstitutional.*

2. The applicant submits that she was initially appointed as Commercial Clerk on 16.7.1990 in the scale of pay of Rs.975-1540 (now corresponding to PB-1 + GP Rs.2000/-). Thereafter, she was promoted as Sr.Commercial Clerk by office order dtd.15.3.1994(Annexure-A1). The applicant in response to a notification inviting applications for promotion to the post of Commercial Controller in the scale of pay of Rs.1400-2300 (now corresponding to PB-2 + GP Rs.4200/-) applied for the same and on being selected, an office order was issued on 11.7.1994 appointing the applicant to the post of Commercial Controller (Annexure-A2). However, immediately thereafter vide order dtd.15.7.1994, the promotion order was kept in abeyance. The said order was challenged before this Tribunal in OA.No.1104/1994 and vide order dtd.23.3.1995, the Tribunal set aside the order dtd.15.7.1994 and directed the respondent to give effect the order of appointment with effect from the date the applicant reports for duty as Commercial

OA.No.170/01725/2015/CAT/Bangalore Bench Controller. Thereafter, the respondents issued office order dtd.3.5.1995(Annexure-A3) following which the applicant took over the responsibilities of Commercial Controller. The applicant claims to be continuing in the post of Commercial Controller since then.

3. The applicant further submits that when she was continuing as Commercial Controller, her name was not shown in any of the seniority list of Sr.Commercial Clerks after 1995. However in the provisional seniority list published in 2010 and 2011 her name was shown amidst Senior Commercial Clerk in PB-1 + GP Rs.2800. Further, the applicant's annual increment due on 1.7.2011 was not drawn for which the applicant submitted a representation to the authorities. The applicant had drawn the salary of Rs.20,670/- as Commercial Controller in December 2014. However, in the month of January 2015, her designation was changed to Sr.Commercial Clerk and the pay was also brought down to Rs.20,170/- (Annexures-A4 & A5). The applicant claims to have initially represented the matter thinking that there is a clerical error but since no revision was done, the applicant submitted representation on 10.3.2015 followed by another representation on 20.3.2015 to the 3rd respondent (Annexure-A6 & 7). The respondents issued further memorandum dtd.17.2.2015(Annexure-A10) promoting the applicant as Chief Commercial Supervisor-II in PB-2 + GP Rs.4200/- w.e.f. 1.11.2013. This order clearly appears to be erroneous as the applicant was holding the higher post of Commercial Controller in PB-2 + GP Rs.4200 w.e.f. 3.5.1995. Moreover, having completed more than 10 years of service from 3.5.1995, she is entitled to 3rd financial upgradation under MACP w.e.f. 1.9.2008 to PB-2 + GP

Rs.4600. The applicant further submitted a detailed representation dtd.5.10.2015(Annexure-A11) but without any effect. Hence, the applicant has approached this Tribunal seeking the relief as already mentioned.

4. The applicant further submits that she was regularly promoted as Commercial Controller vide Annexure-A3 order. There is no subsequent order cancelling the applicant's promotion as Commercial Controller or reverting her to the post of Commercial Clerk. Therefore, treating the applicant as Sr.Commercial Clerk with effect from January 2015 that too when the applicant continues to be working as a Commercial Controller is clearly illegal and unconstitutional. Since the applicant completes 10 years of service in the same pay scale, she is entitled to 3rd financial upgradation under MACP w.e.f. 1.9.2008. Hence, she prayed for granting the relief as sought for.

5. The respondents have filed a reply statement in which they corroborated the fact that the applicant was initially appointed as Commercial Clerk and got promotion as Sr.Commercial Clerk in March 1994. The respondents had issued a notification by calling volunteers from eligible categories for filling up the post of Commercial Controller which was an ex-cadre post filled up by way of a process of selection. In the selection process, the applicant along with Sri.S.N.Vasishta was selected to the post of Commercial Controller vide office order dtd.11.7.1994. The said order was kept in abeyance. In compliance of the orders passed by the Tribunal in OA.No.1104/1994, a further order was issued giving effect to the promotion order dtd.11.7.1994. They

OA.No.170/01725/2015/CAT/Bangalore Bench submit that the post of Commercial Controller is an ex-cadre post and this fact has also been clearly mentioned in the order passed by the Tribunal in OA.No.1104/1994. Hence, this is not a cadre post as claimed by the applicant. Respondent No.4 issued a note dtd.5.4.2011 transferring the applicant as Sr.Commercial Assistant. The respondent No.3 issued office order dtd.19.08/09.2011 transferring the applicant from Commercial Controller to the post of Sr.Commercial Assistant(Annexure-R3). The applicant joined as Sr.Commercial Assistant at Bangalore City Booking Office on 2.4.2011. The respondents then granted the applicant the benefit of financial upgradation under MACP to the next higher pay band i.e. Rs.PB-2 + GP Rs.4200 w.e.f. 1.9.2008(Annexure-R5). Further, the applicant was provisionally placed in the select list for promotion as Chief Commercial Supervisor-II in PB-2 + GP Rs.4200 against restructured vacancies w.e.f. 1.11.2013.

6. The respondents admitted the fact that the applicant has drawn the pay at Rs.20670 during the period ending December 2014 showing the designation as Commercial Controller. However, since the applicant was transferred to her substantive post of Sr.Commercial Assistant, the respondents had drawn the correct pay of Rs.20170/- in the month of January 2015, which will be given effect from 1.7.2014. If any excess payment is made erroneously, the same is liable to be recovered from the applicant's salary. It is also submitted that the post of Commercial Controller pertaining to Commercial Department is no more in existence and the same has been surrendered by the Commercial Department vide Joint Memorandum dtd.10.4.2014(Annexure-R6).

Therefore, they submit that the applicant cannot claim the post of Commercial Controller as her substantive post and as on date, the applicant is Commercial Supervisor Gr.II in PB-2 + GP Rs.4200. The respondents further submitted that the applicant is not entitled to 3rd financial upgradation w.e.f. 1.9.2008 as she was already granted 2nd MACP w.e.f. 1.9.2008 taking her substantive post as Sr.Commercial Assistant. It is also mentioned that other employee who was senior to the applicant and was selected as Commercial Controller along with the applicant was also repatriated to his substantive post. Therefore, they submit that the contention of the applicant does not merit any consideration and she is not entitled to 3rd financial upgradation w.e.f. 1.9.2008 as claimed by her.

7. The applicant has filed rejoinder in which she mentioned that the contention of the respondents that the post of Commercial Controller was an ex-cadre post is not correct. Annexure-A3 communication clearly indicates that it is a cadre post and that is why the applicant and other incumbent continued in the post without any break. In Railways every ex-cadre post is a tenure post with a tenure of maximum period of only four or five years as would be evident from the Railway Board order dtd.27.8.2004(Annexure-A13). Moreover, following 1995, the applicant's name was not included in seniority list of Commercial Clerk. Only during the year 2010, they included her name in the seniority list of 2010 and the reason for the same is unclear. The respondents ought to have granted the applicant the financial upgradation under MACP in PB-2 with GP Rs.4600 w.e.f.1.9.2008. If the applicant were to be in the cadre along with those who were in the cadre, the applicant would have

OA.No.170/01725/2015/CAT/Bangalore Bench been given the benefit of the financial upgradation contained in Annexure-R5 during 2009 or at least during 2010 and not five years after the applicant became due. Annexure-R6 communication did not indicate that the post of Commercial Controller was an ex-cadre post. It also indicates that at least up to 10.4.2014, the post of Commercial Controller was in existence. Therefore, the applicant contends that she is entitled to the relief sought by her.

8. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submission made in the OA and the rejoinder highlighted the fact that the applicant was promoted to the post of Commercial Controller through a selection process and continued in the same post all along. It is not an ex-cadre post or a tenure post and had it been so, the applicant would not have been allowed to continue there for more than 15 years. Since the applicant was in the scale of PB-2 + GP Rs.4200 w.e.f. 3.5.1995 and had completed more than 10 years of service in that scale, she is entitled for 3rd financial upgradation under MACP in PB-2 with GP Rs.4600 w.e.f. 1.9.2008.
9. The Learned Counsel for the respondents, on the other hand, submitted that the post of Commercial Controller was an ex-cadre post. The communication dtd.16.5.1994(Annexure-R1) clearly mentioned the post of Commercial Controller as an ex-cadre post. When the applicant herself filed OA.No.1104/1994 agitating against the order keeping in abeyance the posting order, she had also mentioned it as an ex-cadre post. The order of the Tribunal dtd.23.3.1995 in OA.No.1104/1994 also

clearly mentioned that the post of Commercial Controller is an ex-cadre post. He further mentioned that when the applicant was reverted initially from Commercial Branch to Booking Office in April 2011, she was directed to report to Sr.DCM/SBC. There is also a specific order of shifting her there as Sr.Commercial Assistant. However, he could not clarify as to how a person can continue for such a long period. When asked about the case of Sri S.N.Vasishta who was selected as Commercial Controller along with the applicant, he mentioned that Sri Vasishta has appeared for a LDCE examination in 1999 for the post of Commercial Inspector/Gr.IV and got selected. Thereafter, he came to the Commercial department and was later promoted as Commercial Superintendent in 2013. Learned Counsel submitted that on reversion back to the parent cadre as Sr.Commercial Assistant, the applicant had to get the benefit of that cadre only and not that of the Commercial Controller. Accordingly, the applicant was granted 2nd MACP benefit as Sr.Commercial Assistant w.e.f. 01.09.2008 allowing her Grade Pay Rs.4200. Therefore, the action taken by the respondents is in accordance with rules and the contention made by the applicant has no justification.

10. We have carefully considered the facts of the case and submissions made by either side. From the records it is evident that the applicant who was initially appointed as Commercial Clerk appeared in a selection process for the post of Commercial Controller and got selected. It appears from the communication dtd.16.05.1994(Annexure-R1) that the post was specified as ex-cadre post. Following the selection process, the applicant was promoted as officiating

OA.No.170/01725/2015/CAT/Bangalore Bench Commercial Controller but the same was subsequently kept in abeyance because of which the applicant approached this Tribunal in OA.No.1104/1994. Pursuant to the order passed by this Tribunal dtd.23.03.1995 in OA.No.1104/94 setting aside the impugned order staying the operation of appointment order, the applicant joined as Commercial Controller. Both in the original application and also in the order passed by the Tribunal in OA.No.1104/1994, the post of Commercial Controller was mentioned as ex-cadre post. No doubt the appointment order did not specifically mention the post of Commercial Controller as ex-cadre post but non-mention of the same would not negate the fact that the post was ex-cadre. Normally a person who goes to an ex-cadre post shall revert back after a specific period. Nevertheless, continuation in the ex-cadre post for a long time cannot amount or result in making the person part of the cadre on a permanent basis. It appears from the documents shown by the Ld.Counsel for the respondents that the applicant was initially posted in divisional office and thereafter was relieved on 10.03.2005 to report to SCM/Claims/SBC. Thereafter vide communication dtd.01.04.2011 to the applicant, she was repatriated to Sr.DCM/SBC and relieved on 01.04.2011. There was also a formal order on 19.04.2011 posting her as Sr.Commercial Assistant in PB-1 with Grade Pay Rs.2800 which was not challenged. However, there appears to be a lapse on the part of the respondents to allow the applicant to continue to draw the salary of the Commercial Controller till 2014. It appears from the muster particulars placed at Annexure-R4 that immediately after repatriation to the Sr.Commercial Assistant the applicant did not attend the office from 31st May 2011 till 11th April 2012 either on account of LAP or on CCL or

on absence. Again she was on absence either on LAP or on sick from March 2014 till April 2016. Further the applicant was granted 2nd MACP benefit w.e.f. 01.09.2008 along with Grade Pay Rs.4200 i.e. the pay which she was drawing as Commercial Controller. Hence, there would not have been any reduction in pay scale of the applicant even she was reverted to the parent cadre as Sr.Commercial Assistant since she was allowed financial upgradation under MACP to the same scale she was drawing as Commercial Controller from 1.9.2008. However there is no denying the fact that the applicant went to an ex-cadre post and was reverted back to the parent cadre in 2011. Therefore, the claim of the applicant that she is entitled to the MACP benefit considering her appointment as a regular Commercial Controller does not appear to be justified or permissible as per rules.

11. Therefore, on detailed consideration of the facts and circumstances of the case, we hold that the contention made by the applicant in the present OA does not merit consideration and hence the OA being devoid of any merit stands dismissed. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

/ps/

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

Annexures referred to by the applicant in the OA.170/01725/2015

Annexure-A1: A true copy of office order bearing No.39/Comml./94 dated 15.03.1994 issued by the 3rd respondent

Annexure-A2: A true copy of office order bearing No.89/Comml.Controller/94 dated 11.07.1994 issued by the 3rd respondent

Annexure-A3: A true copy of office order No.33/Comml./95 dated 03.05.1995 issued by the 3rd respondent

Annexure-A4: A true copy of pay slip of the applicant for the month of December 2014

Annexure-A5: A true copy of pay slip for the month of January 2015

Annexure-A6: A true copy of representation dated 10 March 2015 addressed to the 3rd respondent

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Annexure-A7: A true copy of representation dated 20 March 2015 addressed to the 3rd respondent

Annexure-A8: A true copy of representation dated 24th March 2015, a true copy of which addressed to the 3rd respondent

Annexure-A9: A true copy of Service Register as received by the applicant under the RTI Act

Annexure-A10: A true copy of order bearing No.B/P.524/II/Comml/CC/Restg/2013 dated 17.02.2015 issued by the 3rd respondent

Annexure-A11: A true copy of detailed representation dated 5.10.2015 addressed to the 2nd respondent

Annexure-A12: A true copy of RBE order bearing No.101/2009 dated 10.06.2009

Annexures with reply statement:

Annexure-R1: Copy of Lr.No.B/P.608/I/Comml.Contr/93 dated 16.05.94

Annexure-R2: Copy of Seniority list of Sr.Commercial Assistant in pay band Rs.5200-20200 in Grade Pay Rs.2800 as on 01.02.2010

Annexure-R3: Copy of office order No.792/09/201/II/CC's/47 dated 19.08/09.2011

Annexure-R4: Copy of Muster particulars of the applicant maintained at Booking Office/SBC and details of CCL and Leave availed

Annexure-R5: Copy of office order No.1094/11/2014/II/Comml/CC dated 28.11.2014

Annexure-R6: Copy of Joint Memorandum dated 10.04.2014

Annexures with rejoinder:

Annexure-A13: A true copy of Railway Board order bearing RBE No.191/2004 dated 27.08.2004
