

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.79 of 2013

Cuttack this the 14th day of December, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBE(A)

C.Rajan, aged about 62 years, S/o. late Padmanava, retired Store Man Grade-II, O/o. Dy.C.E./C/Cuttack, permanent resident of Vilappil House, PO-Mannur, Via-Kodakindi, Dist-Calicut, Kerala

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Mishra

S.K.Mohanty

T.K.Chaudhury

Ms.J.Pradhan

-VERSUS-

Union of India represented through:

1. The General Manager,E.Co.Rly, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Senior Personnel Officer,Con./Co-ord, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, dist-Khurda
3. Deputy Chief Engineer (Con.), East Coast Railway, At-Station Bazar, PO-College Square, Town/Dist-Cuttack
4. Financial Advisor & Chief accounts Officer/Con.E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
5. Chief Personnel Officer, E.C.Rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.K.Nayak

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant had retired as Store ManGr.II in the O/o. the Deputy Chief Engineer (Con.), East Coast Railways, Cuttack on 30.4.2011. He had joined in the erstwhile S.E.Railways on

26.2.1973 and was granted temporary status in the scale of Rs.330-480/- as HSSarang,Gr.II. His scale of pay was revised to Rs.1200-1800 with effect from 1.1.1986 by the 4th CPC and Rs.4000-6000/- by the 5th CPC with effect from 1.1.1996. A/4 is the office order No.62 of 1991 dated 31.5.1991 which states that the applicant being found medically unfit was posted as Store Man, H.S.Gr.II in the scale of Rs.1200-1800/-. In the year 2009, the Railway Board issued RBE No.215 of 2009 allowing computation of 50% casual service with temporary status as qualifying service for grant of financialupgradation under the MACP Scheme. The applicant had already completed more than 20 years of qualifying service as on 1.9.2008 and therefore, claims that he was eligible for 1st and 2nd financial upgradation under the MACP Scheme. After his retirement on 30.4.2011, he submitted a representation on 3.1.2012 to the Senior Personnel Officer,Con./Co-ord., East Coast Railway, (Respondent No.2) with a prayer for grant of 1st and 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008 and payment of consequential financial benefits. Since he did not get any relief, he filed O.A.No.932 of 2012 in this Tribunalwhich directed the Respondent No.2 to consider the pending representation and pass necessary orders. In compliance of the order of this Tribunal passed in O.A.No.932 of 2012, the Respondent No.2 passed a speaking order on 18.1.2013 and rejected the prayer for grant of 1st and 2nd financial upgradation

under the MACP Scheme to the applicant. Aggrieved by the same, applicant has filed this O.A. praying for the following reliefs:

- i) To quash the order of rejection dated 18.01.2013 under Annexure-A/11.
- ii) And to direct the Respondents to grant 1st& 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 to PB-I Rs.5200-20200/- with GP Rs.2800 and Rs.4200/- at par with T.Sivdasan and V.D.Vincent and pay the differential arrear salary, DCRG, Commuted value of pension, leave salary and pension with 12% interest for the delayed period.
- iii) And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The applicant has based his prayer on the following grounds:

The applicant had retired from service without having any promotion or financial upgradation. He was absorbed in the post of Store Man, H.S.II in the scale of pay of Rs.1200-1800 vide order dated 31.5.1991 and retired from service in the same post. The impugned order dated 18.1.2013 has been passed without application of mind. Persons similarly placed viz., T.Sivadasan and V.D.Vincent have been granted the benefits under financial upgradation whereas the applicant has been denied such benefit. Hence, he is eligible for the relief prayed for by him.

3. The Respondents in their counter-reply filed on 17.9.2013 have contested the claim of the applicant. It is their contention that the applicant was engaged in the Railways as a casual H.S. Sarang on daily rated basis with effect from 16.8.1973 and granted temporary status with effect from 1.1.1981 in the scale of Rs.330-480-Rs.1200-1800/-.

Subsequently, he was absorbed against a regular Group D 40%/60% PCR cadre post in direct entry grade in the scale of Rs.196-232-750-940/- vide Memorandum No.E/45/738 dated 16.7.1992. His service was regularized against 60% PCR posts of Semi-skilled Storeman in the scale of Rs.800-1150- Rs.2650-4000/- with effect from 24.4.1997 vide CE/C/II/BBS/REG/PCR/02898 dated 12.04.2001. Even though he was regularized in Group-D category in the scale of Rs.750-940-Rs.2550-3200/- and Semi Skilled Storeman in scale of Rs.800-1150/- Rs.2650-4000, he was allowed to continue to work in the higher scale on officiating/ad hoc basis as Sarang Gr.II/Storeman, Gr.II in the scale of Rs.1200-1800/- Rs.4000-6000 due to exigency of work. He retired from Railway service on superannuation with effect from 30.4.2011 as Storeman, Gr.II (ad hoc) after rendering 26 years & 9 months of qualifying service. His last officiating pay was Rs.12,910/- with Grade Pay of Rs.2400/- in PB-II (Rs.5200-20200). The case of the applicant was rejected on the ground that under the MACP Scheme as circulated by the Railways vide circular dated

10.06.2009, financial upgradation shall be counted from the direct entry grade in regular post and has no relevance to the casual appointment/adhoc post such as Sarang/Storeman,Gr.II.The direct entry grade of the applicant in a regular post was Group-D post in PCR cadre in the scale of Rs.2550-3200/- as per 5th CPC, whose corresponding Grade Pay is Rs.1800/- in the 6th CPC. The applicant had availed one regular promotion by way of regularization in Semiskilled Storeman in the scale of Rs.2650-4000/- as per the 5th CPC whose corresponding Grade Pay was Rs.1800/-. The applicant completed 10 years of service on 16.8.1994 and 20 years of service on 16.8.2004 taking into account 50% of Temporary Status service. Although the applicant was eligible for 1st and 2nd financial upgradation with enhanced Grade Pay of Rs.1900 and Rs.2000/- with effect from 1.9.2008 under MACP Scheme, he could not get any financial benefit because he was already enjoying the higher Grade Pay of Rs.2400/- on officiating basis prior to 1.9.2008. The applicant's comparison with others viz., T.Sivadasan and V.D.Vincent is misconceived since ShriSivdasan was granted financial upgradation under MACPScheme as per the direction of this Tribunal in O.A.No.731 of 2010. Sri V.D.Vincent's case was also considered as a special case in view of the orders of this Tribunal in O.A.No.238 of 2012.

4. Applicant filed a rejoinder on 23.9.2013 in which he has submitted that the respondents have incorrectly interpreted

the MACPScheme and have denied the applicant financial upgradation under the MACPS on the ground that he was already getting a higher Grade Pay other than his entitlement. The applicant's total qualifying service is more than 20 years and he had not been granted any regular promotion/financial upgradation during his service career and is therefore, entitled to 1st and 2nd financial upgradations with effect from 1.9.2008 under the MACPS in PB-II(Rs.5200-20200) with GP of Rs.2800 and Rs.4200/-. His entry into the regular service is Gr.II and he retired from service as Gr.II and enjoyed the scale of pay meant for Gr.II. The respondents have failed to make a distinction between regularization and promotion and have denied the consequential financial benefits with this miscalculation. The applicant never got any promotion,nor fixation of pay on promotion during his service career.

5. The respondents filed a reply to the rejoinder on 10.12.2013 and have reiterated that even though the applicant has been regularized in Group-D category in the scale of Rs.750-940/- /Rs.2550-3200 and semi skilledStoreman in the scale of Rs.800-1150/Rs.2650-4000, he has been allowed to continue to work in higher scale on officiating/adhoc basis as SarangGr.II/Store Man Gr.II in the scale of Rs.1200-1800 - Rs.4000-6000/- due to exigency of work. He had availed one regular promotion as Semi-skilled Storeman, Gr.II in the scale of Rs.800-1150/2650-4000 as per the 5th CP whose

corresponding GP in the 6th CPC was Rs.1800/- after merging of four pre-revised Gr.D pay-scales in 6th CPC. The applicant completed 10 years of regular service on 16.8.1994 and 20 years on 16.8.2004 after taking into account 50% of his temporary status service. As per the financial upgradation under the MACP, he was eligible to get GP of Rs.1900 – 2000 with effect from 1.9.2008. However, since the applicant was already getting GP Rs.2400 on officiating/ad hoc basis prior to 1.9.2008, he was not granted the benefit of MACP. His casual/adhoc service on re-appointment as Sarang, Gr.II/HS.Storeman, Gr.II in the scale of Rs.1200-1800 - 4000-6000 as per the 5th CPC which corresponds to GP of Rs.2400 has no relevance for grant of MACP as per the existing rules. Therefore, grant of MACP in the scale of Rs.2800 and Rs.4200 with effect from 1.9.2008 is not legally tenable.

6. We have heard the learned counsels from both the sides and perused the documents submitted by them. During the course of arguments, the learned counsel for the applicant has cited the orders of this Tribunal in O.A.No.831 of 2012 wherein the applicant who was working as a Gas Cutter, Gr.I in the Railways had been given the benefit of financial upgradation under the MACPS after taking into account his service record and the post that he had held. This order of the Tribunal was upheld by the Hon'ble High Court of Orissa in WPC No.13867 of 2012 in judgment dated 18.5.2016. The applicant has also cited

the judgment of the Hon'ble High Court in State of Orissa & Ors. vs. Bhagaban Sarangi & Ors. [81 (1996) CLT 385(SC)] in which it was held that the Orissa Administrative Tribunal was bound by the decision of the High Court of the state in that matter.

7. We have perused the record of service of the applicant as per which the applicant had been granted temporary status with effect from 1.1.1981 in the scale of Rs.330-480 during 3rd CPC, Rs.330-480 revised to Rs.1200-1800 by the 4th CPC, Rs.1200-1800 revised to Rs.4000-6000 during 5th CPC, which was further revised to Rs.5200-20200 with GP Rs.2400/- as per the 6th CPC with effect from 1.1.2006. At the time of his regularization/absorption against 40%/60% PCR post with effect from 1.4.1988, in the direct entry grade with effect from 1.4.1988, he was already drawing a higher scale than his regularized post. The entry in the Service Book shows that he passed the trade test for the post of Semi-skilled Storeman in the scale of Rs.800-1150/- and was regularized as a Skilled Storeman against 60% with effect from 24.4.1997. This also effectively means that the applicant continued in the same grade right from his direct entry on regularization with effect from 1.4.1988 till his retirement on 30.4.2011. His pay was fixed at Grade Pay of Rs.2400 (6th CPC) consequent to his drawing of higher pay scale at the time of his regularization. This is only a result of his carry forward of the past service rendered by him prior to his regularization from 1.4.1988.

Applicant had completed 10 years of service on 1.4.1998 and 20 years of service on 1.4.2008. He was therefore eligible to 1st and 2nd financial upgradations under the MACP Scheme with effect from 1.9.2008. His drawing of the higher GP is a consequence of his fixation of pay at the time of regularization and would not in any way obstruct his financial upgradation.

8. A similar case has been adjudicated in favour of the applicant by this Tribunal in O.A.No.831 of 2012. The applicant therein was granted the 2nd financial upgradation under MACP on completion of 20 years since he had got a first promotion with effect from 24.3.1997. In the present case, the respondents have submitted that the applicant is entitled to 1st and 2nd financial upgradation under MACPS but have denied the same on the ground that he was already drawing a higher Grade Pay than what he was entitled to on financial upgradation. MACP is a personal benefit granted to the employees on their eligibility. The very objective of MACP is to grant relief to those who stagnate in any grade during their career for more than 10/20 years. Para-2 of the guidelines at Annexure-I of OM dated 19.5.2009 states as follows:

“2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Para-A of the first schedule of the CCS(Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is

available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion”.

9. In view of the above, it is our considered view that the applicant will be entitled to 1st and 2nd upgradation under the MACPS as per the Scheme envisaged in OM JNo.35034/3/2008-Estt(D) dated 19.5.2009. The respondents are directed to sanction the same calculating higher Grade Pay with of Rs.2400/- as the base with effect from 1.9.2008 within a period of eight weeks from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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