

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.445 of 2013

Reserved on : 11.09.2018

Order pronounced on : 17. 09.2018

Between:

P.B. Dasan, S/o. Pazhanimala,
Aged 59 years, Occ: Station Superintendent,
Secunderabad Division, South Central Railway,
Sirpur Town Railway Station, Adilabad Dt.

... Applicant

And

1. Union of India, represented by
The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
Secunderabad Division, Sanchalan Bhavan,
South Central Railway, Secunderabad.
2. The Senior Divisional Personnel Officer,
Secunderabad Division, Sanchalan Bhavan,
South Central Railway, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. K.R.K.V. Prasad
Counsel for the Respondents	...	Mr. N. Srinatha Rao, SC for Railways

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not granting 3rd financial upgradation under MACP vide lr dt 11.12.2012 of the respondents.

2. Brief facts are that the applicant joined the respondent organisation on 27.10.1980 and rose to the level of Station Supdt. in PB-2 of Rs 9,300-34,800 with G.P of Rs.4,600. On completion of 30 years of service he is entitled to

grade pay of Rs 4,800 in PB-2 under MACP and as it was not granted the OA has been filed.

3. The applicant's contention is that albeit he completed 30 years of regular service not granting 3rd financial upgradation under MACP on grounds that the period of training and suspension have not been considered for counting service is incorrect. To support his argument he has quoted the verdict of this tribunal in OA No 48 of 2010 filed by the applicant wherein the suspension was ordered to be treated as service. Applicant claims that since he is retiring on 30.11.2013 non grant of the benefit sought will have a cascading effect on his retirement benefits.

4. The respondents at the outset state that under MACP an employee is eligible for financial up gradation after completing 10/20/30 years of service whenever he stagnates in a particular grade without a promotion for 10 years or more. Respondents inform that the applicant was under suspension for a period of 5 years 6 months and 27 days and once this period is deducted from the total service then he will not be eligible for 3rd financial up gradation under MACP. The issue dealt under OA 48/2010 pertains to crediting of leave on Average pay during the suspension period.

5. Heard the learned counsel and perused the relevant documents.

6. The applicant claims that the suspension has been treated as service vide O.A. 48/2010 and the respondents contend that the OA deals only with the leave on Average Pay(LAP) during the suspension period. The respondents are correct in saying so, since the OA was filed for crediting the LAP during suspension period. However, the subject of contention in essence was how to treat suspension to grant LAP. This tribunal after deliberating over the pros and cons

of the suspension issue in the said OA has come to the conclusion that the period of suspension is not treated as break in service unless orders are passed specifically to treat it so.

“When the period of suspension is not treated as break in service it has to be counted as service only. During suspension period a Govt. Servant is prevented from carrying out his normal duties but nevertheless he continues to be a Government servant. Only suspension treated as dies-non is not to be reckoned as service.”

7. Based on the above ratio the applicant is eligible for 3rd financial up gradation under MACP. The respondents have not produced any contradicting developments subsequent to passing the orders of this tribunal in regard to the treatment of the suspension period. Therefore the OA need necessarily to be allowed.

8. The Respondents are therefore directed to consider the representation dt 4.1.2012 of the applicant and allow the 3rd financial upgradation with consequential benefits that accrue from the date he is eligible, keeping in view the orders of this tribunal in OA 48 of 2010 in regard to treatment of suspension period as discussed above. Time allowed is 3 months from date of receipt of this order. No order to costs.

9. The OA is thus allowed. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

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