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No.O A.1090/ 2013

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Jayanta Kumar Chowdhury, son of Late
Hare Krishna Chowdhury, aged about 65
years, Ex-JE-I under WPO/KPA/E.Rly. residing
at 28/A/1 Canning Hum Road, P.O. Naihati,
Dist. North 24 Parganas, PIN-743165

.....Applicant

-versus-

1. Union of India through the General Manager,
Eastern Railway, Fairlie Place, Kolkata -700 001;
2. The Chief Works Manager, Kanchrapara Railway
Workshop, Eastern Railway, Kanchrapara-721301



.....Respondents

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. B.L. Gangopadhyay, counsel

Heard on : 02.08.2018

Order on : 16.8.18

ORDER

Bidisha Banerjee, Judicial Member

The applicant by way of this O.A. has sought for the following relief:-

"An order do issue directing the respondents to grant one ACP under Assured Career Progressive Scheme and grant him arrear at an early date."

2. The applicant has claimed that he was appointed as Trainee Artisan on 15.11.1972 and after ten months of training he was posted as Skilled Artisan on 19.12.1973. On 25.08.1982 against 25% quota he was upgraded as ELCB which was redesignated as J.E.-II. He was posted as J.E.-II on 18.08.1982, further

promoted as J.E.-I on 20.03.1999 and retired from service on 31.03.2008 on superannuation whereafter in terms of VIth Central Pay Commission's Recommendations the posts of J.E.-I and J.E.-II were merged. The applicant has submitted that since the two posts got merged, his movement from J.E.-II to J.E.-I should not be reckoned as promotion for the purpose of Assured Career Progression (ACP), therefore, he would be entitled to at least one ACP upon completion of 24 years of service from his initial entry or posting as Skilled Artisan(19.12.1973).

3. At hearing Id. counsel for the applicant would strenuously urge that since merger of the posts(JE-I and II) was implemented w.e.f. 01.01.2006 and MACP was implemented under 6th CPC w.e.f. 01.09.2008, the applicant would be eligible also for a third MACP upon completion of 30 years from the date of entry, which prayer, however, he did not make in this case.

4. Id. counsel for the respondents vehemently opposing the claim would draw our attention to a chart depicting the posting/service particulars of the applicant, Ex J.E.-I Shop No.14 at Kanchrapara Workshop, Eastern Railway. The chart with statements is set out hereinbelow:-

| Name | Date of appointment | Promoted as | Promoted as | Date of retirement |
|-------------------------|--|---------------------|--------------------|--------------------|
| Jayanta Kumar Chowdhury | 15.11.1972 as Tr. Artisan Tech.III on 19.12.1973 | JE-II on 18.08.1982 | JE-I on 20.03.1999 | 31.03.2008 |

Since Sri Chowdhury(applicant) was appointed on 15.11.1972/19.12.1973 already got first promotion on 18.08.1982 and second promotion on 20.03.1999 even before merging of cadre.

As such he is not under purview of rule of ACP Scheme in terms of CPO KKK Sl.No.202/99(w.e.f.01.10.99)

Note:1 Merger of post in scale Rs.5000-8000 and Rs.5500-9000/- implemented w.e.f. 01.01.2006 in terms of CPO/KKK's Sl.No.87/2008 & 124/2010.

2. MACP was implemented under 6th CPC w.e.f. 01.09.2008 in terms of CPO/KKK's Sl.No.102/09."

Citing the aforesaid Id. counsel for the respondents would vociferously submit that since the merger took place after retirement of the applicant, he would neither be eligible to seek benefits of 2nd ACP nor 3rd MACP, since MACP Scheme was introduced long after his retirement.

5. Id. counsel for the respondents would also draw our attention to RBE 101/2009 particularly with reference to para 10 thereof which clarifies that "no past cases would be reopened".

Id. counsel for the applicant would submit in response that since the grant of ACP was never an issue in the applicant's case, the bar imposed by para 10 supra, would not be attracted or come into play to operate against the applicant.

6. We heard the Id. counsels and perused the materials on record.

7. From the chart depicted supra, we find that within first 12 years of his service(1973-1985) the applicant was promoted from Technician-III to JE-II on 18.08.1982. But before completion of 24 years of his service from his initial entry i.e. 1973-1997 he earned not a single promotion. ACP was introduced w.e.f. 01.10.1998. Therefore, on the effective date of ACP as per ACP Scheme the applicant had not earned his 2nd promotion to JE-I.. Accordingly he would be eligible for 2nd ACP which entitlement ought to be duly considered by the authorities.

8. In regard to his claim for 3rd MACP we notice that MACP Scheme was introduced w.e.f. 01.09.2008 i.e.long after his retirement on

superannuation(31.03.2008) and, therefore, he would not be entitled to any benefits under MACP Scheme albeit merger of JE-I and II w.e.f. 01.01.2006.

9. In the aforesaid backdrop, we dispose of this O.A. with a direction upon the competent authority to examine the grievance of the applicant for grant of 2nd ACP from due date and issue proper orders on the same within 2 months from the date of communication of this order.

10. No order as to cost.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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