



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No OA 350/01600/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. U.K. Varma, Administrative Member

ASOKE SENGUPTA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.K.Dutta, counsel
Mr.B.Chatterjee, counsel

For the respondents : Mr.L.K.Chatterjee, counsel
Mr.A.K.Guha, counsel

Order on : 31.08.2016

O R D E R

Mr. Uday Kumar Varma, A.M.

The present application is filed seeking the following reliefs :

- a) An order holding that the denial of 3rd MACP to the applicant treating his promotion to the post of Section Engineer (P.Way) as induction through LDCE i.e. as Direct Recruitment is totally arbitrary and unsustainable as well as RBE No. 100/12 is unsustainable in law.
- b) An order holding that even in case of Direct Recruitment as Section Engineer the applicant is entitled to 3rd MACP counting his service prior to Section Engineer since the date of his initial appointment in Eastern Railway.
- c) An order quashing and/or setting aside the impugned order/communication dated 1.9.15 and the applicant prays for further order for direction upon the respondents to grant the applicant the benefits of 3rd MACP counting his entire service prior to his promotion/movement to the post of Section Engineer by treating such movement as promotion for all purposes and the order dated 2.5.14 (copy whereof is annexed herewith and marked as Annexure A/9) to this application may be treated as sustainable for granting the benefit of 3rd MACP with grade pay as Rs. 5400/-
- d) To quash and set aside the impugned office order being No. 10/PWI/2015 dated 24th September 2015 issue by the Assistant Personnel Officer (Engg) for Chief Personnel Officer, Eastern Railway.

2. The brief facts of the case are as follows :

The applicant is working for the post of Sr. Section Engineer (P. Way)

under Principal Chief Engineer, Eastern Railway. The respondents have denied

the benefits of 3rd MACP to the applicant, taking into consideration his service prior to the post of Section Engineer (PW & Works) and treating the movement of the applicant from the post of Permanent Way Inspector, Grade II to the post of Section Engineer erstwhile PWI as a Direct recruitment. Moreover instead of counting his service from the date of his initial appointment as PWI Gr-III, the respondents granted 2nd MACP treating the initial appointment from the date of his promotion as Section Engineer now re-designated as Senior Section Engineer treating the same as direct recruitment w.e.f. 1.9.08. Recently the same has been modified after curtailment of training period from 1 year 2 months although applicant was imparted training for two months only and after such curtailment by order dated 24.9.15, date of MACP has been deferred to 21.9.09 and thereby the respondents have reduced the pay of the applicant by way of re-fixation arbitrarily and decided to make recovery of alleged overpayment unilaterally which is neither bonafide nor lawful. The applicant has retired on 31.10.15.

Hence the present application is filed.

3. The respondents in their reply have stated that the applicant was initially appointed as Apprentices PWI Gr.III/JE-II/P.Way in the pay scale of Rs.5000-8000 w.e.f. 1.9.83 and joined the post on 23.3.84 after curtailment of apprenticeship period from 1 year to six months. He got first promotion as JE-I/P.Way w.e.f. 14.10.98 in the scale of Rs.5500-9000/-. Subsequently Railway Board vide their letter dated 14.10.90 in order to provide an opportunity to the Departmental Graduate Engineer working in pay scale Rs.1600-2660/- (Rs.5500-9000) for getting next higher grade i.e. Rs.2000-3200/- (Rs.6500-10,500) though the process of LDCE against the vacancy of 10% DR quota on curtailment of 20% vacancy of Technical Supervisor prescribed for direct recruitment of Engg. Graduate through RRB.

The applicant got second promotion to the post of Section Engg./P.Way w.e.f. 19.7.2000 in the scale of RS.6500-10,500/-. However, after merger of grades carrying same Grade Pay i.e. JE-II with JE-I and SE with SSE, he got

only one promotion on completion of 24 years of service as on 1.9.08 and became eligible for second MACP, which has been given to him.

Subsequently, on receipt of Railway Board's clarification dated 18.8.15, the effective date of grant of 2nd MACP was rectified to 21.9.09 instead of 1.9.08 vide office order dated 24.9.15. Therefore he is not entitled for grant of 3rd MACP as per Railway Board's aforesaid decision dated 18.8.15.

4. We have heard the Id. Counsels from both sides and perused the records and have given thoughtful consideration to the issue involved in this OA.

5. The overwhelming argument advanced by the Id. Counsel for the applicant at the time of hearing was that the applicant's promotion to the post of Section Engineer (P.Way) through LDCE has to be treated as a promotion and not as a direct recruitment. It was his contention that even though the posts were initially earmarked for direct recruitment, they were subsequently diverted to be filled through LDCE and therefore this being a promotion and not a direct recruitment, he is entitled for benefits under MACP scheme applicable to him as an employee whose regular service began at the time of his joining the department i.e. in 1984. In support of this argument he drew our attention to several communications where this mode of selection has been referred to as promotion.

His other argument was that other employees who were also Section Engineers (P.Way) like him have been granted the benefit of the 3rd MACP while he has been denied the same.

6. We have carefully considered the matter and we find the first argument of the applicant is devoid of merit. The fact is that the post against which the applicant was recruited or promoted was a direct recruitment post and in view of administrative exigencies, the respondents had decided to fill these posts through a different mechanism and not through the normal promotions and the mechanism that followed was through LDCE which prescribed certain minimum numbers of years of service to become eligible and based on merit in a written examination these posts were filled. In other words, they are like direct recruitment with the only difference that it is not through open examination and only eligible departmental candidates can appear in the written test. Moreover, once selected through this process they get the same

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pay scale and other benefits as if they were directly recruited. This includes a substantial raise in their pay scale and salaries if they happen to be one like the applicant who directly became Section Engineer from the post of PWI, Grade II. It cannot be argued that these are akin to normal promotions because if these posts were filled in normal procedure, it would have taken several more years for the applicant to reach this position.

7. We are therefore inclined to agree with the respondents' argument that he cannot, after having availed the benefit of promotion through an unusual mode of recruitment claim in addition, every other benefit which goes with the normal promotion. In fact the cases of his colleagues that he has mentioned in the OA do not fall in the same category of the applicant because his other colleagues who got the benefit of MACP were not posted as Section Engineers through the mechanism of LDCE but through normal promotion channel under the service rules and they became Section Engineers much later than the applicant.

8. At the time of argument, Id. Counsel for the applicant and the respondents both drew our attention to letter of Railway Board dated 12.9.12 (Annexure A/13) for different reasons. The Ld. Counsel for the applicant drew our attention to paragraph (ii) which states as under :

"if the relevant RRs prescribe a promotion quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP scheme."

While the Id. Counsel for the respondents quoted paragraph (i) as :

"if the relevant RRS provide for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP scheme."

Naturally the circular has to be seen in harmonious totality. We conclude from the circular that notwithstanding the use of the term "promotion" quoted in paragraph (ii) the spirit as well as the letter of the circular suggests that if an employee gets a Grade prescribed for the direct recruitment through

LDCE/GDCE, the same has to be treated as direct recruitment for the purpose of grant of financial upgradation under MACP and the past service rendered in a lower pay scale/grade pay shall not be counted for the purpose of MACP scheme. The applicant has not challenged the circular.

9. In view of the discussions above and considering the facts and circumstances of the case, we think that the applicant is unable to conclusively establish any error or illegality in the decision taken by the respondents denying him the benefits of 3rd MACP. In fact, we are of this clear view that the respondents' actions are as per existing rules and regulations. We therefore do not see any necessity to interfere in this matter.

10. The OA is accordingly dismissed. No order is passed as to costs.

(U.K.VARMA)
MEMBER (A)

10.11.7
(BIDISHA BANERJEE)
MEMBER (J)

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