

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/55/2012

Date of Reserve: 29.01.2019

Date of Order: 25.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Karunakar Bhoi, aged about 65 years, S/o. Late Budhi Bhoi, resident –  
At/PO-Rasulgarh, Bhubaneswar-10, Dist-Khurda, Odisha, PIN-751 010.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through :

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751 001.
3. Assistant Director, Staff, O/o. C.P.M.G., At/PO-Bhubaneswar, Dist-Khurda-751 001.
4. Director of Accounts (Postal), At-Mahanadi Vihar, PO-Naya Bazar, Dist-Cuttack-753 004.

...Respondents

By the Advocate(s)-Mr.A.Pradhan

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired employee of the Department of Posts. In this Original Application under Section 19 of the A.T.Act, 1985, he has prayed for the following reliefs:

“...to direct the Respondents to consider the case of the applicant for promotion/financial upgradation to BCR cadre/scale of pay w.e.f. 17.5.2000 as per G.I.Dept. of Posts Lr.No.37-SO/91-SPB.I dtd. 6.1.1993 and fix the pay and pension of applicant correctly.

And direct to refund Rs.17,252/- with interest and to calculate his arrear salary, pension and retiral dues and pay the same with 12% interest.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice”.

2. Brief facts leading to filing of this O.A. are as follows:

Applicant was recruited as Gr.D in R.M.S. 'K' Division in the year 1972. He was thereafter promoted as Mail Guard in the year 1982. Again, he was promoted as Sorting Assistant in the year 1983. Subsequently, he was further promoted to LSG cadre under TBOP Scheme in the year 1993. He was granted the benefit of promotion to BCR cadre vide order dated 10.8.2009 and the benefit of 3<sup>rd</sup> financial upgradation under the MACP Scheme with effect from 1.9.2008. Thereafter, the applicant retired from service on 28.02.2010. He was sanctioned provisional pension to the tune of Rs.8670/- vide order dated 23.2.2010. Applicant was granted. Vide communication dated 21.03.2011(A/4) the Senior Accounts Officer/Pension in the office of the Director of Accounts (Postal), Cuttack communicated to the Sr.Post Master, GPO, Bhubaneswar under intimation to the applicant which reads thus:

"The Asst. Director(Accounts), O/o. The CPMG, Orissa, Bhubaneswar, having in his letter No.AP/4-560/2008 dated 11.03.2011 sanctioned the payment of Rs.3,04,337/- (Rupees Three Lakh four Thousand Two hundred & twenty seven) only being the commuted value of Rs.3094/- out of the pension Rs.7735/- per month granted to Sri Karunakar Bhoi, Ex-PA, holder of PPO No.CK-6171-P.

2.Reduced pension of Rs.4641/- (Rupees Four thousand six hundred & forty one) only per month consequent on commutation is payable to Sri Karunakar Bhoi, from the date of receipt of commuted value of the pension by him/her or 3 months from the date of issue of this authority by this office whichever is earlier or from the 1<sup>st</sup> day of the month as per Rule 6(1)(c) of CCS(Commutation of Pension) Rules, 1981. The date from which the reduced pension is effective may be noted in both halves of PPOs under attestation treating this letter an authority.

3.A separate bill should be prepared for the payment of the commuted money quoting the No. And date of this letter as authority & paid vouchers should be forwarded to this office in a registered cover in separate schedule along with this letter in original".

In consequence of the above, the applicant was asked to deposit a sum of Rs.17,252/- towards excess payment of pension. The applicant deposited the said amount on 18.4.2011. However, the applicant being aggrieved with this, submitted a representation dated 7.5.2011 to Respondent No.2 praying therein to upgrade his pay to BCR scale of pay with effect from 17.5.2003 and to fix his pension in correct stage and to return the amount of Rs.17,252/- which has been deposited by him with interest scale of pay in the year 2000. Since no action was taken, the

applicant approached this Tribunal in O.A.No.476 of 2011 and this Tribunal vide order dated 27.7.2011 disposed of the said O.A. with direction to Respondent No.2 to consider and dispose of the representation of the applicant as aforesaid within a stipulated time. In compliance with the above direction, the Respondents issued an order dated 7.10.2011(A/7) rejected the representation of the applicant on the ground that the applicant is not entitled to any relief as claimed by him. Aggrieved with this, the applicant has moved this Tribunal in the instant O.A. seeking reliefs as mentioned above.

3. Applicant in support of reliefs sought for has urged the grounds as under:

“That the Respondent No.2 without considering the genuine grievance of the applicant properly simply rejected the case of the applicant on the ground that the case of the applicant is not covered under any rules to get BCR after 10 years of getting TBOP, secondly, BCR scheme has become redundant after the introduction of MACP w.e.f. 1.9.08, so the applicant cannot get BCR as he had not completed 26 years of service, when the scheme became redundant and thirdly the applicant is not entitled to get MACPIII and ranting of MACP-III is also irregular to applicant and thus, the Respondent No.2 rejected the case of the applicant.

Earlier in normal course even OC officials are entitled to get promotion/financial upgradation after 26 years of service in one cadre, i.e., 2<sup>nd</sup> financial upgradation. In order to give better promotional avenue the MACP-I, II & III was introduced w.e.f. 1.9.2008 substituting the earlier mode of promotion i.e., TBOP & BCR, i.e., after completion of 16 years and 26 years. The MACP-I, II & III being given after 10, 20 & 30 years of service in one cadre but even the MACP has not been given to applicant

though he has rendered 27 years of service in P.A. cadre has not been given neither MACP-II or BCR promotion/financial upgradation. By introducing MACP, the applicant has been put to disadvantageous position. It is never the intention of legislature, administration and policy of Govt. to harass or to deprive any benefit to any employee. BCR scheme has been abolished by replacement of MACP, which is beneficial to employees but the same has been in a manner to put the applicant into disadvantageous position.

For that the applicant is entitled to get BCR scale of pay w.e.f 17.5.2000 as he has completed 17 years of service in the cadre of P.A. and there was not single BCR PA was available in the entire recruiting unit, so he is entitled to get promotion/financial upgradation to BCR in view of G.I. Dept. Of Posts. Lr.No.37-50/91-SPB.I dated 6.1.1993.

For that reduction of pension without any notice show cause and opportunity of being heard by Respondent No.4 is violation of the order of Respondent No.2 and the same is arbitrary, mala fide, whimsical and colourable exercise of power and the same is liable to be set aside".

4. Per contra, respondents have a detailed counter. While not disputing the factual aspects of the matter, they have pointed out that as per the Assured Career Progression Scheme, (sic) an official is entitled to the benefit of three promotion/upgradation. According to respondents, the audit raised objection limiting the benefit of the applicant to three promotions, i.e., Mail Guard, Sorting Assistant and TBOP. This being the position, the excess amount paid to the applicant on account of promotion under BCR and MACP-III granted to him wrongly was sought to be recovered and resultantly, an amount of Rs.17,252/- was directed to be recovered from the applicant. Aggrieved with this, the applicant filed

O.A.No.576/2011 and as already indicated above and, in pursuance of the direction of this Tribunal, representation dated 7.5.2011 was considered and a reasoned order dated 7.10.2011 (A/7) was passed which is impugned and called in question in this O.A. According to respondents, applicant is entitled to only three promotions and therefore, Grade Pay of Rs.2800 granted to him under the TBOP Scheme is in consonance with the rules. Respondents have pointed out that there is no provision for maintaining roster for SC/ST candidates for BCR promotion on completion of 17 years service in view of clarificatory instructions issued by the Department of Posts vide letter dated 2.7.1997 as circulated vide CPMG, Odisha Circle letter dated 27.5.1998. Therefore, applicant was promoted under BCR with effect from 1.7.2009 on completion of 26 years service. According to respondents, the orders for grant of the benefit under the MACP Scheme with effect from 01.09.2008 was received on 24.09.2009 i.e., after BCR scheme had been implemented. As per ruling of MACP the applicant is not entitled to BCR w.e.f. 01.07.2009 as MACP was effective from 01.09.2008. Therefore, on scrutiny it came to light that the applicant is not entitled to MACP III with Grade Pay of Rs.4200 w.e.f. 01.09.2008 since he had already availed of three promotions/financial upgradation after his joining the Govt. Service. Respondents have therefore, prayed that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed a rejoinder in which he has stated that applicant's journey in service was from ED/GDS to Gr.D, Postman/Mail Guard & Sorting Assistant was by virtue of his merit being qualified in the Departmental Examination and he started his service career as Sorting Assistant on 17.5.1993. From 17.5.1993 to 28.2.2010 no promotion has been given to the applicant during his 27 years service in the cadre of Postal/Sorting Assistant. Besides, the applicant has stated that the action of the respondents in reducing his pension and consequential recovery being violative of the principles of natural is not sustainable in the eye of law.

6. We have heard the learned counsels for both the sides and perused the records. At the outset, we would like to note that applicant's service career to the Department started when he was recruited as Gr.D in the year 1972 and not in the year 1993 as has been mentioned in the rejoinder. However, it is an admitted fact that from Gr.D post the applicant was promoted as Mail Guard in the year 1982, as Sorting Assistant in the year 1983 and LSG cadre under TBOP Scheme in the year 1993. He was also granted the benefit of BCR cadre vide order dated 10.8.2009 and the 3<sup>rd</sup> MACP Scheme with effect from 1.9.2008. The benefit of BCR and 3<sup>rd</sup> MACP, as contended by the respondents having been granted wrongly, this necessitated reduction in pension as well as consequential recovery of a sum of Rs.17,252/-. This action, in our considered view, is against the

principles of natural justice inasmuch as before taking recourse to such an action to the prejudice of the applicant, it was obligatory on the part of the respondents to put him to notice on the proposed reduction and consequential recovery. However, the Tribunal is not oblivious of the fact that the benefit under the BCR and MACP Scheme cannot run concurrently. At the same time, it is to be noted that the respondents have pointed out that the applicant was not entitled to the benefit either under the BCR Scheme or the MACP Scheme since, as per the prevalent rule, promotions/financial upgradations earned by the applicant should be restricted to three. However, the respondents have not produced any documentary evidence to show that in between the promotions earned by the applicant from Gr.D to BCR cadre and the financial benefit granted under the MACP Scheme, the posts to which such promotions were made carried the higher scale of pay independent to each other including the benefit under the MACP Scheme and there was no merger took place in between the promoted posts on account of the recommendations of 6<sup>th</sup> CPC. Neither of the parties has come up with a clear picture on the promotions availed and financial benefits granted to the applicant with the prescribed scale of pay/Grade Pay which is the basic and fundamental requirement to consider entitlement of the applicant to BCR or MACP, as the case may be. Be that as it may, since the respondents before taking

action to the prejudice of the applicant did not put him to notice to show cause, the impugned order dated 7.10.2011(A/7) is liable to be quashed and set aside. Ordered accordingly. The Respondents are directed to refund the amount of Rs.17,252/- to the applicant forthwith.

7. With the observation and direction as aforesaid, this O.A. is allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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