

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 154/2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Ajit Kumar Mishra, aged about 50 years, S/o Late Sasanka Sekhar Mishra, At/PO – Karilopatna, PS – Patkura, Dist. – Kendrapara, at present working as Station Superintendent, Cuttack Railway Station, Cuttack.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, Jatni, Khurda.
3. Senior Divisional Personnel Manager, East Coast Railway, Khurda Road Division, Jatni, Khurda.

.....Respondents.

For the applicant : Mr.P.K.Chand, counsel

For the respondents: Ms.S.L.Patnaik, counsel

Heard & reserved on : 16.1.2019

Order on : 24.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for following reliefs:-

"In the above facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to quash the order dtd. 7.11.2011 (Annexure A/2) to the extend in granting G.P.Rs.4600/- to the applicant and further be held that the applicant is entitled to receive Grade pay Rs.4800/- from 1.9.2008 in Third MACP.

And further be pleased to direct the respondents to pay G.P.Rs.4800/- of Third MACP to the applicant from 1.9.2008 with all arrear dues and interest."

2. The applicant was first appointed as Assistant Station Master (in short ASM) in 1.8.1984 and promoted as Station Master (in short SM) in December, 1987. While working as SM in Adra Division, he was transferred to Khurda Road division on 16.1.1991 after accepting the reversion to the grade of ASM with the Grade pay of Rs. 2800/-, but his pay was protected. Then he was promoted as SM in Khurda Road division on 20.8.1993 with the Grade Pay (in short GP) of Rs. 4200/-. Then he was promoted to the post of Deputy Station

Superintendent (in short DSS), which was merged with the post of SM with GP of Rs. 4200/- after 6th Central Pay Commission (in short CPC) report. Then the applicant was promoted to the post of Station Superintendent (in short SS) on 29.4.2010 with the GP of Rs. 4600/-. Thereafter, vide order dated 8.6.2011 (Annexure A/1) and dated 7.11.2011 (annexure A/2), the applicant was allowed the benefit of financial upgradation under third MACP to the GP of Rs. 4600/- w.e.f. 1.9.2008.

3. The applicant claims the benefit of third MACP to the GP of Rs. 4800/- w.e.f. 1.9.2008, on the ground that he was first promoted to the rank of SM in December, 1987 in Adra division. Although he was transferred to Khurda Road division after accepting reversion to lower post of ASM, his financial benefit was protected and since the MACP is financial upgradation, it should not be affected by the inter-division transfer at lower post. Hence, as per the applicant, he would be deemed to be promoted to SM in December, 1987 to GP of Rs. 4200/- and will be entitled for 2nd MACP to GP of Rs. 4600/- w.e.f. 1997 (i.e. from 1.9.2008) and 3rd MACP to the GP of Rs. 4800/- w.e.f. 2007 (i.e. from 1.9.2008) instead of the 3rd MACP benefit to the GP of Rs. 4600/- w.e.f. 1.9.2008, granted by the respondents as per the order dated 8.6.2011 (A/1).

4. The respondents have filed counter, stating that as per para 24 of the Railway Board circular dated 10.6.2009 (RBE No. 101/2009) by which the MACP Scheme was extended to the Railway servants, if an employee seeks unilateral transfer to a lower scale, he will be entitled for 2nd and 3rd MACP benefit after completion of 20/30 years of regular service from the date of his initial appointment. The applicant got promoted to the rank of SM at GP of Rs. 4200/- w.e.f. 20.8.1993 under Khurda Road division, which will be counted as second upgradation benefit. He got next promotion on 29.4.2010 to the rank of SS with GP of Rs. 4600/-. Hence, the applicant will be entitled for 3rd MACP benefit after 10 years from 20.8.1993, i.e. after 19.8.2003 and since the MACP Scheme was w.e.f. 1.9.2008, the 3rd MACP benefit to the applicant has been allowed w.e.f. 1.9.2008. Accordingly, the mistake in the order dated 8.6.2011 (A/1) was corrected vide order dated 7.11.2011 (A/2) treating the 2nd MACP of Rs. 4600/- granted to the applicant as 3rd MACP benefit.

5. The applicant, in reply to the counter, has filed the Rejoinder. Vide para 4 of the Rejoinder, it is stated that vide order dated 19.5.2016 (Annexure A/8), the respondents have allowed the benefit of 3rd MACP to the applicant to the GP of Rs. 4800/- w.e.f. 13.8.2014, alongwith some other similarly placed employees who have also been granted the benefit of 3rd MACP to the GP of Rs. 4800/-. It is also stated that as per the RBE No. 08/2013 dated 31.1.2013 (Annexure A/9), the employees in whose case the benefit of pay protection was allowed at

the time of unilateral transfer, the promotions earned in the previous organization has to be reckoned for the purpose of MACP Scheme.

6. We have heard learned counsel for the applicant, who argued that as per the Railway Board circular dated 31.1.2013 (A/9), since the applicant was allowed pay protection, promotion in previous station will have to be reckoned and hence, the applicant will be treated to have been promoted to SM rank with GP of Rs. 4200/- w.e.f. December, 1987. As he got his next promotion to the rank of SS with GP of Rs. 4600/- w.e.f 29.4.2010, he will be entitled for 3rd MACP benefit w.e.f. 1.9.2008.

7. Learned counsel for the respondents submitted that as explained in para 2 of the counter and the provisions under the para 24 of the circular on MACP, the applicant has been correctly granted the benefit of the MACP to the GP of Rs. 4600/- w.e.f. 1.9.2008.

8. We have carefully gone through the pleadings on record and the relevant circulars of the Railway Board referred to by the applicant and respondents in their pleadings. Para 24 of the RBE No. 101/2009, extending the MACP Scheme to the Railways, it is stated as under:-

"24. In case, an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial upgradations on completion of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization."

9. The Railway Board circular dated 31.1.2013 (A/9) states as under:-

"(i) Financial upgradation under MACPS in the case of staff who joined another unit/organization on request.

Railway board's letter of even number dated 28.12.2010 provides that in case of transfer including unilateral transfer on request, regular service rendered in previous organization/office shall be counted along with the regular service in the new organization/office for the purpose of getting financial upgradations under the MACP scheme. However, financial upgradation under the MACP scheme shall be allowed in the immediate next higher grade pay in the hierarchy of revised Pay Bands as given in Railway Services (Revised Pay) Rules, 2008. It is now further clarified that wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower Post/Grade from the promoted Post/Grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office. In respect of those cases, where benefit of pay protection have been allowed at the time of unilateral transfer to other organization/unit and thus the employee had carried the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of MACP Scheme."

Hence, the Railway Board circulars RBE No. 101/2009 dated 10.6.2009 (A/5) and dated 31.1.2013 (A/9) stipulate that in case of an employee transferred to another division on his own request on reversion to lower post, the provisions under para 24 will apply and the applicant will be allowed for 2nd and 3rd MACP benefit on completion of 20/30 years of regular service in the earlier division, which will be counted alongwith the service in the new division. Further, the applicant was allowed the benefit of pay protection on unilateral transfer, for which, his earlier promotion will be counted for MACP purpose.

10. It is noticed that the provisions of para 24 of the RBE No. 101/2009 have not been modified except for the regular service to be counted as per the old division instead of the new division as stated in para 24. In view of the specific provision in para 24, the applicant's eligibility for 2nd and 3rd MACP benefit will have to be considered from 20 and 30 years of regular service counting from the date of initial joining against the regular post in old division, i.e. from 13.8.1984 (as stated in the order dated 19.5.2016 (A/8). In this case the stagnation in the scale of SM for more than 10 years/20 years will not be considered for the reason that the applicant had opted for transfer on a lower post on reversion, for which, the stagnation of the applicant in the scale of Station Master is not due to lack of promotional avenues, but due to choice of the applicant to be transferred to a post with lower scale. Hence, the provision of grant of 2nd and 3rd MACP benefit after 20/30 years service as per para 24 of RBE No. 101/2009 will apply to the case of the applicant.

11. Applying the para 24 of the circular RBE No. 101/2009 (Annexure A/5) to the case of the applicant, it would be seen that he completed 20 years of regular service on 12.8.2004, when his 2nd upgradation will be due. Since the MACP Scheme was introduced w.e.f. 1.9.2008, the benefit of 2nd MACP to the GP of Rs. 4600/- will be available for the applicant from 1.9.2008. Hence, the order dated 8.6.2011 (A/1) has been rightly passed by the competent authority. The benefit of 3rd MACP will be available to the applicant after completion of 30 years of regular service, i.e. from 13.8.2014 and hence, the order dated 19.5.2016 (Annexure A/8 attached to the Rejoinder filed by the applicant) has been passed correctly by the respondents in accordance with the circular of the Railway Board on MACP Scheme. The applicant has not furnished any rule or circular of the Railway Board in support of the contention that even if he was transferred unilaterally, the benefit of MACP will be available in case of stagnation in a particular pay scale for more than 10 years.

12. In view of the discussions above, it is observed that the order dated 7.11.2011 (Annexure A/2), stipulating that the MACP benefit granted to the

applicant vide order dated 8.6.2011 will be treated as 3rd MACP instead of 2nd MACP benefit for the applicant, is not tenable, in view of the subsequent order dated 19.5.2016 (Annexure A/9), granting 3rd MACP benefit to the applicant from 13.8.2014. The impugned order dated 7.11.2011 (Annexure A/2) is liable to be quashed and hence, it is accordingly quashed. However, we are unable to allow any other relief prayed for in this OA, in view of discussions at paragraph 9 to 11 of this order. The OA is disposed of accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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