

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/886 OF 2014
Cuttack, this the 18th day of December, 2018

CORAM
HON'BLE MR. G.C. PATI, MEMBER (A)
HON'BLE MR. S. K. MISHRA, MEMBER(J)

Bijaya Keta Behera, aged about 52 years, S/o. Padmanav Behera, Permanent resident of Vill.-Nahulia, PO-Giria, Via-Rajkanika, Dist-Kendrapara, at present Qr. No.D/59-G, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.

...Applicant

(By the Advocate- M/s. N. R. Routray, J. Bhatt, J. Pradhan, T. K. Choudhury, S. K. Mohanty)

-VERSUS-

Union of India Represented through

1. The General Manger, East Coast Railway, E.CoR, Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Financial Advisor & Chief Accounts Officer, E.Co. Rly, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Dy. Financial Advisor and Chief Accounts Officer (S & W), East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Additional Financial Advisor (Admn.)/, East Coast Railway, E.Co.Rly. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

(By the Advocate- Mr. T. Rath)

ORDER

S. K. MISHRA, MEMBER (J):

Applicant had initially been appointed as Junior Stenographer in the scale of Rs.1200-2040/- in the year 1987. While working as such, he had appeared in Appendix-II examination and he having come out successful, was provisionally absorbed as Junior Accounts Assistant (AAO) in the same scale of i.e., Rs.1200-2040/- vide order dated 29.7.1992. On completion of three

years service and having been found eligible, applicant was promoted to the post of Accounts Assistant in the scale of Rs.1400-2600 vide order dated 16.01.1996. He was further promoted to the post of ISA in the scale of Rs.6500-10500/- vide order dated 21.05.2004. In view of the recommendations of the 6th CPC, MACP Scheme came into force with effect from 1.9.2008 and in terms of the said Scheme, three financial upgradations are allowed on completion of 10, 20 & 30 years service to an employee who has not got any promotion/financial upgradation. As per Condition No.1 and 28 of the Scheme, if an employee has completed 10 years of service in a particular grade after getting 2nd promotion, then he will be given the 3rd financial upgradation on completion of 10 years in that grade. While the matter stood thus, vide RBE No.124/2008 dated 22.09.2008 the Railway Board issued order wherein certain categories of posts merged together to a common Grade Pay. As per this order, the scale of Rs.6500-10500/- and Rs.7450-11500 merged together carrying the Grade Pay of Rs.4800/-.

According to applicant, he having completed ten years service on the 2nd promotional post submitted representations dated 19.01.2013 and 17.6.2014 (A/7 series) followed by a subsequent representation dated 10.9.2014 (A/8) to the concerned authorities for grant of 3rd financial upgradation under the MACP Scheme. The Respondents have A/9 dated 17.09.2014 rejected the claim of the applicant on the ground that the movement from Junior Stenographer to JAA is a promotion in terms of Para-211, Chapter-II of IREM, Vol-I. Hence, aggrieved by this, the applicant has filed the present O.A. praying for the reliefs as mentioned above.

2. It is the case of the applicant that Para-222, Chapter-II of IREM Vol.I nowhere stipulates that change of category and/or movement/switchover from

one cadre to another , in the instant case from Junior Stenographer to JAA, carrying the same scale of pay to be treated as promotion. Secondly, the applicant has relied on the decision dated 27.07.2012 of this Tribunal in O.A.No.153 of 2011 wherein this Tribunal quashed the impugned order of rejection on the ground that the conversion/movement/switchover from the post of Junior Stenographer to JAA at the relevant time carrying the same scale of pay cannot be construed as promotion. It was further directed by this Tribunal that the railway authorities should grant 3rd financial upgradation in favour of the applicants therein and accordingly, the respondents have complied with the said order.

3. On the other hand, the respondents have contested the claim of the applicant by filing a detailed counter. According to Respondents, the applicant has already availed three promotions considering his shifting/promotion from Jr. Stenographer to JAA as first promotion (as the change of category from Jr. Stenographer to JAA has been reckoned as promotion for the purpose of MACPS as defined by the Railway Board, from JAA to AA as second promotion and from AA to ISA as third promotion. It has been submitted that clarifying the doubt, the Railway Board in consultation with the Establishment Directorate has clearly mentioned as a matter of policy decision vide their letter dated 4.3.2010 that the movement from Jr. Steno to JAA is to be treated a case of promotion for the purpose of MACP Scheme in terms of Para – 211, Ch.II of IREM, Vol.1.1. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsels for both the sides and perused the records including the rejoinder to the counter filed by the applicant.

5. The applicant has challenged the impugned order dated 17.09.2014(A/9) yy which he has been deprived of the 3rd financial upgradation under the MACP Scheme. It is the case of the applicant that his movement, i.e., change of category from Junior Stenographer to JAA has been considered as promotion by the respondents and thereby he has been denied the benefit of 3rd financial upgradation under the MACP Scheme. In this regard a reference has been made to Para-211 of Chapter-II of IREM Vol.I. The learned counsel for the applicant has drawn the attention of this Tribunal to Board's instruction dated 29.7.1992 (A/2) in support of his submission that the applicant who was working as Junior Stenographer has been transferred to Clerical cadre as JAA in the same scale of pay, i.e. 1200-2040/-. Learned counsel for the respondents on the other hand submitted that this is a case of promotion and in this regard he has drawn the attention of this Tribunal to Note 1 & 3 wherein it has been mentioned that the promotions of the above named staff are provisional. Learned counsel for the applicant submits that the said note is applicable only to the employees whose names find place in Pt. B of the order and is not at all relevant or applicable to the applicant as whose name has been mentioned at Part-A of the order. Learned counsel for the applicant also submits that this case is covered by the decision dated 27.07.2012 of this Tribunal in O.A.No.153/2011 wherein similarly placed persons as that of the applicant in the present O.A. have been granted the same reliefs.

6. We have gone through the order of this Tribunal cited supra. Para-5 & 6 of the said order clearly show that the facts and circumstances of the said case are quite similar to the facts and circumstances of the present case and hence, this Tribunal finds that the ratio decided by this Tribunal in

O.A.No.153/2011 is fully applicable to the case in hand. At this juncture, we may note that this aspect has not been controverted by the respondents in their counter. However, leaned counsel for the respondents submitted that the earlier judgment passed vide A/10 should be treated as per incuriam as the instructions issued vide R/1 dated 14.1.1995 were not the subject matter of consideration in O.A.No.153/11. It may be a fact that the said instruction was not brought to the notice of this Tribunal in the said case. But this Tribunal cannot overlook the fact that the order passed vide A/10 has been implemented by the respondents themselves. Therefore, the plea that the said document was also not within the knowledge of the respondents nor could not be produced when the decision in O.A.No.153/11 was taken by this Tribunal cannot be accepted.

7. In view of the discussions held above, we are of the opinion that the ratio decided by this Tribunal in O.A.No.153 of 2011 is fully applicable to the case of the applicant. Accordingly, we quash the impugned order dated 17.09.2014(A/9) in so far as the applicant is concerned and direct the respondents to take into account the period of qualifying service rendered by the applicant in the grade of Junior Stenographer together with the qualifying service rendered as Junior Account Assistant for the purpose of 3rd MACP and accordingly, grant him the benefits thereon with effect the date the same is due and admissible.

8. In the result, the O.A. is allowed to the extent indicated above. No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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