

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 310/2012

Present: Hon'ble Mr.Gokul Chandra Pati, Administrative Member
Hon'ble Mr.Swarup Kumar Mishra, Judicial Member

D.N.Adhikari, aged about 62 years, S/o Late K.C.Adhikari of Vill-Mandargordh, PO- Naikuri, via/PS- Tamluk, Dist.- Purba Medinapur, West Bengal, retired Senior Clerk (PCR), O/o Deputy Chief Engineer/Con./1/East Coast Railway/Sambalpur.

.....Applicant.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekhpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer/Construction/ East Coast Railway, Rail Vihar, Chandrasekhpur, Bhubaneswar, Dist. – Khurda.
3. Senior Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekhpur, Bhubaneswar, Dist. – Khurda.
4. Deputy Chief Engineer (Con.)/1, East Coast Railway, At/PO- Khetrarajpur, Town/Dist.- Sambalpur.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 17.12.2018

Order on : 2.1.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed by the applicant Sri D.N. Adhikari under section 19 of the Administrative Tribunals Act, 1985 with the prayer for following reliefs:-

- (a) To quash the impugned order of rejection dated 2.11.2011 under Annexure A/7.
- (b) And to direct the Respondents to grant 2nd financial upgradation under the MACP scheme w.e.f. 1.9.2008 by granting Grade Pay of Rs.4200/- and release the differential arrear salary, pension, DCRG, commuted value of pension and leave salary with 12% interest for the delayed period of payment."

2. The facts in this case are undisputed. The applicant was initially engaged as a casual dresser Gr. II under the Construction department and he was given temporary status w.e.f. 1.01.1981. Then he was absorbed as a PCR Khalasi post in the pay scale Rs. 750-940/- w.e.f. 1.11.1990 with same pay scale and his service was regularized against the post of PCR Junior Clerk w.e.f. 14.3.1997 in the pay scale of Rs. 950-1500/- vide order dated 11.12.1997 (Annexure-A/2). Thereafter, he was allowed to officiate against a higher technical post on ad-hoc basis till 18.2.2002. On 19.2.2002, he was re-designated as senior clerk, which was his cadre post in the pay scale of Rs. 5200-20200/- plus Grade Pay of Rs. 2800/- and he retired from the said post on 30.4.2011.

3. On 16.3.2011, a representation was filed by the applicant for upgradation under Assured Career Progression (in short ACP) w.e.f 1.10.1999 and under Modified Assured Career Progression (in short MACP) to the grade pay of Rs. 4200/- w.e.f. 1.09.2008. This representation has been rejected by the respondent no.2 vide the impugned order dated 2.11.2011 (Annexure A/7) by stating as under:-

".....as you have been granted Ty. Status w.e.f. 1.1.81, absorbed against PCR Khalasi post w.e.f. 1.11.90 in scale Rs.750-940/-/ Rs.,2550-3200/- and was subsequently absorbed/regularised against PCR Jr. Clerk post in scale Rs.950-1500/- /Rs.3050-4590/- / Rs.5200-20,200/- PB-1 in Grade Pay Rs.1900/- (in 6th PC) w.e.f. 14.3.1997 you are not eligible to get ACP benefit in scale Rs.4500-7000/- as Sr. Clerk after completion of 24 years of regular service w.e.f. 30.11.2009 which is later to the cut off date i.e. 31.8.2008 from which grant of ACP seized. Further, as regards to grant of MACP it is informed that, you have completed 10/20 years regular service as on 30.11.95 and 30.11.2005 respectively taking into account 50% of Ty. Status service. As you have been granted one regular promotion as Jr.

Clerk in Grade Pay Rs.1900/-, you are eligible to get next grade pay Rs.2000/- as per hierarchy of Pay Band w.e.f. 1.9.2008 instead of Rs.4200/-. However, at the time of retirement you have been retired from railway service in Grade Pay Rs.2800/- as ad hoc Sr.Clerk as per extant rule. As such you are not entitled to get Grade Pay Rs.4200/- as per extant order."

4. The counter filed by the respondents by stating that had the applicant not been promoted, he would have got the benefit of two higher grade pay of Rs. 1900/- and Rs. 2000/- under MACP as his initial appointment on regularization was at grade pay of Rs. 1800/-, since his total length of eligible service period is 25 years 5 months for which he was entitled for two MACP benefits. Actually, the applicant was in the initial post with grade pay of Rs. 1800/- and promoted/regularized as Junior Clerk in the grade pay of Rs. 1900/-. Then he was allowed to officiate against the post of Senior Clerk (ad-hoc) with the grade pay of Rs. 2800/- and he was paid all the retirement benefits with the last pay scale of Senior Clerk with grade pay of Rs. 2800/-. It is stated in the counter that the applicant is not entitled for any additional benefit of ACP/MACP.

5. Rejoinder has been filed by the applicant in reply to the counter. It is stated in the rejoinder that the applicant throughout his career was working at a higher scale of pay as indicated in Annexure A/1 due to which the contention that he was regularised in the post of Khalasi is not correct. It is further stated that his service was regularised as a Junior Clerk in the higher pay scale which is his initial posting. His total qualifying service is more than 20 years as on 1.9.2008 and he retired from the service as a Senior Clerk with Grade pay of Rs.2800/- which implies that the applicant during his service has availed only one promotion.

6. Heard Mr.N.R.Routray, learned counsel for the applicant who pointed out the statement of the details salary drawn by the applicant duly authenticated by the respondents, copy of which is at Annexure A/1 to the OA. As shown in the statement he was appointed first as a Dresser Grade I in the scale of Rs.210-290/- which is higher than the minimum pay scale and he was promoted to Sup. Mistry Grade II in the higher scale of Rs.330-

480/- and then promoted to Sup. Mistry Grade I in the higher pay scale of Rs.380-560/-. He continued in the same grade after necessary revision on account of recommendations of 4th & 5th Pay Commissions. On 2.4.1997 the applicant was re-designated as JE Clerk II in the scale of Rs.5000-8000/-. On 1.12.2001 he was reverted and re-designated as Senior Clerk in the pay scale of Rs.4500-7000/- and his pay was fixed at Rs.5625/-. After revision of 6th pay Commission his pay was fixed in pay Bank Rs.5200-20,200/- with Grade Pay of Rs.2800/- at which he retired from service w.e.f. 30.4.2011. It was argued by Mr.Routray that the applicant has got only one promotion of Senior Clerk after being regularised as Junior Clerk w.e.f. 14.3.1997 vide order dated 11.12.1997 (Annexure A/2 to the OA). So effectively the applicant got only one promotion from Junior Clerk to Senior Clerk for which he is entitled to get at least one more upgradation of ACP/MACP. It was stressed by the learned counsel for the applicant that the applicant had never held the post of Group 'D' (Khalasi) w.e.f. 1.11.1990.

7. Heard Mr.S.K.Ojha, learned counsel for the respondents. It was submitted by the learned counsel for the respondents that the applicant was regularised as Class IV Khalasi w.e.f. 1.11.1990 as per the entry in the Service Book which was produced by the learned counsel at the time of hearing. He further pointed out that at page 16 of the Service Book the applicant was regularised as Junior Clerk w.e.f. 14.3.1997 and then designated as Senior Clerk w.e.f. 30.10.2002 with Grade Pay of Rs.2800/-. It was submitted that since his initial post against which he was regularised in 1.11.1990 was Khalasi, his subsequent promotions will be treated as promotion even if the order does not specifically says so in the light of the Apex Court decision in Union of India -vs- Puspa Rani & Ors. [2008 (II) SCC (L&S) 851]. Therefore he argued that his designation/regularisation as Junior Clerk as well as Senior Clerk will be counted as two promotions for which the applicant will not be entitled to any additional benefit under MACP scheme.

8. We have gone through the pleadings and also considered the submissions made by the learned counsels. The question is whether the

regularisation of the applicant as Junior Clerk w.e.f. 14.3.1997 will be considered as a promotion or it should be treated as a regularisation considering the fact that the applicant was working as such in the Construction Department from the date of his appointment. Learned counsel for the applicant emphasises that since the applicant from the date of his joining is working against the higher post of Junior Clerk as corroborated by the calculation sheet of the respondents at Annexure A/1 to the OA, his regularisation as a Junior Clerk w.e.f. 14.3.1997 should not be counted as a promotion. It is seen that the order dated 11.12.1997 by which the applicant was regularised as Junior Clerk (Annexure A/2 to the OA) states as under :

"In terms of Chief Project Manager/S.E. Railway/Bilaspur's office order No. 35/97 and Endorsement No. PB/CON-RES/PCR/Spl. Dated 14.3.1997, (1) Shri D.K.Ghosh (ad hoc) PA to CPM/S.E.Railway, Sambalpur in scale Rs.2000-3200/- (RSRP' 86) and (2) Shri D.N.Adhikari, (ad hoc) JE(W) under Sr. Section Engineer (HQ)/Con/Sambalpur is hereby regularised as JUNIOR CLERK in scale Rs.950-1500/- (RSRP'86) against the sanctioned PCR cadre of Junior Clerk of Chief Project Manager/S.E. Railway/Bilaspur's Unit."

9. The order dated 23.10.1990 by which the applicant was absorbed against the PCR Khalasi post in the pay scale of RS.750-940/- has not been enclosed although the fact of the order has been mentioned in the impugned order dated 2.11.2011 (Annexure A/7 to the OA) as well as in para 2(A) of the counter. In reply to the said para in the counter the applicant in the rejoinder has denied the fact generally that he was ever working against the post of Khalasi but no document has been enclosed in support of the contention of the respondents in the counter as well as in the Service Book of the applicant that he was regularised in the post of PCR Khalasi in the Group 'D'/ Class IV pay scale of Rs.750-940/- w.e.f. 1.11.1990. On the other hand the Service Book of the applicant which was produced by the learned counsel for the respondents at the time of hearing clearly mentioned that he was regularised in Class IV post of PCR Khalasi and this decision of the respondents have never been questioned or disputed by the applicant till 2011 when he represented claiming the benefit of ACP/MACP.

10. Under the guidelines of ACP/MACP the regular service of an employee is to be counted to be the qualifying service for the purpose of financial upgradation under the ACP/MACP scheme. The officiating or ad hoc promotions are not to be counted. Assuming that the applicant's contention that he was working in the pay scale of Junior Clerk from the date of joining in the Construction Department under the respondents as stated in the calculation sheet at Annexure A/1 to be correct, then that will not be counted as qualifying service for the purpose of ACP/MACP till such time the applicant is regularised. He was given the temporary status in 1981 and regularised in the post of PCR Khalasi in Group 'D' pay scale w.e.f. 1.11.1990 vide the order dated 23.10.1990 as stated in para 2(A) of the counter and this has never been disputed by the applicant. Hence, it is assumed that the applicant has accepted this order and his services have been regularised as PCR Khalasi in Group 'D' scale. The subsequent regularisation order vide order dated 11.12.1997 (Annexure A/2) where his services have been regularised as Junior Clerk which is admittedly at higher pay scale than the pay scale admissible to PCR Khalasi has to be treated as a promotion although the order dated 1.12.1997 does not mention that it is a promotion but if his regular service is counted then it will be clear that from 1.11.1990 till 14.3.1997 his regular post was that of Khalasi although he might be drawing higher pay scale on account of the fact that he was officiating against the post of Junior Clerk but that benefit of higher scale is not available to the applicant since it was not a regular post. So once the applicant was regularised as Junior Clerk then that will be considered as promotion or upgradation or financial upgradation since it involves undisputedly higher pay scale.

11. In this regard the judgment referred to by Mr.S.K.Ojha, learned counsel for the respondents in the case of Puspa Rani (supra) while interpreting promotion vis-a-vis upgradation, it is held as under :

31. In legal parlance, upgradation of a post involves the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the

employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment - D.P. Upadhyay vs. G.M., N.R. Baroda House.

32. The word 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post" - [State of Rajasthan vs. Fateh Chand Soni.](#)"

12. In view of the above judgment the promotion will imply advancement to higher position/rank and also advancement to a higher grade. If the regular post in which the applicant was working as on 14.3.1997 is considered then prior to that his service to be counted against the regular post of PCR Khalasi although he was officiating in the post of Junior Clerk but that will not be counted for the purpose of ACP. Hence his regularisation w.e.f. 14.3.1997 to the post of Junior Clerk meant the advancement of his regular service from the post of Khalasi to the post of Junior Clerk which is of the higher rank and higher pay scale also. Therefore it will imply to be the promotion by applying the ratio of the judgment in the case of Puspa Rani (*supra*). Even if the regularisation of the applicant vide order at Annexure A/2 dated 11.12.1997 is not considered to be definitely a movement to the next higher pay scale compared to the earlier regular pay scale of the applicant. Hence it has to be treated as a promotion and we are unable to accept the contention of the learned counsel for the applicant that it is not a promotion.

13. In view of the above discussion we are of the view that after considering the regular service rendered by the applicant he has already availed two promotions, one to the post of Junior Clerk from Khalasi w.e.f. 14.3.1997 and another promotion to the post of Senior Clerk w.e.f. 30.10.2002. Even though he was placed in different ranks on officiating post at a higher pay scale the same will not be counted since those were not regular service. It is however, noted that nothing is mentioned in the pleadings about the confirmation of the applicant as Senior Clerk before his retirement and it is stated in the impugned order at Annexure A/7 that he

was re-designated as Senior Clerk (ad hoc) PCR in the scale Rs.5200-20,200/- with Grade Pay of Rs.2800/- vide order dated 2.11.2011. The retirement benefits have been allowed to the applicant based on the pay scale applicable to the Senior Clerk. The OA is therefore disposed of with direction to the respondents to consider the post of Senior Clerk (ad hoc) as a regular Senior Clerk for the purpose of retirement benefits payable to the applicant. The reliefs as prayed for with regard to ACP/MACP benefit as prayed for in the OA is not admissible under the rules.

14. The OA is disposed of accordingly. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath