

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A No. 322 of 2011

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

Hara Mohan Patra, aged about 50 years, S/o Mangala Patra, at present working as a Junior Clerk (ad hoc), O/o Deputy Chief Engineer (Construction), Jajpur Keonjhar Road, At/Po – Jajpur Road, Dist. – Jajpur. Orissa.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Senior Divisional Personnel Officer, E.Co.Rly., Waltair Division, At/PO – Dondaparthy, Dist. – Vishakhapatnam, Andhra Pradesh.
3. Senior Divisional Signal & Telecom Engineer, E.Co.Rly., Waltair Division, At/PO – Dondaparthy, Dist. – Vishakhapatnam, Andhra Pradesh.
4. Divisional Railway Manager, E.Co.Rly., Waltair Division, At/PO – Dondaparthy, Dist. – Vishakhapatnam, Andhra Pradesh.
5. Deputy Chief Engineer (Construction, E.Co. Rly., Jajpur Keonjhar Road, At/Po – Jajpur Road, Dist. – Jajpur, Orissa.

.....Respondents.

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

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

Heard & reserved on: 12.3.2019 Order on : 19.3.2019

ORDER

PER MR. GOKUL CHANDRA PATI, MEMBER(A) :-

In this case, the applicant had initially joined the railway service as casual khalasi on 24.11.1980 in Construction department and then he was regularized in service w.e.f. 5.3.1992 after being given temporary status w.e.f. 1.1.1984. He availed ad-hoc promotions in Construction department to the post of Material Chaser and then as Junior Clerk in the Grade Pay (in short GP) of Rs. 1900/- after 1.1.2006. On introduction of the Modified Assured Career Progression (in short MACP) Scheme w.e.f. 1.9.2008, the guidelines for the Scheme provide for ignoring the promotion to the grade which was merged subsequently with GP of Rs. 1800/- after acceptance of 6th pay commission recommendation. The applicant claims (para 4.5 & 4.8 of the OA) that after completion of more than 20 years of service on 1.9.2008, he was entitled for

the benefit under MACP to the GP of Rs. 2800/- w.e.f. 1.9.2008 as being a junior clerk, he was entitled for MACP benefit for the next promotion post of senior clerk with GP of Rs. 2800/-. But he was allowed the 1st and 2nd MACP benefit to the GP of Rs. 1900/- and Rs. 2000/- respectively by the respondents vide order dated 23.2.2011 (Ann.-A/5). Being aggrieved, he has filed this OA seeking the following reliefs:-

- "(1) To quash the order dtd. 23.2.2011 under Annexure A/5 so far this applicant is concerned.
- (2) To direct the respondents to grant Grade pay of Rs.2800/- as 2nd financial upgradation w.e.f. 1.9.2008.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;"

2. The applicant has also advanced another ground in the OA apart from claiming the GP applicable for his next promotional post by stating that similar issue was considered in the OA No. 966 & 967 of 2009 before Madras Bench of the Tribunal and the claims were allowed in these OAs. This was upheld by Hon'ble Madras High Court and Hon'ble Apex Court. Following the order of the Tribunal in above OAs, Chandigarh Bench of the Tribunal has also decided the OA No. 367 of 2015 vide order dated 14.9.2015 (Ann.-A/5b).

3. The stand of the respondents in the counter is that the applicant was regularized w.e.f. 5.3.1992 in the GP of Rs. 1800/- and although he was allowed ad-hoc promotions to higher GP of Rs. 1900/- in Construction department on local arrangements to manage the work and it was purely temporary. Such ad-hoc promotions do not confer any right on the applicant to claim higher GP under MACP scheme. For the purpose of the MACP benefits, he will be entitled for higher GP based on his pay as a regular employee and not on the base of which he was getting on account of ad-hoc promotion. Hence, he was entitled for the GP of Rs. 1900/- on 1st MACP and the GP of Rs. 2000/- on 2nd MACP w.e.f. 1.9.2008. It is further stated that the applicant was not eligible for the GP of Rs. 2800/- in view of the conditions in the guidelines of MACP and his MACP benefit cannot be based on the pay he was getting on ad-hoc promotion to the post of junior clerk in Construction department since his posting as junior clerk was not on regular basis.

4. The applicant filed Rejoinder bringing up a number of fresh averments stating that he had cleared the suitability tests for different post in Construction department after which he was promoted on ad-hoc basis. It was also stated that one of his juniors i.e. Sri Jagannadha Rao who was appointed as a casual khalasi in 1988 and regularized w.e.f. 21.10.1992 and was allowed promotions to different posts with higher grades including to the post of WTM/I with GP of Rs. 2800/- w.e.f. 15.12.2009 (Ann.-A/19). It is stated that he

should be promoted to the grade of at least WTM/III for which he had cleared the suitability test on 28.4.2007. It is also alleged that he was not called for an examination held on 12.11.2002 where as his junior was called for the post of WTM/III and passed the examination for which the result was declared on 20.12.2002. The applicant avers that the respondents be directed to incorporate his name in the list of 20.12.2002 and to fix his pay at GP of Rs. 1900/- as his case was ignored while giving the opportunity to his juniors. Then he should be promoted to the post of WTM/II with GP of Rs. 2400/- on 27.7.2006 and then as WTM/I with GP of Rs. 2800/- w.e.f. 15.12.2009 at par with his junior.

5. We have heard learned counsels for the applicant and the respondents and perused the pleadings on record. In the Rejoinder filed by the applicant, new reliefs relating to his promotions at par with a junior has been made. This cannot be considered as these prayers are not made in the OA and no new prayer can be made in the Rejoinder under the rule 32 of the CAT Rules of Practice, 1993 which is meant to be the objection to clarification to the reply/counter filed by the respondents in response to the OA. Hence, we will not consider fresh averments or prayers for relief made in the Rejoinder filed by the applicant.

6. The applicant has projected two grounds in the OA. First ground is that he is entitled for the GP of Rs. 2800/- w.e.f. 1.9.2008 under MACP in place of Rs. 2000/- allowed by the respondents vide order dated 23.2.2011 (Annexure-A/5) since he was getting the same GP already. Respondents have stated that the applicant had got promotion to the GP of Rs. 1900/- on ad-hoc basis and hence, he did not have any right for claiming the GP based on ad-hoc promotion. As per the guidelines on MACP Scheme by Railway Board vide order dated 10.6.2009 (Annexure-A/3), the benefits under the Scheme are available after 10, 20 and 30 years of regular service. Hence, ad-hoc promotions at higher grade will not be considered for the purpose of MACP since it is not a part of regular service. If his regular post carries less pay, then that pay which he would have enjoyed on regular basis would be taken into account for the purpose of the MACP Scheme. Hence, the claim of the applicant for higher GP based on the GP he was getting on ad-hoc promotion is not in accordance with the guidelines of the MACP Scheme at Annexure-A/3.

7. The second ground in the OA is that as per the order dated 14.9.2015 (Annexure-A/5) of Chandigarh Bench of the Tribunal in OA No. 376/2015, the applicant was entitled for the benefit of MACP at higher GP than what was allowed vide order dated 23.2.2011 (Annexure-A/5) since his juniors were getting higher GP than him as stated in para 4.11 of the OA. In the Rejoinder,

the applicant has cited the example of his junior Sri Jagannadha Rao who was getting the GP of Rs. 2800/- at a higher post. It is seen from the Rejoinder that Sri Jagannadha Rao had got promotion to higher pay scale while the applicant did not get the promotion. The applicant has not averred that Sri Jagannadha Rao was allowed a higher GP than him in consideration of the MACP benefit. Hence, the example of Sri Rao is not the example of his junior getting higher GP because of wrong implementation of the MACP Scheme, but it was due to promotions availed by Sri Rao while ignoring the applicant for the said promotion about which he has mentioned in the Rejoinder, but not in the OA. In OA No. 376/2015 before Chandigarh Bench of the Tribunal, the applicant in that OA had claimed that his juniors were getting higher pay on grant of financial upgradation under MACP which is not the case in case of the junior Sri Jagannadha Rao in this OA before us as Sri Rao was getting higher GP of Rs. 2800/- on account of his promotions superseding the applicant which was not a relief prayed for in the OA. Hence, the order dated 14.9.2015 (Annexure-5b) in OA No. 376/2015 has no application in the present OA before us.

8. One argument in the OA that the applicant was working as Junior Clerk and hence, his MACP should be at the GP of the next promotional post as senior clerk having the GP of Rs. 2800/-. The argument is not acceptable since the post of Junior clerk was being held by the applicant on ad-hoc basis. Hence in view of the discussions in para 6 supra, the claim is not sustainable. It is also not permissible since as per the guidelines of MACP, the elevation is to the next higher Grade Pay in the hierarchy of the pay bands as specified in first schedule of the Railway Services (Revised Pay) Rules, 2008. In other words, since the GP as junior clerk is Rs. 1900/-, the next higher Grade Pay under the above rules being Rs. 2000/-, the applicant would be entitled for the GP of Rs. 2000/- on financial upgradation under MACP as per the guidelines.

9. In view of the discussions above, no justification has been made out to call for any interference in the matter. The OA, therefore, is liable to be dismissed and hence, it is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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