

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/381 OF 2015
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)

P. K. Chatterjee, aged about 62 years, S/o. Late Jagabandhu Chatterjee, retired Gas Cutter Grade-1, O/O. Executive Engineer/Con/E.Co. Rly, At- Angul Railway Station(Raniguda), PO-Turang, Town/Dist-Angul, Permanent resident of Vill-Bisanikharida (Near Nabagraha Temple), PO/Via- Charampa, Dist- Bhadrak, Odisha.

...Applicant

(By the Advocate- M/s. N. R. Routray, S. Sarkar, 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. Senior Personnel Officer, Con./Coordination, E.Co. Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Chief Administrative Officer/Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Executive Engineer/Con./East Coast Railway, at present Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
5. Chief Personnel Officer, East Coast Railway, E.Co.Rly. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

(By the Advocate- Ms. S. Rajguru)
ORDER

S. K. MISHRA, MEMBER (J):

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

- i) To quash the orders of rejection dated 06.11.2012 & 08.04.2015 under Ann. A/6 & A/11 respectively.
- ii) And to direct the Respondents to grant 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 to PB-II with GP-Rs.4200/- and pay the differential financial

benefits, i.e., arrear salary, leave salary, DCRG, commuted value of pension and arrear pension with 12% interest for the delayed period.

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

2. Facts of the matter are that earlier, the applicant had approached this Tribunal in O.A.No. 905 of 2012 and this Tribunal, vide order dated 12.01.2015 disposed of the said O.A. in the following terms:

"17.In the light of the above discussions, therefore, it is incumbent upon the Respondents to examine the Service Book of the applicant in order to verify what was the capacity on appointment of the applicant on regular basis. It has to be determined whether the present applicant has availed of the benefit of one promotion, or two promotions since his date of regular appointment. That determination will incidentally lead to the correct decision as to whether the applicant is eligible for grant of 2nd financial upgradation under MACP as per the prayer made in this O.A.

18.In view of the above discussions, and the deficiency in the speaking order in not covering the above aspect, we think it appropriate to remit the matter back to the Respondents with a direction to carefully scrutinize this factual aspect and after reconsidering the matter, pass a reasoned order, within a period of ninety days and communicate to this to the applicant".

3. In compliance of the aforesaid direction of this Tribunal, the Respondents have issued a speaking order dated 8/9.04.2015(A/11) by stating that the applicant is not entitled to any financial upgradation as per the extant rules. Hence, by filing the present O.A., the applicant has challenged the legality and validity of the impugned order at A/11 seeking reliefs as mentioned above.

4. It is the case of the applicant that he along with one Muralidhar Behera & L.D.Das had initially been engaged in the erstwhile S.E.Railway and granted temporary status with effect from 01.01.1981 in the scale of Rs.330-480/- as a Skilled Saranga/Gas Cutter, Gr.II. On the recommendation of 4th CPC the said

pay scale was revised to Rs.1200-2040/- w.e.f. 01.01.1986 and from Rs.1200-1800 to Rs.4000-Rs.6000/- with effect from 01.01.1996 on account of 5th CPC recommendations. While working as Saranga/Gas Cutter Gr.II in the scale of Rs.1200-1800/-the services of the applicant were regularized for the first time with effect from 01.04.1988 in the scale of Rs.750-940/- vide order dated 13.12.1992. While the matter stood thus, again the service of the applicant was regularized with effect from 01.04.1988 in the scale of Rs.3050-4590/-. While the applicant was working as Gas Cutter Gr.II in the scale of Rs.1200-1800/-, he was promoted to the post of Gas Cutter, Gr.I in the scale of Rs.1320-2040/- with effect from 24.03.1997 on adhoc basis vide order dated 31.12.1997 and as such, his scale of pay was enhanced from Rs.4000-6000/- to Rs.4500-7000 (5th CPC). The applicant as on 1.9.2009 had already completed more than 20 years of regular/qualifying service as well as 10 years in the post of Technical Grade-I and therefore, he is eligible for 2nd/3rd financial upgradation under the MACP Scheme.

5. On the other hand, the respondents by filing a detailed counter have opposed the prayer of the applicant. According to Respondents, applicant had initially been engaged as casual Skilled Gas Cutter-cum-Welder on daily rate basis on 4.9.1975. He was granted temporary status on 1.1.1981 and he was regularized in Gr.D in the scale of Rs.750-940/- on 1.4.1988. According to respondents, applicant was given a regular promotion as Gas Cutter-cum-Welder/Fitter, Gr.III in the scale of Rs.950-1500 (Group-C) on 1.4.1988 against PCR post. Subsequently, he was given regular promotion as Gas Cutter-cum-Welder, Gr.II/Fitter, Gr.II in the scale of Rs.4000-6000/- against PRC post with effect from 1.4.1990. After his adhoc promotion as Gas Cutter, Gr.I in the scale of Rs.4500-7000 on 24.3.1997, the applicant retired from

railway service on 30.11.2013 on attaining the age of superannuation. Respondents have pointed out that from 01.01.1981, i.e. the date of grant temporary service to 01.04.1988 when his service was regularized in Gr.D which period works out to 7 years and 03 months the applicant was in the scale of Rs.950-1500/- whereafter two promotions were granted i.e., regular promotion to Gas Cutter, Gr.II on 01.04.1990 and adhoc promotion to Gas Cutter, Gr.I on 24.03.1997. It has been submitted that under the instructions of ACPS/MACPS 50% of temporary status of temporary status has to be given weightage and thereby by adding 3 years, 7 months and 15 days the applicant's regular appointment as Gas Cutter, Gr.III has to be reckoned from 16.08.1984 for the purpose of ACPS/MACPS. Thus, it is the contention of the respondents that the applicant having availed financial benefits much prior to the due date under ACPS/MACPS, he is not entitled to 3rd financial upgradation under the MACP Scheme.

6. With these submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has filed a rejoinder to the counter more or less reiterating the same stand point as taken in the O.A.

8. We have heard the learned counsels for both the sides and perused the records.

9. It was submitted by the learned counsel for the applicant that if it is considered that the applicant had got first promotion in 1.4.1990 and 2nd on 24.3.1997, then after 20 years, i.e., by 2010 the applicant is entitled to 3rd MACP as per Clause-B of MACP Scheme (A/4).

10. Learned counsel for the applicant has relied on the decision of the Hon'ble High Court in W.P. C.No.5385/18 dated 9.7.2018, besides relying upon the decision of this Tribunal in O.A. No. 831 of 2012 disposed of on 3.2.2015. In both the cases the Hon'ble High Court as well as this Tribunal found that the regularization cannot be termed as promotion and so also the absorption and confirmation. The said finding was given after carefully going through the materials on record. This Tribunal has also carefully gone through the materials on record in this case including the order passed by this Tribunal in O.A.No.831 of 2012. The said orders clearly show that those are not promotion orders, but regularization with retrospective effect. Therefore, this Tribunal is unable to accept the submission of the learned counsel for the respondents that by the said orders the applicant had been promoted. The learned counsel for the respondents had strenuously urged before this Tribunal by drawing the attention to the averments made in Para-11 of the counter in support of his submission that for the purpose of ascertaining an employees' eligibility to avail financial upgradation under ACP/MACP, computation of total period of qualifying service rendered by the employee is taken into account that includes an employee's regular service as well as 50% of service rendered in Temporary status. Thus, in including 50% of total service rendered in temporary status which turns out to be 3 years 7 months and 15 days, the applicant's regular service has to be reckoned from 16.08.1984 for the purpose of ACP/MACP. It was also submitted by the learned counsel for the respondents that the entire period for which the applicant has served after being conferred with temporary status cannot be calculated, but 50% of the said period can be calculated for the purpose of giving pensionary benefits. He had also submitted that the judgment dated

9.7.2018 of the High Court in WPC No. 5385/18 and decision of this Tribunal in O.A. No.831 of 2012 are not applicable to the facts and circumstances of the present case since the application of MACP is dependent on the relevant dates on which the concerned person was engaged on casual basis/conferred with temporary status and subsequently regularized. The same having been duly approved in this case vis-a-vis the applicants in other cases as relied upon by the learned counsel for the applicant this Tribunal should not pass any order on the basis of the judgment given in those cases.

11. From the above analysis, we find that the point which needs to be determined in this case has already been decided by the Hon'ble High Court and by this Tribunal in the decisions cited supra and the facts of the present case being similar to those, we are not inclined to make a departure from the view already taken. Accordingly this Tribunal sets aside the orders of rejection dated 06.11.2012 & 08.04.2015 under Annexure- A/6 & A/11 respectively and consequently, direct the Respondents to grant 2nd financial upgradation under the MACP Scheme to the applicant along with all consequential benefits. Respondents are directed to undertake this within a period of three months from the date of receipt of this order.

12. In the result, the O.A. is allowed as above, with no order as to costs.

(S.K.MISHRA)
MEMBER(J)

BKS

(G.C.PATI)
MEMBER(A)