

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 885 of 2014
OA No. 159 of 2016**

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

- OA No. 159 of 2016 Surendra Nath Biswal, aged about 56 years, S/o Late Biswambar Biswal, at present working as Accounts Assistant, under F.A. & C.A.O., East Coast Railway, Bhubaneswar, resident of Qr. No. C-90F, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.
- OA No. 885 of 2014 R.Ram Chandra Rao, aged about 53 years, S/o R.T.Subramanyam, resident of Qr. No. G-50/D, Rail Accounts Colony, Khurda Road, At/PO – Jatni, Dist.- Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, E.Co.Rly., E.Co.R 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), E.Co.Rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
4. Additional Financial Advisor (Admn.)/East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.

.....Respondents.

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

For the respondents: Mr.T.Rath, counsel (OA No. 885/2014)
Mr.S.Barik, counsel (OA No. 159/2016)

Heard & reserved on : 10.1.2019

Order on :

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The reliefs prayed for in OA No. 159/2016 filed under Section 19 of the Administrative Tribunals Act, 1985 are as under :

- "(a) To declare the clarification dtd. 4.2.2010 under Annexure A/4 as non est;
- (b) And to direct the respondents to declare the alleged 3rd financial upgradation under Annexure A/5 as 2nd financial upgradation

- under MACP Scheme in view of order dtd. 27.7.2012 under Annexure A/9;
- (c) And to direct the respondents to grant 3rd financial upgradation under the MACP Scheme w.e.f. 31.5.2015 in PB-II with GP of Rs.4800/- and pay the differential financial benefits."

The reliefs sought for in OA No. 885/2014 are as under :

- "(a) To quash the order of rejection dtd. 17.9.2014 under Ann.-A/9;
- (b) And to direct the respondents to grant 3rd financial upgradation under the MACP Scheme w.e.f. 24.11.2003 in PB-II with GP of Rs.4800/- and payment of differential financial benefits."
2. In OA No. 159/2016, the applicant was appointed as a Junior Stenographer on 10.9.1987. He appeared in the examination and on being successful he expressed his willingness to be absorbed in clerical cadre of Accounts Department. Accordingly, he was absorbed as Junior Stenographer vide order dated 30.5.1995 (Annexure A/1 to the OA). Then on completion of three years of service, the applicant was promoted to the post of Accounts Assistant in the higher pay scale, vide order dated 6.9.1995 (Annexure A/2 to the OA). After introduction of the Modified Assured Career Progression (in short MACP) Scheme w.e.f 1.9.2008, the applicant was granted third financial upgradation with Grade Pay of Rs.4600/- w.e.f. 1.9.2008 (Annexure A/5 to the OA). Thereafter he represented vide representation dated 23.6.2015 (Annexure A/6 to the OA) for grant of 3rd financial upgradation/MACP as he has completed 10 years of service in the second promotional post. He submitted another representation on 18.9.2015 (Annexure A/7 to the OA) for 3rd MACP benefit to the Grade Pay of Rs.5400/- at par with other similarly placed employees. But the representation was rejected by the respondent No.4, treating the movement of the applicant from Junior Stenographer to Junior Accounts Assistant as a promotion in terms of para 211 of IREM Vol.I.

3. The facts in brief in OA No. 885/2014 are that the applicant was appointed as a Junior Stenographer on 2.9.1988 under the respondent Railway. He appeared in the examination and on being successful, he expressed his willingness to be absorbed in clerical cadre of Accounts Department. Accordingly, he was absorbed as Junior Accounts Assistant in the same pay scale as Junior Stenographer, vide order dated 22.11.1993 (Annexure A/2 to the OA). Then on completion of three years of service the applicant was promoted to the post of Accounts Assistant in the higher pay scale, vide order dated 25.11.1993 (Annexure A/3 to the OA). After introduction of the Modified Assured Career Progression (in short MACP) Scheme w.e.f 1.9.2008, the applicant was granted second financial upgradation with Grade Pay of Rs.4200/- w.e.f. 1.9.2008. Thereafter, he represented vide representation dated 4.11.2013 (Annexure A/7 to the OA) for grant of 3rd

financial upgradation/MACP as he has completed 10 years of service in the second promotional post. He submitted another representation on 2.9.2014 (Annexure A/8 to the OA) for 3rd MACP benefit to the Grade Pay of Rs.5400/- at par with other similarly placed employees. But the representation was rejected by the respondent No.4, treating the movement of the applicant from Junior Stenographer to Junior Accounts Assistant as a promotion in terms of para 211 of IREM Vol.I.

4. From above, it is clear that in both the OAs the dispute and issues involved are similar. Therefore, both the OAs are considered and disposed of by this common order. The question to be decided in both the OAs is whether the movement of the applicant from Junior Stenographer to Junior Accounts Assistant will be treated as a promotion or not.

5. We have heard the learned counsel for both the parties. Learned counsel for applicant cited the decision of this Tribunal in OA No. 153/2011 (as stated in OA) and in OA No. 886/2014 and stated that the decision will apply in this case. Learned counsel for the respondents referred to letter of Railway Board dated 4.3.2010 (Annexure R/2 in OA 885/2014) stating that it is a promotion. When the applicant in OA No. 885/2014 was moved from Junior Stenographer to Junior Accounts Assistant the following order dated 22.11.1993 was passed:

"Sri R.Rama Chandra Rao, Jr. Steno under Sr. DAO/KUR is absorbed in Clerical cadre as JAA in scale Rs.1200-2400/- (RPS'86) w.e.f. 8.7.93 i.e. the date from which he exercised his option for change of his category against direct recruitment quota of candidates and retained in this office against an existing vacancy. Sri Rao will continue to work as Jr. Steno in this office till his reliever is posted.

Note : (1) The above change of category/promotion is provisional and subject to the judgment of the Supreme Court or High Courts as the case may be in respect of court petitions pending in the said courts.
 (2) This issues in terms of FA&CAO (Admn)/GRC's letter No. Admn/SE/165/Pt.V/App.2&3/2103 dt. 23.9.95 and with the approval of the competent authority."

In OA No. 159/2016, following order was passed at the time of movement of the applicant from Junior Stenographer to Junior Accounts Assistant vide order at Annexure A/1 of the OA :

"The application by Sri S.N.Biswal, Sr. Steno in connection with change of category from Stenographer to Clerical cadre has been accepted by the competent authority and he is allowed to come over to the cadre of JAA from the date of his option i.e. from 30.5.95, against the existing vacancy.

Necessary office order may also be issued from your end in connection with his promotion as A.A. w.e.f. 31.5.95 i.e. next date of his coming over to JAA subject to verification of CRs for the last three years and suitability against one existing vacancy. It may also be certified that there are no D&A, SPE Vigilance cases against him on the same date with intimation to this office."

It is also mentioned in para 4.1 of the OA that while being posted as Junior Accounts Assistant no financial fixation was undertaken which has not been denied generally in the counter by the respondents without furnishing

any document to show if the applicants in both the OA, had got any benefit of promotion in terms of fixation of pay, when they were posted as Junior Accounts Assistant. In view of the specific wordings used in the order dated 22.11.1993 and since no fixation of pay which is done in case of promotion was undertaken, this movement cannot be stated to be a promotion.

7. The applicant in OA No. 885/2014 has stated in the OA that in a similar case this Tribunal in OA No. 153/2011, vide order dated 27.7.2012 (Satis Gadi -vs- Union of India & Ors.), this Tribunal held as under (copy of the order at Annexure A/10 of OA No. 885/2014) :

"Therefore, by no stretch of imagination, Junior Accounts Assistants could be construed as a promotional grade of Junior Stenographer in so far as the present applicant is concerned, In the circumstances, we cannot but hold that para 211, Chapter-II of IREM, Vol.I is not applicable to the case of the applicant, especially when he has been converted from the post of Junior Stenographer to the post of Junior Accounts Assistant carrying the same scale of pay of Rs.1200-2040/."

8. As pointed out by learned counsel for the applicant at the time of hearing that the decision in OA No. 153/2011 had been followed by this Tribunal in another OA No. 886/2014 vide order dated 18.12.2018, in which it was also held as under :

"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, learned 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."

9. The respondents in their counter have cited an order dated 4.3.2010 of the Railway Board (Annexure R/2 in OA No. 885/2014), which was referred as Annexure R/1 in OA No. 886/2014, stating that in terms of para 211 of IREM, the movement of Junior Stenographer to Junior Accounts Assistant is to be reckoned as a promotion for the purpose of MACP scheme. This averment is not backed by the order dated 22.11.1993 and the fact that no fixation of pay

was done after posting of the applicant as Junior Accounts Assistant. Hence it cannot be called as a promotion and the Annexure R/2 will not apply in this case.

10. Regarding para 211 of IREM, it was held by this Tribunal vide order dated 27.7.2012 in OA No. 153/2011, the said para 211 is not applicable to the case of the applicant and this finding holds good in spite of the letter dated 4.3.2010 of the Railway Board, which is a clarification issued with reference to a query and hence, it is applicable for that case only. In these OAs, there is nothing on record to show that any benefit of promotion like fixation of pay was granted to the applicants at the time of their absorption as Junior Accounts Assistant.

11. Accordingly following the order of this Tribunal dated 27.7.2012 in OA No. 153/2011 and order dated 18.12.2018 of this Tribunal in OA No. 886/2014, the impugned order dated 17.9.2014 (Annexure A/9 to the OA No. 885/2014) rejecting the representation of the applicant is not sustainable and the case of the applicant deserves to be considered for benefit of 3rd MACP as per law. Accordingly, we quash the impugned order dated 17.09.2014 (Annexure A/9 to the OA No. 885/2014) 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 in OA No. 885/2014 and OA No. 159/2016 and accordingly, grant him the benefits thereon with effect the date the same is due and admissible.

12. In the result both the OAs are allowed as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath