

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00609/2017

Friday, this the 18th day of January, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

K.Vidhyadharan,
S/o.Krishnan,
Retired Mopla Khalasi/Carpenter,
O/o.Dy.CE/GC/Tirupati, S.C.Railway.
Residing at Narayaneeyam (Naduvila Veedu),
Karavaram P.O., Kallambalam,
Thiruvananthapuram – 695 605. ...Applicant

(By Advocate – M/s.Varkey & Martin)

V e r s u s

1. General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Administrator Officer (Construction),
South Central Railway, Secunderabad.
3. The Deputy Chief Engineer, Gauge Conversion,
South Central Railway, Tirupati – 517 501. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 11th January 2019, the Tribunal on 18th January 2019 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/609/2017 is filed by Shri.K.Vidhyadharan, who retired on 29.2.2012 as Mopla Khalasi/Carpenter, aggrieved by denial of 2nd MACP in PB Rs.5200-20200 + GP Rs.2800/- on the ground of not having 20 full years service. The reliefs sought by the applicant is as follows :

1. Declare that the applicant is entitled to be placed in PB Rs.5200-20200 + GP Rs.2800 as 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008 or from such other dates when he complete 20 years of qualifying service by adding full or part of his temporary status and/or casual labour service, with all attendant benefits and; direct the respondents accordingly.

2. Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are : the applicant was engaged as Mopla Khalasi from 20.4.1979 under the 2nd respondent and was thereafter granted temporary status in the scale Rs.330-480 (3rd Pay Commission) with effect from 1.1.1983 which was revised to Rs.1200-1800 (4th Pay Commission) and Rs.3050-4590 (5th Pay Commission). It is submitted that after 18 years of service he was regularized as Artisan Grade II in scale Rs.3050-4590 (PB-1 Rs.5200-20200 + GP Rs.1900/-) with effect from 13.6.2001. It is alleged that except an upgradation on adhoc basis under the Assured Career Progression Scheme (ACP Scheme) in scale Rs.4000-6000 with effect from 29.3.2004 vide Memorandum dated 18.7.2006, which was revised to PB-1 Rs.5200-20200 + GP Rs.2400 with effect from 1.1.2006 in 6th Pay Commission, he did not get any promotion during his service.

3. It is submitted that when the applicant retired from service on 29.2.2012 he had at his credit qualifying service reckoned as 19 years 11 months and 6 days which was counted as 20 years in his Pension Working Sheet dated 27.2.2012, a copy of which is available at Annexure A-2.

4. The applicant brought to our notice Annexure A-3 Railway Board letter dated 4.12.2009 wherein it has been decided that '*50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 10, 20 and 30 years for the grant of benefit under the MACP Scheme on the analogy that the same is also reckoned as qualifying service for pension*'. Nevertheless, the applicant was not granted 2nd MACP.

5. While so, the applicant came across the judgments of the Hon'ble Delhi High Court in W.P.(C) No.7618/2014 and Hon'ble High Court of Andhra Pradesh on a reference in W.P.(C) No.25260/2002 which held that temporary status service in full and 50% of casual service shall count for determining qualifying service for pension and ACP/MACP. The said decisions were followed by the Hyderabad Bench of this Tribunal in O.A.No.981/2015 and Principal Bench in O.A.No.1925/2015. Based on the above, the applicant made a representation dated 20.12.2016 to the 3rd respondent with a copy to the 2nd respondent seeking 2nd MACP with GP Rs.2800/- in PB-1 Rs.5200-20200 with effect from 1.9.2008 with all attendant benefits. But this has been to no avail.

6. As grounds the applicant submits that he is entitled to 2nd MACP (GP Rs.2800/-) with effect from the date on which he completes 20 years of qualifying service by adding his temporary status/casual labour service either in full or in part, with consequential increase in his pay and pension, the shortfall being only less than 30 days.

7. The respondents in their reply statement submitted that the applicant was initially engaged as casual labour on daily wage basis from 20.4.1979 and was subsequently granted temporary status vide Annexure R-1 Office Order dated 9.10.1986 with effect from 1.1.1983 in scale Rs.260-400 (3rd Pay Commission) and not in the scale Rs.330-480 (3rd Pay Commission) as stated in the O.A. It is clearly mentioned in the said Office Order that '*staff are however hereby warned that even though they are brought on temporary status/monthly rate of pay will not have any lien on any temporary posts in the regular establishment. They are liable to be discharged/terminated from service without any notice in the event of there being no works (ELR sanction). They are also advised that they have no prescriptive right to claim for continuance, promotions, seniority etc'*'. It is therefore clear that until and unless the employee absorbed in regular establishment and provided lien in regular establishment his previous status will not be counted as regular service. It is submitted that during the period of temporary status he was given adhoc promotion in the scale Rs.330-480 with effect from 19.5.1984. It is pertinent to note that it is the scale Rs.330-480 which was revised in the 4th Pay Commission as Rs.1200-1800 with effect from 1.1.1986 and further as Rs.4000-6000 with effect from 1.1.1996 in the 5th Pay Commission and not the scale Rs.260-400. Thus it is the scale Rs.260-400 to which he was granted temporary status.

8. It is submitted that only after 18 years of temporary status service the applicant could be regularized and absorbed as Carpenter in the regular establishment in the initial scale of Rs.260-400/- with effect

from 13.6.2001. But without fixing his pay in the initial scale itself, the pay granted to him in the scale Rs.330-480 on adhoc promotion with effect from 19.5.1984 was protected and he continuously enjoyed the same in the scale of Rs.4000-6000 (5th Pay Commission). Hence it is clear that two benefits were already given to the employee ie. if the adhoc promotion should have not been taken into account his grade pay has to be fixed in initial grade pay of Rs.1900/- in scale Rs.5200-20200 in first ten years and in second ten years his pay has to be fixed in Rs.2000/- grade pay in scale Rs.5200-20200. Hence two financial benefits had already been given to the applicant and his settlement was also done in grade pay of Rs.2400/- on the adhoc pay itself. Lastly, the respondents submitted that as per the original scheme only regular service of employees shall be counted for grant of MACP and that casual employees, including those granted 'temporary status' shall not qualify for benefits under the scheme. It has been counted for grant of MACP, which again, is restricted to 50% of the same.

9. Heard Shri.Martin G Thottan, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. Perused all the pleadings and documents available on record. Under MACP Scheme an employee is eligible for three financial upgradation at the 10th, 20th and 30th years of service. Going by Annexure A-2 Pension Working Sheet issued by the 3rd respondent, the respondents themselves have counted the qualifying service as 20 years. This apart, taking a cue from Annexure A-3 Railway Board Order dated 4.12.2009,

the applicant is entitled to claim 50% of temporary status casual labour service on absorption in regular employment towards the minimum service of 10, 20 and 30 years for the grant of benefit under the MACP Scheme on the analogy that the same is also reckoned as qualifying service for pension. Further, the Hon'ble Supreme Court also in **Union of India & Ors. v. Rakesh Kumar & Ors.** in Civil Appeal No.3938/2017 has held that :

“55. In view of foregoing discussion, we hold :

- i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.
- ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- iii) those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.
- iv) it is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.

10. In view of the foregoing Annexure A-3 Railway Board order and the judgment of the Hon'ble Supreme Court on the subject, the applicant is entitled to reckon 50% of casual service before obtaining the temporary status as also 50% of the temporary status service till he is regularised towards counting the qualifying service for grant of MACP upgradation which will add up to the required 20 years of service.

11. In the result, the O.A is allowed. The respondents are directed to grant 2nd financial upgradation under the MACP Scheme to the applicant in scale Rs.5200-20200 with Grade Pay Rs.2800/- from the date when he completes 20 years of qualifying service by reckoning 50% of casual service before obtaining the temporary status as also 50% of the temporary status services till he is regularised with all consequential benefits arising out of this order. The directions as ordered shall be complied with, within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated ts the 18th day of January 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00609/2017

1. Annexure A-1 - True copy of Memorandum No.P.Con.GC.TPTY.12 dated 18.7.2006 issued by the third respondent.
2. Annexure A-2 - True copy of applicant's Pension Working Sheet dated 27.2.2012 issued by the 3rd respondent.
3. Annexure A-3 - True copy of the Railway Board Order RBE No.215/2009 dated 4.12.2009.
4. Annexure A-4 - True copy of the representation dated 20.12.2016 to the 3rd respondent with copy to the 2nd respondent.
5. Annexure R-1 - True copy of the Office Order No.18/86 (DEN/C/MLG/E.B dated 9.10.1986).
6. Annexure R-2 - True copy of the fixation of pay in the new pay scale 1986.
7. Annexure R-3 - True copy of the pay structures of 3rd, 4th, 5th and 6th Pay Commissions.
8. Annexure R-4 - True copy of the CPO/SC's letter No.P/E/407/PCI/ph-II/Vol.VII dated 13.6.2001.
9. Annexure R-5 - True copy of the letter No.P/Con/535/MACP/other Units dated 29.9.2010 of Dy. Chief Personnel Officer, Construction, Secunderabad.
10. Annexure R-6 - True copy of the order dated 24.3.2018 of the Hon'ble Supreme Court in Union of India & Ors. v. Rakesh Kumar & Ors.
