

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/235/2016

Date of CAV: 21.12.2018

Date of Pronouncement: 09.01.2019

Between:

Ch. Prakash, S/o. Satyanarayana Rao,
Aged 64 years, Occ: Retd. CE & RS,
Secunderabad Division, South Central Railway,
Secunderabad, Telangana State.

... Applicant

And

1. Union of India,
Rep. by its General Manager,
South Central Railway, Rail Nilayam, 3rd Floor,
Secunderabad – 500 071.
2. Chief Personnel Officer,
South Central Railway, Rail Nilayam, 4th Floor,
Secunderabad – 500 071.
3. The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad – 500 071.
4. The Senior Divisional Personnel Manager,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad – 500 071.
5. The Divisional Personnel Officer,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad – 500 071.

... Respondents

Counsel for the Applicant ... Mr.Ch. Prakash, applicant in person

Counsel for the Respondents ... Mr. V. Vinod Kumar, SC for Railways

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for not granting MACP to the applicant in the grade pay of Rs 4800.

3. Brief facts of the case are that the applicant was appointed as Commercial Clerk in 1971 in the respondents organisation in the grade pay of Rs.2000. On 29.4.1977 the applicant was promoted on an adhoc basis as ECRC (Enquiry cum Reservation Clerk) in the grade pay of Rs.330-560. While working as adhoc ECRC, the applicant applied for the post of ECRC against a notification dated 16.6.1977 issued by the respondents. The applicant got selected as ECRC in the scale of Rs.330-560/- (corresponding to PB-1 Rs.5200-20200 with G.P 2800). The applicant was not granted the benefit of fixation of pay when he was absorbed as ECRC on being promoted. Later the applicant was promoted as ECRC Gr-I in the grade pay of Rs 4200 on 1.1.1984 and thereafter to the post of CE &RS in the grade pay of Rs 4600 on 25.1.2005. The applicant retired on 31.1.2011 after rendering 32 years of service. The applicant's claim is that since he got only 2 promotions after being absorbed as ECRC in direct entry grade, as per MACP, he is due for the 3rd financial up gradation of Rs.4,800 after putting in 30 years of service. The applicant represented on several occasions and the last being on 26.6.2015 but the respondents rejected the same on 22.9.2015 and hence the OA.

4. The contentions of the applicant are that the appointment to the grade of ECRC is a lateral movement from the post of Commercial Clerk, as per Railway Board Lr. dt 2.4.2015 and should not be treated as promotion since it is not

covered under Rule 13 of RS (RP) Rules 2008. The ECRC post is the direct entry grade in the ECRC channel. Regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/ contact basis before regular appointment on pre-appointment training shall not be taken into reckoning. Further, the first para of RBE 100/2012 has clarified that if the recruitment rules provide for filling up of vacancies in a grade by direct recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as direct recruitment for the purpose of grant of financial up gradation under MACP. Besides, the normal hierarchy of promotions for Commercial Clerks is Senior Commercial Clerk, Head Commercial Clerk, Chief Commercial Clerk and Commercial Supdt. The Enquiry cum Reservation Clerk (ECRC) is not in the normal hierarchy of promotions for Commercial Clerks. Further, there was no percentage of posts reserved for Commercial Clerks in ECRC cadre as per notification of 1977. Subsequently, Railway Board vide Ir dt 25.6.1998, has ordered that 25% posts in the ECRC cadre will be filled by direct recruitment through RRB and 75% by promotion based on selection from those who are Sr. Commercial clerks, Sr. Ticket Collectors, Commercial clerks and Ticket Collectors. Thus Commercial Clerks who appear and get selected through LDCE/GDCE to the post of ECRC, the normal channel of promotion provided for commercial clerks ceases to exist. Moreover, the selection was open to different seniority units of the commercial dept. viz., Travelling Ticket Examiners, Ticket Collectors, passenger guides, commercial clerks, claims tracers etc. The case in question is covered by the verdict of Honourable Principal bench of this Tribunal in Madan Lal Jhamb vs

MCD & Others, dt 23.5.2013. Lastly, juniors to the applicant were extended the MACP benefit but not to the applicant would mean invidious discrimination.

5. Respondents resist the contentions of the applicant by stating that the selection of the applicant was against 75% promotional quota of ECRC. The post of ECRC is a higher grade post with grade pay of Rs.2,800 than the Commercial Clerk post with GP of Rs.2000. The contention of the applicant that the promotion to the post of ECRC cannot be treated as promotion is untenable as per serial circular SC. No 194/1998. In fact, the applicant has got 3 promotions with the first one as ECRC in G.P of Rs.2800, the second one as Sr. ECRC with G.P of Rs.4200 and the third one as CE& RS with GP of Rs.4600. The applicant was given the benefit of fixation of pay on promotion to a higher grade post of ECRC as per service book entry. The notification has mentioned that only serving employees i.e. Commercial Clerks and TTEs are eligible which meant that promotion from Commercial Clerk to ECRC is under departmental promotional quota. The Railway Board letter dt.2.4.2015 cited by the applicant is applicable to those recruited after the implementation of 6th CPC. The applicant who was recruited in 3rd CPC was extended the benefit of pay fixation on being promoted to ECRC. As per the 2nd para of RBE No. 100/2012 dt 12.9.2012, if the relevant recruitment rules prescribe a promotion quota to be filled on the basis of LDCE/GDSE such appointment would be treated as promotion for the purpose of benefit under MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP. In the case of Madan Lal Jhamb cited by the applicant decided by the Hon'ble Principal bench of this Tribunal, the post of Hindi Translator is not a promotional post but is a direct recruitment and therefore given the financial upgradation.

6. Heard the applicant in person and learned counsel for the respondents and perused the documents submitted.

7A. The applicant joined the respondents organisation as Commercial Clerk in the scale of Rs.110-200 in 3rd CPC and as per the 6th CPC the Grade Pay for the said post is Rs.2000. The applicant responded to the notification of the respondents dt.16.6.1977 for promotion to the post of ECRC on selection basis. He got selected to the post of ECRC which has a grade pay of Rs.2800. The employees from different seniority units of the commercial department appeared in the exam and there were no posts reserved for Commercial Clerks at that instant of time. Further, the channel for promotion in respect of Commercial Clerks is Senior Commercial Clerk, Head Commercial clerk, Chief Commercial Clerk and Commercial Supdt. whereas for ECRS it is to Sr. ECRC and CE&RS. Therefore they are two separate cadres. The entry level grade is ECRS in respect of the ECRS cadre and not Commercial Clerk. Besides, it is pertinent to point out that only in 1998 seventy five percent of posts were reserved for commercial clerk category as per sl circular 194/98 whereas the applicant was selected as ECRC in 1977. Therefore the clause contained in sl circular 194/98 reserving 75% posts to Commercial Clerks does not apply to the applicant and hence the stand of the respondents in this regard is incorrect. Further, RBE 100/2012 clarified that if the recruitment rules provide for filling up of vacancies in a grade through direct recruitment, induction of employee to that grade through LDCE/GDCE may be treated as direct recruitment for the purpose of grant of financial upgradation under MACP. The applicant was selected through LDCE to the grade of ECRS and hence his selection has to be treated as direct recruitment for the purpose of MACP. Regular service for the purpose of MACP

shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contact basis before regular appointment on pre-appointment training shall not be taken into reckoning. As per MACP rulings the regular service of the applicant commenced from the date he joined the post of ECRC on 20.7.1978. As claimed by the respondents, the post of ECRC is no doubt a higher grade post but it should not be lost sight of that it is the direct entry grade post for the ECRC cadre. Therefore, the elevation of the applicant to the post of ECRC should not be treated as promotion under MACP. The Honourable Principal Bench of C.A.T. in Madan Lal Jhamb vs MCD and ors has interpreted that the post of Hindi Translator belongs to a different cadre and therefore the applicant therein who was promoted to this post from LDC cadre was granted financial upgradation under MACP. In the present case too, the applicant moved from Commercial Clerk post to ECRC post, which indeed were two different cadres in 1977 as was the case in respect of LDC and Hindi Translator in the Hon'ble Principal Bench case. Hence the Hon'ble Principal Bench case squarely covers the case in question. Thus in view of the facts stated above the promotion of the applicant from Commercial Clerk to ECRC should not be considered as a promotion under MACP. Consequently the applicant has got only two promotions to that of Sr. ECRC in the grade pay of Rs.4,200 and to the post of CE&RS with the grade pay of Rs.4,600. The applicant having completed 30 years of service is eligible for the 3rd financial upgradation under MACP in the grade pay of Rs.4,800. The applicant has made out a case which succeeds and hence the OA is allowed.

B. The respondents are therefore directed to consider as under:

- i) To grant 3rd MACP in favour of the applicant in PB-2 of Rs.9300-34,000 with grade pay of Rs.4,800 w.e.f. 1.9.2008 with all consequential benefits thereof.
- ii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iii) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 9th day of January, 2019

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