

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIOA/051/00152/2015Date of Order:- 23.10.2018**C O R A M**

HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

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Churka Murmu, son of Murmu, age 63 years, resident of village Ghagidih, PO-Karandih, PS-Baghbera, Jamshedpur, District- East Singhbhum.
.....Applicant.

By Advocate:- Mr. M.A.Khan.

Vs.

1. Union of India through General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Divisional Railway Manager (P), South Eastern Railway, Chakharderpur Division, PO & PS-Chakharderpur, District-West Singhbhum-83312.
3. Sr. Divisional Personnel Officer, South Eastern Railway, Chakharderpur Division, PO & PS-Chakhardarpur, District-West Singhbhum-83312.
4. Divisional Security Commissioner South Eastern Railway, PO & PS-Chakhardarpur, District-West Singhbhum-83312.

.....Respondents.

By Advocate:- Mr. P.D.Singh, Addl. Standing Counsel.

O R D E R (ORAL)

Per K.N.Shrivastava, Member (Admn.) :- The applicant joined as Constable in Railway Protection Force (RPF) in the year 1980. He secured his regular promotion and finally reached to the grade of

Inspector. However, he suffered a penalty of “reduction in rank from the post of Inspector to Sub-Inspector for one year” w.e.f. 01.06.2009. The applicant thus, got reverted to the post of Sub-Inspector. He finally retired from service on 31.05.2012 on attaining the age of superannuation. The grievance of the applicant is that he has been denied benefits of 2nd ACP (though mentioned as 2nd MACP in the OA) and 3rd MACP. The applicant’s second grievance is that he was sick from 15.08.2009 to 01.06.2010 and as such, remained absent from duty but the respondents have not passed any order to regularise this period. Accordingly, the applicant has approached the Tribunal in the instant OA praying for the following reliefs:-

“8(i) For direction upon the respondents to grant 2nd MACP w.e.f. 23.04.2000 and 3rd MACP w.e.f. 23.04.2010 to the applicant as the applicant was appointed on 23.04.1980 and completed 20 years on 23.04.2000 & 30 years on 23.04.2010.

(ii) For issuance of direction upon the respondents for payment of consequential service benefit as well as retiral benefit with penal interest on the basis of 2nd & 3rd MACP as the applicant retired from service on 31.05.2012.

(iii) For issuance of direction upon the respondents to pay packing and transfer allowance from Dongra Post to Tata Nagar by road amounting to Rs.16000/-.

(iv) For direction upon the respondents to treat the period from 15.08.2009 to 01.06.2010 as on duty and not as sick as indicated in rules 526 and pay the leave encashment accordingly.”

2. Pursuant to the notice issued, the respondents entered appearance and filed their written statement as well as an additional written statement.

3. The respondents in their pleadings have indicated that the applicant was denied 2nd ACP/3rd MACP benefits on the ground that he had suffered a punishment in the year 2009. As regards regularisation of his sick period from 15.08.2009 to 01.06.2010, the respondents in para 8 of their written statement have stated that it is revealed from the record that the applicant neither made any appeal in due course to the appropriate Medical Board, nor the Medical Board had recommended for treating the RMC period from 15.08.2009 to 01.06.2010 as duty.

4. Mr. M.A.Khan, learned counsel for the applicant submitted that the applicant had informed the respondents in regard to his availing treatment at a private hospital from 15.08.2009 to 01.06.2010 and that the respondents never referred this matter to any Medical Board and as such there was no occasion for the

applicant to file any appeal against any recommendation of the Medical Board. Mr. Khan also drew our attention to Annexure-A/1 dated 01.06.2010 which is a letter from Divisional Security Commissioner/RPF to Chief Medical Superintendent, S.E.Railway, Chakradharpur to say that the respondents were well aware of the sickness of the applicant during that period.

5. Argument of learned counsel for the parties was heard.

6. It is not in dispute that the MACP Scheme came into effect from 01.01.2006 pursuant to the recommendation of the 6th CPC and the Central Government issued order to this effect on 01.09.2008. Prior to 01.01.2006, ACP was in vogue in terms of which two financial upgradations were available to a Government servant on completion of 12 & 24 years of service. It would thus be clear that the applicant became entitled for 2nd ACP benefits in the year 2004 and not in the year 2000, as claimed by him. We are not convinced with the pleadings of the respondents that the 2nd ACP benefits has been denied to the applicant on account of his suffering a punishment of reduction in rank in the year 2009. As noted herein above, the applicant had become entitled for the 2nd ACP benefit in the year 2004 itself on completion of 24 years of

service and at that point of time he had not suffered any punishment.

7. As regards the 3rd MACP benefit to the applicant, it would be pertinent to note that the applicant would have become entitled for it in the year 2014 i.e. after completing ten years of service from the date of receiving the 2nd ACP. Since he has retired on 31.05.2012 he could not have been granted the 3rd MACP benefit.

8. It is not in dispute that the applicant was sick from 15.08.2009 to 01.06.2010 and was availing treatment in a private hospital during that period. The factum of his sickness was well within the knowledge of the respondents. After he reported for duty and applied for regularisation of his sick period, the respondents were duty bound to take necessary action by sanctioning him appropriate leaves as available to his credit. If they had any doubt with regard to his sickness, they could have subjected him to examination by a Medical Board, but they did not do so. In view of this, we repel the contention put-forth on behalf of the respondents that in absence of any recommendation of the Medical Board and any appeal against that by the applicant, the respondents did not take any action in that regard.

9. In the conspectus of the discussions in the foregoing paragraphs, we dispose of the OA in the following terms:-

(i) The respondents shall grant 2nd ACP benefit to the applicant w.e.f. 23.04.2004 when he completed 24 years of service. The applicant shall be paid interest @ 8% p.a. on the arrears of the 2nd ACP benefit.

(ii) The applicant's prayer for grant of 3rd MACP benefit is rejected.

(iii) The respondents shall regularise the sick period of the applicant from 15.08.2009 to 01.06.2010 by sanctioning appropriate leaves as available to his credit.

(iv) The applicant shall be paid Composite Transfer Grant in regard to his transfer from Dongra Post to Tatanagar as per rules.

The respondents shall complete the aforesaid exercise within a period of two months from the date of receipt of this order.

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(K.N.Shrivastava)
Member (Admn.)