

**Central Administrative Tribunal
Principal Bench**

OA No. 3491/2017
MA No. 3713/2017
and
OA No.3033/2017
MA No.3204/2017

Order reserved on: 27.05.2019
Order pronounced on : 17.07.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

OA No.3491/2017

Sonamani Kauts,
Age 61 yrs.,
w/o Sh. A.K.Kauts,
Retd CH. O.S
R/o 403, Gaur Heights Sector
Vaishali, Ghaziabad.

... Applicant

(By Advocate: Sh. T.J.Ram)

Versus

1. Union of India
Through General Manager,
Northern Railway HQ's Office,
Baroda House, New Delhi.
2. CAO/Construction,
Head Quarter,
Northern Railway,
Kashmere Gate,
Delhi.
3. Divisional Railway Manager,
Delhi Division,
Northern Railway,
State Entry Road,
New Delhi-1.

... Respondents

(By Advocate: Sh. Shailendra Tiwary)

OA No.3033/2017

Jitendra Singh
Age 61 yrs.,
S/o Sh. Raghu Pal Singh,
Retd Supd.E/Const/Welfare/Kashmere Gate,
R/o 127-D, Sector-12,
Vijay Nagar, Pratap Vihar,
Ghaziabad (near Union Bank of India).

... Applicant

(By Advocate: Sh. Sukhdev Singh with Ms. Anjali Rana)

Versus

1. Union of India
Through General Manager,
Northern Railway HQ's Office,
Baroda House, New Delhi.
2. Chief Administrative Officer/Const.,
Northern Railway (Const.),
HQ's Office, Kashmere Gate,
Delhi.
3. Chief Personnel Officer,
Northern Railway,
HQ's Office,
Baroda House, New Delhi.

... Respondents

(By Advocate: Sh. Satpal Singh)

ORDER

Both these OAs have common question of law, therefore, a common order is being passed.

2. The applicant in OA No.3491/2017 was appointed as a Clerk in the pay scale of Rs.260-400 on 16.08.1982. She was appointed as Senior Clerk in the grade of Rs.330-560 on 30.09.1985 against 20% LDCE quota. In due course, she was promoted as Head Clerk

on 16.11.1988 in the pay scale of Rs.1400-2300. This scale got revised to Rs.5000-8000 in 5th CPC and thereafter to PB-2 GP + Rs.4200/- in 6th CPC.

3. The applicant in OA No.3033/2017 was appointed as a Clerk in the pay scale of Rs.260-400 on 04.02.1982. He was appointed as Senior Clerk in the grade of Rs.330-560 on 07.10.1985 against 20% LDCE quota. In due course, he was promoted as Head Clerk on 04.03.1995 in the pay scale of Rs.1400-2300. This scale gets revised to Rs.5000-8000 in 5th CPC and thereafter to PB-2 + GP Rs.4200/- in 6th CPC.

4. Both the applicants plead that they were posted as Senior Clerk for vacancies as of 31.10.1983 against 13-1/3% LDCE quota for which examination was held by Railway Recruitment Board. The panel of successful candidates was issued vide letter dated 30.09.1985. This covering letter reads as under:

“As a result of the selection held in this office on the basis of written test on 2.6.1985, followed by interview on 14th and 16th august, 1985 from the serving graduates against the quota reserved for them. 91 candidates working under you have been provisionally placed on the panel and their name in order have been indicated in the enclosed list. 11 more candidates i.e. item No.6,7,13,14,15,39,41 and 44 of (CE/Construction) item No.16 and 83 of SSTE/C/TKJ, item No.32 of Dy. Cst and item No. Dy. CE/Bridges of enclosed list have also been Head quarters against existing vacancies as advised by you, may be promoted as Sr. Clerks Grade Rs.330-560(RS) at yours.”

5. The formal promotion orders from this panel, were issued on 07.10.1985. A total of 92 names were shown therein and the name

of Smt. Sonamani Kauts, applicant in OA No.3491/2017, appeared at Sl. No.79 and that of Sh. Jitendra Singh, applicant in OA No.3033/2017, appeared at Sl. No.80 of said list.

Thereafter, the applicants were granted third MACP to PB-2 + GP Rs.4600/- vide orders dated 24.02.2010 and this was applicable w.e.f. 01.09.2008. Subsequently, vide orders dated 05.05.2011 this third MACP was counted as second MACP. The applicants plead that this was on the basis that selection against 13-1/3% LDCE quota was to be counted as initial direct recruitment to the post of Senior Clerk. Thereafter, third MACP was granted to PB-2 + GP Rs.4800 vide orders dated 10.10.2012 and this took effect from 15.08.2012 in respect of Smt. Sonamani Kauts and w.e.f. 03.02.2012 in respect of Sh. Jitendra Singh.

6. The applicant in OA No.3491/2017 pleads that her posting as Senior Clerk was against 13-1/3% LDCE quota along with direct recruits from open fresh candidates and as such, this needs to be taken into account as the initial appointment and MACP benefits granted with respect to this initial grade. It was in keeping with this consideration that the third MACP granted on 23.02.2010 was treated as second MACP vide orders dated 05.05.2011 by discounting the promotion from Clerk to Sr. Clerk. Thereafter, the third MACP became due and was granted on 10.10.2012 vide orders dated 10.10.2012.

However, just before retirement, this third MACP to GP Rs.4800 was withdrawn as not due. It was also advised that a recovery of Rs.1,66,477/- is required to be made from Smt. Sonamani Kauts and Rs.1,65,057/- from Sh. Jitendra Singh, for the duration they drew GP Rs.4800/- in place of GP Rs.4600/-.

7. Applicants represented against such recoveries. However, this amount was recovered from DCRG. The applicants made a representation bringing out therein that the DOP&T in follow up of a judgment of Hon'ble Apex Court in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Ors.**, [(2015) 4 SCC 334], issued directions vide letter dated 02.03.2016 to prohibit recoveries from Group 'C' & 'D' staff in certain conditions. This letter by DOP&T was thereafter adopted by Ministry of Railway also vide RBE No.72/2016 dated 22.06.2016. However, their representations were rejected vide order dated 27.03.2017. This rejection order reads as under:

“आपको सूचित किया जाता है कि आप दोनों कर्मचारियों की नियुक्ति लिपिक के पद पर) 400-260रु थी हुई में (-/1900 .पी.जी . प्रथम पदोन्नति वरि लिपिक ग्रेड पे 560-330) रु का दूसरी पर पद के (-/2800 .पी.जी .कार्यालय अधी.पी.जी 2300-1400 पे ग्रेड) . (-/4200 रुव तीसरी पदोन्नति के .अधी.का.मु (-/4600 .रु .पी.जी 2660-1600 पे ग्रेड) । है हुई पर पद इस प्रकार आपके तीनों आर्थिक लाभ हैं चुके हो पूर्ण चैनल प्रमोशन/ आपको अगली एम 4800 .पी.जी लाभ का .पी.सी.ए.का लाभ देय नहीं है ।

महाप्रबंधक 2015/14397 .सं.एस.पी के हाऊस बडौदा रेलवे उत्तर ,कार्मिक/ दिनांक दिनांक -Pt/NR/15/Acp/2009/V-PC .सं पत्र के बोर्ड रेलवे व 27.07.2015 22.07.2015के अनुसार आपकी लिपिक के पद से ग्रेड पे रु के लिपिक वरिष्ठ से 1900 2800 .पी.जी पदपर पदोन्नति LDCE %3/1-13quota amongst servicing graduate clerk के आधार पर हुई थी । जिसे प्रमोशन एक हेतु करने प्रदान के MACP । है गया माना”

8. Feeling aggrieved, the applicants had preferred the OA seeking following reliefs:

“OA No.3491/2017

1. That this Hon'ble Tribunal may graciously be pleased to pass and order quashing the impugned order of recovery of Rs.1,66,477/- holding it absolutely illegal, arbitrary, violative of natural justice and contrary to the rules.

2. Be pleased to grant all the consequential benefits by quashing the impugned order and to restore grade pay of Rs.4,800/- granted under 3rd MACP and protect the pay of the applicant.

OA No.3033/2017

1. That this Hon'ble Tribunal may graciously be pleased to pass and order quashing the impugned order of recovery of Rs.1,65,057/- holding it absolutely illegal, arbitrary, violative of natural justice and contrary to the rules.

2. Be pleased to grant all the consequential benefits by quashing the impugned order and to restore grade pay of Rs.4,800/- granted under 3rd MACP and protect the pay of the applicant.”

9. The applicants plead that the 13-1/3% LDCE quota was provided vide Railway Board's letter dated 18.06.1981. The relevant paras of this letter read as follows:

“The Ministry of Railways have had under consideration the question of restructuring of the Ministerial Cadre of Non-accounts Departments other than Personnel in the wake of upgradations done in the case of Personnel Department vide their letter No. PCIII/80/UPG/21 dated 10.11.80. As a result of agreement reached with the staff side in the Departmental Council (JCM), it has now been decided as under:-

xxx xxx xxx

(ii) 13 1/3 % of the total posts of Senior Clerks in scale Rs. 330-560 will be filled from amongst the Graduate Clerks already serving in the lower Grades after allowing them the age relaxation

already in force. These vacancies will be filled up by a competitive examination to be held by the Railway Service Commission. In the event of Graduate Clerks not being available from amongst the serving employees to fill this quota, the residual vacancies will be filled up by direct recruitment through the Railway Service Commission over and above the 20% quota referred to in (i) above.

xxx xxx xxx

4. The staff of the Personnel Department will be governed by instructions contained in this Ministry's letter No. PCIII/80/UPG/21 dated 10.11.80 except that the level of direct recruitment in scale Rs. 330-560 – In Personnel Department also will be 33 1/3%, and will be regulated in accordance with Para 1(i) & (i) above.

5. This has the sanction of the President.

Xxx xxx xxx”

10. Thereafter, Railway Board issued another instruction vide RBE No.100/2012 dated 12.09.2012 which reads as under:

“References have been received from Zonal Railways seeking clarification regarding grant of benefits under MACPS in respect of the employees qualifying through LDCE/GDCE. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of Government on MACPS and it has been decided as under:-

(i) if the relevant RRs 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 upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP Scheme.

(ii) if the relevant RRs prescribe a promotion Quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP Scheme.

This issues with the concurrence of the Finance Directorate of the Ministry of Railways.”

11. The applicants plead that they are required to be covered under Clause (i) of Board's letter dated 12.09.2012 (para 10 supra).

The applicants also plead that the reasoning given while rejecting their representation have referred to a circular P.S. No.14397/2015 dated 27.07.2015 and this PS in turn, was based upon a Railway Board clarification issued to Northern Railway vide letter dated 22.07.2015, which reads as under:

“Sub:- Financial upgradation under MACPS to the employees selected under LDCE Scheme.

Ref: - N.Rly's letter's No.831E/123-V/EIV(MACPS/LDCE),
dt. 06.07.2015.

With reference to Northern Railway's letter under reference, it is stated that with the issue of Board's restructuring instructions dt. 18.06.1981 the provisions for filling up the vacancies in Sr. Clerks grade stands amended and as per the amendment/existing provisions 13 1/3 % quota is not direct recruitment quota but promotional quota to be filled through LDCE from amongst serving graduate clerks in the lower grade and para 174 (4) of IREM Vol.I 1989 Edition indicates that position. Thus appointment against 13 1/3 % quota from amongst Serving Graduate Clerks in Grade Pay of Rs. 1900/PB-1 has to be treated as promotion for the purpose of MACP Scheme in terms of point No. (ii) of Board's letter dt. 12.09.2012 (RBE No. 100/2012).”

The Board's letter dated 12.09.2012 (RBE No.100/2012) quoted above is given in para 10 supra.

12. The applicants plead that this letter dated 22.07.2015 (para 11 supra) is not applicable in their case and it is para (i) of Railway Board's letter dated 12.09.2012 (para 10 supra), which is required to be followed.

13. The respondents opposed the OA and it was pleaded that para (ii) of letter dated 12.09.2012 (para 10 supra) is applicable, the 13-

1/3% LDCE being a promotion. Following averment has been made in the counter reply filed in OA No.3491/2017:

“It is submitted that the Applicant was well aware of reduction of her salary from 68000/- to 64100/- also the recovery thereof Rs.165057/- as applicant was part and parcel of personnel Branch being Ch. COS/P.Branch. It is submitted that the applicant has no cause of action hence the present Original Application is not maintainable and same may dismissed accordingly.”

The applicant, however, mentioned in rejoinder that this reduction was actually from Rs.6600/- to Rs.62200/- and recovery amount was Rs.166477/-.

14. Similar averment is made by the respondents in OA No.3033/2017 that applicant is holding the post of CH. O.S. of ‘P’ Branch and that he was well aware of the reduction of his pay from Rs.66000/- to 62200/- and downgrading from GP Rs.4800/- to Rs.4600/- and recovery amounting to Rs.1,65,057/-.

15. Matter has been heard at length. Sh. T.J.Ram, learned counsel represented the applicant in OA No.3491/2017 and Sh. Sukhdev Singh with Ms. Anjali Rana, learned counsel represented the applicant in OA No.3033/2017. Sh. Shailendra Tiwary, learned counsel in OA No.3491/2017 and Sh. Satpal Singh, learned counsel represented the respondents in OA No.3033/2017. Since the issue at hand is same, a common order is being passed.

16. The applicants were appointed as a Clerk in the year 1982 in the grade of Rs.260-400. Thereafter, a Limited Departmental

Competitive Examination (LDCE) was held for departmental candidates having graduate degree to fill 13-1/3% quota of the posts of Sr. Clerk. Both the applicants were posted as Senior Clerk in the grade of Rs.330-560 in the year 1985 on the basis of this LDCE exam. The relevant instructions in this regard were in force from 1981, as brought out in para 9 above. The Board's letter dated 12.09.2012 (para 10 supra) is only a clarification of this existing situation. The LDCE examination is conducted as a procedure for faster promotion of qualified departmental candidates. This position is clarified vide para (ii) of Railway Board's letter dated 12.09.2012 (para 10 supra). The instructions dated 22.07.2015 (para 11 supra) was a clarification given by Railway Board to Northern Railway. It is obvious that it is also a reiteration of this position.

17. The pleadings by the applicants that they being successful in LDCE against 13-1/3% quota needs to be treated as a direct recruit against Clause (i) of Railway Board's letter dated 12.09.2012 (para 10 supra) and not as a promotee, cannot be accepted in view of the implicit provisions which were subsequently explicitly clarified also in the instructions dated 12.09.2012 as well as in 22.07.2015.

18. The applicants were working as Chief O.S. in Establishment Department/Personal Department of Headquarters office in

Construction Department of Northern Railway. Establishment department deals with all personal related matters.

It was in keeping with this spirit of LDCE that the third MACP was initially granted to PB-2 + GP Rs.4600/- vide orders dated 24.02.2010, which was to take effect from 01.09.2008. Thereafter, some proposal would have been made to treat this third MACP as second MACP by ignoring the promotion from Clerk to Sr. Clerk and orders were subsequently issued on 05.05.2011. Thereafter, grant of third MACP PB-2 + GP Rs.4800/- was also done vide order dated 10.10.2012.

It is inconceivable that the applicants who were working in the Headquarters Office of Personal Department in Construction Department at the position of Chief O.S., would have been totally unaware firstly about the nuances of LDCE selection being a promotion, and secondly when the settled position of grant of 3rd MACP as per orders dated 24.02.2010 was changed to count it as 2nd MACP vide orders dated 05.05.2011 and thirdly about grant of third MACP vide orders dated 10.10.2012. All these orders were issued by same Headquarters office of Personnel Department in Construction Department.

19. It is in keeping with this that the conditions of total innocence and total ignorance and no misrepresentation whatsoever, on the

part of the applicants, which was sine-qua-non of relief granted in **Rafiq Masih** judgment (para 7 supra), are not taken to be true in the case of the instant both applicants.

20. The entire service record of an employee is reviewed at the time of retirement and it is at this stage that this error of treating the third MACP to GP Rs.4600/- ignoring the promotion from Clerk to Senior Clerk and as a result, treating the third MACP to GP Rs.4600/-, which was otherwise terminal, as second MACP and thereafter grant of third MACP to a still higher grade GP Rs.4800/- came to light and was rectified and it was assessed that certain excess payments have taken place. It is only right that the applicants, who were working at important and key positions in the same office which deals with such matters, cannot be allowed to enrich themselves due to the incorrect actions by their own department and resultant excess payments.

21. In view of the foregoing, the pleas put forth by the applicants are not gaining acceptability. Both the OAs are dismissed being devoid of any merit. No order as to costs.

22. All pending MAs also stand disposed of.

23. Respondents are also directed to conduct an enquiry and identify the reasons as to how incorrect fixations got done and take corrective measures to avoid recurrence.

**(Pradeep Kumar)
Member (A)**

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