

45

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.210/00321/2017

DATED THIS WEDNESDAY, THE 03rd JULY, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R. N. SINGH, MEMBER (JUDICIAL)

Omprakash Shrivastava, Age 56 years,
Occ. : Foreman, O/o Indo-German Tool Room,
P-31, Chikalthana MIDC, Aurangabad (Maharashtra) 431 006.
R/o Row House No.34, Shreenath Vihar,
Pisadevi, Aurangabad (Maharashtra) 431 006. *... Applicant*
(By Advocate Shri C.S.Tembhurnikar)

Versus

Union of India, Through
1. The Managing Director,
Micro, Small and Medium Enterprises,
Indo-German Tool Room, P-31, Chikalthana MIDC,
Aurangabad (Maharashtra) 431 006.
2. The Additional Secretary and Development Commissioner,
Ministry of Micro, Small and Medium Enterprises,
Nirman Bhavan, 7th Floor, Maluana Azad Road,
New Delhi 110 001. *... Respondents*
**(By Advocate Shri Vijay Vaidya along with
Ms. Pavitra Manesh)**

ORDER (ORAL)

PER : R.N.SINGH, MEMBER (JUDICIAL)

Heard the learned counsels for the parties.

2. The applicant, in the present OA has challenged the order dated 05.01.2017 (Annex A-1) whereby the respondents have refused further fixation of pay and has informed the applicant that one increment was added because of oversight at the time of fixation of his pay at the time of the regular promotion.

3. The precise facts leading to the present case are that the applicant was appointed as a Skilled Worker under the respondents with effect from 01.03.1995. He was further appointed as Highly Skilled Worker (redesignated as Technician Grade I) with effect from 20.11.2001 through direct recruitment process in the pay scale of Rs.4,500-125-7,000/-.

4. The applicant was granted benefit under the Modified Assured Career Progression Scheme (MACP Scheme) vide order dated 25.11.2011 in Pay Band I Rs.5,200-20,200/- plus Grade Pay of Rs.2,400/- (Annex A-2) and this order was modified vide office order dated 11.09.2015 to the extent Pay Band II Rs.9,300-34,800/- plus Grade Pay of Rs.4,200/-. The applicant has been further promoted to the post of Foreman with effect from 09.11.2015 on temporary basis with pay of Rs.16,410/- in the Pay Band II Rs.9,300-34,800/- plus Grade Pay of Rs.4,200/- (Annex A-4).

5. The respondents have issued memorandum dated 12.02.2016 (Annex A-5) whereby they have informed the applicant that on promotion of the applicant from Technician Grade I to the post of Foreman vide order dated 09.11.2015, by oversight his pay had been wrongly mentioned as Rs.16,410/- in Pay Band II Rs.9,300-34,800/- plus Grade Pay

of Rs.4,200/-but instead his pay as temporary Foreman shall be Rs.15,810/- in the Pay Band II Rs.9,300-34,800/- plus Grade Pay of Rs.4,200/- with effect from 09.11.2015. Aggrieved of such memorandum dated 12.02.2016 (Annex A-5), the applicant has preferred representation dated 24.10.2016 and in response thereto the respondents have passed the impugned order dated 05.01.2017 (Annex A-1).

6. The learned counsel for the applicant submits that the whole issue in the present case is as to whether on being granted promotion with effect from 09.11.2015 the applicant is entitled for grant of one additional increment in terms of office memorandum dated 07.01.2013 (Annex A-7), issued by the Ministry of Finance, Government of India, Department of Expenditure. He refers and relies upon paragraph No.2 of the memorandum dated 07.01.2013 which reads as under :

"2. In terms of this Ministry's OM No.169/2/2000-IC dated 24.11.2000, dealing with the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and administrative considerations, extension of the benefit of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities."

7. The learned counsel for the applicant argues that while the applicant was working as Technician Grade I, he was promoted to the post of Foreman and, therefore, in terms of the aforesaid provision of memorandum dated 07.01.2013, he is entitled for grant of one additional increment. So the pay fixation done by the memorandum dated 09.11.2015 was correct and the office memorandum dated 12.02.2016 should not have been issued by the respondents. He further argues that the impugned order dated 05.01.2017 is also illegal in view of the same has been passed ignoring the provision of the office memorandum dated 07.01.2013, cited hereinabove.

8. On contra, the learned counsel for the respondents submits that the applicant was granted financial upgradation under MACP Scheme vide order dated 25.11.2011 in Pay Band II of Rs.9,300-34,800/- with Grade Pay of Rs.4,200/- and therefore, on getting regular promotion to the post of Foreman with effect from 09.11.2015, the pay fixation has to be done keeping in view the provisions of paragraph No.4 of Annex I to DOPT OM on Modified Assured Career Progression Scheme dated 19.05.2009 (Annex R-1) and paragraph No.4 thereof reads as under :-

"4. *Benefit of pay fixation available at the time of regular promotion shall be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs.1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs.2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs.100). After availing financial upgradation under MACPS, if the Government servant get his regular promotion in the hierarchy of his cadre, which is to the grade of Rs.2400/- on regular promotion, he will only be granted the difference of grade pay between Rs.2000 and Rs.2,400. No additional increment will be granted at this stage."*

9. We have perused the pleadings on record and have also considered the submissions made on behalf of the parties. The basic facts are not disputed. The only issue to be decided is whether on being promoted from the post of Technician Grade I to the post of Foreman, the applicant is entitled for grant of one additional increment while fixing his pay in terms of the office memorandum dated 07.01.2013, referred to herein above. From plain reading of paragraph No.2 of Office Memorandum dated 07.01.2013 under reference, it is evident that this provision is applicable only when the pay admissible to the feeder post and the promotional post is identical in the revised pay scales based on the

recommendation of the V Central Pay Commission. However, this provision is not applicable in the present case as the feeder post of the applicant was Technician Grade I i.e. Pay Band I Rs.5,200-20,200/- plus Grade Pay of Rs.2,800/- and the pay band of the promotional post i.e. of Foreman is Rs.9,300-34,800/- plus Grade Pay of Rs.4,200/-.

10. It is the admitted case of the applicant that on grant of benefit of MACP Scheme in the year 2011, he had been placed in the same Pay Band II (Rs.9,300-34,800/- plus Grade Pay of Rs.4,200/-) which is also applicable to the promotional post i.e. Foreman. Therefore, in our considered view, the provisions of paragraph No.4 of MACP Scheme, as noted above, shall apply while fixing pay of the applicant on promotion which has actually been done in his case by the respondents. Hence we find no illegality in the order dated 05.01.2017 (Annex A-1) and the OA is devoid of merit. Accordingly, the same is dismissed.

11. In the facts and circumstances of the case, no order as to costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

kmg*

JD/67/19