

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/269/2015

Date of Reserve:17.05.2019

Date of Order:26.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Anil Kumar Sahu, aged about 55 years, S/o. Late Abhinna Sahu, at present working as a Mail/Express Guard, Office of Sr.DMO/E.Co.Rly/Khordha Road – resident of Ramachandrapur Bazar, College Road, PO-Jatni, Dist-Khordha, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Sarkar
J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Personnel officer/E.Co.Rly./E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Senior Divisional Personnel Officer, E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist-Khurda.
4. Senior Divisional Operating Managr/E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist-Khurda.
5. Secretary, Railway Board, Rail Bhawan, New Delhi-110 001.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order dated 05.02.2014 under Annexure-A/5 and order dated 16.12.2014 under Annexure-A/8 so far as the applicant is concerned.

- ii) And to direct the Respondents to restore the applicant in the Grade Pay of Rs.4600/- as 2nd financial upgradation under the MACP Scheme and pay the arrear salary.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. Shorn of unnecessary details, it would suffice to mention that the applicant while working as a Mail/Express Guard under the Respondent-Railways carrying the scale in PB-2 with Grade Pay of Rs.4200/- was granted 2nd financial upgradation under the Modified Assured Career Progression (in short MACP) Scheme in PB-2 with Grade Pay of Rs.4600/- with effect from 01.09.2008 vide O.M.No.OPTG/C/114/2010 dated 23.09.2010 (A/4). While the matter stood thus, Respondent No.3 issued a Corrigendum dated 05.02.2014 (A/5) stating that the applicant was not entitled to 2nd financial upgradation in PB-II with Grade Pay of Rs.4600/- with effect from 01.09.2008 in view of clarifications issued vide RBE No.142/2012 and CPO/ECOR/BBS's as a result of which, it was ordered therein to revise the pay fixation accordingly and to effect recovery, in case arrears have already been paid. In the above backdrop, applicant along with other affected persons submitted a joint representation dated 02.12.2014 (A/7) to the General manager, East Coast Railways, Bhubaneswar to intervene in the matter and allow them the benefit of Grade Pay of Rs.4600/- as had been so granted. This representation is stated to have been turned down vide A/8 dated 16.12.2014. Aggrieved with this, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as referred to earlier.

3. The grounds on which the applicant has laid his claims are that similar issue was the subject matter of dispute by the CAT, Allahabad Bench in O.A.No.1241/2011 (Sachidananda Ram & Ors. Vs. Union of India & Ors.) in

which the CAT, Allahabad Bench quashed the impugned order withdrawing the financial upgradation granted to the applicants therein. Being aggrieved, the Railway Authorities approached the Hon'ble High Court of Allahabad in Writ-A No.18244/2013 and the Hon'ble High Court decided that the movement of Senior Goods Guard whose pay scale is Rs.5000-8000/- when posted as Passenger Guards will be only lateral induction and not exactly promotion. Further, in view of merger of scale of Rs.5000-8000/- with Rs.5000-9000/- by the 6th CPC to GP of Rs.4200/- in PB-II the Private Respondents are entitled to two more financial upgradations under MACP Scheme and accordingly, dismissed the Writ Petition. It is the further case of the applicant that in similar matter in O.A.No.051/00027/2014, the CAT, Patna Bench has granted relief to the applicant (s) therein.

4. Contesting the claim of the applicant, respondents have filed their counter. It has been submitted that the applicant was appointed as Probationary Guard in the scale of Rs.330-350/- on 22.07.1986 and on completion of the required training, he was posted as Guard-C in the said scale of pay with effect from 10.09.1986 in Chakradharpur Division. Pursuant to the recommendations made by the 4th CPC, the post of Goods Guard-C and B stood merged and designated as Goods Guard carrying the scale of Rs.1200-2040/-. On the basis of the recommendations of 5th CPC, the pay scale of Goods Guard was revised to Rs.4500-7000/- and to Rs.5200-20200/- with GP of Rs.2800/- in pursuance of 6th CPC's recommendations. According to Respondents, while working as Goods Guard, the applicant was promoted to Sr.Goods Guard/Passenger Guard in the scale of Rs.5000-8000/- (5th CPC) with effect from 06.05.1999/20.03.2000, whereafter, he was further promoted to Sr.Passenger Guard carrying the scale of Rs.5500-9000/-(5th CPC) with effect

from 01.12.2004. Again, the applicant was promoted to Mail Express Guard in the scale of Rs.5500-9000/- (5th CPC) with effect from 21.02.2005. Based on the recommendations of 6th CPC, the scale of Rs.5500-9000/- has been revised to Rs.9300-34,800/- with Grade Pay of Rs.4200/- with effect from 01.01.2006 and accordingly, the applicant's pay has been fixed as Mail Express Guard which is the highest scale in Guard category. Respondents have pointed out that after implementation of 6th CPC's recommendations, four categories of Guards were classified and according to them, even if Sr.Goods Guard (non-functional), Sr.Passenger Guard and Mail Express Guard are in the same PB-2 (Rs.9300-34800 with GP of Rs.4200/-), in the event of promotion from Sr.Pasenger Guard to Mail Express Guard, fixation in the promotional post of Mail Express Guard shall be made by granting Rs.500/- as an Additional Allowance on which DA is admissible. Respondents have submitted that taking into account the Grade Pay in four categories of Guards in the 6th CPC's recommendations, the feeder post of Goods Guard was placed in PB-1 with Grade Pay of Rs.2800/-, the second promotional categories, i.e., Sr.Goods Guard (non-functional) and Sr.Passenger Guard being placed in one Grade Pay of Rs.4200/- and the last promotional category being Mail Express Guard carrying the Grade Pay of Rs.4200 + Rs.500/- as Additional Allowance.

5. Respondents have submitted that the matter regarding grant of 2nd financial upgradation under the MACP Scheme in Grade Pay of Rs.4600/- from 05.09.2008 as granted to the applicant was the subject matter of examination by the Department of Personnel & Training and accordingly, vide RBE No.142/2012, it was clarified as follows:

"References have been received from Zonal Railways seeking clarification as to what Grade Pay would be admissible under M.A.C.P. Scheme to an employee holding feeder post in a cadre where promotional post is in the

same Grade Pay. The matter has been examined in consultation with the Department of Personnel & Training (DOP&T), the nodal Department of Government on M.A.C.P. Scheme and it is clarified that A.C.P./M.A.C.P.Scheme have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues. Thus, financial upgradations under A.C.P./MACP Scheme CANNOT be to higher Grade Pay than what can be allowed to an employee on his normal promotion. In such cases, financial upgradation under MACP Scheme would be granted to the same Grade Pay”.

6. Based on this, it has been contended by the Respondents that the 2nd financial upgradation granted to the applicant under the MACP Scheme has been revised as he was not entitled for such upgradation and in effect, the benefit granted to the applicant vide office order dated 23.9.2010 has been withdrawn by issuing Corrigendum dated 05.02.2014 and accordingly, the pay of the applicant has been revised and re-fixed. As regards recovery of excess amount drawn by the applicant, it has been submitted by the respondents that since overpayment was made to the applicant erroneously which amounts to unjust enrichment, it was considered necessary to recover over payment, which has been commenced from November, 2014 on instalment basis upto April, 2015. The balance amount has not been recovered due to interim order dated 19.05.2015 passed by this Tribunal.

7. The Respondents have therefore, prayed that the O.A. being devoid of merit should be dismissed.

8. Applicant has filed a rejoinder to the counter, more or less reiterating the same facts as averred in the O.A.

9. We have heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant drew our attention to the orders passed by this Tribunal in O.A.No.273 of 2015 (disposed of on 5.3.2018) and O.A.No.270 of 2015 (disposed of on 11.05.2018)

and stated that the applicant in the present O.A. being a similarly situated person, the orders passed by this Tribunal in both the O.A. are squarely applicable to his case and therefore, prayed for similar order to be passed in this O.A.

10. We have examined both the orders passed by this Tribunal in the light of the facts involved in the present O.A. It appears that challenging the very same order as in the present O.A., one Ratnakar Panda, whose names figures at Sl.No.13 had filed O.A.No.273 of 2015 (supra). In that very order, the name of the applicant in the present O.A. finds place at Sl.No.15. After considering the pros and cons of the said O.A. and relying on an earlier decision in O.A.No.273/2015 (cited supra), this Tribunal vide order dated 11.05.2018 held as under:

"6. We have heard the learned counsels from both the sides. During the course of arguments, learned counsel for the applicant drew our attention to order dated 5.3.2018 in O.A.No.273 of 2015(Ajaya Kumar vs. Union of India) wherein this Tribunal had granted similar relief. For the sake clarity, Paragraphs-7, 8, 9 and 10 of the order are reproduced below:

7. The applicant had joined as a Goods Guard in 1981. In the category of Railway Guards, he got promotion to Senior Goods Guard/Passenger Guard with effect from 1.12.1997, Senior Passenger Guard with effect from 20.4.2001 and Mail/Express Guard with effect from 3.7.2002. Consequent upon the 6th CPC recommendations, the Grade Pay was fixed at the uniform rate of Rs.4200/- for Goods Guard, Senior Goods Guard, Senior Passenger Guard and Mail/Express Guard. Any promotions in this category only involve promotional increment under rule-13 of the Revised Pay Rules, 2008. Vide RBE No.54/2014, it was laid down that in case of promotion from Senior Goods Guard to Senior Passenger Guard, promotional increment would not be admissible. Only functional promotion in the same Pay Band/Grade Pay will be given. The Respondents have relied upon RBE No.142/2012 dated 13.12.2012 which reads as follows:

"Sub: Grant of financial upgradation under MACP Scheme-Clarification reg.

References have been received from Zonal Railways seeking clarification as to what Grade Pay would be admissible under MACP Scheme to an employee holding feeder post in a cadre where promotional post is in the same Grade Pay. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of the Government on MACP Scheme and it is clarified that ACP/MACP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues. Thus, financial upgradations under ACP/MACP Schemes CANNOT be to higher Grade Pay than what can be allowed to an employee on his normal promotion. In such cases financial upgradation under the MACP Scheme would be granted on the same Grade Pay.

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

8. The applicant has cited the judgment of CAT, Patna Bench at Ranchi in O.A.No.051/00027/2014 in which one of the Members of the present Bench was a Member. The relevant paragraphs of the said judgment are quoted herein below:

"4. (d) It is obvious from the above that the past rulings of this Tribunal not only settled the issue under adjudication in this OA but have also stood the test of judicial scrutiny at a higher level as well. Further, that a Co-ordinate Bench of this Tribunal (Patna Bench) has, vide orders dated 25.02.2014 in O.A. 721 of 2012, relied upon these rulings and decided as under:

"Accordingly, the O.A. is allowed and the impugned letter dated 18.05.2012 issued by respondent no.5 is hereby quashed and set aside. Respondents are directed to restore the financial upgradation under MACPs to the applicants after extending the benefit of the order/judgment dated 22.02.2012 and 19.07.2013 passed by the CAT Ernakulam Bench and Hon'ble High Court, Allahabad respectively within a period of three months from the date of receipt of a copy of the order. No order as to costs.

(e) It is significant that, notwithstanding the arguments submitted through the written statement, validity of the judicial rulings cited above and the similarity of the issues raised in this OA with those raised in OA 1241 of 2011 [decided by Allahabad Bench of this Tribunal on 24.09.2012] has not been..

5. In view of the above, this Tribunal holds that the prayer of the applicants in this OA is both just and justifiable. As such, reliefs prayed for in para 9 of the OA are allowed in full. The impugned orders referred to in paras 8(a), (b) and (c) are quashed and set aside. Further, the respondents are directed to restore the financial upgradation granted under MACP to the applicants within a period of three months from the date of receipt/communication of this order. It is reiterated that the ruling of this Tribunal is based on the orders dated 22.02.2012 and 24.09.2012 passed by Ernakulam Bench and Allahabad Bench of this Tribunal in similar matters; that these rulings have stood the test of time and scrutiny. That the decision of Hon'ble High Court, Allahabad in CWJC No.18244 of 2013, decided on 19.07.2013, stands testimony to this foundation.
6. In sum, this OA succeeds and stands disposed in terms of above, with no order as to costs".
9. By the above order of the CAT, Patna Bench at Ranchi, which also relied upon the orders of the CAT, Ernakulam Bench and the judgment of Hon'ble Allahabad High Court, restored the MACP Scheme to the applicant in the above litigations and the applicants continued to get the benefit of the Grade Pay of Rs.4600/Rs.4800/- .
10. Following the above quoted order of the Coordinate Benches promotion granted to the applicant from Senior Goods Guard to Senior Passenger Guard where no financial benefit was granted will be ignored and the applicant will be entitled to 2nd financial upgradation under the MACP Scheme. We, therefore, allow the O.A. filed by the applicant holding that the applicant will be entitled to Grade Pay of Rs.4600 by way of 2nd financial upgradation under the MACP Scheme. Accordingly, the impugned orders dated 05.02.2014 under Annexure-A/5 and dated 16.12.2014 under Annexure-A/8 so far as the applicant is concerned are quashed and set aside. Respondents are directed to pass the necessary orders restoring the Grade Pay of Rs.4600 to the applicant as 2nd financial upgradation with effect from 1.9.2008 within a period of eight weeks from the date of receipt of this order. No costs".

7. In view of the above, we follow the same ratio as adopted in O.A.No.273 of 2015 and hold that the applicant will be entitled to Grade Pay of Rs.4600 by way of 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008. Accordingly, orders dated 5.2.2014(A/5) and 16.12.2014(A/8) are quashed and set aside. Consequently any recovery made should be refunded to the applicant. The Respondents are directed to pass necessary orders granting the above relief to the applicant within a period of eight weeks from the date of receipt of this order.
8. The O.A. is allowed as above with no order as to costs".
11. Since the point to be decided in this O.A. is no more *res integra*, following the decision already taken by this Tribunal in O.A.No.273/2015 and O.A.No.270/2015 (supra), we quash the orders dated 5.2.2014(A/5) and dated 16.12.2014 (A/8) in so far as the present applicant is concerned by holding that the applicant was entitled to Grade Pay of Rs.4600/- by way of 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008. Recovery made, should be refunded to the applicant. Respondents are therefore, directed to pass necessary orders granting the above reliefs to the applicant within a period of eight weeks from the date of receipt of this order.
12. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

