

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/826/2014

Date of Reserve:24.04.2019

Date of Order:28.06.2019

CORAM:

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

Gour Chand Dutta, aged about 54 years, S/o. Late Purna Chandra Dutta – at presently working as Technician Grade-I(SSE/TL/Electrical) under Workshop Personnel Officer/E.Co.Rly./Carriage Repair Workshop, Mancheswar, Bhubaneswar, resident of Quarter No.A-14/4, Type-II, Sector-D, East Coast Railway Colony, Near Central School, PO-Mancheswar Railway Colony, Bhubaneswar, Dist-Khurda, Odisha.

...Applicant

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

-VERSUS-

Union of India represented through:

1. General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway,Mancheswar, Bhubaneswar, Dist-Khurda.
3. Workshop Personnel Officer, Carriage Repair Workshop, E.Co.Rly., Mancheswar, Bhubaneswar, Dist-Khurda.
4. Chief Personnel Officer/East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Technician Grade-I(SSE/TL/Electrical) under the respondent-railways. He is aggrieved by the communication dated 28/29.10.2014(A/11) whereby his request for grant of 3rd financial upgradation under the Modified Assured Career Progression (MACP) Scheme has been turned down by the Railway Administration on the

ground that as per Board's guidelines, MACP benefits are granted on completion of stipulated period of regular (not Adhoc) service. Hence, he has approached this Tribunal in this O.A. seeking for the following reliefs:

- i) To quash the order of rejection dated 28/29.10.2014(A/11).
- ii) To direct the Respondents to grant 3rd financial upgradation under the MACP Scheme w.e.f. 1.09.2008 in PB-II with Grade Pay of Rs.4200/- at par with B.K.Otta and Dhoba Sahu applicants in O.A.No.377/2010 and 394/2010.
- iii) Further to direct the respondents to pay the arrear salary w.e.f. 01.09.2008 with 12% interest for the delayed period of payment.

2. Succinctly stated, facts of the matter are that applicant joined Railway service as Skilled Artisan Grade-III in the trade of EFWM in the scale of Rs.260-400/- (RS) with effect from 01.02.2986. Subsequently, he was promoted to HS Grade-II with effect from 28.02.1993. He was thereafter, promoted to the pot of Technician Grade-I in the scale of Rs.1320-2040/- (RP) on ad hoc basis with effect from 28.02.1995. While working as such, ad hoc promotion of the applicant was regularized vide order dated 10.10.2002. In pursuance of recommendations made by the 6th CPC, MACP Scheme came into force with effect from 01.09.2008 which provides three financial upgradations at the intervals of 10, 20 and 30 years of service. Applicant along with others were granted 3rd financial upgradation in PB-II with Grade Pay of Rs.4200/- with effect from 10.10.2012.

3. Grievance of the applicant is that in the case of similarly situated persons, namely S/Shri B.K.Otta and Dhoba Sahu, the respondents vide order dated 04.04.2014 antedated the effective date of 3rd financial upgradation under the MACP Scheme to 01.09.2008 in obedience to order dated 28.01.2014 of the Hon'ble High Court of Orissa passed in W.P.(C) No.12423/2012 (arising out of O.A.No.294/2010) and W.P.(C)

No.12424/2012 (arising out of O.A.No.277/2010). In the above backdrop, applicant along with others submitted a representation dated 16.04.2014 to Respondent No.3 for grant of 3rd financial upgradation with effect from 01.09.2008 at par with Shri B.K.Otta, inter alia with a request to compute the ad hoc service as Technician Grade-I with effect from 28.02.1995 followed by regularization as qualifying service for the purpose of granting 3rd financial upgradation with effect from 01.09.2008. This representation of the applicant was rejected vide communication dated 29.10.2014 (A/11) the grounds of which have already mentioned above. Hence, this application with the aforesaid reliefs.

4. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, financial upgradation is admissible whenever an incumbent has spent 10 years continuous regular service in the same grade pay without any career advancement. In terms of Para-9 of Annexure to RBE No.101/2009 (A/5) issued by the Railway Board as circulated vide East Coast Railway Estt. Srl.No.108/2009 "regular service for the purpose of MACPS 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/contract basis before regular appointment or pre-appointment training shall not be taken into reckoning". Respondents have pointed out that since the applicant did not get any promotion during the last ten years from the date of 2nd regular promotion, he was granted 3rd financial upgradation in PB-II with GP Rs.4200(RP) with effect from 10.10.2012 on completion of 10 years of regular service as Tech.Gr.I in PB-I with GP Rs.2800/- under the MACP Scheme. As regards grant of 3rd financial benefits to S/Shri B.K.Otta and Dhoba Sahoo with

effect from 01.09.2008, it has been submitted that in obedience to the orders of the Hon'ble High Court of Orissa dated 28.01.2014 in WP(C) No.12423/2012 and WP(C) No.12424/2012, they were granted the said benefits which according to them, is purely personal to the employees concerned and it cannot be generalized as a precedent. Therefore, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

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

6. We have heard the learned counsels for both the sides and perused the records. We have also perused the order of this Tribunal in O.A.No.2377 of 2010 (B.K.Otta vs. UOI) as upheld by the Hon'ble High Court of Orissa, as cited by the applicant in support of his claim. It reveals that Shri B.K.Otta on completion of the training in different trades was appointed as Skilled Artisan, Gr.III with effect from 01.02.1986. He was thereafter provisionally regularized/promoted to High Skilled Gr.II (Electrical Fitter cum Wire Man) in the year 1993. Then, he was promoted on adhoc basis to HS, Gr.I (Electrical Fitter cum Wireman, Gr.II after passing the trade test vide order dated 03.05.1994 and his service in that grade was regularized vide order dated 10.10.2002. He submitted a representation claiming the benefit of MACP with effect from 03.05.1994 when he completed 10 years continuous service in the same Grade Pay and on the basis of the fact that his juniors S/Shri B.S.Swain and J.K.Ray had been granted the same benefit. This request having been turned down by the respondent-railways, this formed the subject matter of O.A.No.377/2010 before this Tribunal. This Tribunal vide order dated 22.03.2012 disposed of the said O.A. in the following terms:

"Therefore, in our considered view, if the adhoc promotion was given effect to [after the applicant had qualified in the trade test] and the applicant continued in the post till regularization in the said post/grade without any break, non-counting the period of service from the date he was promoted to the said post/grade for the purpose of grant of third MACP is not justified. Since this aspect (continuance of the applicant on adhoc basis without break till regularization is not clear in the pleadings of the Respondents), we deem it fit and proper to direct the Respondents to check this aspect of the matter and if it is found to be in the affirmative, then consider the case of the applicant for grant of third MACP, of course, subject to his fulfilling the conditions provided in the MACP Scheme, by taking into consideration his date of promotion to Tech.Gr.I in the scale of pay Rs.1320-2040/- (4th CPC) w.e.f. 13.05.1994. The entire exercise needs to be completed within a period of 90(ninety) days from the date of receipt of copy of this order. Ordered accordingly".

7. At this stage, it is to be noted that the Hon'ble High Court while disposing of W.P.(C) No.12324 of 2012, vide order dated 28.01.2014 observed as follows:

"In view of such nature of order passed by the Tribunal, the petitioners-Railways should have considered the case of the opposite party in accordance with the said direction and if it is found that opposite party is not entitled to the benefit, it is open for the petitioners-Railways to reject the claim of the opposite party on any ground which can form the basis of such rejection. While doing so, it would be open for the railway authorities to take into consideration the date of promotion of the opposite party.

Mr.Mishra, learned counsel appearing for the petitioners-Railways submits that since the learned Tribunal has made certain observation, it is found not possible to comply with the directions. We are of the view that the petitioners are entitled to take an independent decision.

With the aforesaid direction, the writ petition stands disposed of".

8. Having regard to the pleadings of the parties, we are of the considered opinion that the facts in O.A.No.377/2010 are similar to the facts of the

instant O.A. In view of this, we are inclined to allow the same relief that was allowed by this Tribunal in O.A.No.377 of 2010.

9. Having regard to the facts and circumstances of the case, we are of considered view that if the adhoc promotion was given effect to [after the applicant had qualified in the trade test] and the applicant continued in the post till regularization in the said post/grade without any break, non-counting the period of service from the date he was promoted to the said post/grade for the purpose of grant of third MACP is not justified. Since the claim of continuance of the applicant on adhoc basis without break till regularization is not specifically denied in the pleadings of the Respondents, we deem it fit and proper to direct the Respondents to check this aspect of the matter and if it is found to be in the affirmative, then consider the case of the applicant for grant of third MACP in the same manner that was done for the applicant in O.A.No.377 of 2010, subject to his fulfilling the conditions provided in the MACP Scheme, by taking into consideration the applicant's date of promotion to Tech.Gr.I in the scale of pay Rs.1320-2040/- (4th CPC) w.e.f. 28.02.1995. The entire exercise has to be completed within a period of 90(ninety) days from the date of receipt of copy of this order.

10. With the above observation and direction, this O.A. is disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

