

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/448/2016

Date of Reserve: 09.04.2019

Date of Order: 28.06.2019

CORAM:

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

Bimal Kumar Mohanty, aged about 53 years, S/o. Sri Nrupa Kishore Mohanty – at present working as Accounts Assistant under P.A. & C.A.O., East Coast Railways, Bhubaneswar – resident of Qr.No.Type-III, A-18/4, Railway Colony, Mancheswar, Bhubaneswar-751 017, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Sarkar, U.K.Bhatt

Smt.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. Financial Advisor & Chief Accounts Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Deputy Director, Pay Commission-V, Railway Board, At-Rail Bhawan, New Delhi-110 001.
4. Deputy Financial Advisor & Chief Accounts officer (G), East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...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 declare the clarification dated 04.03.2010 under Annexure-A/6 as non est.
- ii) To quash the order of rejection dated 22.06.2016 under Annexure-A/11.

- iii) To direct the Respondents to grant 3rd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 in PB-II with GP of Rs.4600/- and pay the differential financial benefits.
- iv) 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 note that the applicant had earlier approached this Tribunal in O.A.No.161 of 2016 claiming 3rd financial upgradation under the MACP Scheme. This Tribunal vide order dated 5.4.2016 directed Respondent No.2 to consider and dispose of the representation preferred by the applicant as per extant rules and instructions and pass a reasoned and speaking order within a stipulated time frame. In pursuance of the aforesaid direction, Railway Administration rejected the representation of the applicant vide communication dated 22.06.2016 (A/11) which is impugned and called in question in the instant O.A. For the sake of clarity, the relevant portion of which reads as follows:

"That, initially you had joined in Railway as a Junior Typist in the scale of Rs.950-1500 (RPS in IV PC). Later you had been promoted to the post of Sr.Typist in the scale of pay 1200-2040.

After passing the IREM Appendix II examination and on your option to switch over to the clerical cadre of Accounts department, you had been posted as JAA. Thereafter, you have been promoted to the post of Accounts Assistant on the basis of seniority-cum-suitability as per provision laid down by Railway Board (As per IREM Staff in Grade Rs.1200-2040 will be eligible for promotion to the post of Accounts Assistant in the grade of Rs.1400-2600/- after minimum 3 years service in Rs.1200-2040/- provided they have to pass Appendix-IIIA examination).

You had availed the first promotion considering your movement from Jr. Typist to Sr. Typist. Further, you had availed the second promotion when you had opted for JAA cadre. Consequently you have been promoted from Sr.Typist. As per the Railway Boards' letter dated 04.03.2010, "the movement from Jr.Steno to JAA is a case of promotion in terms of Para - 211 Ch.II of IREM, Vol.I. In view of this, the same is to be reckoned as promotion for the purpose of MACP Scheme: The copy of the extract of Para-211. Ch. Of IREM, VolI is annexed herewith as Annexure-R/2. And finally by promotion from JAA to AA you have already availed of three

promotions. As clarified by Railway board vide above referred letter change of cadre from Sr.Typist to JAA is a case of promotion for the purpose of MACP Scheme.

In view of the above, you request for third financial upgradation is untenable and not in consonance with the Railway Board's policy decision".

3. Aggrieved with the above, the applicant has invoked the jurisdiction of this Tribunal praying for the reliefs as already mentioned above.

4. It is the case of the applicant that initially he had joined Railways as Junior Typist and got promoted as Senior Typist/JAA in the scale of Rs.1200-2040 which corresponds to Grade Pay of Rs.2800/-. Further, he was promoted to the post of A.A. with effect from 16.02.1993 which corresponds to pay in PB-II with Grade Pay of Rs.4200/- as per 6th CPC and has completed more than 10 years of service in the 2nd promotional post of AA and as such, he is eligible for grant of 3rd financial upgradation in PB-II with Grade Pay of Rs.4600/- with effect from 01.09.2008. His contention is that no where Para-211, Chapter-II of IREM, Vol.I stipulates that change of category and/or movement/switchover from Senior Typist to JAA carrying the same scale of pay is to be treated as promotion. He has further pointed out that this issue was the subject matter of challenge before this Tribunal in O.A.No.153 of 2011 and this Tribunal vide order dated 27.7.2012 held that the conversion/movement/switchover from the post of Senior Typist to JAA in the same scale of pay cannot be construed as a promotion. Based on this, it has been submitted by the applicant that since the issue to be decided in this O.A. is no longer *res integra*, the instant O.A. may be disposed of following the ratio decided in O.A.No.153 of 2011.

5. Contesting the claim of the applicant, respondents have filed a detailed counter. Since the contents of the counter are based on the impugned order,

the relevant parts of which have already been quoted above, we are not inclined to repeat the same any further.

6. We have heard the learned counsels for both the sides and perused the records. We have also gone through the decisions relied upon by both the sides to support their respective contentions.

7. Admittedly, the applicant joined Railways as a Junior Typist on 19.10.1987 and later on, promoted to the post of Senior Typist with effect from 16.02.1990 in the scale of Rs.1200-2040/-. In consequence of his qualifying the Appendix-IIA Examination and he having exercised option, applicant's category from Sr.Typist to the post of Junior Accounts Assistant (in short JAA) was changed and accordingly, he was posted as JAA in the scale of Rs.1200-2040/- with effect from 16.02.1993.

8. It is the case of the respondents that change of category from Sr.Typist to JAA should be reckoned as promotion in terms of Para - 211 Ch.II of IREM, Vol.I. On the other hand, it is the case of the applicant that since Sr.Typist and JAA carries the same scale of pay, i.e., Rs.1200-2040/-, it is not a case of promotion.

9. In this connection, we have gone through the decisions of this Tribunal in O.A.No.153 of 2011(disposed of on 27.7.2012), O.A.No.885 of 2014 & O.A.No. 159 of 2016 (disposed of vide common order on 29.1.2019) as relied upon by the applicant to fortify his stand point.

10. It reveals from the O.A.No.153 of 2011 that applicant, Satis Gadi had joined as Junior Stenographer in the scale of Rs.1200-2040 with effect from 14.08.1987 and while working as such, on his option being exercised and having passed the Appendix-IIA Examination, he was allowed to officiate as Junior Accounts Assistant with effect from 11.6.1991 carrying the same scale

of pay (Rs.1200-2040) as that of the post of Junior Stenographer. He was, thereafter, promoted to Accounts Assistant carrying the scale of Rs.1400-2600/-. Challenge in that O.A. was that since initially the applicant was holding the post of Junior Stenographer in the scale of Rs.1200-2040/- and subsequently switched over to the post of Junior Accounts Assistant carrying the same scale of pay, i.e., Rs.1200-2040/-, the decision of the Railway Board that the movement from Junior Stenographer to Junior Accounts Assistant is a case of promotion in terms of Para 211, Chapter-II of IREM, Vol.I is bad in law. This Tribunal after considering the arguments of both the sides, decided the matter in favour of the applicant therein in the following terms:

- "5. It is not in dispute that the applicant had initially entered the railway service in the year 1987 as Jr. Stenographer carrying the scale of Rs.1200-2040/-. It is also not in dispute that he was allowed switching over/conversion to the post of Junior Accounts Assistant carrying the scale of Rs.1200-2040/- with effect from 11.6.1991. Thus, from the admitted fact there is no iota of doubt that the posts of Junior Stenographer as well as Junior Accounts Assistant carrying the pay scale of Rs.1200-2040/- at the relevant point of time when the applicant was converted to Junior Accounts Assistant cannot be construed as promotion inasmuch as there is no such rule laid down in the service jurisprudence promoting an incumbent to a post carrying the same scale of pay as that of the post held by him in the feeder grade. We are conscious that after introduction of 5th CPC coming into force with effect from 1.1.1996, whereas the scale of pay of Junior Stenographer was Rs.4000-6000/- the scale of pay of Junior Accounts Assistant in the Railways was Rs.4500-7000/- and in that event it may be logical to conclude that Junior Accounts Assistant is a promotional grade for the post of Junior Stenographer because of the elevation. But in the instant case the peculiarity involved is that prior to coming into force the 5th CPC, i.e., 1.1.1996, the applicant had already been allowed conversion to the post of Junior Accounts Assistant carrying the scale of Rs.1200-2040, which pay scale he was already in receipt of in the grade of Junior Stenographer. Therefore, by no stretch of imagination, Junior Accounts Assistants could be construed as a promotional grade of Junior Stenographer in so far as the present applicant is concerned. In the circumstances, we cannot but hold that Para 211, Chapter-II of IREM, Vol.I is not applicable to the case of the applicant, especially when

he has been converted from the post of Junior Stenographer to the post of Junior Accounts Assistant carrying the same scale of pay of Rs.1200-2040/-.

6. For the reasons discussed above, we would direct the Respondents to take into account the period of the qualifying service rendered by the applicant in the grade of Junior Stenographer together with the qualifying service as Junior Assistant Accounts for the purpose of 3rd MACP and accordingly, grant him the benefit thereon with effect from the date the same is due and admissible".

11. Relying on the aforesaid decision, this Tribunal in O.A.Nos.885 of 2014 and 159 of 2016 also granted similar reliefs to the applicants therein.

12. In support of their contentions, respondents have relied on the decision of the Hon'ble Supreme Court in State Financial Corpn. Vs.M/s.Jagadamba Oil Mills (AIR 2002 SC 834). Upon perusal of the said decision, it reveals that the same pertains to wrong calculation of the benefits granted to an employee under the VRS Scheme. Since this decision of the Hon'ble Supreme Court has been rendered in a different context and not germane to the issue involved in the present O.A., in our considered view the same is not of any help to the respondents.

13. In Surendra nath Pandey & Ors. Vs. Uttar Pradesh Cooperative Bank Limited & Another [(2011) 1 SCC (L&S) 217], as cited by the respondents, we would like to note that the said decision relates parity in pay scale and not in the context of grant of benefits under the MACP Scheme. Therefore, this decision so relied upon is of no help to the respondents.

14. Coming to the facts of the present case, it is to be noted that the sole point to be decided in this O.A. is whether movement/conversion/switch over from one post to another carrying the same scale of pay could be construed as promotion. Answer to this question is in the negative in view of foregone conclusions of this Tribunal in O.A.Nos.153 of 2011, 885 of 2014 and 159 of

2016 cited supra. In view of this, we are of the opinion that the impugned communication dated 22.6.2016 (A/11) does not stand the judicial scrutiny and accordingly, the same is quashed and set aside. Consequently, the respondents are directed to take into account the qualifying service rendered by the applicant as Senior Typist together with the qualifying service rendered as Junior Account Assistant for the purpose of 3rd MACP and grant him the benefit under Scheme on completion of 10 years service in PB-II with Grade Pay of Rs.4200/-, provided that the applicant fulfils the other conditions of MACP Scheme and in such eventuality, the applicant shall be granted arrears financial benefits with effect from the date 3rd financial upgradation under the MACP Scheme is due and admissible to him. This exercise shall be completed within a period of 120 days from the date of communication of this order.

15. 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)

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