

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/546/2012

Date of Reserve:12.07.2019

Date of Order:04.09.2019

CORAM:

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

Sri Lingaraj Singh, aged about 58 years, Retd. SPM, S/o. Late Basanta Kumar Singh, resident of Vill:Shyamacharanpur, PO/PS/Dist-Dhenkanal-759 001, Retd. SPM of Talamul S.O.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary-cm-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur-768 001.
3. Director of Accounts (Postal), At-Mahanadi Vihar, PO:Naya Bazar, Dist: Cuttack, Odisha-753 004.
4. Superintendent of Post Offices, Dehkanal Division, At/PO/Dist-Dhenkanal-759 001.

...Respondents

By the Advocate(s)-Mr.L.Jena
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

The applicant is a retired Postal employee. He has approached this Tribunal in this O.A. seeking for the following reliefs:

"...to quash Annexure-A/8 & 9 and direct the Respondents to consider the case of applicant for grant of BCR promotion/financial upgradation w.e.f. 25.8.2008 and release the retirement benefits & pension in the revised pay/pension with due interest and cost".

2. Brief facts leading to filing of this O.A. are thus: The applicant entered service as Group D in the Department of Posts with effect from 25.1.1978. He was promoted to the cadre of Postman with effect from 19.05.1981. While

working as such, he was further promoted as Postal Assistant by virtue of departmental examination on 25.8.1982. The applicant was promoted to the cadre of L.S.G. under T.B.O.P. Scheme on completion of 16 years service vide order dated 10.09.1998. Again, the applicant was promoted to BCR Cadre/Scale on completion of 26 years service as Postal Assistant vide order dated 5.5.2009. Applicant took voluntary retirement from service with effect from 1.2.2012 having rendered more than 34 years of service. According to applicant, at the time of his retirement, the last pay drawn by him was Rs.18,160/- + D.A. and since he had completed more than 34 years service, his pension should have been fixed at Rs.9080/- + D.A. But the Respondents fixed his pension at Rs.8070 + D.A. as a result of which, he suffered a loss of Rs.1010/- + D.A. every month. This action was taken by the respondents vide order dated 18.4.2012 (A/6) behind his back and without giving him any notice to show cause. Aggrieved with this, the applicant submitted a representation dated 14.5.2012 (A/7) to Respondent No.2, which was rejected vide communication dated 28.6.2012 in pursuance of which Respondent No.4 vide Memo dated 2.7.2012 (A/8) cancelled the promotion given to the applicant under the BCR Scheme. Consequently, Respondent No.4 issued Memo dated 10.7.2012 (A/9), which reads as follows:

"Under the provisions of Rule-64 and 71 of C.C.S.(Pension) Rules, 1972, sanction of the Supdt. Of Post Offices, Dhenkanal Division, Dhenkanal is hereby conveyed for payment of provisional Retirement Gratuity of Rs.3,95,471/- (Rupees Three lakh ninety five thousand four hundred seventy one) only out of total gratuity amount of Rs.439412/- to Sri Lingaraj Singh, Ex.SPM, Talmul S.O., who retired from service voluntarily on 01.02.2012 F/N subject to final adjustment at the time of sanctioning final Retirement Gratuity by PAO Cuttack-4.

This will be charged under Head 3201-07-104-01 Gratuities".

3. Hence, this Application with the reliefs sought for as mentioned above.

4. The grounds on which the applicant has based his claim are that the action of the respondents is violative of the principles of natural justice. According to applicant, Postal Assistant is entitled to get BCR scale of pay on the day he completes 26 years of service with effect from 25.8.2008 as held in Piran Ditta & 25 Ors. Vs. U.O.I. & Ors. [2005(1) ATJ 430]. It has been contended that as per the decision of CAT, Jodhpur Bench in O.A.No.382 & 354 of 2011, officials who have got earlier promotion prior to coming to P.A. cadre are also entitled to get MACP on completion of 10, 20 & 30 years of service. Applicant has pointed out that since no proceeding was pending against him nor he had gained undue benefit by his misrepresentation, he and on the other hand, since he had worked as SPM due to BCR promotion, the recovery ordered to be effected by the respondents is bad in law.

5. Per contra, respondents have filed their counter. The sum and substance of the counter-reply is that at the time when the applicant was to be granted the benefit under the BCR Scheme on completion of 26 years of service as P.A., it was decided by the Department that the effect of promotion would be either on 1st January or 1st July of the year in which the applicant is completing 26 years of service. Accordingly, although the applicant had completed 26 years of service as on 24.8.2008, he was given financial upgradation under BCR scheme w.e.f. 1st January, 2009 and he continued as such till his retirement on 01.02.2012. While processing the retirement benefits, it was noticed that under the Modified Assured Career Progression (in short MACP) Scheme three financial upgradations are admissible on completion of 10, 20 & 30 years of regular service from the entry cadre under with effect from 01.09.2008. Paragraph-4 of the said Scheme vide Office Memorandum dated 28.09.2008 (R/1) prescribes as under:

"The schemes of Time Bound One Promotion introduced with effect from 30.11.1983 and the Biennial Cadre Review introduced with effect from 01.10.1991 and extended to other categories of staff on subsequent dates shall stand withdrawn with effect from 01.09.2008".

6. The Respondents have pointed out that Paragraph-8 of Salient Features to the said Office Memorandum states that "Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS". In the above background, it has been contended by the respondents that the applicant initially joined the Department as Group-D and subsequently, promoted to Postman cadre which is his first promotion. Thereafter, the applicant was promoted to the cadre of Postal Assistant (second promotion). Subsequently, he was given financial upgradation under Time Bound One Promotion (in short TBOP) Scheme with effect from 25.8.1998, which is his third promotion. In view of this, the respondents have submitted that the applicant was not entitled to further promotion under BCR Scheme with effect from 01.01.2009. Respondents have submitted that since the BCR Scheme lost its existence with effect from 01.09.2008 when MACP Scheme came into force, the applicant is not eligible to get financial upgradation under the said Scheme. The promotions given to the applicant having been re-examined, the Post Master General, Sambalpur Region vide Memo dated 28.06.2012 cancelled promotion granted to the applicant under BCR Scheme and this fact was intimated to the applicant vide Memo dated 2.7.2012.

7. Applicant has filed a rejoinder to the counter and the respondents have also filed a reply to rejoinder.

8. Heard the learned counsels for both the sides and perused the records.

9. From the pleadings of the parties, it is an admitted position that the applicant was due to get the benefit of financial upgradation under BCR scheme with effect from 24.08.2008, i.e., on completion of 26 years service from the date of joining as Postal Assistant. However, on the decision taken by the respondents, the applicant was granted the said benefit with effect from 1.1.2009, instead of 24.08.2008, by which time, due to operation of MACP Scheme with effect from 01.09.2008, the benefit granted under BCR Scheme had been withdrawn. Therefore, in the instant case, the point to be decided is whether the applicant was entitled to the benefit of BCR scheme with effect from 24.08.2008 when he had completed 26 years of service in the cadre of Postal Assistant. In this connection, the applicant has relied upon the decision of Full Bench, Chandigarh (Circuit Sitting at Jammu) in O.A.No.7/JK/2003 decided on 14.01.2005 (Piran Ditta & 25 Ors. Vs. Union of India & Ors.). In that case, the point to be decided by the Full Bench was (i)whether the benefits under BCR Scheme dated 11.10.1991 (Annexure-A/1) are to be granted from the date one completes 26 years of satisfactory service or from the crucial dates of 1st January or 1st July, as the case may be, against each identified for upgradation from these crucial dates each year as per subsequent clarifications. The Full Bench answered the point that "the benefit under the Biennial Cadre Review Scheme dated 11.10.1991 has to be granted from the date one completes 26 years of satisfactory service".

9. In view of the above decision of the Full Bench, we are of the opinion that the applicant was entitled to the benefit of BCR Scheme with effect from 24.08.2008 and therefore, there was no justification to grant him the said benefit with effect from 01.01.2009 by which time, MACP Scheme had already been operationalized. We therefore, quash Annexure-A/8 dated 01.07.2012

Annexure-A/9 dated 10.07.2012 and direct the Respondents to consider granting the benefit of financial upgradation under BCR Scheme in favour of the applicant on completion of 26 years of service in the cadre of P.A., i.e., with effect from 24.08.2008 and accordingly, calculate and release the retiral benefits in favour of the applicant within a period of ninety days from the date of receipt of this order.

10. 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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