

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. 377 of 2012

Date of order: 23.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Mrs. Jharia Pyne,
Daughter of Late Jogesh Chandra Majumder,
Aged about 61 years,
A retired Chief Matron of
South Eastern Railway, Garden Reach,
Kolkata.
Presently residing at Flat No. 102,
15/2, Omkar Mall Jetia Road,
Howrah - 711 001

.. Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
S.E. Railway, Garden Reach,
Kolkata - 700 043.
2. The Secretary,
Ministry of Railways (Rail Board),
Rail Bhavan,
New Delhi - 110 001.
3. The Medical Director,
Central Hospital, S.E. Railway,
Garden Reach, Kolkata - 700 043.
4. Chief Personnel Manager,
S.E. Railway,
Garden Reach, Kolkata - 700 043.

.. Respondents

For the Applicant : Mr. G.C. Chakraborty, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-

"a. A direction upon the respondents to modify the date of

effect of 3rd Financial Upgradation in respect of the applicant by allowing date of effect from 28.9.2008 instead of from 19.6.2011 in the order No. MED/HQ/34 dated 11.7.2011.

b. A direction upon the respondent to make the payment of arrear of Pay and allowances on Grade pay of Rs. 6,600/- and other pensionary benefits by revision of last Band pay and Grade pay.

c. A direction upon the respondent to pay interest @ 18% per annum w.e.f. 28.9.2008 on arrear pay and allowance and w.e.f. 1.7.2009 on arrear pension and other pensionary benefits till date of payment.

d. Any other order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper."

3. The Ld. Counsel for the applicant at the outset itself would place reliance on the decision of the Hon'ble Calcutta High Court and develop his argument that the present applicant is virtually on the same footing as that of the applicant in the said WPCT and extract from the said decision of the Hon'ble Calcutta High Court runs thus:-

"13. A bare perusal of this Clause indicates that only such service which is rendered on an ad hoc or contractual basis on pre-appointment training, before regular appointment shall not be taken into reckoning for extending the benefits of the scheme. Thus, if an employee is recruited on an ad hoc basis and undergoes training before he is absorbed as a regular employee, the period of service rendered by him as an ad hoc employee cannot be included for the purposes of extending the benefits under the Scheme. However, if an employee has acquired the training requisite for the job that he is recruited for, albeit on an ad hoc basis, prior to his appointment, that period of ad hoc service must be included for payment of the benefits of the Scheme. The Scheme which is envisaged by the Railway Board in para material with the MACP Scheme for the Central Government Civilian Employees which has been issued on 9th September, 2010 by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training). In fact Clause 9 in the Scheme applicable to the Central Government Civilian Employees is identical to Clause 9 of the MACP Scheme which is applicable to the railway employees.

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20. In our opinion, therefore, the Tribunal has erred in rejecting the applications of the petitioners. A correct interpretation of Clause 9 of the Scheme would entitle the petitioners to the benefits of the MACP Scheme as both of them have completed more than 30 years of service in employment from the date they had been appointed as trained staff nurses but on an adhoc basis. They would thus be entitled to the 3rd financial

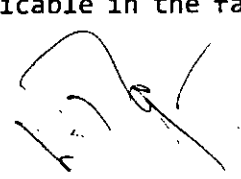
upgradation. The petitioners would also be entitled to all arrears of pay and allowances and other pensionary benefits consequent to the extension of the benefit of the MACP Scheme.

21. The petitions are allowed accordingly. The respondents shall pay all arrears to the petitioners and refix the pension payable to them within 4 months from today."

4. As such, the Ld. Counsel for the applicant placing reliance on those findings of the Hon'ble Calcutta High Court in WPCT No. 497 of 2013 dated 11.3.2014 would argue that the same treatment be meted out to the applicants in this O.A. The gist and kernel of the applicant's case is that she joined the service as trained nurse even though she was given appointment on adhoc basis. The Hon'ble High Court distinguished and differentiated the Trained Nurse on adhoc basis from that of the Untrained Nurse being appointed on adhoc basis. Accordingly, the Hon'ble High Court of Calcutta directed that trained Nurse appointed on adhoc basis should be treated as persons appointed on regular basis from the date of appointment on adhoc basis itself for the purpose of computing MACP benefits in their favour. Accordingly, the Ld. Counsel for the applicant would pray for allowing the O.A.

5. Per contra, the Ld. Counsel for the respondent authority would place reliance on the reply filed by the respondents to the effect that in this case the present applicant was conferred with the benefits of the MACP but her grievance is that it should be antedated by taking into account the adhoc service rendered by her and that such a prayer is not tenable.

6. The point for consideration is as to whether the decision of the Hon'ble Calcutta High Court is squarely applicable in the facts and circumstances of the case.



7. A mere reading of the decision of the Hon'ble Calcutta High Court cited supra would exemplify and demonstrate that the said judgment is squarely applicable to the factual matrix of this case. Indebutably and indisputably the applicant joined the respondent Railway service as Trained Nurse and without any break she has been continuing in service. In such a case we could see no exception which could be carried out as against her for the purpose of not complying the dictum of the Hon'ble Calcutta High Court in the cited judgment. No doubt, according to the Ld. Counsel for the applicant the 3rd MACP benefit was given to her already but the question arises as from which date that was given. The Ld. Counsel for the applicant would appropriately and correctly point out that wrongly excluding the period of service on adhoc basis the 3rd MACP benefit was calculated and given but it should be antedated so to say that 3rd MACP benefit ought to have been calculated and given by counting her service from 28.9.78 so to say that of her appointment on adhoc basis as Trained Nurse.

6. As such, we could see considerable force in the submission of the Ld. Counsel for the applicant. Accordingly, the respondent Railway authorities are directed to count the service of the applicant w.e.f. 28.9.78 for the purpose of conferring the 3rd MACP benefit and accordingly the arrears, if any, be paid to her.

7. Accordingly, the O.A. is disposed of. The M.A. is also closed.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)