

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**O.A. No. 350/715/2013
M.A. No. 350/303/2013

Date of order: 10.06.2019

**Coram : Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. N. Neihisal, Administrative Member**

Shri Tarun Kumar Pal
S/o Late N.B. Pal
Aged about 41 years, working as Junior Clerk
Under Senior Section Electrical Engineer
S.E. Rly., Shalimar, residing at 7/3
Talpukur Road, Sarsuna, Kolkata – 61.

... Applicant

For the Applicant : Mr. A. Chakraborty & Ms. T. Das

- Versus -

1. Union of India through the General Manager
S.E. Rly., Garden Reach
Kolkata – 700043.
2. Sr. Divisional Personnel Officer
S.E. Rly., Kharagpur, P.O. & P.S. – Kharagpur
Dist – Paschim Midnapore
Pin – 721301.
3. Sr. Divisional Electrical Engineer (G)
S.E. Rly., Kharagpur, P.O. & P.S. – Kharagpur
Dist – Paschim Midnapore, Pin – 721301.
4. Sr. Section Engineer (Electrical)
Shalimar, P.O. & P.S. – Shibpur
Dist – Howrah, Pin – 711103.

... Respondents

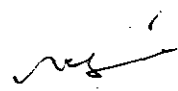
For the Respondents : Mr. R.K. Sarma, Standing Counsel

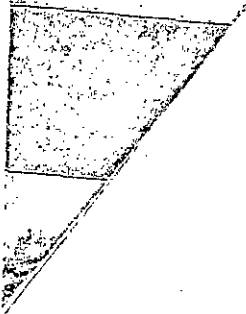
ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman:**

Prayer for condonation is allowed.

2. The applicant was initially appointed as Constable in the Railway Protection Force in the South Eastern Railway. He was promoted to the post of Head Constable, which carried the pay scale of Rs. 3200-4900/-. However, he was medically decategorised on 09.03.2004 and was offered alternative employment as Jr. Clerk, with the pay scale of Rs. 3200-4590/-.

3. The Railway issued clarification on 27.11.2006 to the effect that if Head Constable is appointed as Jr. Clerk on being medically decategorised, the pay structure of the post of Head Constable shall be taken into account, for the purpose of extending the benefit under the Assured Career Progression (ACP) Scheme. This O.A. is filed with a prayer to direct the respondents to grant 1st ACP in the pay scale of pay of Rs. 4500-7000/- w.e.f. 09.03.2004. The applicant contends that his claim accords with the notification dated 27.11.2006 and orders passed by this Tribunal in certain O.A.s





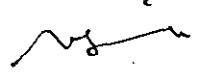
4. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant was initially appointed as Constable on 01.01.1991 and thereafter was promoted as Head Constable on 28.05.1999. According to them, his 1st ACP offset against this promotion and by the time the applicant became due for 2nd ACP on completion of 24 years of service; the Modified Assured Career Progression (MACP) came into force w.e.f. 01.09.2008. It is stated that the claim made by the applicant is not tenable.

5. We heard Mr. A. Chakraborty, learned counsel for applicant and Mr. R.K. Sarma, learned Standing counsel for respondents.

6. The prayer in the O.A. reads as under:-

"An order do issue directing the respondents to grant 1st ACP in favour of the applicant in the scale of pay of Rs. 4500-7000/- w.e.f. 09-03-2004 and to fix his pay in the said scale and to grant all the consequential benefits".

7. From this, it is clear that the applicant wants the 1st ACP w.e.f. 09.03.2004, the date on which he was medically decategorised, while in the post of Head Constable. This is not permissible. The reason is that his



1st ACP stood offset on account of his promotion to the post of Head Constable. Thereafter, he was put in the post of Jr. Clerk.

8. The respondents counted the entire service of the applicant, in continuity. In para 8 of the counter affidavit, it is stated as under:-

"8. With regard to the statement made in paragraph 4.7 of the said Application, save and except what are matter of records and all other allegations/statements made therein are denied and disputed. It is further submitted that that the applicant was initially appointed as Constable on 10.01.1991 in scale Rs. 3050-4590/-. On 28.05.99, he got promotion to the post of Head Constable in scale Rs. 3200-4900/-. As per Railway rules, he was due 2nd financial up-gradation after completion of 24 years from his date of appointment. But due to implementation of modified ACP w.e.f. 01.09.2008, the applicant was awarded 2nd financial up-gradation after completion of 10 years after fulfilment of requisite criteria w.e.f. 29.05.2009."

9. Though the applicant filed the rejoinder, this aspect was not contradicted. The plea of the respondents that the applicant was already extended the benefit of 2nd MACP stood un-rebutted. If the applicant has any grievance about it, he can work out his remedies separately. The relief claimed in this O.A. cannot be granted.



10. We therefore, dispose of the O.A. leaving open to the applicant to seek redressal of grievances, if any, in relation to the 2nd MACP, in terms of law, as settled by this Tribunal.

There shall be no order as to costs.


(N. Neelam)
Administrative Member


(Justice L. Narasimha Reddy)
Chairman