

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.749/2016

Date of Decision: 01st July, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri S.T. Sharma, Age 61 years,
Retired Programmer (Group – B),
Central Railway, Mumbai
Residing at B-4, Jagruthi, Raj Kunj Co-op Hsg Scty,
Chembur 400 074.

.. ***Applicant***

(In person)

VERSUS

Union of India through

1. The Secretary, Ministry of Railways,
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, Central Railway,
Head Quarter's Office, CSTM.
3. The Chief Personal Officer,
Head Quarter's Office, Central Railway, CSTM.
4. The Chief Commercial Manager,
Head Quarter's Office, New Annexe Bldg,
Central Railway, CSTM.

... ***Respondents***

(By Advocate Shri V.D. Vadhavkar)

ORDER (Oral)

Per : R.Vijaykumar, Member (Administrative)

This application has been filed by the
applicant on 01.09.2016 under Section 19 of
the Administrative Tribunals Act, 1985
seeking the following reliefs:-

“8.a. The Hon'ble Tribunal may gracefully be pleased
to hold and declare that the applicant be promoted to the
Sr. Scale Grade Rs.15600-39100 (RSRP) GP Rs.6600/- as
a Sr. Programmer taking into Railway Board's letter dated

22.11.2007 or thereafter which the Hon'ble Tribunal deem fit.

8.b. The Hon'ble Tribunal may gracefully be pleased to direct the respondents to refund MACP arrears of Rs.79000/- paid in 2012 and recovered by the administration from the applicant at the time of retirement in 2015.

8.c. Costs of the application be provided for.

8.d. Any other order, this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant commenced service on 04.03.1980 as Chemical and Metallurgical Assistant by appointment through the Railway Recruitment Board and which is a Group 'C' post. Thereafter, he received a first promotion in his substantive cadre in 1985 and in 1991, he underwent a selection process and joined the Passenger Reservation System (PRS) as Assistant Programmer, obtaining the salary equivalent to PB-II Grade Pay of Rs.4600/-. In May, 2000 he was appointed on officiating basis in a Group 'B' position with the pay scale equivalent to PB-II Grade Pay of Rs.4800/-. His services were regularised subsequent to the notification of Recruitment Rules on 09.02.2015 and the applicant was also regularised in the Grade 'B' service on

10.02.2015. Meanwhile, he states that he received an MACP in 2011 raising his Grade Pay to Rs.5400/- as per MACP Rules.

3. The applicant has filed this OA as second stage litigation after directions by this Tribunal in OA No.63/2016 dated 08.03.2016 by which respondents were directed to pass a reasoned and speaking order and this they have done in impugned order No.P./CR/E-Gaz/260/1/STS dated 11.05.2016. The applicant has challenged this order by seeking the above mentioned reliefs and is seeking regularisation from a previous date for which he relies on the orders of the Railway Board in reference No.E(NG)/-98/PM16/1 dated 22.11.2007 which reads as under:-

*“GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)*

.....
No.E(NG)I-98/PM16/1 New Delhi, dated 22.11.2007

*The General Managers,
Central, Eastern, Northern,
Southern and South Central Railways.*

*Sub : Procedure for filling up posts in PRS
Computer Centres.*

*The present procedure for filling up posts in
PRS Computer Centres in three streams of Database,
Console and Programmers has been detailed in this
Ministry's letter No.E(NG)I-87/PM16/3 dated 15.2.1993.*

*In terms of these instructions, the posts in PRS Computer Centres in various grades are required to be filled on ex-cadre basis by selection from amongst ECRCs in the same grade or in the immediate lower grade with a minimum two years service subject to fulfilment of other conditions as indicated in the letter *ibid*.*

2. Pursuant to a demand raised the question of caderisation of posts in the PRS Computer Centres has been considered carefully by this Ministry. It has been decided that since for the present the situation is not conducive to encadre the posts in PRS Computer Centres, the caderisation has not been found feasible of implementation. The posts in various grades may, therefore, continue to be filled on ex-cadre basis as per extant procedure. It has, however, been decided as a special case that existing incumbents who are continuing in the PRS Computer Centres from inception or have lost touch with the working of their parent cadre by virtue of their long association with the PRS Computer Centres, may be considered for promotion to a grade higher than the grade held by them on regular basis in their parent cadre against posts lying vacant in the PRS Computer Centres; their suitability being assessed through a written test or viva voce. If after this exercise, posts remain vacant, the same may be filled as per extant procedure mentioned in para 1 above.

3. Staff working on ex-cadre basis in the PRS Computer Centres should continue to be considered for selection/promotion in their parent cadre and spared immediately for taking up promotion.

Please acknowledge receipt.

Sd/-
(U.S.GUSAIN)
Director Establishment (N)
Railway Board."

4. The applicant was heard at length on this issue including on the relevance of this order to his request for the relief of regularisation and on the aspect of the specific date from which he thought he

should be regularised.

5. The respondents in their speaking orders have argued that the Railway Board Orders of 22.11.2007 have no relevance to regularisation claimed by the applicant and that they have consulted the respondent No.1 in this matter and have received instructions that the applicant is not covered by the provisions of this letter and on this basis, they have decided to treat him as a regular employee in the Group 'B' category w.e.f. 09.02.2015 when the Recruitment Rules for the PRS cadre were notified. On this basis, they have also denied extension of the senior scale benefit of PB-II and Grade Pay of Rs.6600/- with retrospective effect or even w.e.f. 09.02.2015 when he was regularised.

6. Learned counsel for the respondents also submits that the Railway Board letter of 2007 relied on by the applicant also strictly applies to Non-Gazetted Employees. From the reading of the letter of the Railway Board dated 22.11.2007, it is apparent that the respondents wished to induct interested and capable persons from

departments other than the Enquiry cum Reservation Clerk (ECRC) and later specified that since these persons had served for a long time in PRS, they had lost touch with their parent cadre and therefore, as a special case, they should be given a promotion to a grade higher than the grade held by them on regular basis in their parent cadre. It is noticed that the applicant in the present case was a Group 'C' employee and it is not his case that he has not received higher grade than obtained in his previous cadre and in fact, he has attained the Group 'B' category of PB-II Grade Pay of Rs.4800/-. Therefore it is manifest that the applicant has obtained the promotion intended in the said circular and further, it is also apparent that this circular does not give any endorsement or make any reference to any process of regularisation or promotional opportunities in the ex-cadre postings of PRS. In case the applicant had a grievance after obtaining Group 'B' salary of Grade Pay of Rs.4800/- in the year 2000, he had the option of making a representation all along until he

obtained the MACP in the year 2011 (2010 ?). It seems that the applicant only pursued the aspect of regularisation and then sought consequent promotions that he could have gained with the relevant experience in the feeder post. However, at this stage, there were no recruitment rules for this cadre and the applicant continued in this position until he was regularised when the RRs were notified on 09.02.2015. If the applicant had a grievance regarding regularisation as early as 2007-2008 when he completed 8 years of service in the lower category, he had the liberty of recourse to legal remedies but he failed to do so and cannot make now represent in this regard. Moreover, the present basis for relief and the relief claimed themselves solely refer to the Railway Board letter dated 22.11.2007 which, we hold, is irrelevant to the relief claimed by the applicant.

7. The applicant has also made a multiple claim for relief of refund of MACP arrears of Rs.7900/- paid in 2012 and recovered from his pensionary benefits in 2015. The applicant contends that he had raised this

issue in the OA filed in 2016 but that has clearly not found part in the directions of this Tribunal. In any case, in view of the submission made by the applicant, liberty is granted to him to file a separate OA to pursue relief in that regard on the basis that a single OA cannot be pursuing multiple reliefs.

8. In the circumstances, the Original Application is dismissed as not maintainable without any order as to costs.

(Ravinder Kaur)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

ma.

JD
66/7/19