

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.283/2015

Dated this Wednesday the 18th day of September, 2019

CORAM: Dr. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Promod S. Sharma,
aged 53 years, Working as
Chief Booking Clerk at BDTs
residing at 30/9 Dahisar Railway Colony
Dahisar (E), Mumbai - 400 068 ... **Applicant**

(By Advocate Shri C.M. Jha)

VERSUS

1. Union of India through its
General Manager, Western Railway,
Head Quarters Office, Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager
Western Railway, Mumbai Central
Divisional Office, Mumbai Central
Mumbai - 400 008.
3. Divisional Railway Manager
Western Railway,
Divisional Office,
KOTA (Raj.). ... **Respondents**

(By Advocate Shri S. Ravi)

ORDER

Per: Ravinder Kaur, Member (J)

The present OA has been filed by the
applicant under Section 19 of the
Administrative Tribunals Act, 1985 seeking the
following reliefs:-

"8(a). The respondent be directed to consider the applicant's case under MACP scheme by counting his 14 years service as ESM and thereby grant 3rd financial promotion, keeping in view of 31 years of continuous service & also grant consequential relief thereof.

(c) Any other and further order as this Hon'ble Tribunal may deem fit and proper.

(d) Costs.

2. The facts are that the applicant was selected as Electrical Signal Maintainer (ESM) and on 15.09.1984 he was sent for training for 18 months. After completion of training, he was posted at Kota under respondent No.3 as an ESM-II in the grade of Rs.1200-1800/-. He was promoted as ESM-I in grade of Rs.1320-Rs.2040 (RP).

2.1 The respondent No.3 issued Notification dated 09.02.1996 for filling up the posts of Asstt. Commercial Clerks (ACC), Ticket Collectors and Trains Clerks etc. under the GDCE Scheme in grade of Rs.3200-4900/- (RP) which was a post lower in grade than the grade of ESM. The applicant in pursuance to the aforesaid Notification applied and appeared for the examination conducted. He was selected for the post of ACC. After being relieved from the post of ESM-I, he joined his duties as ACC on 30.04.1998 vide joining letter Annex A-2.

2.2 It is contended by the applicant that his appointment to the post of ACC under GDCE Scheme was in violation of the Railway Board's letter No.173/2004 dated 05.08.2004 (Annex A-3) as the Board letter provides "***employee in grade lower than the grade for which GDCE is held, should be allowed to appear in GDCE examination***". It is submitted that the applicant was wrongly allowed to appear in the exam and thereafter posted as ACC in grade lower than ESM-I.

2.3 The applicant was promoted as Senior Commercial Clerk in February, 2003 in the grade of Rs.1200-2040(RP). The 5th Pay Commission recommended Assured Career Progression (ACP) Scheme i.e. in the next higher grade pay on completion of 12 years of continuous service by the employee in the same grade subject to the grant of two financial upgradation in the entire career. Thereafter 6th Pay Commission recommended Modified Assured Career Progression (MACP) scheme which introduced three financial upgradations at the intervals of 10, 20 and 30 years of continuous service. It is the claim of the applicant that since he has completed continuous service of 31 years, he ought to

have been granted three financial upgradations whereas he could only get two promotions as he was promoted as Senior Commercial Clerk in February, 2003 in the grade of Rs.5200-20200-2800 G.P., which was a regular promotion and thereafter under MACP Scheme on 06.06.2013 he was given 2nd upgradation.

2.4 The applicant states that (i) he was appointed as ESM-II on 15.09.1984 at Kota, (ii) promoted as ESM-1 in 1988, (iii) Demoted as Commercial Clerk & Transferred to Mumbai on 30.04.1998, under GDCE scheme (iv) 1st promotion on 07.02.2003 as Sr. Commercial Clerk, (v) IInd promotion under MACP scheme on 06.06.2013.

2.5 It is the claim of the applicant that the second upgradation under MACP ought to have been granted to him on 15.09.2004 after rendering continuous service of 20 years w.e.f. 15.09.1984 when he had joined the service as ESM-II. Further that he ought to have been granted third financial upgradation under MACP on 15.09.2014, instead of the second promotion given on 06.06.2013.

2.6 It is the case of the applicant that his previous service w.e.f. 15.09.1984 to

30.04.1998 on the post of ESM-II and thereafter ESM-I be calculated for grant of third MACP. To this effect, he is relying upon the Railway Board Letter No.PC/V/2009/ACP/2 dated 31.01.2013 that in case of transfer on request, regular service rendered in previous office shall be calculated alongwith the regular service in new organisation/office for the purpose of getting financial upgradation under MACP scheme.

2.7 It is claimed that transfer on own volition to a lower post from the higher post in the previous organisation is required to be ignored in terms of the Railway Board letter dated 31.01.2013 referred to above. Therefore, he is entitled to third promotion in the lower grade transfer and he stands to be demoted. He has further relied upon the judgment of Hon'ble Bombay High Court in the case of *Union of India Vs. Karan Anant Purao*, reported in 2014 (2) ALL MR 798 whereby it was held that ad-hoc service before regularisation also to be counted for MACP scheme. The applicant made several representations dated 26.02.2010, 14.07.2011, 23.10.2012 & 19.02.2013 but he did not get any

relief and consequently, he filed present OA on the following grounds:-

(i) The applicant has put in 31 years continuous service since 15.09.1984 and have got only two promotions whereas he ought have been granted third financial upgradation.

(ii) That he was wrongly granted demotion under GDCE scheme due to which he got two promotions only and no financial upgradation as per MACP scheme.

(iii) The respondents have not taken 14 years service as ESM into consideration and thus he is deprived of the financial upgradation.

(iv) As per Railway Board's letter dated 31.01.2013, the applicant's 14 years service in the previous unit as ESM be counted for financial upgradation.

(v) The respondents have violated Articles 14, 16 and 309 of the Constitution.

3. The respondents in reply have filed detailed affidavit and have raised preliminary objection that the OA is liable to be dismissed on the ground of delay and laches.

3.1 It is submitted that the applicant was rightly granted MACP w.e.f. 07.02.2013 vide

Memo No.E/C/839/MACP/11/BKG dated 06.06.2013. With regard to the applicant's appointment as Assistant Commercial Clerk vide order dated 10.06.1998, it is submitted that he had applied of his own free will and got selected as Assistant Commercial Clerk even though he was promoted as a Electrical Signal Maintainer-I (ESM-I) being a higher grade with higher pay scale of Rs.4000-6000/- in May 1988 itself.

3.2 Regarding the averment of the applicant that as per Annex A-3 RBE no.173/2004 dated 05.08.2004, under GDCE only employees who were lower in grade could be appointed, it is clarified that para 2 of the said scheme deals with the staff working in higher grades applying for post in lower pay scale in response to Notification for GDCE and in para 4 it has been specifically clarified that past cases decided need not be reopened".

3.3 The applicant who was working as ESM, a technical post on a higher grade till 1996 responded to the Notification dated 09.02.1996 of GDCE examination and applied for a lower post in grade. The post of ACC is of different cadre than that of Electrical Signal Maintainer

(ESM) post. The applicant had of his own will applied for the said lower grade post in the year 1998 and that the RBE letter, dated 05.08.2004 referred to above clarifies that past cases decided prior to 2004 need not be reopened.

3.4 It is further submitted by the respondents that financial upgradation is admissible on completion of 10, 20 and 30 years of regular service from the date of entry grade or on completion of 10 years service in the same grade pay whichever is earlier. They have relied upon GM(E) CCG's No.EP/89/0 vol iv dated 03.08.2009 and circular No.PC-V/2009/ACP/2 dated 12.09.2012 (Annex R-1 colly).

3.5 It is denied that the applicant who was appointed as ESM-II and then promoted to ESM-I in 1988 was demoted as Commercial Clerk on 30.04.1998 under GDCE scheme. It is stated that the case of the applicant is not of transfer or voluntary transfer but in fact he had himself applied and appeared for examination for a post lower in grade under GDCE scheme and got selected on 30.04.1998. Further that he got promotion as Senior Commercial Clerk and later

on also got financial upgradation under MACP scheme on 06.06.2013.

3.6 The respondents have further stated that the service of the applicant from 1984 to 1998 as ESM-II and ESM-I cannot be counted for financial upgradation under MACP scheme as though he got promoted to a higher grade as ESM-I 4000-6000 in May 1988, it is a technical post of a particular cadre. In the year 1996 he applied and appeared for examination under GDCE scheme where he got selected to a lower grade post of Assistant Commercial Clerk in pay scale of Rs.3200-4900/- that too in a non-technical post of a different cadre.

3.7 Regarding the reliance of the applicant on the Railway Board letter No.RBE 08/2013 dated 31.01.2013, it is stated that the said Railway Board letter deals with the cases of request transfer or voluntary transfer and is not applicable to the case of the applicant who had been directly recruited as Assistant Commercial Clerk in 1998 by virtue of his applying and appearing in the examination. Therefore, the service rendered by him from the date of 1984 to 1998 (wrongly mentioned as 1988

in the reply in para 9(ii)) cannot be counted.

3.8 The respondents have prayed that the OA being devoid of merits is liable to be dismissed.

4. The applicant has filed rejoinder whereby he has reasserted all his averments as per the OA.

5. We have heard the arguments addressed by Shri C.M. Jha, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents at length and have carefully gone through the pleadings available on record.

6. The Railway Board letter No.E(NG)1/2004/PM2/3 dated 05.08.2004 is relevant and reproduced here for ready reference:-

"R.B.E No.173/2004

Subject : Introduction of General Departmental Competitive Examination for filling 25% DR quota vacancies in certain group 'C' Categories-Clarification regarding.

(No.E(NG)1/2004/PM2/3 dated 5.8.2004)

In para 2(iv) of this Ministry's letter No.E(NG)I/92/PM2/16, dated 20.08.1993, (Bahri's 129/1993, p.230) it has been stipulated that all regular employees possessing the prescribed qualifications for direct recruitment are eligible to appear in the General Departmental Competitive Examination (GDCE) irrespective of the grade and cadre in which they are working.

2. *It has been brought to the notice of the Board that staff working in higher grades apply for posts in lower scale of pay in response to notifications for GDCE.*

3. *The matter has been reviewed by the Board. It is clarified that the phrase 'irrespective of the grade' in the instructions referred to above is not intended to allow staff working in grades higher than the grade carried by the posts for which GDCE is held. Accordingly, only the employees working in lower grade posts and at the best in the same grade for which GDCE is being held should only be allowed to appear in the GDCE. In no case persons working in higher grade posts be allowed to appear in the GDCE to be held for lower grade post.*

4. *However, past cases decided otherwise need not be reopened."*

On perusal of RBE No.173/2004 (Annex A-3), it is observed therein that it was brought to the notice of the Board that staff working in higher grades apply for posts in lower scale of pay in response to the notification of GDCE. The matter was reviewed and it was clarified that the phrase 'irrespective of the grade' in the instructions contained in para 2(iv) of the Government Ministry's letter No.E(NG)I/92/PM2/16 dated 20.08.1993, is not intended to allow staff working in grades higher than the grade carried by the posts for which GDCE is held. So it was resolved that only the employees who were working in lower grade posts or at the posts in the same grade for which GDCE is being held, should only be allowed to appear for the

same. Further para 4 of RBE No.173/2004 clearly finds mention that past cases decided otherwise need not be reopened.

7. In view of this, the applicant cannot agitate the issue that he was wrongly selected for the post of ACC as at the time he appeared for GDCE, he was working in higher grade post of ESM-I. This fact cannot be ignored that the applicant himself had opted to apply for the post of ACC in terms of Notification dated 09.02.1996 and he got selected and was posted as ACC w.e.f. 30.04.1998. It is strange to notice that the applicant while relying upon RBE letter No.173/2004 dated 05.08.2004, intentionally ignored its para 4 which clearly specifies that past cases decided otherwise need not be reopened. Since his selection was in the year 1998, the Railway Board letter No.173/2004 in terms of its para 4 is not applicable to his case. The applicant in this manner has tried to mislead the Tribunal. He himself had voluntarily applied for GDCE examination scheme for the post of Assistant Commercial Clerk, a lower grade post. There was no such rule at the relevant time to prohibit

any employee in a higher grade to apply in the post of lower grade under the scheme. Consequently, we do not find any violation of the Railway Board letter dated 20.08.1993 which was later on clarified vide RBE No.173/2004 (Annex A-2).

8. Admittedly, as per GM(E) CCG's No.EP/89/O vol IV dated 03.08.2009 para 1 financial upgradation is admissible on completion of 10, 20 and 30 years of regular service from the date of entry grade or on completion of 10 years service in the same grade whichever is earlier. The applicant had joined the service as ESM-II in the year 1984 and was promoted as ESM-II in 1988. He enjoyed the benefit of this promotion for a period of 10 years. Later on under GDCE scheme, he applied in pursuance to the notification dated 09.02.1996 and got selected to the post of ACC, lower in grade to the post of ESM-I and he joined his duties as ACC on 30.04.1998. However, as observed above he had himself opted for the said post and no one forced him to join the same, as such the promotion which he had received in the year 1988 after joining his service in the year 1984

is required to be taken into consideration for all practical purposes towards financial upgradation. Thereafter when he joined as ACC in the year 1998, he got his second promotion of his career in the year 2003 to the post of Senior Commercial Clerk though it was 1st promotion at his new post and thereafter he got financial upgradation under MACP scheme on 06.06.2013.

9. In all from the date of his joining the service on 15.09.1984, he has enjoyed two promotions and one financial upgradation, therefore he is not entitled to any financial upgradations under ACP scheme or MACP scheme as claimed by him.

10. In view of the above discussion, the Original Applicant is without merits. Hence, the same is dismissed. MA No.465/2015 stands closed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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