

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00578/15
With
MA/050/00199/19

Date of Order: 28.05.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Binay Kumar, Son of Late S.N. Sinha.
2. O.P. Pathak, Son of Late K. Pathak,
3. Bijay Kumar Singh, Son of Late R.L. Singh.

All are Deputy Chief Inspector of Tickets, East Central Railway, Danapur
Division, District- Patna (Bihar).

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Chief Commercial Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).

.... Respondents.

By Advocate: - Mr. Mukundjee
Mr. Sheojee Prasad

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- The instant OA is filed by three applicants, who were appointed on 21.05.1980, 27.06.1984 and 06.09.1984 respectively, for grant of the benefit of 3rd MACP at par with their junior and similarly placed co-employees, namely Shri Satish Kumar and Md. Khurshid Ansari w.e.f. the date of completion of 30 years of their service and for payments of arrears with interest accordingly. The applicants have alleged that they have got only one promotion, to the post of Ticket Collector Gr. I in the pay scale of Rs. 1200-20-40 on 21.05.1997 and thereafter they have been granted the benefit of 2nd ACP in the years 2004, 2008 and 2008 respectively on completion of 24 years of their service and as such they are entitled to get the benefit of 3rd MACP (in the pay scale of 9300-34800 GP 4600) on completion of 30 years of service. The applicants were initially appointed as Clerk Gr. II and got promotion to the post of Clerk Gr. I. While working as Clerk Gr. I, following a notification by respondents dated 21.07.1989 for formation of panel to the post of Ticket Collector in the pay scale of 950-1500, willingness was sought from serving employees in Group C categories. The applicants, along with Shri Satish Kumar and Md. Khurshid Ansari submitted their willingness. They finally got selected to the post of Ticket Collector Gr. II. It was after this that they got promotion (the only promotion) to the post of TC Gr. I (in pay scale of 1200-2040) on 21.05.1997.

2. The respondents have denied the claim of the applicant. According to them, in terms of RBE No. 100/2012, the appointment/posting

as TC has been treated as direct recruitment and past services rendered before it has not been counted for the purpose of MACP. Since from the date of their appointment as TC on 30.06.1990 they have completed only about 25 years of service and have got two promotions (one actual promotion and another by way of ACP). They can be given the 3rd MACP only after 30 years of service or after 10 years from the date of their last promotion. Hence, their claim is not justified. It is also alleged in the written statement that the benefit given to the two persons similarly placed (Shri Satish Kumar and Md. Khurshid Ansari) was found to have been done erroneously and is being withdrawn after observing all formalities.

3. The applicants have filed a rejoinder in which they have challenged the applicability of RBE No. 100/2012 and alleged that this is against the Department's own order (Annexed as A/6) under which the Department has withdrawn the show cause notice issued to withdraw the benefit given under MACP to some persons. They have also alleged that "the so called RBE No. 100/2012 cannot be applied in the case of applicants as their appointment to the post of TC and promotion to the post of Sr. TC has been settled on 21.07.1989 and 21.05.1997, i.e. much before the issue of so called RBE 100/2012".

4. An MA (No. 199/2019) was also filed by the applicants enclosing RBE 147/2015 as Annexure A/4 and two communications seeking show cause against withdrawal of MACP and cancelling the show cause notice (respectively under Annexure A/5 and A/6). They have also requested in this MA to allow them to add granting of a relief of declaring "

the impugned reason shown by the respondents in their WS including their RBE 100/2012 stating that past service of applicants has not been counted for the purpose of MACP in terms of RBE 100/2012 as null, void ab initio wrong and against RBE 147/2015 as contained in Annexure A/4, against their own order dated 29.05.2012 as contained in Annexure A/6 and also contrary to order passed by this Tribunal in OA 912/2015 on 01.05.2019.”

5. We have gone through the pleadings and heard the learned counsels of both the parties. To put the matter in focus, the resolution of the issues raised in this OA depends on whether RBE 100/2012 or RBE 147/2015 are applicable to the facts of this case. For proper understanding of this issue, the relevant portions of both these circulars are extracted below:-

RBE 100/2012

- (i) If the relevant RRs provide for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall not be counted for the purpose of MACP Scheme.
- (ii) If the relevant RRs prescribe a promotion Quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACPS Scheme.

RBE 147/2015

“This Department’s O.M. No. 35034/3/2008-Estt. (D) (Vol. II), dt.01.11.2010 provides that in case of transfer ‘including unilateral transfer on request’, regular service rendered in previous

organization/office shall be counted along with the regular service in the new organization/office for the purpose of getting financial upgradations under the MACP Scheme. However, financial upgradation under the MACPS shall be allowed in the immediate next higher grade pay in the hierarchy of revised Pay Bands as given in CCS (Revised Pay) Rules, 2008. **It is now further clarified that wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower Post/Grade from the promoted Post/Grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office” .**

6. To add to the complexity of the matter, the applicant have alleged that this Tribunal has decided this matter in favour of their claim in OA 912/2015. Hence, we have gone through all these three relevant documents and also the letter inviting candidates for selection to the post of Ticket checking cadre dated 21.07.1989 (produced by the learned counsel for the applicants) by which the applicants were selected to the post of TC. The relevant portion of that communication is also extracted below:-

“2. The candidates so volunteering and being empanelled would be treated as direct recruits against RB quota and they will be junior to all the existing serving Ticket Checking staff (Permanent & Temporary). They should apply to Sr. DPO or DPO concerned of the division and in case of headquarters office staff, applications should be addressed to CPO/CCC.”

7. A plain reading of RBE 100/2012 along with the notification for selection to the post of Ticket Clerk leaves no doubt about the fact that this selection was not by way of promotion but by way of direct recruitment. Hence, such selection cannot be counted as a promotion while counting eligibility for MACP and at the same time the service rendered before such

direct recruitment also cannot be taken into consideration for the purpose of MACP. The applicants have based their claim on RBE 147/2015 which was apparently issued to cover cases of “transfer on own volition to a lower post” which is not the case in the present OA. Here, though the person might have come on his own volition to a lower post, it was after appearing in a test which the notifying circular itself made clear was to treat them as direct recruits. Hence, RBE 147/2015 will not apply to the facts of this case. We have also noticed that the names of two persons mentioned in the OA (Shri Satish Kumar and Md. Khurshid Ansari) are not there either in Annexure A/5 or A/6 and thus the action taken by the respondents to withdraw their show cause notice, in case of persons not similarly placed as the applicants, will not be of any help to the applicants. We have also noticed that the decision in OA 912/2015 also related to the persons who got reversion/bottom seniority on their seeking voluntary transfer to a lower post/lower scale and therefore the principle mentioned in RBE 147/2015 does apply to such person and cannot be considered to be applicable to the applicants.

8. As made clear in the above paragraph, the applicants will have a right for a third MACP only when they complete 30 years from the date of their recruitment as TC on 30.06.1990. Therefore, this OA is disposed of with a direction to the respondents to consider grant of MACP to the applicants, if they fulfil all the conditions under the rules, on completion of 30 years from the date of their recruitment as TC. In the light of the above, MA is also disposed of. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member