

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00771/15**

Reserved on: 22.05.2019  
Date of Order: 27.05.2019

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

S.N.P. Bhawasinka, Son of Late G.N. Bhawasinka, Resident of Mohallah- Marwari Mohallah, PO- Gopalganj, PS- Gopalganj, District- Gopalganj, Retired Junior Engineer-II(W), On Ad-hoc under Deputy Chief Engineer (Construction) Works-I, East Central Railway, Mahendrughat, Patna (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, North East Railway, Gorakhpur (U.P.).
2. The Chief Administrative Officer (Construction), North East Railway, Gorakhpur (U.P.).
3. The Divisional Railway Manager, North East Railway, Gorakhpur.
4. The Chief Administrative Officer (Construction), East Central Railway, Mahendrughat, Patna (Bihar).
5. The Deputy Chief Engineer (Construction-I), East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).

.... Respondents.

By Advocate: - Mr. S.K. Griyaghey

**ORDER**

**Per Dinesh Sharma, A.M:-** :- This OA is for grant of benefit of second and third MACP w.e.f. 1.9.2008 and to pay the arrears with interest along with revision of pensionary benefits. The applicant was appointed as Works Supervisor/Works Mistry in the year 1974 in the pay scale of Rs 380-560/- and was given ad hoc promotion to the post of Junior engineer Grade II on the pay scale of Rs. 5000-8000/- in Construction Department of the

Railways. He filed an OA (No. 40 of 2005) for grant of ACP with effect from 9.8.1999 but it was dismissed on 16.12.2010 for the reason that the Applicant's not passing the required selection test disentitled him from the benefit of ACP. He filed a writ petition before the Hon'ble High Court of Patna vide C.W.J.C. No. 16541 of 2011. During the pendency of this petition, the Railway was given an opportunity to consider the matter afresh and pass orders. Following this, a reasoned order, dated 08.08.2012, was passed by DRM, East Central Railway, Lucknow, again disallowing the second ACP. In this order (Refer Annex A/1), it is mentioned that a benefit of MACP has been granted to the applicant with effect from 1.9.2008, since there is no condition about fulfilling any benchmark about promotion in this (MACP) Scheme. The Hon'ble High Court disposed of the writ petition on 31.8.2015, finding no error in the order of the Tribunal. The Hon'ble High Court refused to entertain, on a submission made by the Id. Counsel of the petitioner in the writ petition, his claim under the MACP in the first instance. It was left open to the applicant to move before the concerned authority or this Tribunal "to consider his claim in accordance with the MACP scheme...keeping in view the fact that this writ petition has been pending in this Court since 2011... on merits, rather than disentitle him on the ground of delay or such technicality".

2. While not substantially contradicting the facts, the respondents have disputed the claim of the applicant mainly on ground that he could not be given the second benefit of the ACP because of his not appearing and clearing the required test despite having been given

sufficient opportunities. This, according to them, disentitled him for getting the second ACP and this legal position has also been confirmed by this Tribunal and also by the Hon'ble High Court. The Respondents have alleged (in para 1 and 5 of the W.S.) that, reading schemes of MACP and ACP together, an employee is entitled to 3 MACP benefits on completion of 30 years, minus the number of benefits he/she had already got by way of normal promotion or under ACP. According to them, he admittedly had his first ad-hoc promotion long back. By not appearing in the required selection test for promotion, the applicant has "declined" himself the second promotion under the ACP, and it was not granted to him despite his approaching this Tribunal and the Hon'ble High Court. Therefore, he was entitled to only the 3<sup>rd</sup> MACP which has been granted to him on 1.9.2008.

3. We have gone through the pleadings and heard the learned counsels of both the parties. The facts are not in dispute. The only issue which needs to be decided is: Whether the applicant is disentitled to claim his **second MACP** also, because of his having become disentitled to claim his **second ACP**.

4. After having gone through the pleadings and hearing arguments of the Id. Counsels of both the parties, we have no hesitation in finding that he is certainly not disentitled. It is clearly mentioned in the reasoned order of the DRM, Lucknow (Annex. A/1) that there is no condition regarding fulfilling any benchmark for the grant of MACP. It is also admitted in the Written Statement (WS) that a person is entitled to get 3 MACPs minus what he already got before completion of 30 years. Though the WS

has added “subject to fulfilment of benchmark”, this contention is contrary to what is expressly mentioned in the above-mentioned order at Annexure A/1. The Id. Counsel of the respondent also replied in the negative when specifically asked whether there was any condition or benchmark necessary for granting financial benefits under the new MACP scheme. Even if, as alleged by the respondents, it was to be agreed that the applicant had himself “declined” his second ACP, this cannot be counted as promotion while counting eligibility for financial upgradation under the MACP. The learned counsel for the applicant also, during the course of arguments, alleged (and later produced) various instances where two or three benefits of the MACP have been granted on the same date (on the date of coming into force of the new MACP scheme). These orders (dated 19.10.2010 of Ministry of Agriculture granting three financial upgradations under this scheme w.e.f. 1.9.2008 to one Lal Mohan Chaudhary, Peon and Phool Singh, Chowkidar, and another order dated 27.5.11 of the East Central Railway dated 370/2011 by which a number of persons were granted 2<sup>nd</sup> and 3<sup>rd</sup> benefits of pay revisions under the MACP on the same date) show that multiple MACP benefits do accrue and can be granted on the date of the implementation of the scheme, if the employees fulfil the conditions.

5. Since the Hon’ble High Court has implicitly allowed condonation of delay in filing this claim, we dispose of this OA with a direction to the respondents to grant the applicant benefit of two upgradations under the MACP w.e.f. 1.9.2008 and revise his pensionary benefits accordingly. The applicant has apparently raised his claim under

the MACP for the first time before the Hon'ble High Court (as observed in their decision dated 31.8.2015) and now before this Tribunal on 27.9.2015, after the Hon'ble High Court directed him to do so. Hence, the arrears of pay will be granted only from the month next to the month of his filing this OA (i.e. from October 2015). Necessary orders to implement this decision should be issued within 3 months from the date of receipt of this order. The respondents will also be liable to pay interest at the rate of 8% if there is a delay of more than 4 months in the payment of arrears, from the date of receipt of a copy of these orders. No orders as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**