

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00848/2019
Date of Order : 19-09-2019

Between :

Mohd.Osman, Aged about 61 years
(Group-C), S/o Late M.A.Rahman,
Occ: Traffic Inspector / Station Master (Retired),
Hyderabad Division, South Central Railway,
Secunderabad.

...Applicant

AND

1. Union of India rep. by
The General Manager,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.
2. The Principal Chief Personnel Officer,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.
3. The Senior Divisional Personnel Officer,
Hyderabad Division,
South Central Railway, Secunderabad-500 071.
4. The Senior Divisional Financial Manager,
Hyderabad Division,
South Central Railway,
Secunderabad-500 071.

...Respondents

Counsel for the Applicant: Mr. G. Trinadha Rao

Counsel for the Respondents : Mrs. Vijaya Sagi, SC for Rlys

CORAM :

THE HON'BLE MRS.NAINI JAYASEELAN: ADMINISTRATIVE MEMBER

ORAL ORDER

(per Hon'ble Mrs.Naini Jayaseelan, Administrative Member)

Heard Mr. G. Trinadha Rao, learned counsel appearing for the applicant and Mrs. Vijaya Sagi, learned Standing Counsel for Railways.

2. Counsel for the applicant contends that the present OA has been filed challenging the inaction of the Respondents in not granting the 3rd MACP benefit, which according to the applicant, he was entitled to, with effect from 27.08.2007. He also placed reliance on the Railway Board Circular RBE No.101/2009, dated 10.06.2009 wherein at para-28 illustration in a similarly placed case the benefits of 3rd MACP was granted. He argues that the applicant's case is covered as per the illustration at para-28(ii) of the said circular. Learned counsel for the applicant further contends that the applicant has also made a representation dated 10.01.2019 for grant of MACP with effect from 01.01.2006. The said representation has been duly received in the Respondents Department on 15.01.2019 and has not been disposed of till date.

3. Mrs. Vijaya Sagi, the learned Standing Counsel for the Respondents contends that the applicant has since retired on 31.12.2017 and since he was granted technical promotion in the year 2013, the OA is barred by limitation.

4. Counsel for the applicant placed reliance on the judgment passed in OA/180/00004/2014 & Batch, dated 31.08.2016 of CAT, Ernakulam Bench wherein it was held that, in view of the judgment of the Hon'ble Apex Court in the case of Union of India Vs. Tarsem Singh [2008 (8) SCC 648],

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought to an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.....”

It was held as under :

“11.Therefore, this Tribunal is of the view that any wrong fixation of the pay for want of granting correct financial upgradations like ACP/MACP at the appropriate time also has to be regularised by the respondents which will have a cascading effect on the fixation of averages emoluments for the pensionary benefits.....”

However there is one exception to the above is, if the re-opening of the issue affects the settled rights of the 3rd party. In view of the fact that, in the instant case there are no third party rights and prima facie it appears that it is a continuous wrong, without going into the merits of the case, the Respondents are directed to dispose of the applicant's representation dated 10.01.2019 and also treating the present O.A as a representation

within a period of two months from the date of receipt of a copy of this order with a speaking order.

5. With the above direction, the O.A. is disposed of at the admission stage.

6. In the circumstances of the case, there shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (A)

Dated : 19th September, 2019.
Dictated in Open Court.

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