
(2018) 07 CAT CK 0059

In the Central Administrative Tribunal

Case No : Original Application No. 2215 Of 2012

SK Mani

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0059

Hon'ble Judges : Dinesh Gupta, J;Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Meenu Mainee, K.C. Prasad

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. This Original Application(OA) has been filed by the applicant claiming the following reliefs:-

"a) allow the O.A. and quash the impugned orders:

b) pass any other or further order/s as this Hon"ble Tribunal may deem fit and proper in the facts of the case: and

c) cost of the proceedings may be given to the applicant.

2. In brief, it is the case of the applicant that the benefit of MACP was granted to the applicant and subsequently it was withdrawn on the ground that she has not completed 20 years regular service, so far because some period, after her appointment on 06.11.1979, was declared unauthorized absence and hence dies non.

3. It is the contention of the applicant that respondents have not only reduced the pay of the applicant from Rs.27,110/- to Rs.25,500/- but also passed orders to recover the alleged excess amount of payment which she had been drawing for the last more than two years. The applicant has also pointed out that she had

filed OA No. 1841/1992 which was allowed by the Tribunal vide order dated 22.07.1993, but despite this, the respondents did not allow her to join duty and instead issued another charge-sheet on 23.03.19985 wrongfully alleging unauthorized absence from 02.12.1984 to 12.10.1985 for which the applicant had already been punished by imposing a penalty of withholding of increment for one year. She had appealed against her punishment of dismissal from service in a disciplinary proceeding and the General Manager (P), on her appeal, reduced the punishment of dismissal from service to reduction to the post of Staff Nurse for a period of three years and this period of reduction was treated as period of absence and hence, dies non. She contends that the benefit of MACP was given to her as per Railway Board Circular dated 10.06.2009 w.e.f. 06.11.2009 and after about two years, she was given a show cause notice dated 24.01.2012 to submit her reply to show cause as to why her incorrectly given MACP should not be withdrawn and the benefit given on the basis of wrong order of MACP should not be recovered. She admits that she did not send any reply to the aforesaid show cause notice and instead filed the present OA.

4. In reply to this OA, the respondents, in their counter reply, have first of all sought to draw attention to the show cause notice dated 24.01.2012 issued to the applicant. They have objected to her having approached this Tribunal directly without giving any reply to the show cause notice. Hence, without exhausting available departmental remedy, she could not have directly approached the Tribunal.

5. Further, the respondents contend that this OA is not maintainable and should be dismissed on the ground that the applicant was unauthorized absent in different spells for 266 days, i.e. during the period from 1980 to 1989 and the said period was treated as "dies non" and the same is not covered under MACP benefits. It is further submitted that without challenging the vires of the rules, the applicant cannot get the benefit." They have also stated that "during her service, she remained unauthorized absence from duties in different spells during 1980 to 1989 i.e. 266 days are treated as LWPs and period from 03.06.1990 to 16.09.1998 are treated as "Dies Non". Smt. S.K. Mani Chief Matron PB Rs.15600-39100+5400 GP has been granted the benefit of GP Rs.6600 under MACP Scheme w.e.f. 06.11.2009 vide Notice No.752-E/MACP/Nursing Cadre/CH dated 19.01.2010 erroneously as she has not completed 30 years of regular service on that date 06.11.2009 due to (266 days LWP + Dies Non period) i.e 8 years 3 months and 14 days.". The respondents have clearly pointed out that the applicant often remained absent unauthorizedly from service. As such, the unauthorized absence period of 266 days LWP and period from 03.06.1990 to 16.09.1998 (8 years 3 months and 14 days) treated as "dies non" does not count for MACP benefits.

6. The respondents have also pointed out that after granting the benefit of MACP, when the service record of the applicant was examined, it was found that the benefit of MACP was given without excluding the period of unauthorized absence

and the period treated as "dies non". Moreso she did not even bother to give reply to the aforesaid show cause notice. Hence withdrawal of MACP benefit of Grade Pay of Rs.6600 was made.

7. Both parties were heard and the records perused.

8. Quite clearly, the applicant has been on unauthorized leave on more than one occasion during her service period and has faced disciplinary proceedings. Taking into account the period from 1980 to 1989 (LWPs) and period from 03.06.1990 to 16.09.1998 (dies non), the applicant could not be given the benefit of the MACP Scheme as she has not completed 30 years of regular service on that date 06.11.2009 due to period of 266 days treated as LWP and period of 30.06.1990 to 16.09.1998 treated as dies non. Paras 1 and 9 of the MACP Scheme are relevant. They read as under:-

"1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

xxx xxx xxx

9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post."

9. It is also noted that the applicant has not chosen to answer the show cause notice and has come with this OA to the Tribunal. The Railway Services (Pension) Rules, 1993 have also been produced by the respondents in which Rule 14 deals with Periods which shall not be treated as service for pensionary benefits. Period of service excluded under clause (xii) of the aforesaid Rule which reads as under:-

"(xii) period of service treated as dies non."

As such, even the period of service treated as dies non cannot be counted as service for pensionary benefits.

10. It is well settled law that beneficial schemes started by the Union of India or a State Government as a model employer, like the ACP Scheme, or its modified form, the MACP Scheme, do not per se give a right to the applicant to claim them as a matter of right, unless all the requisite conditions are fulfilled and that

under MACP Scheme, for grant of financial upgradations, the same parameters are required as are essential for regular promotion. The financial upgradations are allowed since the Government servant stagnates for want of appropriate promotional avenues, but the eligibility for promotions continued to be the norm for grant of financial upgradation. Para 17 of MACP Scheme reads as under:-

"17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs.7600 and above."

11. While considering the award of MACP, all periods of punishment etc. are taken into account to determine the date on which MACP is to be awarded. Quite clearly, we find that the applicant, due to unauthorized absence, did not have a clear service period for award of MACP. Hence, when it was found that the same has been wrongly given to her, it has been subsequently denied. Para 18 of the MACP Scheme is relevant and the same reads as under:-

"18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder."

It is found that taking into account the factual record of service of the applicant, the MACP benefit could not be given to her as per relevant rules.

12. With the above observations, we find no merit in this OA and the same is dismissed. No costs.