

(2022) 04 CAL CK 0098
In the Calcutta High Court

Case No : W.P.C.T No. 59 Of 2014, CAN 1 Of 2015 (Old CAN 9528 Of 2015)

Union Of India & Ors.

APPELLANT

Vs

Subrata Mukherjee & Ors.

RESPONDENT

Date of Decision : 29-04-2022

Acts Referred:

Citation : (2022) 04 CAL CK 0098

Hon'ble Judges : Harish Tandon, J; Rabindranath Samanta, J

Bench : Division Bench

Advocate : Partho Ghose, Sabita Roy, Sardar Amjad Ali, Masum Ali Sardar

Final Decision : Dismissed

Judgement

Harish Tandon, J

The core issue in the instant writ petition pertains to the financial upgradation under the Modified Assured Career progression Scheme (MACPS) on the basis of the recommendation of the 6th Central Pay Commission adopted by the Ministry of Railways. The said scheme provides three financial upgradation counted from the direct entry grade on completion of 10, 20, 30 years of service respectively. It is not in dispute that after adopting the recommendation of the 6th Pay Commission, the Railway Authorities extended the benefit of financial upgradation to its employees but the dispute cropped up when the railway took the stand that the employees who were initially appointed as Khalasi or at Group-D post on ad-hoc/temporary basis shall be considered as the entry grade and not when they were absorbed in Skill Grade-III (Technical Grade-III). In other words, their appointment to the post of the Technical Grade-III was considered as the promotion to such posts from Group-D and, therefore, they are entitled to three financial upgradation under the said MACP Schemes having promoted to the post of Technician Grade-I.

That being the foundation of the dispute, slew of representations came from the sizable numbers of employees who were appointed to the post of Group-D on ad-

hoc and/or temporary basis that the aforesaid decision of the Railway Authorities are contrary to the aforesaid scheme.

The challenge was also made to a decision of the Railway Authorities to recover the excess amount which some of the employees received upon a financial upgradation beyond Technical grade-I as the Railway Authorities found that such financial upgradation was granted erroneously being the fourth financial upgradation which is contrary to the said scheme. Since their representations were not considered favourably, the challenge was thrown to the Circular dated 9.6.2011 whereunder the entry grade was directed to reckon from Group-D before the Tribunal in OA no. 580 of 2011.

The stand was taken by the Railway Authorities that though the course completed act Apprentices were likely to be absorbed as a Skill artisan Grade-III but for want of adequate vacancies they were appointed as Khalasi (Grade D) with the contemplation that when the vacancies would arise, they will be promoted after passing necessary trade test. The Tribunal upon the pleadings of the various parties was of the opinion that the crucial question involved is whether the appointment at Group D post was ad-hoc or a regular appointment and the subsequent appointment as Artisan Grade-III (Tech III) by virtue of a direct recruitment or promotion. Since the authorities did not address such issue in the said impugned Circular dated 9.6.2011, the direction was passed upon the Railway Authorities to issue individual notices and to pass a speaking order within two months from the date of the receipt of the said order. Simultaneously, the said circular was kept in abeyance till the completion of the exercise and the communication of the orders till one month thereafter.

By Speaking Order dated 13.11.2012 passed in terms of the order of the Tribunal in the said Tribunal application, the Railway Board opined that all the litigating employees are, in fact, Course completed act Apprentices and have undergone a training imparted by the relevant department. It is further opined that though they were initially appointed as Khalasi (Grade D post) but later on, while filling up the post of Skilled Artisan Grade-III they were promoted to such post having possessed the requisite qualification required for appointment to the post of a Skilled Artisan III. It is thus held that since they availed the first promotion (the financial upgradation) they are entitled to three such financial upgradation upto the post of Technician Grade-I and cannot claim the third promotion as senior technician.

The primary question as framed in an earlier round of litigation before the Tribunal was whether the appointment of the litigating employees at Group-D post is a temporary or ad-hoc or a regular appointment. The another ancillary issue which arises in the instant writ petition is whether such appointment at Group D post shall be regarded as a regular service as defined in the said scheme and subsequent absorption at the post of Technician Grade-III is by way of direct recruitment or promotion.

On the recommendation of 6th Central Pay Commission, the MACP Scheme was adopted by the Ministry of Railways with a Circular dated 10th June, 2009. The said scheme was in supersession of the previous Assured Career Progression Scheme and made applicable to regularly appointed Group A, B and C railway employees except the officers of organized Group A service. It is further indicated that the status of Group-D employees would cease on their completion of prescribed training as recommended by the said commission and they shall be treated as Group C employees. However, the casual employees including those granted temporary status and employees appointed in railways on ad-hoc or contractual basis were kept outside the benefit of the said scheme.

In order to avail the aforesaid benefits under the said scheme to the regularly appointed railway employees, the regular services was defined thereunder, which runs thus:

"Regular service for the purpose of MACPS shall commence from the date of adjoining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/reappointment basis. Service rendered on ad-hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, post continuous regular service in another Government/department in a post carrying some grade pay prior to regular appointment in a new department, without a break , shall also be counted towards qualifying regular service for the purpose of MACPS annually (and not for the regular promotion). However, benefits under MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post."

What can be discerned from the definition of the regular service as quoted above that reckoning of the benefits under the said scheme shall be extended to an employee joining the post in direct entry Grade regular basis through direct recruitment or on absorption/re-employment. The services rendered on ad-hoc or contractual basis shall not be taken into account as starting point for extending such benefits.

Naturally, the first and foremost point which arises is whether the appointment of the respondents herein to the Group-D post was a temporary/ad-hoc or a casual basis so as to keep them out of the definition of regular service and, therefore, such appointment would not be taken into consideration while extending the benefit under the aforesaid scheme.

The appointment letter issued to the various employees including the respondents would reveal that they were temporarily appointed to the different categories of Group D posts with clear stipulation that such appointment is made on probation for one year. Clause 15 of the said letter of appointment is indicative of the fact that such appointment is purely temporary in nature and they will not have any future claim for employment. Clause 14 further provides that the appointment is initially for a period of three months at the first instance

and further appointment shall depend upon other factors on the progress during the aforesaid three months. It is no doubt true that such appointment is temporary in nature and cannot fit in the definition of a regular service. Though the probation period is one year but in view of Clause 14 it is dissected into a different time period and their services may be terminated after three months if the progress is not shown. The stand of the Railway is that the respondents have joined at Group D post (direct recruit grade) on a regular basis, therefore, the entry grade for the purpose of the said scheme shall be reckoned as Group-D and the promotion to skill Grade-III shall be counted as first promotion under the said scheme.

The attention of the court is drawn to Indian Railways Employees Manual (IREM) providing the mode of recruitment in the category of the Skilled Artisan Grade-III in various engineering departments. Para 159 of IREM is quoted as under:

"1) the vacancies in the category of Skilled Artisan Grade-III in the scale Rs. 950-1500/- in various engineering departments will be filled as under:

i) 25 per cent by selection from Course completed Act Apprentices, ITI passed candidates and matriculates from open market serving employees who are Course completed Act Apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees.

ii) 25 per cent from serving semi skilled and unskilled staff with educational qualification as laid down in Apprentices Act and

iii) 50 per cent by promotion of staff in the lower grade as per prescribed procedure."

There is no ambiguity to the applicability of the mode of recruitment to Skill Grade-III in terms of the said manual. The point which is still begging an answer and has been projected affront whether the appointment to the said Skill Grade-III was by way of a promotion as contemplated in Clause (II) or selection from open market under Clause (I) thereof. According to the authorities so far as the appointment to the Skill Grade-III through open market is concerned there is a procedure for examination conducted by the Railway Recruitment Board but there is no necessity of such examinations if the employee is promoted to the said post against 25 per cent quota. The stand of the railways appears to have been misdirected for the simple reason that Clause I of Paragraph 159 of IREM reserving 25 per cent vacancy to be filled up by selection from a course completed apprentice by way of a direct recruit and the serving employee who have a requisite qualification required therefor, shall also be considered against said quota. The said para of the IREM requires the period of training for a direct recruit in the following:

"(3) The period of training for direct recruits will vary depending on the qualifications of recruits. The same will be as under:

(i) Course completed Act Apprentices trained in Railway Establishments. – Nil

(ii) Course completed Act Apprentices trained in non-Railway Establishments. – 6 months

(iii) ITI passed candidates. – 6 months

(iv) Matriculates. – 3 years”

It appears from the Circular dated 27.7.1981 annexed to the writ petition filed by the writ petitioner that all such candidates have been directed to undergo such training. The contention of the railway is that there was a regular appointment to the post of Group D and the Skill Grade-III was filled up by promotion and since respondents availed one financial upgradation they are not entitled to further financial upgradation having availed three times. There is no document forthcoming from the record that the appointment at Group D post which was temporary in nature with the probation period of one year has been regularized in such posts rather the stand of the railway is that they were absorbed in the post of a Skill Grade III after being appointed on a temporary basis at Group D post.

There is a distinction between an appointment by way of promotion and the absorption at the said post. Absorption connotes the confirmation at the posts which was held by the employee on temporary or ad-hoc basis which cannot be extended when a person is appointed to another post which is Group-C. We further find that within a short span of time after the temporary and ad-hoc appointment at Group-D post, the respondents were appointed in the post of a Skill Grade-III by way of so-called absorption. The Tribunal has also found in some of the cases the regular appointment on Grade-III post was made within the interval of 15-20 days which is inconceivable. We are unable to accept the contention of the Railway Board, that though the appointment of the respondents was made on Group D post because of unavailability of the requisite vacancy as Skill Grade-III, as the same runs counter to a normal course of affairs. Since the MACP vividly contemplates that the appointment as temporary or ad-hoc will not be considered under the said scheme, we do not find any justification in the stand of the Railway Authorities in considering the Group D post as a regular service within the meaning thereof under the said scheme.

We, thus, do not find any illegality and infirmity in the impugned order. The writ petition is dismissed.

No order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.