

(2023) 10 CAT CK 0014

Central Administrative Tribunal - Allahabad Bench, Allahabad

Case No: Civil Miscellaneous Contempt Petition No. 07 Of 2022 In Original Application No. 252 Of 2014

Anil Shankar Srivastava

APPELLANT

Vs

Anupam Sharma, General
Manager, North Eastern Railway,
Gorakhpur & Ors

RESPONDENT

Date of Decision: Oct. 9, 2023

Hon'ble Judges: Om Prakash, VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench: Division Bench

Advocate: Anil Kumar Srivastava, H.S. Chaurasia, Mahendra Prasad Mishra

Final Decision: Disposed Of

Judgement

Dr. Sanjiv Kumar, Member A)

1. Instant contempt petition has been filed for non-compliance of the order dated 06.10.2021 passed by this Tribunal in OA No. 252/2014. The operative para of the order reads as under: -

“8. On perusal of the available pleadings and the law laid down by the Hon'ble Supreme Court, the impugned order dated 06.09.2013 cannot be sustained and the same is quashed. Accordingly, the OA is allowed directing the respondents to grant the first financial up-gradation under the ACP Scheme to the applicant. The Respondents are directed to accord the 2nd up gradation under ACP as per decision of the Hon'ble Central Administrative Tribunal Madras Bench dated 26.08.2008 in OA No. 335 of 2007 (V. Venkataraman Vs. Union of India and others) as affirmed by the Hon'ble High Court of Madras vide order dated 19.10.2010 passed in Writ Petition No. 21112 of 2009 (Union of India and others. Vs. Registrar, Central Administrative Tribunal Madras Bench and another) and confirmed by the Hon'ble Supreme Court vide order dated 04.01.2012 in SLP No. 9422 of 2011 and to accord 3rd Upgradation under ACP as highlighted in the next higher grade pay i.e. S-18-PB-3 Rs. 15,600-39,100 Revised Pay Structure (Grade Pay of Rs. 6600) with consequential benefits. No order as cotsts.”

2. The respondents have filed a short counter reply and a counter reply cum compliance affidavit. In the short counter reply, the respondents have filed the interim order dated 05.05.2022 passed by Hon'ble High Court in Writ Petition No. 1487/2022, wherein the Court observed the following: -

“Having heard learned counsel for the parties, as an interim measure, we hereby provide that in case the opposite parties are granted the benefit of ACP pursuant to the judgment impugned here in this writ petition from the due dates computing their requisite period of service from the date of up-gradation and, accordingly, the first ACP

on completion of 10 years, second on completion of 20 years and third on completion of 30 years of service as per Rules, the learned Tribunal subject to the outcome of this writ petition may treat it to be the substantial compliance of the judgment passed by the Tribunal.

Learned counsel for the petitioner, in the meantime, may also place on record the explanation as to the manner in which the benefit of ACP is to be regulated to the employees working in accounts cadre, who on the basis of three years qualifying service become eligible to the next higher promotion besides gaining the same status within 80% of the cadre strength as well as on completion of 10 years satisfactory service by way of first ACP."

3. Further, in the counter-cum-compliance affidavit, the respondents have stated that the applicant has been provided requisite three promotions/up-gradations, which is maximum stipulated as per spirit of MACP Scheme, which may be illustrated by the following tables: -

Year	Scale	Desig.	Promotion/ Upgradation	Time period from Date of Recruitment	Office Order No./Date	Remarks
1	2	3	4	5	6	7
1983	330- 560	JAA	Appointment	-	-	Appointment
1986	1200- 2040	JAA	Pay Fixation in 4th CPC	-	-	Fixation in 4th PC

1987	1400-2600	AA	Promotion from JAA (1200-2040) to AA (1400-2600)	Four years	Office order No. 227 dt. 21.11.1987	1st promotion w.e.f. 01.04.1987 against vacancies which arose as result of restructuring as per provisions of RBE No. 222/97 dated 27.08.1987 and RBE No. 158/87 dt. 18.06.1987
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2008	6500-10500	AA	Upgradation from AA (5500-9000 erstwhile 1400-2600) to AA (Scale 6500-10500) w.e.f. 08.07.2007	24 years	Office Order No. 19 dt. 09.06.2018	2nd upgradation given w.e.f. 08.07.2007 under ACP (RBE No. 233/99 dated 01.10.1999) after 24 years of service after date of appointment vide office order No. 19 dated 09.06.2008 (As they had already earned one promotion, only 2nd upgradation was due
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							3rd upgradation given w.e.f. 08.07.2013 under MACP (RBE No. 101/2009 dated 10.06.2009 (after 30 years of service after date of appointment vide order No. 2 dated 30.01.2014 (As they had already earned one promotion & one Financial upgradation, only 3rd upgradation was due under MACPS).
2014	PB-II Pay Scale Rs. 9300- 34800 (GP 5400)	AA	Upgradation from AA (Grade Pay 4800 erstwhile Scale 6500- 10500) to AA (PB-II Pay Scale Rs. 9300- 34800 (GP 5400) w.e.f. 08.07.2013	30 years	Office Order No. 2 dt. 30.01.2014		

4. The respondents further say that in view of the above, the claim of the applicant for more upgradation in addition to three promotions / upgradations already given is not maintainable. The applicant had been granted first promotion in the year 1987 w.e.f. 01.04.1987 and thereafter, second upgradation as ACP was granted vide Office Order No. 19 dated 09.06.2008 and the third upgradation as MACP was granted vide Office Order no. 2 dated 30.01.2014 w.e.f. 08.07.2013. Thus, in view of the observation made

by the Hon'ble High Court in second paragraph in its order dated 05.05.2022, the order passed by this Tribunal stands substantially complied with by the Railway administration.

5. On the other hand, the applicant has filed rejoinder reply wherein the contents of paras 1, 2, 5, 6, 7, 8 and 9 of counter-cum-compliance affidavit have not been denied. However, the contents of paras 3, 4 and 10 to 23 of the counter-cum-compliance affidavit have been denied being misconceived. It is further stated that the opposite parties have not complied with the order passed by this Tribunal even till date and as such they are entitled to be sternly dealt with under Contempt of Court's Act.

6. Case came up for hearing on 04.10.2023. Shri Anil Kumar Srivastava with Shri H.S. Chaurasiya, learned counsel for the applicant and Shri Mahendra Prasad Mishra, learned counsel for the respondents were present and they were heard.

7. We have gone through the entire record and carefully considered the rival contentions.

8. In the rejoinder, there is no clarification as to how they rebut the averments of the respondents in para 18, which is a table given about the various promotions / upgradations. The fact is that the applicant was appointed in the year 1983 and then his pay was revised as per 4th Pay Commission in the year 1986. Thereafter, in the year 1987, after four years, he was given first promotion from the grade of JAA to AA vide Office Order No. 227 dated 21.11.1987. Why this should not be considered as the first promotion of the applicant, is not forthcoming in the rejoinder and is not substantiated and is not understandable.

9. Secondly, the said table further states that in the year 2008, after 24 years of service, upgradation from AA was given w.e.f. 08.07.2007 vide Office Order No. 19 dated 09.06.2008 as per the ACP Scheme and this was the second upgradation for the applicant. Except for denying this fact, the applicant does not give any clarification why it should not be considered as second upgradation. Hence, the contention of the applicant is not understandable or convincing.

10. Further, the respondents in the same para and table mentioned that in the year 2014, after 30 years of service, as per the MACP Scheme, 3rd upgradation was given to the applicant w.e.f. 08.07.2013 vide Office Order No. 2 dated 30.01.2014. Barring denying the same, the applicant does not give clarification why this should not be considered 3rd MACP of the applicant as per eligibility. Hence, the contention of the applicant in the rejoinder is bland, unsubstantiated and un-clear. Hence, we come to the conclusion that what the authorities have stated in the counter-cum-compliance affidavit, is substantial truth that the applicant has got one regular promotion in the year 1987 and one upgradation under ACP Scheme in the year 2008 and another upgradation under new MACP Scheme in the year 2013, hence, it is clear that in terms of the order of the Hon'ble High Court dated 05.05.2022, wherein it was observed that "having heard learned counsel for the parties, as an interim measure, we hereby provide that in case the opposite parties are granted the benefit of ACP pursuant to the judgment impugned here in this writ petition from the due dates computing their requisite period of service from the date of up-gradation and, accordingly, the first ACP on completion of 10 years, second on completion of 20 years and third on completion of 30 years of service as per Rules, the learned Tribunal subject to the outcome of this writ petition may treat it to be the substantial compliance of the judgment passed by the Tribunal", and as per the facts placed before us, we have no ground to conclude otherwise than that the applicant had been granted three upgradations as was envisaged under the MACP Scheme and subject to the outcome of the writ petition.

11. In view of the above facts and circumstances, we do not find any flaw in the statement of the respondents' department contention that substantial compliance of the judgment passed by this Tribunal has been made and as such, the contempt proceedings are liable to be closed. Accordingly, the contempt proceedings are closed. The notices are discharged. All associated pending MAs stand disposed off.