

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.28703-CAT of 2018

Date of decision: December 06, 2018

Union of India and others

...Petitioners

Versus

Jarnail Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Jagdish Marwaha, Special Counsel for
petitioners – Union of India.

Mr. Jagdeep Jaswal, Advocate for
the respondent No.1 – caveator.

HARINDER SINGH SIDHU, J.

The Union of India, Ministries of Railways has filed the present writ petition laying challenge to the order dated 27.04.2017 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.1122/PB/2013, whereby, the Original Application filed by respondent No.1 impugning the order dated 8.7.2013 rejecting his claim for grant of benefit under ACP Scheme w.e.f. 17.12.2002 was allowed. The order dated 11.09.2018 whereby Review Application No.60/44/2017 has been dismissed, has also been challenged.

Respondent No.1 was appointed on 17.12.1990 as Junior Engineer-II in the pay scale of Rs.1400-2300. He was confirmed w.e.f. 17.12.1992. In the year 1993 in terms of a Restructuring Scheme he was

designated as JE-I and placed in the revised pay scale of Rs.5000-8000. He approached the Tribunal by filing OA No.577/PB/1998 seeking grant of pay scale of Rs.5500-9000 as given to his juniors. On the directions of the Tribunal, he was placed in the cadre of JE-I w.e.f. 23.6.1993 in the pay scale of Rs.1600-2660 revised to 5500-9000 w.e.f. 1.1.1996. The case of respondent No. 1 was that the Restructuring Scheme resulting in upward revision of his pay-scale did not amount to promotion. Hence under the ACP Scheme he had become entitled to first financial up-gradation w.e.f. 17.12.2002 on completion of 12 years of service. Under the ACP Scheme two financial up-gradations were admissible on completion of 12 and 24 years of service. This Scheme was replaced by the Modified ACP Scheme (MACP) w.e.f. 1.9.2008, whereunder, three financial up-gradations on completion of 10/20/30 years of service were provided for. Hence, he claimed that he had become entitled to the 2nd Financial up-gradation after 20 years of service on 17.12.2010.

The petitioners herein however, treated the revision of his pay scale at the time of restructuring as promotion. It was their case that as he had got one promotion as JE-I, he became eligible for grant of his first financial up-gradation under MACP Scheme in the scale of Rs. 9300-34800 with Grade Pay of Rs.4600/-. It was asserted that he was not found fit for grant of the financial up-gradation w.e.f. 1.4.2008 but was given the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600 w.e.f. 1.4.2009 as he was found suitable. He had been promoted as S.E. (SSE) in grade pay of Rs.4600/- w.e.f. 20.5.2011. He became eligible for grant of his 2nd financial up-gradation in the scale of Rs.9300-34800 Grade Pay 4800/-

w.e.f., 17.12.2012. He was considered by the screening committee but not found suitable. However, he had been given the said benefit w.e.f. 1.4.2013 in the grade pay of Rs.4800/-. It was also the case of the petitioner-Union of India that the training period of two years, prior to his confirmation, could not be reckoned as regular service for the purpose of grant of financial up-gradation under the MACP Scheme.

The learned Tribunal noticed that the Ernakulam Bench of the Central Administrative Tribunal in OA No.181/12M “Abdul Rasheed vs. Union of India etc.” decided on 31.1.2013 had directed the Ministry of Railways to refer the matter to the DOPT, the Nodal Ministry, for clarification regarding treating the training period prior to absorption for the purposes of grant of ACP. As no such clarification had been received, it was held that the claim for counting the training period as eligibility service for grant of ACP/MACP would be governed by the decision/clarification of the Ministry.

The contention of petitioners that it was not a case of up-gradation consequent on restructuring but one of promotion was rejected by the Tribunal in order dated 6.8.2014 observing:

“A perusal of the order dated 22.3.1997 shows that while on the one hand the applicant and others are stated to have been promoted to the post of J.E.Gr.I in the scale of Rs. 1600-2660, but the present designation is mentioned as “JE-Gr.II” and the revised designation is mentioned as “JE-Gr.I”. This grant of higher pay scale is under a restructuring scheme vide which the designation of the post was revised. This cannot be treated as a promotion in terms of the law discussed above as it was grant of a higher pay scale under a cadre restructuring.”

That order was challenged by the petitioners by filing CWP No.11274 of 2015. Before the High Court certain documents were referred to by both parties, which had not been considered by the Tribunal. The writ petition was disposed of on 22.2.2017. A consented order was passed. The writ was allowed and the order of the Tribunal was set aside. The case was remitted to the Tribunal for fresh adjudication.

Thereafter, the Tribunal has passed the order dated 27.4.2017, which has been challenged herein.

The learned Tribunal has noted that the documents filed by the petitioner before the High Court in support of its contention that the restructuring, in fact, amounted to promotion from the post of JE-II to J.E-I, had not been placed before it. In the absence of any such document, the Tribunal did not have the benefit of any fresh prospective of the case from the point of view of the petitioners. Relying on a decision of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited vs.R. Sathakumari Velusamy and ors 2011(9) SCC 510** and a decision of this Court in **Jaswant Singh Vs. Union of India and ors 2014 (19) SCT 263** it was held that the revised pay scale given to the applicant on account of restructuring did not amount to promotion. He was, therefore, held entitled to financial up-gradations under ACP/MACP without taking into account his revised pay-scale consequent on the restructuring.

The decision of the Tribunal is based on settled legal position that an up-gradation simpliciter, where no process of selection or consideration of comparative merit is involved, would not amount to promotion. There was no material before it to substantiate the petitioner's

assertion that it was a promotion and not a case of grant of higher pay scale consequent on restructuring.

There is no infirmity in the order.

Dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 06, 2018

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No