

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

W.P.No.7181 of 2019

Date: 25.07.2019

Between:

Union of India,
Rep. by its General Manager,
South Central Railway,
Railnilayam, Secunderabad,
and four others

...Petitioners

and

Ch. Prakash

...Respondent

Counsel for the petitioners: Mr. P. Bhaskar

Counsel for the respondent: Ch. Prakash, party-in-person

The Court made the following:

ORDER: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The Union of India is aggrieved by the order, dated 09.01.2019, passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the learned Tribunal has allowed the O.A. filed by the respondent-applicant ('the applicant', for short), and has directed the petitioners to grant the third MACP (Modified Assured Career Progression) in favour of the applicant in PB-2 of Rs.9300-34,000 with grade pay of Rs.4,800/- w.e.f. 01.09.2008, and with all consequential benefits thereupon. The learned Tribunal had further directed the petitioners to implement the said order within three months from the date of receipt of the certified copy of that order.

Briefly the facts of the case are that on 29.06.1972, the applicant was appointed as a Commercial Clerk by the Railway Service Commission. His initial appointment was in the Third Pay Commission Scale; subsequently, the scale was enhanced under the Fourth, the Fifth and the Sixth Pay Commission respectively. According to the applicant, by notification, dated 03.06.1977, the vacancies for the post of Enquiry-cum-Reservation Clerk (ECRC) were announced. The applicant applied for the said post. Therefore, on 29.04.1977, he was appointed to the said post on *ad-hoc* basis. Subsequently, on 20.07.1978, he was regularised on the said post. The grievance of the applicant was that despite the fact that he has rendered thirty years of service, he was not given

the benefit of the third promotion under the MACP. Therefore, he filed the O.A. before the learned Tribunal.

As stated hereinabove, by order dated 09.01.2019, the learned Tribunal has directed the petitioners to give the benefit of the third promotion under the MACP to the applicant within a period of three months from the date of receipt of the certified copy of the said order.

The learned counsel for the petitioners submits that initially, on 29.06.1972, the applicant was appointed as a Commercial Clerk. Subsequently, on 20.07.1978, he was promoted to the post of ECRC on regular basis. Thus, that was his first promotion. Moreover, on 01.01.1984, he was granted a second promotion to the post of Senior ECRC, and on 01.11.2003, he was granted the third promotion as CE & RS. Therefore, the applicant was certainly granted three promotions under the MACP. Hence, the learned Tribunal is unjustified in concluding that the applicant was never granted the third promotion as alleged by him. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr.Ch.Prakash, the respondent, who is present-in-person, submits that he was appointed on 29.04.1977, to the post of ECRC on *ad-hoc* basis, but at the relevant time, the said post was not declared as a promotional post. In fact, the said post was the entry post for the CE & RS. Therefore, his selection and appointment on regular basis on 20.07.1978 was as a direct recruitee. Hence, the

petitioners are unjustified in claiming that his appointment on the post of ECRC on 20.07.1978 shall be treated as his first promotion. *Secondly*, it is only in 1998 that the post of ECRC was declared as promotional post, and 75% of the posts were reserved for Commercial Clerk category. Therefore, the said declaration made in 1998 is inapplicable to the recruitment, selection and appointment of the year 1977. *Thirdly*, having considered the fact that the applicant was a direct recruitee to the post of ECRC in 1977-78, the learned Tribunal was justified that in thirty years of service, the applicant was granted only two promotions, whereas under the MACP he is entitled to three promotions. Hence, the respondent, party-in-person, has supported the impugned order.

Heard the learned counsel for the petitioners, the respondent, party-in-person, considered the impugned order and perused the record.

Admittedly, till 1998, the post of ECRC was not a promotional post for the category of Commercial Clerk. In fact, as observed by the learned Tribunal, the channel for promotion for the post of Commercial Clerk was to the post of Senior Commercial Clerk, Head Commercial Clerk, Chief Commercial Clerk, and Commercial Superintendent, whereas the channel for promotion for the post of ECRC was Senior ECRC and CE & RS. Therefore, the learned Tribunal was justified in concluding that in 1977-78, these two cadres were

separate and distinct cadres. The entry level grade to CE & RS is the post of ECRC and not the post of Commercial Clerk. Therefore, in 1977-78, when the applicant was appointed on the post of ECRC, he was appointed as a direct recruit, and not as a promotee. Hence, the petitioners are unjustified in treating the appointment of the applicant on the post of ECRC, made in 1977-78, as the first promotion. Consequently, the petitioners are unjustified in claiming that the applicant was given his second promotion in 1984. For, the said promotion would, indeed, have to be treated as his first promotion. Similarly, even his promotion on 01.11.2003 as CE&RS has to be treated as the second promotion, and not as the third promotion as claimed by the petitioners. Hence, the learned Tribunal was justified in concluding that the applicant has been denied the benefit of the third promotion. Therefore, the learned Tribunal was justified in directing the petitioners to grant the third promotion within a period of three months.

The learned counsel for the petitioners submits that since the period of three months is already over, and since a contempt petition is presently pending before the learned Tribunal, this Court may grant further period of three months from today for implementation of the impugned order.

Since the request made by the learned counsel is a reasonable one, this Court directs the petitioners to

implement the impugned order within three months from today.

With the above directions, this writ petition stands disposed of. There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, shall stand disposed of as infructuous.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(Dr. SHAMEEM AKTHER, J)

Date: 25.07.2019
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