25.11.2025
Item No.13
Ct. No.01
RP

WPCT 165 of 2025

Union of India & Ors.
VS
Ajit Kumar Dhur

Mr. Sukanta Chakraborty
Mr. Debasish Basak
...For Petitioners

PER, SUJOY PAUL, ACJ.:

1. Mr. Chakraborty, learned counsel appears for the petitioners.

2. None appears for the respondent even on the second call.

3. Heard on admission.

4. This petition filed under Article 226/227 of the Constitution of India impugns the order dated 11th March, 2025 passed in OA 350/990/2015 whereby the retired employee (original applicant) succeeded in OA and the Tribunal opined that snatching away the benefits of 3rd MACP after retirement and without following the principles of natural justice is not permissible.

5. The relevant facts are that the original applicant got the benefit of third financial upgradation by order dated 18.10.2012. The said benefit was granted under the MACP scheme and, accordingly, he got the scale in the Grade Pay of Rs.4800/-. The employee retired on attaining the age of superannuation on 31.5.2014. After his retirement, the department opined that he was not a direct recruitee. Instead, he got promotion under the Limited Departmental Competitive Examination (LDCE). After having obtained such promotion in the ladder of career progression, he was not entitled to get the benefit of 3rd financial upgradation. The department was not correct in treating the 3rd financial upgradation as direct recruitment and in that case, the benefit of 3rd MACP was wrongly granted to him.

6. The employee assailed it by contending that on merit he was entitled to get the benefit of 3rd MACP. In addition, the said departmental action was assailed on the ground that after retirement no such antedated correction of MACP benefit is permissible and principles of natural justice were not followed.

7. The Tribunal by the impugned order set aside the action of the department and directed restoration of pay in the Grade Pay of Rs.4800/- and also directed consequential payment of pension and other retirement dues. In addition, interest was directed to be paid at current GPF rate.

8. Criticizing this order, learned counsel for the petitioner submits that the employee was not entitled to get the 3rd MACP. After his retirement by a communication dated 21.10.2014, the Southern Eastern Railway issued certain directions. It is submitted that the Tribunal has erred in granting the benefit of 3rd MACP and erred in interfering with department's action. Rule 230(12)(i) of General Financial Rules 2017 was relied upon to submit that the department has the authority, jurisdiction and competence to correct the MACP error and consequentially directed recovery and adjustment of the pension accordingly.

9. Learned counsel for the petitioner further submits that in OA No.1297/15 (Ajay Das & Ors. vs. Union of India & Ors.) decided by the Tribunal on 17.11.2016, the Tribunal had taken a different view in relation to a retired employee. Thus, two judgments of the Tribunal are in different ways.

No other point is pressed by the learned counsel for the petitioner.

10. The first and foremost issue, which arises for consideration, is whether after retirement of an employee the department has any enabling provision to correct the promotion/upgradation earned by him during his employment. In absence thereof, no fault can be found in the impugned order of the Tribunal. Despite repeated query, the learned counsel for the department could not point out any enabling provision to show that after employee-employer relation ceased upon retirement of an employee, the department still has any power to take away the promotion/financial upgradation of an employee which was earned by him during service and, accordingly, modify the pension and retiral dues.

11. Rule 230(12) of the General Financial Rules 2017, which is relied upon, does not throw any light on this aspect. Rule 230(12) is not the enabling provision for any such correction after retirement of an employee.

12. Rule 9 of Railway Services (Pension) Rules, 1993, which is *pari materia* to the relevant Rule of Central Civil Services (Pension) Rules, 2021, is clear and it envisages that recovery from pension, reduction of pension or stoppage of pension can take place in the event of misconduct or conviction of an employee for grave offences. This can be done only when other conditions mentioned in the said rules are satisfied. Thus, no other provision could be brought to our notice which enables the department to make any recovery or reduce the pension after retirement.

13. Thus, the pivotal question is whether after retirement of an employee, the department can correct the promotion/financial benefit/upgradation etc. with retrospective effect. In our opinion, in absence of any enabling provision, the same is impermissible. It was obligatory on the part of the department to show the enabling provision for correcting such promotion/financial upgradation. Thus, we find no reason to examine the correctness of the order of the Tribunal regarding entitlement of the employee for 3rd

MACP. In the result, the writ petition is dismissed solely for the reason that no enabling provision could be shown to us which permits the department to rectify the alleged mistake of grant of financial upgradation when the employee was in service. After retirement no such mistake can be permitted to be correct unless there exists an enabling provision. For this ground alone, we find no justification in interfering with the impugned order of the Tribunal.

14. So far the other order of the Tribunal passed in Ajay Das (supra) is concerned, suffice it to say that the said order of the Tribunal is not binding on us. Therefore, we find no reason to interfere with the impugned order. The admission is declined. The petition is dismissed.

15. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[SUJOY PAUL, ACJ.]

[PARTHA SARATHI SEN, J.]