

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18612 OF 2024

Union of India thru the General Manager, ...Petitioners
Central Railway and Anr.

Versus

Shri Kamlesh Kumar Nagpure ...Respondent

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CHAVAN

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Mrs. Anjali Helekar for the Petitioners.

Mr. S.K. Tripathi for the Respondent.

**CORAM : A.S.CHANDURKAR AND
M.M. SATHAYE, JJ.**

DATE : 13th JANUARY 2025

P.C. :

1. Heard learned Counsel for the parties. Perused the record.
2. The Petitioners have challenged the Judgment and Order dated 16.04.2024 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in Original Application No. 81 of 2019. By the said impugned order, the application filed by the sole Respondent is allowed, thereby directing the Petitioners to grant benefit of first Modified Assured Career Progression (for short 'MACP') Scheme to the sole Respondent with effect from 15.06.2014 instead of 04.01.2017.
3. Learned Counsel for the Petitioners submitted that the Respondent was appointed under order dated 15.06.2004 clearly mentioning therein as an 'Apprentice'. It is submitted that in the subsequent orders dated 16.12.2004, 06.02.2006, 18.10.2006 and

04.01.2007, the Respondent is shown as Apprentice. Relying on clause (9) of the MACP Scheme, it is contended that regular service for purpose of MACP commences from the date of joining of post in direct entry grade “on a regular basis” and that services rendered on Ad-hoc/contract basis before the regular appointment on pre-appointment training, is not to be taken into consideration. It is further submitted that therefore, the services of Respondent from his appointment as Apprentice on 15.06.2004 till 04.01.2007 cannot be considered. The provisions under Indian Railway Establishment Manual Volume II are also relied by the Petitioners, particularly clause 1902 & 1912 in Chapter XIX, which read as under:

“1902. An Apprentice means a person deputed for training in a trade or business with a view to employment in Government service, who draw a stipend at monthly rates from government during such training but is not employed in or against a substantive vacancy in the cadre of a department.

x

x

1912. Date of Posting of Apprentices - The apprentices should be absorbed in the working posts on the working day following the date of completion of the apprenticeship/training period. The suitability of the apprentices for absorption against working post should be judged well in advance of the expiry of the apprenticeship/training period.

In case where there is delay in holding examinations, valuation of answer books, issue of office orders etc. owing to administrative reasons, the period intervening the date

of complication of the apprenticeship training period as extended period of training apprenticeship and the apprentices should be paid stipend for that. In no case an apprentice should be absorbed against a working post with retrospective effect.”

4. On these submissions, it is contended that since the Respondent was appointed as an Apprentice who has been taken into regular services on 04.01.2007, the benefit as directed under impugned order cannot be given from earlier date.

5. On the other hand, the learned Counsel for the Respondent submitted as under. He relied upon on an advisory dated 28.03.2011 issued by the Joint Director of Railway Board, which is about the subject of counting of training period for grant of financial benefits under MACP Scheme. That the said advisory clearly provides that initial training period shall be counted towards eligibility for grant of financial benefits under MACP Scheme in terms of Rule 63 of RPF Rules, 1987. That the Tribunal, after considering the material on record has considered the relevant date of appointment and has passed impugned order granting benefit to Respondent, in which there is no perversity or illegality and therefore no interference is required.

6. We have considered the submissions and perused the impugned order along with other material produced.

7. Perusal of the appointment order dated 15.06.2004 indicates that the Respondent was appointed as Apprentice JE-II (Electric) in the grade of Rs.5000-8000. It is not on ad-hoc or contract basis. Record

shows that Respondent was thereafter sent for training which he successfully completed. The subsequent orders/letters dated 06.02.2006, 18.10.2006 and 04.01.2007 only indicate regularisation, posting and passing of the final examination. Therefore, it is clear that Respondent was appointed on 15.06.2004. As rightly pointed out by the learned Counsel for the Respondent, under advisory dated 28.03.2011, the training period is to be counted for financial benefits under MACP Scheme. This fact can be further discerned from the communication issued by the Deputy Director, Pay Commission-5, Railway Board dated 29.09.2010, whereunder clarification about MACP Scheme was issued and under clarification No.4, it is provided that the benefits under MACP Scheme would be available from the date of actual joining of the post in the entry grade. This clearly supports the view taken in the impugned order.

8. Also, perusal of the Rule 63 of the Railway Protection Force Rules, 1987 (referred in advisory dated 28.03.2011) shows that the period of training including in-service-courses are mandated to be 'treated as duty for all purposes', subject to condition that during the period of training, the recruits shall be paid stipend or pay or allowances as may be specified from time-to-time. This clearly means that from 15.06.2004, when he was appointed, the period of training undergone thereafter by the Respondent, he was on duty under provisions of said Rule.

9. Since the appointment dated 15.06.2004 is not on ad-hoc or contract basis, Clause 9 will not apply. Clauses 1902 and 1912 also do not appear to be operating against the Respondent.

10. Viewed in the light of what is noted above, when the impugned order is perused, it is seen that the Tribunal has considered the aforesaid aspects and has come to the conclusion that the Respondent is entitled for first MACP on completion of 10 years i.e. w.e.f. 15.06.2014. The reasons given in the impugned order as well as in the conclusion drawn, both are based on material available on record. The impugned order thus is neither perverse nor suffering from an error apparent on the face of the record. The view taken, is a probable view.

11. In the aforesaid facts and circumstances, we are not inclined to interfere in the impugned Order by exercising of our extraordinary writ jurisdiction.

12. The Writ Petition is accordingly rejected. No order as to costs.

13. The Petitioners are granted four weeks' time to comply with the impugned order.

(M.M. SATHAYE, J.)

(A.S.CHANDURKAR, J.)