

Chater Pal Vs. Union of India Through the General Manager and Others

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Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Mar-05-2013

Judge : The Honourable Mrs. Justice Manjulika Gautam, Member (a) & the Honourable Mr. a.K. Bhardwaj, Member (J)

Appeal No. : OA No. 1171 of 2012 & MA No. 983 of 2012

Appellant : Chater Pal

Respondent : Union of India Through the General Manager and Others

Judgement :

A.K. Bhardwaj, Member (J):

1. The short question arises to be determined in the present OA is the date from which the applicant should get the benefit of Modified Assured Career Progression (MACP) Scheme. According to the learned counsel for the applicant in terms of letter No.P-4/Posting/- dated 11.10.2000 (Annexure A/2) he was appointed as a substitute khallasi purely on temporary basis against vacancy under SSE/E/DEE/L, thus the service rendered by him after the said date should be taken into account as qualifying service for the purpose of upgradation in terms of the said Scheme and only the service rendered prior to said date should be divided by two. In other words, only the service rendered as temporary status casual labour can be cut into 50% and not the service rendered by a substitute while taking into account such service to determine eligibility of an employee for

financial upgradation.

2. In the counter-reply filed on behalf of respondents it is explained that the total number of days applicant had worked as a casual labourer during the period from 16.09.78 till 11.10.2000 is 550. They have also put-forth that the 50% of actual service between 16.09.1978 to 14.01.2003, i.e., 01 year, 10 months and 25 days has been taken into account to arrive at the qualifying service of applicant for financial upgradation in terms of MACP Scheme. For easy reference, relevant extract of para 4.5 is extracted below:

Statement of Service

Period of Casual Labour and CPC

TABLE

Service details for MACP benefits

Period 16.09.78 to 14.01.2003 (unscreened employer)=24 years 03 months 29 days.

Absent period 16.09.78 to 14.01.2003- 20 year 06 months 10 days.

Actual Service Period-03 years 09 months 19 days

50% of the Actual Service Period-01 year 10 months 25 days

Service Period after screened

From 16.01.2003 to 14.12.2012-09 years 07 months 9 days

Total Service for MACP benefits.11 year 05 months 23 days

Ist MACP due w.e.f. 01.07.2011 and being given.

3. We have heard learned counsel for the parties and perused the record. Ex facie, in terms of letter dated 11.10.2000 (Annexure A/2) the applicant was appointed as substitute khallasi against the existing vacancy. For easy reference

letter dated 11.10.2000 is extracted hereinbelow:

No.P-4/Posting/ 11.10.2000

To

The SSE (W),

N. Rly-DEE/L

Subject: Appointment of Shri Chattarpal S/o Raghubeer Singh as CPC Casual Labour Khallasi under SSE (V)/DEE/L R.A.No.132/2000 in OA No.1572/99, Shri Chattarpal vs. UOI.

Reference: DSE/1/BKN Letter No.Engg/CAT/NDLS/Chattarpal dated 29.9.2000.

In reference to above to implement the judgment dated 22.2.2000 in above RA Sh.Chattarpal S/o Sh.Raghubir Singh is hereby appointed as CPC Khallasi in scale 2550-3200 (Rs.) @ 2550/-, as substitute purely on temporarily basis against existing vacancy under SSE/V/DEE/L.

1. Name: Sh.Chattarpal
2. Fathers name: Sh.Raghubir Singh
3. Designation: CPC Khallasi, Substitute on Ty basis
4. Date of birth: 14.12.59
5. Rate of Pay: 2550/-
6. Scale: 2550-3200 (Rs)
7. Education Qualification: Vth Pass
8. Med.Exam Passed: Fit in C one and below vide med certificate No.103603 dt.7.9.2000 issued by Sr. DHO/ Rewari.

Note: Sh.Chattarpal shall not authorized to work trolly and not required to come in contace with signals in actual operation of his duty.

9. Date of initial appointment:16.9.78 under PWI/MHRQ

10. Permanent Home Address Village Jaipur, P.O. Mandola, Police Stn. Satnali, Tehsil and Distt. Mohendergarh (Haryana)

11. Sh. Chhattarpal will be regularized on screening and after due procedure for permanent posting. Kindly inform the date of resumption as substitute CPC Khallasi on Ty basis.

4. In terms of Railway Boards letter No.PC-V/2009/ACP/2, dated 25.02.2010 unlike casual labourer whose 50% of temporary service is counted for pensionary benefits, temporary service of a substitute needs to be counted for pensionary benefits in full. Para-2 of the said letter reads as under:

R.B.E.No.36/2010

No.PC-V/2009/ACP/2 dated 25.02.2010

2. Further, on demand from both the federations that the entire service of the substitutes on their absorption in regular service may be reckoned for MACPs purposes, the matter has been carefully considered by the Board. It is found that unlike casual labours whose 50% of temporary status service counts for pensionary benefits, temporary status service in full of the substitutes counts for pensionary benefits. It has, therefore, been decided that the entire temporary status service of substitutes followed by regularization without break may be taken into account towards the minimum service of 10,20 and 30 years for the purpose of grant of benefit under the MACP Scheme.

5. In a communication dated 07.04.1997 enclosed by the applicant with his rejoinder it has been indicated that he had put in 605 days casual service during the period from 16.09.1978 till 6.8.85. The relevant extract of the said communication reads as under:

But as per record you have put in service less than two year i.e. (05 days from 16.09.78 to 26.09.78 = 6, 5.12.83 to 14.2.84 = 71 24.2.84 to 17.4.84, 53, 15.5.84 to 14.7.84 = 51, 27.11.84 to 24.8.85 =270 (GC w.e.f.15.6.84) i.e 451 days.

154 days.

605 days from the date of engagement to date of medical unfit. 6. Though in the reply filed by them the respondents have given details of the service rendered by the applicant and have also indicated that the applicant has been granted first MACP w.e.f. 01.07.2011 but the letter dated 11.10.2010 is not commented upon and it is not explained that how the casual service rendered by him is calculated differently in the counter reply and communication dated 07.04.1997. In ground (a) of his OA applicant has taken a specific plea that in terms of Railway Boards letter dated 25.02.2010 the entire service rendered by applicant as a substitute should be counted for the purpose of financial upgradation in term of MACP Scheme. Though the respondents have denied the said contention, but they have not explained any reason for doing so. Para-5 of the reply in which they have given respondents to para (5.a) of the OA reads as under:

5. That the averment in Para 5 under heading grounds sub para (5.a) to (5.e) of the original application are wrong and hence denied by the respondents in view of the detailed reply given in the foregoing paragraphs.

7. In the circumstances, we are convinced that the respondents need to deal with the contentions put-forth by the applicant, i.e.,

(i) his casual service for the period between 16.09.1978 to 11.10.2000 is 605 days, as mentioned in communication dated 07.04.1998 and

(ii) 100% of service rendered by him after 11.10.2000 as a substitute needs to be counted for financial upgradation.

8. In the circumstances, OA is disposed of with a direction to the respondents to examine the said contentions of the applicant and pass a speaking order within a

period of 08 weeks from the date of receipt of a certified copy of this order. While doing so, they would keep in view letter No.P-40/Court Cas./Chattar Pal/1, dated 07.04.1997 (page 54 of the paper-book), letter No.P-4/Posting/- dated 11.10.2000 (Annexure A/2, page-9) and Railway Boards letter No. RBE No.36/2010 dated 25.02.2010. No costs.

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