

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-I, New Delhi.

LCA NO. 94/2014

Date of Passing Order- 11th May,2023

Between:

Shri Chander Bahadur Gurung, Mason (Retired)
As represented by
All India Central PWD (MRM) Karamchari
Sangathan (Regd), House No. 4823, Gali No.13,
Balbir Nagar Extension, Shahdra,
Delhi 110032

Workman

Versus

The Executive Engineer
Faridabad Central Division-1
CPWD, NH-4 Faridabad

Management.

Appearances:-

Shri Satish Sharma, Ld. A/R for the Claimant.

Shri Atul Bhardwaj, Ld. A/R for the management

ORDER

This an application filed by the workman invoking the provisions of section 33-C(2) of the ID Act. In the said claim petition

it has been stated that the workman Chander Bahadur Gurung was appointed as a Mason with effect from 11.06.1976 in Nepal. Pursuant to the settlement dated 09.06.1983, he was transferred to India in the year 1984 and worked in India till 31.07.2013 that is till the date of his superannuation. The service rendered by him in Nepal was taken into consideration for continuity and on completion of 8 years of regular service in skilled category, he was granted the pay and allowances under selection grade with effect from 10.06.1984. The Director General of Works, CPWD, on 09.06.2011 issued an order directing part implementation of the Arbitration Award of 1988 and to treat the grant of selection grade as the first promotion granted to the employee. The DOPT issued an order directing that the workmen of CPWD who have been allowed selection grade on completion of 8 years of service shall be granted 2nd ACP on completion of 25 years of service and the benefits of 3rd MACP on completion of 28 years of service. The workman Chander Bahadur Gurung completed 24 years of service on 14.09.2000. But the mgt did not grant him 2nd ACP or the 3rd MACP according to his entitlement. But the co-employees of the workman have been granted 3rd MACP. His request was turned down on the ground that there are some irregularities in his continuous service. This explanation was given by the mgt as the workman had participated in a strike in the year 1979 as conducted by the then union. In the settlement dated 09.06.1983, though it was decided that the strike period shall be regularized and the increment of the workman will be shifted to the actual date, the same was not carried out. On that pretext, the claimant was deprived of 2nd ACP and 3rd MACP. On 07.11.2014, the claimant gave a representation to the mgt department for grant of the above said benefits to him describing the huge financial loss he has suffered in respect of the past salary and the retirement benefits. But the mgt took no action. In the process, the claimant was also kept out of the benefits of the various allowances basic pay etc. as granted by the 5th Pay Commission with effect from 01.01.2006 to 31.08.2008 by granting of only selection grade despite the clarification issued by DGW, CPWD. Hence in this application the clamant has stated that he is due to get Rs.2,72,965/-with interest at

the rate of 18% on account of not grant of the 2nd ACP and MACP. Along with the petition the claimant had filed several documents including the office memorandum of the director general of works the notification of DOPT his representations and the calculation of the due and drawn statement.

Being served with the notice, the mgt CPDW appeared and filed reply denying the claim of the workman. The maintainability of the proceeding has been challenged on the ground that under the provisions of section 33-C(2) ID Act, a person can get the benefit if the entitlement is already determined. No power is vested to the Tribunal to adjudicate on the entitlement in exercise of the power under 33-C(2) ID Act. The other objection taken by the mgt is that the workman was granted selection grade after completion of 8 years of service and all the arrears have been received by him. He was not granted 2nd ACP on completion of 24 years since the workman could not pass the trade test required for the next higher post as per rules. It has also been stated that after implementation of the recommendation of 6th Pay Commission, the case of the claimant for grant of 2nd MACP was sent to the Superintending Engineer Ghaziabad Central Circle. This Superintending Engineer revised the purposal for grant of 2nd MACP to 3rd MACP and forwarded the same to the Chief Engineer. But the office of the Chief Engineer returned the matter with a remarke that before grant of 3rd MACP the proposal for 2nd MACP may be sent. The proposal for 2nd MACP was delayed since his pay was under complete revision after regularization of the strike period which made it necessary to revise the pay scale, leave entitlement etc. Further the claimant was not granted 2nd ACP as per the recommendation of the 5th Pay Commission since he could not pass the trade test. As per the guidelines issued by DOPT, the case of the workman was put up for approval before the Superintending Engineer, who converted the same to 3rd MACP and the Chief Engineer returned the file with comment that 2nd MACP be considered before allowing 3rd MACP. In the meantime, the workman applied for regularization of strike period and quasi permanency, which is under

process and the final settlement can be done after completion of the process of regularization. It has also been stated that the workman is not entitled to 2nd ACP and 3rd MACP as claimed by him.

The workman filed rejoinder stating that he was granted the pay of selection grade by the order of the mgt. The arbitration award has been implemented partly by the mgt but the ACP and MACP were not granted. He, having completed 8 years of regular service was allowed selection grade which has been treated as first promotion the 2nd and 3rd ACP or MACP are admissible and should have been granted. The other contention is that on grant of selection grade he was allowed promotional pay scale for the post of Work Assistant and his next promotional post is Care Taker. As such there was no requirement for the trade test prescribed under the recruitment rule for the post of care taker. The plea of the mgt that 2nd ACP was not granted since the claimant had not passed trade test is wrong and not acceptable. Thereby the workman has prayed that a direction be given to the mgt to grant him 2nd and 3rd MACP since on implementation of 6th pay commission the procedure of ACP has been abolished.

The workman testified as ww1 and produced the documents marked in the series of ww1/1 to 1/6. The said documents are the office memorandum of Director General of Works dated 09.06.2011 in which direction was issued for grant of selection grade to different categories of employees including the Mason on completion of 8 years of regular service in skilled category after 01.01.1973 with effect from 01.01.1981 or later. The workman has also filed the office memorandum dated 19.05.2009 issued by DOPT wherein, order was passed for allowing MACP to the Central Government Employees as per the recommendations of 6th Pay Commission. The modality of such grant has been specified in the said memorandum. The workman also filed his representation for regularization of the period spent on strike. The documents related to payment of arrears on grant of selection grade etc. On behalf of the mgt the Executive Engineer

deposed as MW1. He proved the document relating to regularization of service of the claimant spent in strike, and the order relating to shifting of the date of increment. The other documents are the letter of the Executive Engineer address to the Superintendent Engineer recommending grant of 2nd and 3rd MACP to the claimant including the check list. MW1/3 is another letter issued by the executive engineer to the Superintendent Engineer intimating that Chander Bahadur passed the trade test on 21.09.2010 and as such he should be granted 2nd and 3rd MACP with effect from 01.09.2008 as he has qualified for the same. The documents relating to grant of ACP to the work charged employees and the calculation of the due drawn statement of the workman has also been filed.

On behalf of the workman argument was advanced that he got the benefits of selection grade with effect from 11.06.1984 on completion of 8 years of service in the skilled category. That having been treated as the first promotion the workman should have been granted 2nd ACP on completion of 24 years. The CPWD has issued a general order on 21.05.2001 for grant of ACP to the employees on completion of 12 years and 2nd ACP on completion of 24 years. The workman had a clear case of entitlement of 2nd ACP on completion of 24 years of regular service the same was not granted to him in due time however, the mgt granted him 2nd and 3rd MACP on 01.09.2008 though he is entitled to 2nd ACP with effect from 11.06.2000. Thereby the workman lost six increments resulting in huge financial loss. It was also argued that the mgt took a false stand that the grant of 2nd ACP was refused since the claimant had not passed the trade test when it was due. In fact, there was no need for passing of the trade test. The Ld. Counsel of the mgt on the contrary argued that by order dated 13.12.2016 the workman Chander Bahadur (retired) has been granted 2nd MAPC with effect from 01.09.2008 and the arrear has already been paid. Hence the claim is not entertainable. Documents relating to due drawn statement has been filed on behalf of the mgt. Another document has been filed as mw1/3 and it is argued that the claimant had participated for 95 days in a strike in the year 1979 and

after regularization of that period his pay was re-fixed and 2nd MACP was granted. Hence, the delay was on account of regularization and pay fixation considering the strike period and passing of the trade test.

The admitted position, as seen from the cross examination of the mgt witness is that the claimant was working as a Mason and he got promotion to the post of work assistant on account of grant of selection grade to him on 11.06.1984. On getting the pay scale of Work Assistant, his next promotional post is Care taker. The mgt though took stand that the 2nd ACP was not granted on account of non passing of trade test, no document requiring the same has been filed. It has been admitted by the mgt witness that when the 4th Pay Commission was implemented the existing selection grade pay that is 330-480 was converted to 1200-1800 and again the same was converted to 4000-6000 under the 5th Pay Commission. The said 5th Pay Commission recommended grant of 2nd ACP to the persons drawing selection grade pay considering the grant of selection grade as the first promotion. There was no requirement for passing of trade test. The stand of the mgt that for not passing trade test the 2nd ACP was not granted seems not acceptable in absence of evidence.

The mgt witness by filing documents has stated that after regularization of the service of the workman the 2nd MACP was granted to him with effect from 01.09.2008 in the pay scale of 5200-20200 with grade pay of 2400. It is not explained why the workman after regularization of his service was not allowed the 2nd ACP with effect from 11.06.2000 in the pay scale of 4500- 7000.

Hence it is held that the mgt took an arbitrary decision by not granting 2nd ACP to the workman with effect from 11.06.2000 in the pay scale of 4500-7000. The workman has calculated the arrears amount of Rs. 2,47,608/- and the Tribunal finds no reason of taking a different view than the same. Hence, it is held that the workman shall get his pay re-fixed after the grant of 2nd ACP in the scale of 4500-7500 with effect from 11.06.2000 and also get the arrear of Rs.

2,47,608/-and his retiral benefits shall be accordingly revised. The application filed by the workman on section 33-C(2) is accordingly allowed. But no order is passed on grant of interest on prayed by the workman. The mgt is directed to pay the monetary dues accrued in favour of this workman for the order passed including the differential financial benefits related to retiral benefits, within 2 months from the date of communication of this order.

Consign the record as per rules.

The order is accordingly passed.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
11th May, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
11th May, 2023.