

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-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 144/2015**

**Date of Passing Award- 21<sup>st</sup> January, 2022.**

Between:

Shri Gopal Bahadur,  
All India CPWD (MRM) Karmachari Sangathan,  
H. No. 4823, Gali No. 13,  
Balbir Nagar Extn., Shahadra,  
New Delhi- 110032.

Workman

Versus

The Executive Engineer (Electrical),  
CPWD, Dehradun Central Electrical Division,  
20, Subhash Road,  
Dehradun- 248001.

Management

Appearances:-

Shri Satish Kumar Sharma,  
(Advocate)  
Shri Atul Bhardwaj,  
(Advocate)

For the Workman

For the Management

**A W A R D**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, Dehradun Central Electrical Division, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/85/2015 (IR(DU) dated 04.08.2015 to this tribunal for adjudication to the following effect.

“Whether the workman Shri Gopal Bahadur is entitled for grant of grade pay of Rs. 2400/- & Rs. 2800/- as 2<sup>nd</sup> & 3<sup>rd</sup> MACP under the scheme considering his promotional channel as work charged staff? If so he should be paid all the consequential benefits with arrears in a fixed time frame?”

Being noticed the workman appeared and filed claim statement stating that he was initially appointed as a khalasi in the project of MRM in Nepal w.e.f 03.01.1977 after completion of the project and as per the settlement dated 09.06.1983 he was transferred to India and continue to work as the

employee of the management. He was promoted to the post of wireman w.e.f 10.05.1995 and the permissible pay scale was allowed to him. But the said order of promotion was on 01.11.2002 and he was demoted to the post of Khalasi and again on the same day he was given promotion to the post of wireman and granted the selection grade on 03.12.2010 in the grade pay Rs. 2000/- on completion of 8 years as per the order of the management. Infact the claimant is entitled for selection grade w.e.f 10.05.2003 in the pay scale of Rs. 4000 to 6000/- on completion of 8 years. The workman was given second MACP w.e.f 01.09.2008 in the grade pay of 2000 and third MACP w.e.f 01.09.2008 in the grade pay of Rs. 2400/-. As per the order of the respondent dated 09.06.2011 one skilled workman of the department on completion of 8 years of regular service is entitled to the pay scale of Rs. 330-480 from 01.01.73, Rs. 1200-1800 w.e.f 01.01.86 and 4000-6000 on 01.01.96 and under sixth pay commission he was granted the PB for Rs. 5200/- to 20,200/- with grade pay of Rs. 2400 w.e.f 01.01.2006. As such the workman is lawfully entitled to grade pay of Rs. 4200/- w.e.f 01.09.2008 on grant of second MACP and grade pay of Rs. 2800/- w.e.f 01.09.2008 on grant of third MACP, But the department committed an error by allowing selection grade to the claimant w.e.f 03.12.2010 with grade pay of Rs. 2000 instead of Rs. 2400/- though the workman is entitled to grade pay of 2400 w.e.f 01.09.2008 on completion of 30 years of regular service making himself entitled to the grade pay of Rs. 2800/- under a third MACP w.e.f 01.09.2008 all the representations in this regard made by the claimant since where not consider he raised a industrial dispute and the conciliation since failed the matter has been referred to this tribunal for adjudication in terms of the reference.

The management appeared and filed WS denying a stand taken by the workman. The contention raised by the management is that the proceeding is not maintainable as there exists no industrial dispute between the parties. The further contention of the management is that the claimant was initially appointed as a khalasi in the project in Nepal and after completion of project reappointed as Khalasi in India. He was appointed in a regular post and promoted in the year 1995 as wireman. At the time of initial appointment he was an unskilled worker and on account of his promotion in the year 1995 became a skilled worker. He has also stated that after completion of 8 years he was entitled to selection grade w.e.f 18.04.2003. Initially on 01.11.2002 he was promoted to the post of wireman on 10.05.1995 which was reversed on 01.11.2002. Again on the same day i.e. 01.11.2002 he was promoted to the post of wireman and given 2<sup>nd</sup> and 3<sup>rd</sup> MACP w.e.f 01.09.2008 and selection grade w.e.f 03.12.2010 and on that day grade pay of Rs. 2000/- was granted though he was entitled to Rs. 2400/- as grade pay. It is the stand of the management that the claimant was wrongly given the promotion to the post of wireman w.e.f 10.05.1995 and on complaints received from similarly placed workers it was reversed on 01.11.2002 and he was rightly granted selection grade w.e.f 10.05.2003 considering his promotion w.e.f 01.11.2002. The management has also pleaded that the claimant is entitled to

grade pay of Rs. 2400/- on completion of 8 years which has been rightly paid at the rate of Rs. 2000/-. The other stand taken by the management is that the judgment passed by the Hon'ble High Court of Punjab and Haryana have no applicability to the present case of the claimant.

On this rival pleading the following issues are framed for adjudication.

### **ISSUES**

1. Whether the workman Shri Gopal Bahadur is entitled for grant of grade pay of Rs. 2400/- and Rs. 2800/- as 2<sup>nd</sup> and 3<sup>rd</sup> MACP under the scheme considering his promotional channel as work charged staff? If so, its effect?
2. If so should be paid all consequential benefits with arrears in a fixed time frame? If so, its effect?
3. To what relief the workman is entitled to and from which date?

During course of hearing the workman examined himself as WW1 and proved the documents exhibited in the series of WW1/1 to WW1/07. The documents include the initial letter of appointment, the letter of promotion given to him, the letter of reversion from the post of assistant wireman to khalasi the order giving him super time scale etc. similarly the management examined one of its executive engineer as MW1 who proved two documents as MW1/1 to MW1/02, which is the photocopies of the service book of the claimant.

At the outset of the argument the management submitted that the claimant is wrongly claiming super time scale as well as MACP which is not permissible under law. The Ld. A/R for the management further submitted that the scheme of ACP and MACP were launched to grant benefit of promotion to the employees whose promotions were blocked for some reason and other. He submitted further that the claimant since has admitted about the grant of super time scale, his claim of 2<sup>nd</sup> and 3<sup>rd</sup> MACP is not maintainable.

### **FINDING**

#### **ISSUE NO.1**

Admitted facts are that the claimant was initially appointed as a Khalasi on 03.01.77 in the project MRM in Nepal and was transferred as a Khalasi to India as per the settlement dated 09.06.83. The stand of the workman is that he was in the unskilled category while working in MRM Project and was also transferred to India in the same category. At that time as per the recruitment Rule and Manual the promotional post of unskilled category was semi skilled category i.e. Assistant Wireman. But at the time of his transfer since he has reached the maximum scale of unskilled category, pursuant to the circular issued by the DOPT dated 13.09.1991 for grant of in-situ promotion to Group C and Group D employee, he was allowed the pay scale of semi skilled workers as per the arbitration award in which it was

directed that the Assistant and semi skilled category shall stand merged with skilled category w.e.f 01.01.73. On account of that the in-situ promotion of the workman to semi skilled category lost its force. Demand being made he was promoted to the skilled category on 10.05.1995. This assertion of the claimant has not been disputed by the management. The claimant has further stated that on completion of 8 years in the skilled category he was entitled to the grade pay in the scale of 4000-6000 w.e.f 10.05.2003. But the management for reasons best known to them on 01.11.2002 reverted the claimant to the post of Khalasi and in suppression of the previous order, on the same day he was given promotion to the post of wireman ignoring his seniority w.e.f 10.05.1995. Pursuant thereto he was granted 2<sup>nd</sup> and 3<sup>rd</sup> MACP on 01.09.2008. Though his demand was initially accepted later on the same was refused. Though he was entitled to the selection grade on a completion of 8 years on 10.05.2003 in the pay scale of 4000-6000 on completion of 8 years regular service in skilled category considering his initial promotion on 10.05.1995, he was denied and granted selection grade w.e.f 03.12.2010 and grade pay of 2000 instead of 2400.

In reply the management has pleaded that selection grade and MACP cannot be allowed at the same time. It has also been stated by the witness of the management that the claimant since could not qualify the trade test is not entitled to selection grade as per the government orders. Surprisingly no document has been filed to show that the claimant was called upon to appear in the trade test and he could not qualify the same. The documents filed by the claimant clearly shows that he was initially granted promotion to the post of Assistant wireman by order dated 18.04.1995 and assigning a reason that it was done by mistake the same was withdrawn after 7 years i.e on 01.11.2002. On the same day again he was granted promotion to the post of wireman in the pay scale of 3050-75-3950-80-4590. The copy of the service book filed by the claimant clearly shows that by entry dated 6.09.2011 which says that the claimant was designated as wireman w.e.f 03.12.2002 on implementation of arbitration award dated 31.01.1998, and since he has completed 8 years of regular service in skilled category w.e.f 03.12.2010. He is entitled to the higher pay scale. Though he was given a higher scale i.e. the pay band 05200-20200 with grade pay of 2000 it is not understood why he was not granted the pay scale of selection grade which is 2400 w.e.f 01.01.2006. In absence of documents it cannot be held solely on the basis of the oral testimony of the management witness that the claimant for disqualification in trade test was not granted the selection grade. This decision of the management appears palpably wrong and it is accordingly held that the claimant is entitled to pay in the selection grade w.e.f 10.05.2003 in the pay scale of 4000-6000 on completion of 8 years regular service in skilled category. The pay scale granted to him w.e.f 03.12.2010 with grade pay of 2000 is held to be wrong instead he is entitled to the pay at par the selection grade from 10.05.2003 which is 4000 to 6000 with grade pay of 2400 w.e.f 01.01.2006. Once it is worked out and selection grade is a promotional pay the claimant shall not be entitled to 3<sup>rd</sup> MACP on

completion of 30 years of regular service w.e.f 03.1.2007. Since the evidence on record shows that similar benefits have already been granted to similarly placed workman, the claimant is held entitled to the pay scale in the selection grade w.e.f 10.05.2003 i.e. the scale of 4000-6000 with grade pay of 2400. This issue is accordingly answered in favour of the workman.

**ISSUE No. 2 and 3**

In view of the finding of issue no.1 the workman is held entitled to the benefit of promotional pay scale i.e. Selection grade pay w.e.f 10.05.2003 with all consequential benefits and entitled to re-fixation of his pay taking into consideration the said pay scale and also held entitled to arrear and other consequential benefits arising there from. Hence, ordered.

**ORDER**

The reference be and the same is answered in the favour of the workman. It is directed that the management shall re-fix the salary of the workman in the pay scale of selection grade w.e.f 10.05.2003 as it was then with all consequential benefit. The subsequent pay of the claimant shall be accordingly revised and the pensionary benefit of the workman shall be determined in accordance to the said revision of the pay. It is further directed that the pay fixation of the claimant shall be done and the differential arrear shall be paid to him by the management within 4 months from the date when this award would become enforceable failing which the workman would be at liberty of getting the order executed and on such event the management will be liable to pay interest at the rate of 9% per annum to the claimant from the date when the amount false due i.e on completion of 4 months from the date of the publication of the award and till final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
21<sup>st</sup> January, 2022

Presiding Officer.  
CGIT-cum-Labour Court.  
21<sup>st</sup> January, 2022.