

SUPREME COURT OF INDIA

Union of India

Vs.

Rosamma Benny

C.A.No.996 of 2020

(S.Abdul Nazeer and Sanjeev Khana,JJ.,)

04.02.2020

JUDGMENT

SLP(C)No.17440 of 2019

1. Leave granted.
2. The impugned order dated 24.05.2018 passed by the Ernakulam Bench of the High Court of Kerala dismisses the Writ Petition filed by the Union of India and Senior Divisional Personnel Officer, Southern Railway, Trivandrum and affirms the order dated 13.10.2017 passed by the Ernakulum Bench of the Central Administrative Tribunal ('the Tribunal', for short) allowing O.A. No. 180/523/2014 filed by Rosamma Benny, Jessy S. Babu and Sreekala P.V., respondent Nos. 1, 2 and 3 respectively before us.
3. The High Court in the impugned order has held that the respondent Nos. 1, 2 and 3 were entitled to financial upgradation under the Modified Assured Career Progression Scheme ('MACP', for short) as they have been working as Enquiry-Cum-Reservation Clerks ('ECRC', for short) w.e.f. 01.11.2003 and therefore, have completed ten years in the cadre of ECRC. Accordingly, the Tribunal was justified and correct in granting the relief by placing the three respondents in the pay band- II with grade pay of Rs. 4600 w.e.f. 01.11.2013.
4. The impugned order, however, fails to notice and examine the circular dated 12.09.2012 issued by the Ministry of Railways (Railway Board) on behalf of the Government of India clarifying grant of benefits under the MACP Scheme to employees who had qualified and were appointed under the promotion quota after clearing Limited Departmental Competitive Examination ('LDCE', for short). The aforesaid clarification was issued after the matter was examined in consultation with the Department of Personnel & Training (DoP&T), the nodal department, and stipulates as under:

“References have been received from Zonal Railways seeking clarification regarding grant of benefits under MACPs in respect of the employees qualifying

through LDCE/GDCE. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of Government on MACPS and it has been declared as under:

(i) if the relevant RRs provide for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP Scheme.

(ii) if the relevant RRs prescribe a promotion Quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases past regular service shall also be counted for further benefits, if any, under the MACP Scheme. The Indian Railway Establishment Manual Vol. I with regard to the filling of posts to ECRC states as under:

“129. (1) The posts in the category of Enquiry— Cum— Reservation Clerks (ECRC) in scale of Rs. 4500-7000 w.e.f 1.1.96 will be filled as under:-

(i) 25% by direct recruitment through Railway Recruitment Board: and

(ii) 75% by promotion by selection from amongst Sr. Commercial Clerks and Sr. Ticket Collectors in the scale of pay Rs. 4000-6000 (RSRP) and Commercial Clerks and Ticket Collectors in the scale of pay Rs. 3200-4900 (RSPP) and Rs. 3050-4590 (RSRP) respectively who are suitable for posting as ECRC involving direct contact with general public. Commercial Clerks and Ticket Collectors in grades Rs. 3050-4590 and 3200-4900 respectively should have completed a minimum of three years service in the respective grade.”

The contention of the appellants is that the three respondents were appointed to the post of ECRC under the promotion quota and their appointment cannot be treated as regular/direct recruitment to the service.

5. The appellants in the reply filed before the Tribunal had stated that Rosamma Benny, respondent No. 1, was appointed as an Office Clerk on 01.04.1982 under Sports Quota in Western Railways in the scale of Rs.260-400/Rs.950-1500. Thereafter, she was transferred to the Palakkad Division in Southern Railway on 13.02.1989 as a Commercial Clerk in the scale of Rs.290- 430/Rs.975-1540. On 14.08.1995 (subsequently revised to 28.12.1993), she was promoted as ECRC-II in the scale of Rs.1200-2040/Rs.4500-7000. Subsequently, respondent No. 1 was promoted as ECRC-I in the scale of Rs.5000-8000 w.e.f. 01.11.2003 (proforma) and 02.01.2009 (regular). Similarly, Jessy S.Babu, respondent No. 2, was appointed as an Office Clerk in South Eastern Railway on 02.03.1984 in the scale of Rs.260- 400/Rs.950-1500. She was transferred to the Trivandrum Division in Southern Railway on 25.06.1986 as a Commercial Clerk in the scale of Rs.290-430/Rs.975-1540.

Subsequently, on 14.03.1995 she was promoted as ECRC-II in the scale of Rs.1200-2040/Rs.4500-7000. On 01.11.2003 she was further promoted as ECRC-I in the scale of Rs.5000-8000. Sreekala P.V., respondent No. 3, was appointed as an Office Clerk on 13.03.1984 in the scale of Rs.260-400/Rs.950-1500 in South Central Railway. On 15.07.1987 she was transferred to the Madras Division in Southern Railway as a Commercial Clerk in the scale of Rs.290-430/Rs.975- 1540. Thereafter, she was promoted as ECRC-II on 22.08.1993 in the scale of Rs.1200-2040/4500-7000. On 01.11.2003 she was promoted as ECRC-I in the scale of Rs.5000-8000.

6. We have referred to the aforesaid position as it has to be examined whether posting on transfer as Commercial Clerks in the case of the respondents can be and should be treated as the first promotion. It is also to be examined whether there has been any merger of pay scales/upgradations which may have a bearing on application of the MACP Scheme to the present respondents by taking into account the circular dated 10.06.2009 issued by the Ministry of Railways (Railway Board) which states that three financial upgradations would be “counted from the direct entry grade on completion of 10, 20 and 30 years of service”. A further circular dated 29.09.2010 issued by the Ministry of Railways (Railway Board) giving point-wise clarifications, inter alia, states that benefit under the MACP Scheme would be available from the date of actual joining of the post in the entry grade. As noted, enquiry in respect of appointment of the three respondents to the post of ECRC is required in terms of the circular dated 12.09.2012 and Clause 129 of the Indian Railway Establishment, Manual Vol. I, quoted above.

7. These aspects have not been examined by the Tribunal and the High Court in the impugned orders. Normally we would have decided the question but find ourselves in difficulty in absence of details as there is no clarity on facts. Keeping the aforesaid aspects in mind and as there is no discussion on the said issues, we would set aside the impugned orders passed by the High Court as well as the Tribunal and remand the matter to the Tribunal for a fresh decision and adjudication on merits without being influenced by the earlier orders passed by them, the High Court and this judgment/order. The Tribunal would independently apply their mind to the facts and the legal position after calling upon the appellant, that is, the Southern Railway, Trivandrum and the respondents, that is, the original applicants before the Tribunal to file additional affidavits, if required and necessary.

8. The appeal is allowed in the aforesaid terms, with an order of remand to the Tribunal, without any order as to costs. To cut short the delay, parties are directed to appear before the Tribunal on 30.03.2020 when a further date of hearing would be fixed.