

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE  
ORIGINAL APPLICATION NO.170/00137/2019  
DATED THIS THE 11<sup>th</sup> DAY OF DECEMBER, 2019  
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER  
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri T.Ramu  
S/o. Late Thimmaiah  
Aged about 60 years  
Retd. Junior Clerk  
At DEE/TRD/SBC  
South Western Railway  
Bengaluru 23.  
R/o No.12/5  
3<sup>rd</sup> Cross, Kalidasa Layout  
Srinigar, Bengaluru-560 050.

....Applicant

(By Advocate Shri M.R.Achar)

Vs.

1. Union of India  
Represented by  
The General Manager  
South Western Railway  
Hubballi: 580028.
2. The Divisional Railway Manager  
South Western Railways  
Bengaluru Division, Bengaluru-560 023.
3. The Senior Divisional  
Personnel Officer  
DRM Office Complex  
Bengaluru Division, Bengaluru-560 023.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

**ORDER**

**(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))**

The case of the applicant is that he was appointed as TRH/TI/O/BWT on 12.8.1982 in Southern Railways, Bengaluru. He was promoted as Points Man Grade-I(Gr.C) on 28.8.1998. Further he was working as Photographer (ad-hoc) in the office of CAO/CN/Bengaluru even on promotion and later he was declared

- medically unfit to work as Points Man and hence de-categorised since 28.5.2001 vide Medically De-categorized Report dtd.29.5.2001(Annexure-A1) and temporarily posted to work as Care-taker of Guards Running Room since 7.6.2001 and he also worked as Matron/SBC Retiring Room in Commercial Department/SBC under order dtd.24.5.2002 on ad-hoc basis for some time and thereafter as a Record Sorter Gr-I in Claims Office/SBC w.e.f. 22.8.2005 as a Group-D post which is unfair and unjust amounting to degrading his employment status and pensionary benefits. Thereafter from the Claims Office, he was posted to General Branch/DRM/O/SBC as Office Junior Clerk/SBC vide order dtd.13.6.2012 and presently he is working as Junior Clerk Sr.DEE/Tr.D/SBC, Bengaluru since 13.7.2012. In his entire period of service, neither he made a request for any particular post nor made any representation for transfer to any particular place. All these postings were made by the respondent department for administrative reasons as per the Board instructions with an assurance that he would be provided with the necessary pay protection by fixing the pay drawn in the original scale while absorbing in an alternative post.
2. The applicant submits that he has totally put in 34 years of service in the Railways with many awards and certificates for his meritorious and sincere work during his entire tenure. Having more than 12 years of service, he has to be considered for MACP benefits. But the respondents have not fixed his cadre and due promotion to higher scale of pay thereby fixing his seniority giving him monetary benefits of promotion even after more than 15 years of service subsequent to his medical de-categorization. Railway Board RBE No.101/09 dtd.10.6.2009 has given clear direction to Railway Administration to implement MACP to the eligible employees. Moreover, his name is also notified for grant of

MACP benefit along with other eligible staff of Railways by office order dtd.25.5.2003. But, he has not been given the said benefit of MACP while juniors are drawing more grade pay than him which is highly discriminatory. Then the applicant has filed OA.No.149/2011 before this Tribunal and it was disposed of on 15.2.2012 directing the respondents to accommodate the applicant as Group-C clerk in the concerned office(Annexure-A2). He has also filed CP.29/2012 for non-compliance of the said order. The 2<sup>nd</sup> respondent vide order dtd.13.4.2012(Annexure-A3) accommodated the applicant in the office of the DRM/SBC, Bengaluru by posting him as Junior/Office Clerk. He made several representations along with one dtd.17.5.2016(Annexure-A4) with a request to absorb him as Ticket Collector, Matron or in any Group-C post with corresponding seniority and promotion. But no action is taken by the respondents on the representations. As per Railway Manual, since the date of medical de-categorisation, the actual seniority should be fixed in the parent unit considering the lien, restructuring the pay scale and grant the MACP for which he is duly eligible. The difference amount from the date of medically de-categorised order during 2001 till date is deprived to him. Since, he is due to retire on 31.7.2017 on attaining superannuation, several recommendatory letters have been sent by his superior officers viz. 20.9.2016 & 24.1.2017 for considering his case for all the benefits viz. MACP benefit, pay protection after restructuring, promotion etc. But the same were not considered. In his pay slip for the month of Feb 2017(Annexure-A6), it is shown as 'Operating Branch' and PF account shown as 'Record Sorter'-claims office without fixing his proper designation. Then the applicant got issued a legal notice dtd.1.3.2017(Annexure-A7) to the 3<sup>rd</sup> respondent who gave an untenable reply dtd.21.3.2017(Annexure-A8) stating that the applicant is already granted 3<sup>rd</sup> MACP in GP Rs.2400 on 24.5.2013 and

he is not entitled for any further MACP on par with his juniors. Then the applicant got issued one more reminder legal notice dtd.27.3.2017(Annexure-A9) requesting to do the needful but in vain. Subsequent to the issuance of the legal notice, the respondents issued the corrected pay slip for the month of March 2017(Annexure-A10) which clearly demonstrates that the designation of the applicant has never been fixed properly.

3. The applicant further submits that he is medically de-categorised w.e.f. 28.5.2001 while another employee Sri Venkoba Rao who is also similarly declared as medical de-categorised w.e.f. 8.7.2001 much later to the applicant is accommodated in a special supernumerary post with the same scale and pay protection which is a clear case of discrimination. The SR Book extract of Sri Venkoba Rao and that of the applicant are produced as Annexure-A11 & A12 respectively. Thus the respondents are guilty of treating equals as un-equals without any reasonable and rationale basis and it is clearly hit by Article 14 of the Constitution. The inaction of the respondents is a clear cut abdication from exercising the power and authority vested in them and hence, the applicant filed the present OA seeking the following relief:

- i. *Issue directions to consider the representation dtd.17.5.2016 vide Annexure-A4 and also call for entire service register of the applicant as well as Venkoba Rao vide Annexure-A11-12.*
- ii. *Pass an appropriate writ, order or direction in the nature of Mandamus directing the respondents herein to consider the representation dtd.17.5.2016 vide Annexure-A4 in terms of the Railway Board Manual and extend all benefits to the applicant i.e. pecuniary benefits in his proper designation along with all the promotional benefits and thus allow the above application.*

4. Per contra, the respondents have submitted in their reply statement that the applicant had earlier filed an OA No.149/2011 before this Tribunal and the

Tribunal vide order dtd.15.2.2012 held that 'the applicant has no right to claim for protection of pay in the Grade of Group-C post from 1998. He also does not have the right for fixation of seniority from 2001 but he has a right to remain in an office which is conducive for the treatment of his wife and daughter and if the respondents find that there is vacancy available at the office of Sr.Commercial Officer, Bangalore or in the office of Sr.Divisional Commercial Manager, Bangalore or any of the nearby places, the applicant shall be accommodated there as Group-C clerk from the date on which he had been so appointed as Group-C clerk. The other prayers of the applicant are rejected'. Now the applicant has filed the present OA and the relief sought for in the present OA have already been taken into cognizance and rejected by this Tribunal and hence the present OA cannot be survived and is liable to be dismissed with costs.

5. The respondents submit that the applicant was initially engaged as substitute under TI/BWT on 12.8.1982 on pay of Rs.196/- in scale of Rs.196-232 and was granted temporary status on 12.12.1982 on completion of four months of service and was empanelled on 31.12.1987 in Traffic department. He was posted as Adhoc Photographer on 3.7.1989 in the pay scale of Rs.950/- and was promoted as Pointsman Gr-II in the scale of Rs.800-1150 w.e.f. 11.3.1991. For his unauthorised absence from duty from 2.2.1996 to 1.4.1996, the penalty of withholding of annual increment for one year was imposed as per Railway Servant (D&A) Rules, 1968. He was transferred to CAO/O/CN/BNC and posted as Adhoc Photographer in the pay scale of Rs.950-1500 w.e.f. 25.4.1997 in the interest of Administration. The applicant was promoted as Pointsman Gr-I w.e.f. 28.8.1998 and he was retained at CAO/O/CN/BNC. The applicant who was on deputation to CAO/O/CN/BNC was repatriated to his parent cadre unit i.e.

Bengaluru Division on his substantive grade i.e. as Pointsman Gr.I in scale of Rs.950-1500. On his repatriation, he was declared medically unfit in AYE TWO and fit for light job in CEE ONE and CEE TWO categories as per Medical certificate dtd.29.5.2001 issued by CMC/SBC. Therefore, he was offered alternative employment as Matron in the scale of Rs.3050-4590 on adhoc basis and purely on temporary basis, as the post of Matron is ex-cadre post, with a condition that 'the alternative employment does not confer on him any claim for seniority, continuance, confirmation etc at a later date, since the posting is purely on temporary basis. Permanent deployment will be done as and when vacancies arise in other categories suitable for him'. Subsequently, the applicant was offered alternative employment as Record Sorter in scale of Rs.2750-4400 and posted to work in Claims/Office/SBC on Supernumerary post and confirmed in scale of Rs.3050-4590 till equivalent grade absorption, pursuant to recommendation of Screening Committee. Further, he was offered alternative employment as Office Clerk and was posted to work in DSL/Shed KJM and thereafter he was posted to DEE/TRD/O/SBC on transfer vide memorandum dtd.13.7.2012. As such the applicant was given pay protection on medically decategorization in the grade in which he was working on regular basis i.e. Pointsman Gr-I w.e.f. 29.5.2001. His pay was never reduced. The applicant was granted 2<sup>nd</sup> MACP in GP Rs.2000 w.e.f. 1.9.2008 i.e. date of commencement of MACP and 3<sup>rd</sup> MACP w.e.f. 22.12.2012 in GP Rs.2400 vide order dtd.24.5.2013 as per his entitlement, which is in accordance with existing rules. His case cannot be compared with Sri Venkoba Rao as at the time of medically decategorization, the applicant was working in scale of Rs.3050-4590/GP 1900 whereas, Sri Venkoba Rao was working in scale Rs.4000-6000/GP 2800. Since the applicant

has been extended all the benefits for which he was entitled to, he is not entitled for any reliefs and the OA is liable to be dismissed.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. From the facts of the case, it is apparent that the applicant was appointed in the year 1982, he was granted temporary status on 12.12.1982 and was also empanelled on 31.12.1987 in the Traffic department. He was posted as Adhoc Photographer on 3.7.1989 on pay of Rs.950 in the pay scale of Rs.950-1500. He was promoted as Pointsman Gr.I in the same scale of pay of Rs.950-1500 in 1998 and this scale was modified as Rs.3050-4590 with the Grade Pay(GP) of Rs.1900 as per the 5<sup>th</sup> CPC. He was decategorised in the year 2001. He was given 2<sup>nd</sup> ACP w.e.f. 1.9.2008 with GP Rs.2000 and 3<sup>rd</sup> MACP w.e.f. 22.12.2012 with GP Rs.2400.
7. As can be seen from the above, his pay has remained at the same level of Rs.3050-4590(earlier pay scale Rs.950-1500) since 1989. Since he has got only one promotion during his career, he was certainly entitled for consideration of ACP which was holding the field till 1.9.2008. The applicant had definitely completed 12 years as early as 1994 and 24 years in 2006. The respondents have given him 2<sup>nd</sup> MACP with GP 2000 only w.e.f. 1.9.2008. Therefore, it is clear that he was eligible for the ACP well before 2008 when he was given the 2<sup>nd</sup> MACP. Accordingly, he would be entitled for the 3<sup>rd</sup> MACP on completion of 30 years of service which apparently has been given to him w.e.f. 22.12.2012. His plea for consideration along with Sri Venkoba Rao has been answered by the respondents stating that Sri Venkoba Rao was working in the scale of Rs.4000-6000 with GP Rs.2800 at the time of his decategorization in the year 2002. From the records also, it is apparent that Sri Venkoba Rao joined the Railways in the

year 1976 whereas the applicant joined only in the year 1982. Therefore, apart from granting him ACP when it was due to him, we cannot find any infirmity in the protection of pay as given by the respondents. The respondents shall consider his case for ACP as per his eligibility and issue appropriate orders accordingly within a period of two(2) months from the date of issue of this order. The 3<sup>rd</sup> MACP given in the year 2012 may also be modified if need be based on further upgradation in pay scales due to the Pay Commission implementation.

8. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ps/

**Annexures referred to by the applicant in OA.No.170/00137/2019**

Annexure-A1: Declaration of Medical D-category dtd.29.5.2001

Annexure-A2: Copy of the CAT order dtd.15.2.2012

Annexure-A3: Copy of the Memorandum dtd.13.4.2012

Annexure-A4: Copy of the representation dtd.17.5.2016

Annexure-A5: Copy of the reply dtd.7.2.2017 & copy of the relevant extract



Annexure-A6: Copy of the pay slip for the month of 1.7.2017

Annexure-A7: Copy of the Legal notice

Annexure-A8: Copy of the reply dtd.21.3.2017

Annexure-A9: Copy of the II-notice dtd.27.3.2017

Annexure-A10: Copy of the bill dtd.1.7.2017

Annexure-A11: Copy of the relevant extract of SR

Annexure-A12: Copy of the relevant extract of SR of Mr.Venkoba Rao

**Annexures with reply statement:**

-NIL-

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