

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00443/2016

Tuesday, this the 10th day of December, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Jai Kumar Nair,
S/o.C.D.Vasudevan,
Aged 56 years,
Working as Station Superintendent,
Podanur Railway Station.
Permanently residing at Akshaya,
Bhagavathi Nagar, Industrial Estate P.O.,
Palakkad, Kerala – 678 731.Applicant

(By Advocates Mr.P.A.Kumaran & Mr.Nirmal V Nair)

v e r s u s

1. Union of India represented by the General Manager,
Southern Railway Headquarters, 1st Floor,
NGO Main Building, Park Town, Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway Headquarters, 1st Floor,
NGO Main Building, Southern Railway,
Park Town, Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad – 678 009.
4. The Divisional Personnel Officer,
Southern Railway, Salem Division,
Salem, Tamil Nadu – 636 005.
5. The Senior Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai, Tamil Nadu – 625 016.Respondents

(By Advocate Mr.Sunil Jacob Jose)

This application having been heard on 27th November, 2019, the Tribunal on 10th December 2019 delivered the following :

ORDER

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

The applicant has filed this O.A seeking the following reliefs :

1. To quash Annexure A-9 and A-10 to the extent it does not reckon the service rendered by the applicant with effect from 21.4.1983, the date of his initial appointment while granting the 3rd financial upgradation under the Modified Assured Progression Scheme.

2. To declare that the applicant is entitled to have his qualifying service reckoned with effect from 21.4.1983, ie., the date of his initial appointment for all purposes including pension, seniority and all consequential benefits including benefits under the Modified Assured Progression Scheme and to direct the respondents to reckon the qualifying service of the applicant for all purposes including pension, seniority and all consequential benefits including benefits under the Modified Assured Progression Scheme with effect from 21.4.1983.

3. To direct the 4th respondent to grant the applicant the 3rd MACP with effect from the date of completion of 30 years from the date of his initial appointment, ie., 21.4.1983 and to draw and disburse all consequential benefits including arrears of pay and allowances with interest @ 12% per annum from the date the amount became due till the date of actual payment.

4. Grant such other reliefs as may be prayed for and the court may deem fit to grant and

5. Grant the costs of this Original Application.

2. The applicant is aggrieved by the impugned order whereby his initial service is not reckoned for the purpose of pension, MACP and other monetary benefits.

3. Brief facts of the case are : the applicant was appointed as provisional Assistant Station Master (ASM) and was directed to undergo training on 21.4.1983. As he could not qualify in the examination then he was permitted to undergo the repeat course. On 8.5.1984 the applicant on successful

completion of repeat course was regularly posted as ASM. He was promoted as Station Master Grade-II on 3.12.1998 and he was given 2nd MACP with effect from 1.9.2008 on 2.11.2009 and he was further promoted as Station Superintendent on 5.8.2010. Thereafter he was granted 3rd MACP on 8.5.2014. But the same was granted to the applicant ignoring his initial service from 21.4.1983 to 26.10.1983 for pension and other benefits. Feeling aggrieved by this he has approached this Tribunal for redressal of the same.

4. Notices were issued and respondents filed their reply statement through Shri.Sunil Jacob Jose, Standing Counsel for the Railways. It is submitted that the applicant prayed for counting the service from the date of undergoing the initial training only for the purpose of pensionary benefits and not for the purpose of MACP. The Railway Board Establishment Circular (RBE No.23/1995) has instructed, where the trainee fails to complete the training period in one attempt, he shall be allowed the benefits of initial training period to qualifying for pension if he succeeds in the repeat course subject to the condition that the period of interruptions between the initial training period and repeat course as well as the entire period of repeat course will be treated as dies non. Hence the period spends in the training period with effect from 21.4.1983 to 25.10.1983 will be taken into account of qualifying service for the calculation of pensionary benefits and the period from 26.10.1983 to 8.5.1984 will be treated as dies non. It is further submitted that stipend is almost equal to the minimum pay of the pay scale attached to the particular post along with Dearness Relief.

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5. The counsel for the respondents during the course of the argument drew our attention to Railway Board Circular No.RBE 29/1987 by which the Railway Board has revised the rates of stipend applicable to various posts with effect from 25.1.1978 including the post of Assistant Station Master in order to show that during the training period only stipend is payable. Minimum pay of pay scale attached to a particular post along with Dearness Relief and regular pay scale is paid only after the absorption on successful completion of training. Thus the contention of the applicant for grant of MACP by taking into account his training period is not acceptable.

6. In view of the above facts and circumstances of the case and the rule position discussed, we are of the view that the applicant is entitled for counting his interregnum training period as qualifying service as he is entitled for reckoning this period for the purpose of pensionary benefits except for counting it for the MACP benefits. This O.A is thus partly allowed with the directions to the respondents to implement the order of this Tribunal within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 10th day of December 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00443/2016

- 1. Annexure A1** – A copy of the letter No. U/P.563/VI/1/Pro.ASM dated 13.4.1983 issued by the 5th respondent.
- 2. Annexure A2** – A copy of the order No.U/P/563/VI/1/Pro.ASM dated 22.4.1983 issued by the 5th respondent.
- 3. Annexure A3** – A copy of the order No.J/P.612/VIII/SMs dated 30.1.1991 along with the relevant portion of the seniority list.
- 4. Annexure A4** – A copy of the service register of the applicant issued to him under the Right to Information Act.
- 5. Annexure A5** – A copy of the letter No.SA/PPG/RTI/2016/47 dated 15.3.2016 issued by the 4th respondent in his capacity as the Public Information Officer.
- 6. Annexure A6** – A copy of the order No.SA/P.612/II/Optg. Dated 8.7.2008 issued for the 4th respondent along with the relevant portion of the seniority list.
- 7. Annexure A7** – A copy of the Office Order No.100/Optg./Admn. Dated 2.11.2009 issued by the 4th respondent.
- 8. Annexure A8** – A copy of the Order No.SA/P.612/VIII/SM/YM/TI/Vol.I dated 5.5.2010 issued for the 4th respondent along with the relevant portion of the seniority list.
- 9. Annexure A9** – A copy of the Office Order No.18/Optg.Admn/SMS/2013 dated 2.7.2013.
- 10. Annexure A10** – A copy of the order No.SA/P.535/II/SMs/MACP dated 24.6.2014 issued for the 4th respondent.
- 11. Annexure A11** – A copy of the letter No.PC-V/2009/ACP/2 dated 10.6.2009 issued by the Railway Board along with the MACP Scheme.
- 12. Annexure A12** – A copy of the order No.35034/3/2008-Estt.(D) dated 9.9.2010 issued by the Department of Personnel and Training.
- 13. Annexure A13** – A copy of the final order dated 12.5.2011 in O.A.No.482/2009 on the files of the Jaipur Bench of this Hon'ble Tribunal.
- 14. Annexure A14** – A copy of the judgment dated 11.3.2014 in WPCT 497-498/2013 on the files of the Hon'ble High Court at Calcutta.

15. Annexure R1 – A copy of order the Railway Board's letter No.E(NG)58/RC1/150-Terms and conditions for Trainees who fail in initial training dated 21.11.1961.

16. Annexure R2 – A copy of the Railway Board letter No.PC-IV/86/Imp/50 dated 19.12.1987.

17. Annexure R3 – A copy of the Railway Board letter No.88-E(ECT)I/23/1 dated 8.5.1989.

18. Annexure R4 – A copy of the Railway Board letter No.PC-V/2009/ACP/2 dated 27.6.2014.

19. Annexure R5 – A copy of the Railway Board letter No.PC-V/2009/ACP/2 dated 29.9.2010.
