

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/01529/2013
&
M.A.No.020/490/2014 in O.A. No.020/01529/2013

Date of CAV: 24.10.2019.

Date of Order :10.12.2019.

Between :

P.Seshaiah, s/o Nesopu, aged 59 yrs,
Occ:Senior Section Engineer (Drg.,),
O/o the Dy. Chief Signal & Telecommunication
Engineer (Porjects), Vijayawada Division,
South Central Railway, Vijayawada.

...Applicant

And

1. Union of India, rep., by the
Secretary (Estd.,), Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.

... Respondents

Counsel for the Applicant ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ... Mr.M.Venkateswarlu, SC for Rlys.

CORAM:

**THE HON'BLE MS.MANJULA DAS, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

By MRS.NAINI JAYASEELAN, MEMBER (ADMN.)

The applicant has filed this OA to declare the action of the respondents in denying the benefit of 2nd/3rd financial upgradations under MACP Scheme to him as illegal, arbitrary, unjust, discriminatory and for a direction to the respondents to reckon the two financial upgradations and fix the pay of the applicant with Grade Pay of Rs.5400/- with effect from 19.09.2006 and grant all consequential benefits, which include arrears of pay and allowances.

2. Brief facts of the case:

The applicant was initially recruited as Tracer in the pay of Rs.260-430/-, which is equivalent to the Grade Pay of Rs.2000/- in PB-I in 6th CPC pay structure. In the IV Pay Commission, the post of Tracer was abolished upgrading all the existing Tracers as Assistant Draftsman. Later on, in the V Central Pay Commission, the Assistant Draftsman cadre was abolished by re-designating the grades of Assistant Draftsman as Junior Engineer (JE) Grade-II and Head Draftsman as Section Engineer (SE) and Chief Draftsman as Senior Section Engineer (SSE). Again on account of the acceptance of the VI Pay Commission's recommendations, the grades of JE Grade-II and Grade-I were merged and called as JE, SE and SSE. The

applicant has submitted that the initial appointment of the Drawing Staff is Junior Engineer Grade-II in PB-2 in Grade Pay Rs.4200/- in VI CPC pay scale and was finally promoted as Section Engineer in PB-2 with Grade Pay Rs.4600/-, as the post of Tracer was upgraded in the next higher grade of Junior Draftsman. In the present scenario, the cadre is left only with two grades i.e., JE at the entry level and SSE on the top.

3. The contention of the learned counsel for the Applicant is that promotions earned/upgradations granted under the ACP in the past to those grades, which now carry the same grade pay due to merger of pay scale/upgradations of posts recommended by the VI Pay Commission shall be ignored for the purpose of granting upgradations under modified ACPS, and he cited the judgment of the Ernakulam Bench of this Tribunal in OA.No.484/2011, 507/2011, 610/2011, 647/2011 and 650/2011, wherein the benefit of MACP was restored to certain cadres directing the respondents to ignore the earlier promotions/upgradations, which now carry the same grade pay due to merger of pay scales/upgradations of posts as per the VI CPC recommendations. Thus, the applicant has submitted that the 3rd financial upgradation under MACP Scheme should be granted to him.

4. The respondents have filed a reply statement. They have stated that the applicant was initially selected for the post of Signal Inspector Gr.III By Railway Service Commission, Secunderabad, and since he was found medically unfit in A-III, but found fit in C-I, he was offered with an alternative appointment as Trainee Tracer in scale Rs.260-430/- and posted to Railway Electrification Project, Vijayawada.

5. The respondents have denied the contention of the applicants that the post of Tracer is now called as Junior Engineer Grade-I and Senior Draftsman as Junior Engineer Grade-II.

6. The respondents have submitted that the scale of Tracer was Rs.260-340/PB-1+ Grade Pay Rs.2000/-, whereas the scale of JE-I is Rs.5500-9000/PB-2 + Grade Pay Rs.4200/- and JE-II is Rs.5000-8000/PB-2 + Grade Pay Rs.4200/-. However, the initial appointment of the drawing staff is JE-II in PB-2 with Grade Pay Rs.4200/- in the VI Pay Commission scales. The applicant was initially appointed as Tracer in scale of Rs.260-340/- and later promoted to Senior Draftsman, now equal to JE-II, and finally promoted to Section Engineer in PB-2 with Grade Pay Rs.4600/-. As per the Railway Board's letter dated 18.05.2010, the matter had been examined and it was observed that "An employee



recruited as Tracer in pay scale of Rs.260-430 (RS), equivalent to Grade Pay Rs.2000/- in PB-1 in VI CPC pay structure, have already earned two promotions by reaching Senior Draftsman post (re-designated as JE-II), first as Junior/Assistant Draftsman pay scale of Rs.330-560 (RS) equivalent to Grade Pay of Rs.2400/- in PB-1, and second as Senior Draftsman pay scale of Rs.425-700(RS) equivalent to Grade Pay of Rs.4200/- in PB-2 in VI CPC structure. Therefore, such employees are due for 3rd financial upgradation only to the Grade Pay of Rs.4600/- in PB-2 under MACP Scheme". Thus, the applicant who was initially appointed as Tracer is not eligible for any MACP, since he had already been granted 3 promotions and reached Grade Pay Rs.4600/-. In a similar relief, claimed by the employees of Western Central Railway in O.A.No.834/2011 before the Jabalpur Bench of this Tribunal, the same was dismissed vide order dated 14.05.2013 on the ground that the promotion from the post of Tracer to Draftsman Grade-III was on account of restructuring of Group-C and D staff, vide RBE No.181/85, and according to this Circular, the post of Tracer was frozen and all the existing regular incumbents on the post were promoted to the post of Junior Draftsman or Draftsman Grade-II. Thus, this promotion has to be ignored for grant of MACP. Also, the next promotion from Assistant Draftsman to Junior Engineer Grade-II was also on account of restructuring of cadre in consequence of acceptance of the V CPC recommendations, as provided in RBE No.223/98, and the applicant was promoted in this scale through normal mode of selection, and this also has to be ignored for grant of MACP.

7. It is also the contention of the respondents that since the applicant had already reached Grade Pay Rs.4600/-, he is not entitled for the MACP for grant of Grade Pay Rs.4800/- and Rs.5400/. Also, as per the ACP financial upgradation scheme, an employee should be given the benefit of financial upgradation, if he has not been awarded any promotions within 12/24 years.

8. It is also the case of the respondents that the applicant has earned three promotions, and therefore, he is not eligible for any ACP. The applicant's comparison with his colleague employee viz., Shri B.V.Chalapathi Rao, had also been questioned, however, in the reply statement, the respondents have stated that the financial upgradation under the MACP granted in favour of Shri B.V.Chalapathi Rao and others was proposed to be withdrawn for the Drawing cadre and necessary show cause notices have already been served on the concerned employees.

9. Citing the judgment of the Jabalpur Bench of this Tribunal, the respondents have made clear in their reply that all the three promotions of the applicant in the past were for those grades, which carried different grade pay, and these promotions cannot be ignored. Also, the facts of the case before the Ernakulam Bench of this Tribunal, are quite different since certain grades of previous promotions/financial upgradations have been merged/upgraded as per VI CPC recommendations. However, in the



present case, all the grades to which the applicant was promoted in the past, carry different grade pays in the pay scales revised as per the recommendations of the VI CPC. Therefore, the judgment of the Ernakulam Bench of this Tribunal is not applicable in the case of the applicant.

10. In the present case, the applicant had already earned three promotions with effect grade pays i.e., Rs.2400/-, Grade Pay of Rs.4200/- and Grade Pay of Rs.4600/-. Therefore, as per the judgment of the Jabalpur Bench of this Tribunal in OA.No.834/2011, and as per the Railway Board's letter No.PC/V/2009/ACP/15/NR, dated 18.05.2010, the applicant is not entitled to any further upgradation under MACP to the next higher Grade Pay in the hierarchy. The respondents have, therefore, prayed to dismiss the present OA.

11. The learned counsel for the Applicant has cited the following judgments in support of contentions.

- (i) *Govt. of NCT of Delhi & Another v. S.K.Saraswat & Others* in W.P.(C) No.9266/2015 dated 09.05.2016 of the Hon'ble High Court of Delhi.
- (ii) *Union of India & Others v. Shri K.M.Khopkar & Others* in W.P.No.5269/2005, dated 11.12.2006.

12. In *Govt. of NCT of Delhi & Another v. S.K.Saraswat & Others (supra)* the Hon'ble High Court of Delhi, in Para 10 of the judgment has clearly stated that "when we read the aforementioned clauses of the MACP



Scheme, it is luminous and lucid that it refers to the existing grade pay of an employee, and the immediate next higher grade pay and not the grade pay in the promotional post and this is the precept and foundation of the Scheme". Moreover, in Para 18 of the judgment (supra), it is clear that the promotions should have been earned and therefore should have been granted, whereas in the present case, the principals have not earned any promotions since the date they were appointed upon direct selection, and therefore the facts and circumstances of this case are entirely different."

13. In the second judgment, cited by the learned counsel for the Applicant, the facts and circumstances of the case are entirely different. In this case, the upgradations granted in terms of the implementation of the CPWD Arbitration Award and OM dated 15.09.1995 cannot be termed as promotion. Therefore, the said judgment cannot have any bearing on the present case.

14. The stipulations in the MACP Scheme are clear that it is the next higher grade pay, which has to be given, and not the grade pay in the hierarchical post, and thus, there appears to be no fault in the action taken by the respondents in granting the grade pay of Rs.4600/- while extending the benefit of MACP.

15. As per the OM No.22034/04/2013-Estt.(D), dated 17.05.2016, the Department of Personnel & Training, had also circulated the decision of the Calcutta Bench of this Tribunal dated 28.04.2016 in OA.No.351/00195/2014 filed by *Shri S.H.K.Murti & Others v. Union of India & Others*, wherein the demand of the applicant for MACP in promotional hierarchy was dismissed. The Calcutta Bench of this Tribunal, in the aforesaid case, held that *“the MACP benefit would be given in the hierarchy of next higher Grade Pay and not in Grade Pay of promotional hierarchy which will be payable on actual promotion”*.

16. In view of the above, the OA is dismissed. The MA.No.490/2014 for deletion of Respondent No.1 stands disposed of. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(MANJULA DAS)
MEMBER (JUDL.)

Dated: this the 10th day of December, 2019

Dsn.