

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**
Original Application No. 219 of 2014
with MA 168/15

This the 20th day of August, 2020

Date of Reserve: 05.08.2020
Date of Pronouncement: 20.08.2020

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)
HONBLE DR A K DUBEY, MEMBER(A)

Shri Pradeep R Kohli,
S/o. Shri Ramlal Kohli,
Aged 58, Working as S S at Bajwa,
Under-Sr DOM, BRC Division.
R/O. FF/106, Sarjan Flat,
Opp. Rander Mata Temple,
New Sama Road, Vadodara-390 002.

... Applicant

By Advocate Ms S S Chaturvedi

v/s

1 Union of India,
Notice to be served through
General Manager,
Western Railway,
Churchgate, Mumbai – 400 020.

2 Divisional Railway Manager(E),
Western Railway,
Pratapnagar,
Baroda-390 004.

... Respondents

By Advocate Shri M J Patel

ORDER

Per Dr A K Dubey, Member(A)

1 The applicant has filed this OA seeking a direction to respondents to quash and set aside the statement of fixation of pay (Annexure A/2) and for a direction to respondents to revise pay fixation of applicant on grant of 2nd and 3rd financial upgradation.

2 The relief sought for in the OA are as follows:-

“8.1 Lord ships be pleased to admit this petition. And be pleased to issue order quash and setting aside Annexure A/2. And be pleased to direct/order to the respondent for revise pay fixation with 2nd and 3rd financial upgradation with all consequential benefit from due date.

8.2 The order for be call for the record.

8.3 Any other relief which the Hon'ble Tribunal deems fit.

8.4 Cost of suit be awarded.”

3 The facts of the case in brief are that the applicant was appointed as group D employee and appeared in GDCE scheme for class III against the RSC quota and was selected as Telegraph Signaler vide letter dated 27.05.1985 as per his service record. Since Telegraph signaller was a dying cadre, the applicant was subsequently selected as ASM vide order dated 22.07.1986 in the scale of Rs.350-560 (later revised to 4500-7000). He passed the training of 5 months and 15 days at Zonal Railway Training Institute at Udaipur. The applicant contends that his scale was equivalent to PB 2 & GP 2800 under VI CPC. Then the applicant was promoted and posted as ASM/SM on 09.07.1988 in the scale of Rs.5000-8000 (earlier 1400-2300), which he contends, is equivalent to PB 2 (Rs.9300-38400)+ GP 4200. Further, the applicant was promoted on 24.12.1997 under MACP in the pay scale of Rs.5500-9000 which was later merged into the pay band of Rs.9300-38400 GP 4200/- under VI CPC. Vide para 5(b) of the Annexure to the Railway Board letter No.PC-VI/110 dated 10.06.2009 (Annexure A 4), financial upgradation under ACP in pre revised scales of 5000-8000, 5500-9000 & 6500-10500 will be ignored on account of merger of all these scales into PB 2 + GP 4200. Later, the applicant was promoted on 21.08.2008 in the pay scale of Rs.6500-10500. The counsel for the applicant submitted that the respondent issued the pay fixation on

11.10.2008 (Annexure A/2) in which the applicant's pay on 1st Jan 2006 was fixed in the scale of pay Rs.9300-34800 GP 4200/- and on applicant's regular fixation on 21.08.2008, pay was shown as Rs.9300-34800 GP 4600/- only whereas the applicant was due for 2nd and 3rd MACP with consequential benefit. The applicant contends that after getting in 4500-7000 scale w.e.f. 23.07.1986, he got 5000-8000 scale w.e.f. 09.07.1988. When the pay scale was revised under VI CPC, he was placed in PB 2 + GP 4200/-. Then, on 21.08.2008 he was given the next MACPS promotion upon 10 years by admitting him to PB 2 + GP 4600/-.

3.1 It is further submitted that the pay scale of Rs.6500-10500 was upgraded to 7450-11500 in the V CPC. In view of this, he contended that he became entitled for revised benefit under MACP as per RBE No.101/2009. As per the RBE 101/2009, the applicant avers that there should be three financial upgradation under MACP counted from direct entry grade on completion of 10, 20 and 30 years of service respectively according to which the financial upgradation should have been granted to applicant as follows:-

1st appointment/

Date of entry	23.07.1986	GP 2800
1 st promotion	09.07.1988	GP 4200
Financial upgradation	09.07.1998	GP 4600
	09.07.2008	GP 4800

3.2 Applicant filed representations dated 20.10.2013, 05.04.2012 and 22.02.2012 demanding 1st and 2nd MACP promotion from the due date on completion of 10 and 20 years of service and he was now claiming that he was entitled to the 3rd MACP on completion of 30 years. The Counsel for

the applicant argued that the respondents have violated the letter of GM dated 09.07.2009 published by Divisional Office on 28.07.2009 in which in para-3, it is stated:-

“SCHEME : Promotions earned/up gradations granted in the past which now carries the same grade pay due to merger shall be ignored for MACPs. Example merged pay scales having same grade pay such as Rs.4200/-, 4600/- and 4800/-, etc.”

Applicant further placed reliance on FAQ on MACP scheme which was published by the respondent authority on 04.10.2012 (Annexure A/7), for clarifications of MACP scheme for financial upgradation purpose. Alleging that respondents have violated Article 14 and 16 of the Constitution and natural justice has been denied, applicant has filed the instant OA.

3.3 Counsel for the Applicant placed reliance on the judgment of Hon'ble High Court of Madras in WP No.16143 of 2016 decided on 01.09.2016 and also on the Office Memorandum No.35034/3/2015-ESst.(D) dated 22nd October 2019 on Consolidated guidelines regarding Modified Assured Career Progression Scheme for the Central Government Civilian Employees.

4 On receipt of notice on OA, respondents have filed a detailed reply opposing admission and also the relief prayed for by the applicant. They have stated that applicant was promoted as ASM in the scale Rs.330-560 against Ranker Quota w.e.f. 23.07.1986. The applicant was promoted as ASM in scale Rs.5000-8000 w.e.f. 05.-07.1988 which later got revised in VI CPC Rs.9300-34800 + 4200 GP. Respondents have contended that as per office record, the applicant's entry into scale Rs.5500-9000 was 24.12.1997 which, in the revised scale of VI CPC was 9300-34800 + 4200 GP and these were not disputed and would not count for MACP as

promotion as per rule. Further, the counsel for the respondents submitted that the effective date of VI CPC was 01.01.2006 and the applicant was earlier working in scale Rs.5000-9000 which would translate to PB 2 + GP 4200 VI CPC w.e.f. 01.01.2006. He also clarified that as per rules, the pay of the employee was to be fixed as on 01.01.2006 in the category in which employee was working on regular basis at that point in time. As such, fixation done as on 01.01.2006 was in accordance with Railway Board's Rules, the respondents counsel submitted. Respondents have given details of applicant's appointment in Railway Service and promotion earned by him in category and scale as below:-

- (i) Appointed in Railway service as Casual Cleaner on 26.09.1974.
- (ii) Granted Temporary Status w.e.f. 26.01.1975 and allotted regular pay scale Rs.196-232. That would later come to Grade pay Rs.1800/- under VI CPC.
- (iii) Promotion as Telegraph Signaller in scale Rs/260-430 on 24.05.1985. That would later mean GP Rs. 2000/- in VI CPC – [1st Promotion].
- (iv) Promoted as ASM in the scale Rs.330-560 against Ranker Quota on 22.07.1986. This would be GP Rs.2800/- in VI CPC – [2nd Promotion].
- (v) Promotion as ASM in the scale Rs.1400-2300 (RP) on 05.07.1988 resumed on 09.07.1988. In V CPC, that became 5000-8000 scale.
- (vi) Promoted as SM in the scale Rs.5500-9000 (RSRP) on 24.12.1997. That would be GP Rs. 4200/- in VI CPC. – [3rd Promotion].
- (vii) Promoted as Station Superintendent in scale Rs.6500-10500 (RSRP) w.e.f. 21.08.2008. That would be GP Rs.4600 in VI CPC as [4th Promotion].

4.1 It was submitted by the respondent's counsel that as mentioned above, applicant had already been granted more than three promotions before MACP Scheme that came into effect on 01.09.2008 as per Railway

Board's letter dated 10.06.2009 (RBE 101/2009) para-8. In view of these, the applicant was not entitled to any further financial upgradation, the counsel for the respondents argued.

5 Applicant has filed rejoinder to the reply of respondents reiterating the contentions stated in the OA.

6 Heard Ms S S Chaturvedi, learned counsel for the applicant and Shri M J Patel, learned counsel for respondents. Perused the documents on record. The applicant contends that in view of para 5 of the MACPS - Annexure to RBE 101 dated 10.06.2009 (Annexure A-4), his promotion from the scale of Rs.5000-8000 to 5500-9000 and then to 6500-10500 should be ignored as all were merged into the scale plus grade pay viz., PB 2 + GP 4200, and then he should be given the second and the third upgradation to GP 4600 and GP 4800. However, the respondents have argued on the basis of service records that the applicant had already received four promotions and was not entitled to any further upgradation.

7 After carefully going through the details of scales admitted to the applicant and the RBE 101 dated 10.06.2009, it is clear that even if the applicant's entry into the grade of Rs.4500-7000 on 22.07.1986 is taken as a direct recruitment, he received his next promotion as ASM on 09.07.1988 in the scale of Rs.5000-8000. At that time the scales were under IV CPC. Then he was promoted to SM in the scale of 5500-9000 on 24.12.1997. At that time, this was under V CPC scales. His next upgradation came up when he was promoted to Station Superintendent on 21.08.2008 in the scale of Rs.6500-10500 which was a scale under V CPC. It is clear from RBE 101 dated 10.06.2009, that the MACPS came into effect from

01.09.2008. At that time, his last promotion date was 21.08.2008. While fixing up his pay in PB 2, his grade pay was fixed as 4600. After 21.08.2008, the next financial upgradation was due only after 10 years if the applicant continued in the service until then. The above sequence of pay and grade pay fixation is in accordance with RBE 101 dated 10.06.2009. A plain reading of these facts and RBE 101 show that the respondents have fixed the pay and the grade pay as per the extant instructions. We don't see anything discriminatory or any infirmity in the decision of the respondents. We are of the clear view that the applicant has not been able to establish anything wrong or arbitrary or violative of instructions in this entire exercise of financial upgradation of the applicant. We find no reason to intervene into the matter and hence the OA is dismissed. In view of the OA being dismissed, MA 168/2015 for interim order does not survive and hence stand dismissed. No order as to costs.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

abp

