

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OCTOBER,

DATED THIS THE 6th DAY OF SEPTEMBER, TWO THOUSAND FIFTEEN

PRESENT:

THE HON'BLE MR. JUSTICE B. SESHASAYANA REDDY, MEMBER (J)

THE HON'BLE DR. P. PRABAKARAN, MEMBER (A)

O.A.243/2013

S. Sivakumar
S/o S. Somasundaram
Retired Accounts Assistant: Southern Railway,
No.21, F-2, TRV Enclave,
Puthur Agraharam, Puthur.
Thiruchirappalli Pin 620 017.

...Applicant

-versus-

1. Union of India rep., by its Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel and Training,
North Block, New Delhi.
2. The Financial Adviser and
Chief Accounts Officer,
Southern Railway Head Quarters,
Park Town, Chennai 600 003.
3. The Senior Assistant Financial Advisor,
(Sr.AFA/T/TPJ),
Coaching Accounts, Southern Railway,
Trichirapalli 620 001.

deleted vide MA-399/14
dt. 24/4/2015.

..Respondents

By Advocates:

M/s S. Kala, for the applicant.

Mr. K. S. Duraipandi, for Respondents

ORDER

(Pronounced by Hon'ble Mr. Justice B. Seshasayana Reddy, Member (J))

This Original Application is filed by S.Sivakumar Under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

- a) Set aside the impugned order of the third respondent in No.P.443/C/Admn/VOL.VII, dated 5.12.2011;
- b) direct the respondents to step up the pay of the Applicant to 4600 grade pay on par with his juniors and particularly Sri Surendiran in pay band II in the scale of pay of Rs.9300-34800.
- (or) in the alternative to grant atleast one financial upgradation on the basis of his length of service in the entire service and in the post of Accounts Assistant
with all consequential benefits such as arrears, interest at the rate of 12% p.a. From the date when the juniors were granted and
- c) issue such further and other appropriate orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and award costs and thus render justice.

2. The facts of the case are that the applicant was appointed as a Traffic Porter on 30.4.1975 in the Coimbatore Traffic department of the southern Railway. He was promoted as record sorter on 3.1.1980. On his qualifying in the departmental examination, he came to be promoted as Accounts Clerk on 6.3.1980, Junior Accounts Assistant on 6.3.1982 and Accounts Assistant on 1.1.1984. He retired from service on attaining the age of superannuation on 29.2.2012 in the scale of pay of Rs. 9300-34800 with Grade Pay of Rs. 4200/-. He submitted representation on 30.09.2011 for grant of benefits under MACP. The 3rd Respondent rejected his representation by order dated 05.12.2011. He has been promoted as Accounts Assistant on 01.01.1984 and completed 20 years of service in the same grade and therefore he is entitled for one financial upgradation as was given to the similarly placed persons. It is submitted in the application that juniors to him, namely, Surendiran and T.V. Krishnan were granted higher Grade Pay under MACP Scheme. A similar issue came to be decided by the Tribunal in O.A. No. 1075/2010 and a direction has been given to the respondents to grant the benefit of MACP to the applicants therein from the date on which their juniors/sub-ordinates were given. For better understanding of the grievance

of the applicant, we deem it appropriate to refer Paras 4(xi) to (xiv) and it is thus:-

xi) The applicant submits that he joined as a Traffic Porter, promoted as Peon. This is first promotion in this grade. Then he was promoted as Record Sorter, this is his second promotion. He was thereafter promoted as Accounts Clerk this is the third one. Again he was promoted as Junior Accounts Clerk which is fourth and finally promoted as Accounts Assistant which was the fifth one. But, direct recruitment was made to CG-I/Jr.AA. For promotion/confirmation to the post of CG-I/Jr.AA a departmental examination has to be passed. The promotion and confirmation of the applicant on passing the test in Appendix 2 conducted on a zonal basis. This is treated as promotion, while the same passing of the test for confirmation of the direct recruits as CG-I/JrAA is not taken into account for financial upgradation. This clearly shows the erroneous and unreasonable approach of the respondents. This is not only unfair but also discrimination. This is hostile discrimination and violative of equal pay for equal work doctrine.

(xii) The applicant submits that the meaning of the word "Direct Entry Grade" is misunderstood by the second respondent to mean "initial entry into railway service" this is unreasonable and untenable. The Applicant submits that because of this misunderstanding the second respondent has not only committed grave error but also acted in violation of the illustration-I in Annexure-I of MACPS.

(xiii) The applicant submits that even in the present set up the nature of work performed by the applicant were either similar or more than the juniors who entered into service of the Railways as CGI directly. As on date they are equal, but the applicant is discriminated against them in the matter of pay. This is clear case of violation of Articles 14, 16 and 39(d) of Constitution of India.

(xiv) The applicant submits that the denial of financial upgradation to him is against the principles of legitimate expectation. The applicant, having acquired promotions on merit, rendered blemishless service, stagnated in the current post without any promotion for several years, had developed a genuine and legitimate expectation that he will be given the financial upgradation, which is a beneficial welfare scheme. But, to his shock and dismay the financial upgradation is denied to him. This is violation of doctrine of legitimate expectation.

3. Respondents 2 & 3 filed reply statement. It is stated in the reply that as per the conditions stipulated in Para -8 of the Annexure-R1, the MACP scheme could be operational with effect from 01.09.2008 and as per the para 9 of the scheme, no stepping up of pay in the Pay Band or Grade Pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme. The financial upgradation under MACP scheme is purely personal to the employees and will have no relevance to the seniority position. As such, there shall be no financial upgradation to the senior employees on the ground that junior employees are getting higher pay/grade pay under MACP scheme. The applicant was appointed as a Porter in the Traffic Department of Southern Railway on 30.4.1975. Later, he was transferred to the Office of the Senior Assistant

Financial Adviser, Traffic, Southern Railway, Tiruchirapalli on 5.07.1976 as Peon. He was then promoted as Record Sorter in scale of pay of Rs. 225-308 on 03.01.1981 and thereafter promoted as Clerk Grade-II in Scale of Pay Rs. 260-400 on 07.03.1981. Having qualified ^{in 12} the Appendix II A examination, he was promoted as Clerk Grade I in scale of pay Rs. 330-560 on 21.04.1982. Finally he retired from service on 29.2.2012. The career progression of the applicant is as follows:-

Sl. No.	Designation	Date of entry/Promotion to the grade	Scale of pay	Equivalent scale of pay and Grade Pay in VI PC	Remarks
1	Porter	30.04.1975 (Appointment)	Rs.196-232	5200-20200 1800	Grades merged in VI CPC with Single Grade Pay
2	Peon	5.7.1976 (Transfer to this office)	Rs. 196-232	5200-20200 1800	
3	Record Sorter	03/01/80	Rs.225-308	5200-20200 1800	
4	CG-II	07/03/81	Rs.260-400	5200-20200 1900	I Promotion
5	CG-I	21.04.1982	Rs.330-560	5200-20200 2800	II Promotion
6	Sub Head	21.10.1985	Rs.425-700	9300-34800 4200	III Promotion

The applicant earned three promotions within a span of 30 years of his service and therefore he is not eligible to get any further financial upgradations under MACP scheme in terms of Railway Boards Letter No. RBE No.101/2009 dated 10.06.2009. The respondents challenged the order passed by this Tribunal in OA. No.1075/2010 by filing W.P. No. 1078/2012 and the same is pending on the file of High Court of Madras. The applicant has not chosen to redress his grievance through departmental remedies available in service rules before approaching this Tribunal. The main object of the MACP Scheme is that in the absence of any promotion to an employee during the service period of 10 years, his case can be considered for grant of first financial upgradation, the second financial upgradation on completion of 20 years of regular service and on completion of 10 years from the first

financial upgradation and in his entire career, an employee is eligible for a maximum three such financial upgradations as approved by the competent screening committee. In the Accounts Department of Railways, the initial recruitment for Group 'D' post starts from 'Peon' category. In case of Group 'C' post, the initial recruitment starts from the post of Accounts Clerk. From 01.04.1980, Railway Board introduced 'Restructuring of Cadre' by recruiting 'Graduates' under the category of Junior Accounts Assistant in the ratio of 80:20 that is, 80% under Direct Recruitment and 20% under Promotion Quota. The 80% Direct Recruitment Quota are recruited through the competitive examination conducted by the Railway Recruitment Board subject to the condition that the candidate will have to qualify in the Appendix-II Examination conducted by the department on their postings as Junior Accounts Assistants. Further in the case of Accounts Clerk also, there is an examination conducted by the department for confirmation to to continue in Railway Service. For promotion to the post of Junior Accounts Assistant, Accounts Clerk has to qualify in Appendix-II (A) Examination. Therefore the case of the applicant cannot be compared with those Junior Accounts Assistant Employees recruited directly through Railway Recruitment Board. The applicant had not attained the status of drawing the maximum of Pay in the Accounts Assistant cadre which warrants extension of stagnation increment etc. The employees who are not qualified in the prescribed departmental Promotion Examination and are not in a position to get any further promotion are to be considered for grant of financial benefit under the MACP scheme. The grant of financial upgradation is no way to be considered as promotion.

4. The applicants filed rejoinder. Thereafter the respondents filed reply to the rejoinder. It is stated in the reply to rejoinder that the contention of the applicant that he should be treated at par with the direct recruit Junior Accounts Assistant cannot be agreed to because the direct recruit Junior Accounts Assistant are recruited as per para 171(4) of IREM whereas the

applicant has been promoted to the post of Junior Accounts Assistant in terms of Para 171(3) of IREM.

5. Heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondents.

6. The applicant placed on record written submissions.

7. It is contended by the learned counsel appearing for the applicant that the applicant secured promotions within a span of 5 to 9 years of his entry into service and thereafter he stagnated in the post of Accounts Assistant from 1.1.1984 till the date of retirement on attaining the age of superannuation on 29.2.2012. As per the decision dated 23.5.2013 of the Principal Bench of the Central Administrative Tribunal, New Delhi in Madan Lal Jhamb vs. MCD and others, the period of 10, 20 and 30 years has to be counted on the basis of the entry into a particular Pay Band and Grade Pay. The meaning of the word "Direct Entry Grade" is misunderstood by the respondents to mean initial entry into Railway service which is unreasonable and untenable. The actual meaning of the term 'Direct Entry Grade' is the grade where there is direct recruitment. In this case, Clerk Grade-I (Junior Accounts Assistant) is the direct recruitment grade. The principle of stagnation increment is to be calculated in the stagnated post only and not from the date of entry into service. The applicant did not earn promotion in the same Grade Pay. In other words, promotion from Peon (GP 1800) to Accounts Clerk Grade II (GP 1900), Clerk Grade-I/Junior Accounts Assistant (GP 2800), Accounts Clerk Grade to Accounts Assistant (GP 2800) are the posts carrying different Grade Pays. The intention of the Scheme is only to provide stagnation increment/financial upgradation to all those who are stagnated in the same post for several years either for want of promotional avenues or otherwise. Fixing an imaginary condition of earlier promotions in service is contrary to the object of stagnation increment principle when no such condition is found in the Scheme. While so, denying the financial

upgradation for longer stagnated seniors on account of their earlier promotion in different grades is untenable and irrational besides being contrary to the object sought to be achieved. MACP is sought for on the basis of stagnation in the post of Accounts Assistant. Therefore, the question of initial entry into service in different posts has no relevance. Induction of an employee to the grade of LDCE/GDCE as per the Recruitment Rules is to be treated as direct recruitment for the purpose of grant of financial upgradation under MACP Scheme. In such cases, the past service rendered in a lower scale/Grade Pay shall not be counted for the purpose of MACP. The promotion of the applicant to the post of CG-I and Accounts Assistant was on the basis of passing Appendix II examination (LDCE) and, therefore, it cannot be counted for the MACP Scheme. The issue of stepping up of pay has been decided by this Tribunal in OA.1075/2010 and the order passed therein has been confirmed by the High Court of Madras in WP.1078/2012 and batch dated 3.4.2014. With these contentions, the learned counsel sought for direction to the respondents to refix the Grade Pay of the applicant at Rs.4600 on the basis of length of service in the post of Accounts Assistant.

9. The learned counsel appearing for the respondents submits that the applicant earned three promotions in his career advancement and, therefore, he does not deserve any financial upgradation under MACP Scheme. A further submission has been made that promotion of the applicant to the post of Accounts Assistant through LDCE cannot be construed as direct recruitment. According to the learned counsel, the promotion of the applicant to the grade of Accounts Assistant is under promotional quota as per the Recruitment Rules. The issue as to whether an employee who earned three promotions in his career advancement is entitled to financial upgradation is no more res integra in view of the decision of this Tribunal in OA.951/2011 and batch dated 31.10.2014 titled as Augustine Roy Rozario vs. Union of India and others. The learned counsel also placed reliance on the Full Bench

Judgement of Ernakulam Bench of this Tribunal in OA.1103/2011 dated 22.3.2013 (J. Leelamal and other vs. Union of India and others) wherein the validity of clause 20 of MACP Scheme has been upheld. The learned counsel laid much emphasis on Para 24 of the Judgement and it is thus:-

24. As to the moulding of the relief, it is to be stated that the applicants has nowhere in the pleadings raised the issue of stepping up of pay. All through it is only as to the financial upgradation that they have been referring to. When such a financial upgradation is impermissible in view of clause 20 of the Scheme, they have chosen to challenge the legal validity too. Stepping up of pay is entirely in a different pedestal and though the decisions relied upon by the applicant's counsel at the time of arguments and certain Government of India decisions could go in favour of such stepping up of pay, law requires that the administrative remedies are first exhausted and it is only when through administrative means the grievance is not redressed, can the jurisdiction of the Tribunal be invoked. Again, normally consideration is given by the Courts for such moulding of relief if taking into subsequent events such moulding of relief is justified. For example, in this case such a moulding of relief could be justified if all the applicants have superannuated by now. That is not the case. There is ample time to seek administrative remedies.

10. The Full Bench Judgement in J. Leelamma's case has been followed by this Tribunal in OA.951/2011 and batch.

11. It is not in dispute that the applicant had earned three promotions from the date of his entry into service. The contention of the applicant is that he stagnated in the post of Accounts Assistant right from the year 1984 till his date of voluntary retirement on 29.2.2012 and, therefore, he deserves financial upgradation under MACP Scheme. He did not dispute of his earlier promotions from the date of his entry into the Department as Gangman to Accounts Assistant. He earned three promotions to the posts which carry different Grade Pay in his service. The principle contention advanced by the applicant is that his promotion to the Accounts Assistant is through LDCE and, therefore, it is to be treated as direct recruitment and not by way of promotion.

Dr. P. S. S. S.

12. We have gone through the copy of Recruitment Rules placed on record along with reply statement to the rejoinder. As per the Recruitment Rules, Junior Accounts Assistant is the feeder post to the post of Accounts Assistant on clearing the Appendix II Examination. The relevant portion of the Recruitment Rules needs to be noted and it is thus:-

5. The posts to the grade of Accounts Asstt. in scale Rs.1400-2600 will be filled by promotion of Junior Accounts Assistants in scale Rs.1200-2040 after they have completed three years service in the grade and passed Appendix II Examination. Provided that the condition of passing the Appendix-II Examination will not be applicable to those Junior Accounts Assistant, who were promoted as such against unqualified senior suitable quota as per clause 3 (22) above.

13. The Recruitment Rules are clear that the post of Accounts Assistant is to be filled only by way of promotion and not by way of direct recruitment. Therefore, the contention of the applicant that his appointment to the post of Accounts Assistant is to be treated as direct recruitment has no merit. The Circular dated 12.9.2002 issued by the Ministry of Railway, Government of India clarifies that if the relevant Recruitment Rules 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. Since the applicant earned three promotions, he is not entitled for any financial upgradation under the MACP Scheme. Under Para-2 of the Scheme, financial upgradation under MACP is purely personnel to the employee and shall have no relevance to the seniority position. As such, there can be no financial upgradation to the senior employees on the ground that junior employees in the grade have got higher pay/Grade Pay

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under MACP Scheme. The principle of 'equal pay for equal work' advanced by the applicant to claim Grade Pay on par with his juniors cannot be pressed into service to claim benefit under the MACP Scheme.

14. A similar issue came up for consideration in OA.383/2013 and OA.384/2013 before the Madras Bench of the Central Administrative Tribunal to which one of us (Dr. P. Prabakaran, Administrative Member) was a Member wherein it has been held as hereunder:-

10. In the present cases the Railway Board has also issued similar clarifications adopting the clarifications issued by the DOPT. As pointed out by the learned Senior Counsel for the respondents, the Railway Board instructions are to be treated as rules having the force of Rules framed under Art.309 of the Constitution of India pursuant to the powers delegated to the Railway Board as held by the Hon'ble Apex Court,

11. In the present OAs upon evaluation of facts submitted by either side and on perusal of the records it is clearly established that the placement of the applicants in the grade of JAA is to be treated as promotion. The re-designation of these employees as JAA was based on the applicants having fulfilling the conditions prescribed in IREM para 171 (5) cited supra. The applicants have also been granted pay fixation benefits under FR 22 © and as such we do not find that the claim of these applicants for ignoring the re-designation as JAA for the purpose of granting ACP/MACP benefits is not maintainable.

12. The rules/instructions governing the re-designation of posts and also granting of financial upgradations under ACP/MACP Schemes are unambiguous and clear and as such there is no room for any other interpretation in the matter. We are in agreement with the submissions of the learned Senior Counsel for the respondents.

13. Recently a Full Bench of this Tribunal at Lucknow in OA.No.94/2006 and 391/2009 had an occasion to consider similar question. The Full Bench in its decision dated 04.12.2014 in the above OAs in para 19 observed as under:-

" 18. Therefore, whether upgradation or grant of higher pay scale amounts to promotion or not depends upon the facts of each case. Where it is found that such upgradation or promotion has an element of selection and involves creation of any new posts, certainly it would amount to promotion."

14. In the light of the above discussion, the OAs are found to be devoid of merit and are liable to be dismissed. Accordingly the OAs are dismissed with no order as to costs.

15. In view of the above discussion, we find that the order No.P.443/C/ Admn/VOL.VII dated 05.12.2011 impugned in the OA does not warrant interference by this Tribunal and accordingly the OA is dismissed. No order as to costs.