

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01006/2016

Monday, this the 5th day of October, 2020

C O R A M :

**HON'BLE Mr. P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

M.K.Sasikumar, aged 56 years,
S/o Late Krishna Pillai,
Private Secretary Grade II,
Office of the Chief Administrative Officer (Construction),
Southern Railways, Ernakulam, Cochin-682 016.

...Applicant

(Advocate : Mr.C.S.G.Nair)

v e r s u s

1. Union of India represented by the General Manager,
Southern Railways, Chennai-600 003.
2. Chief Personnel Officer,
Southern Railways Chennai-600 003.
3. Divisional Railway Manager (P),
Southern Railways, Thiruchirapally-620 001.
4. Chief Administrative Officer (Construction),
Southern Railways, Ernakulam, Cochin-682 016.

...Respondents

(Advocate : Mr.S.Radhakrishnan)

This OA having been heard together on 23rd September, 2020, the Tribunal on 5th October 2020 delivered the following :

ORDER

By K.V.EAPEN, ADMINISTRATIVE MEMBER

In this application the applicant has staked a claim for third financial upgradation under MACP in the Pay Band Rs.9300-34800/- with GP of Rs.4800/- and all consequential benefits thereof with effect from 30.08.2015. The impugned order at Annexure A-12 which turns down the representation submitted by him is also sought to be cancelled.

2. The applicant joined service as a Stenographer in Baroda Division of Western Railway on 30.08.1985. He was promoted as Confidential Assistant (Senior Stenographer) on 22.12.1987. Later he sought a transfer to Thiruchirapally (TPJ) Division of Southern Railway and was transferred to the post of Junior Stenographer in a lower pay scale as per existing rules. However, his pay on transfer to TPJ Division was protected, although he joined in a lower post. Subsequently, in March 1991 he was promoted as a Senior Stenographer in TPJ Division. It is noted from the records provided by the respondents that the applicant's pay was protected when he was posted as Junior Stenographer in the 4th CPC scale of pay of Rs.1200-2040/- at Rs.1560/-. The benefit of this pay protection continued when he subsequently got promotion as Senior Stenographer in the scale of pay of Rs.1400-2600/- on 26.03.1991. Subsequent increments were also calculated on the basis of this protected scale of pay of Rs.1560/- (Annexure R-4 [e]).

3. It has been clarified by the respondents that employees are entitled to get the benefits of pay fixation under Rule 1313 of the Indian Railway Establishment Manual which corresponds to FR 22 (I) (a) (1) in a post only once. As the applicant was given the benefit of pay fixation when he moved to TPJ Division, he was not entitled to a second pay fixation in the same post.

4. During 1996 the applicant submitted his willingness to be considered when volunteers were called for stenographers in Railway Claims Tribunal (RCT), Ernakulam. He was selected as a Senior Stenographer in the RCT, Ernakulam. He joined the RCT vide Southern Railway (DRM/P/TPJ Division) Office Order dated 08.08.1996 wherein it was mentioned that he was transferred and posted to RCT, Ernakulam as Senior Stenographer on the same pay scale with immediate effect,

subject to the usual terms and conditions governing such transfers. **It was indicated in the Order that his lien will be maintained by TPJ Division.** While working at the RCT when a vacancy in the post of Senior PA arose the applicant was selected and recommended for promotion as Senior PA in the scale of Rs.2000-3200/- (Rs.6500-10500 revised) in the existing vacancy with effect from 23.04.1998. The applicant then continued in the post of Senior PA for a period of 14 years till he was relieved on 22.11.2012 (Annexure A-5). He was directed to report to Senior DPO, Southern Railway, TPJ Division for further posting.

5. The applicant challenged this repatriation order before this Bench in O.A.No.1070/2012. He has claimed now that during the course of argument in the O.A when the counsel for the applicant apprehended reduction in pay on his reversion back to TPJ Division, the counsel for the Railways assured that pay would be protected and there would be no reduction in the same. The O.A was however rejected and the applicant was repatriated. The applicant filed O.P. (CAT)No.69/2013 against the order in O.A.No.1070/2012 which was dismissed by the Hon'ble High Court of Kerala. It was observed by the Hon'ble High Court of Kerala that the continuation in the same place beyond five years was rightly found incorrect by this Tribunal and that the Tribunal was justified in saying that domestic problems of the applicant cannot take precedence over the expenditure that was incurred by the RCT Ernakulam. Recourse was provided to the applicant only to approach higher or superior officer who could consider his case on a sympathetic ground and not by any legal action. Thus it is seen from the orders of the Hon'ble High Court of Kerala and this Tribunal that there was no observation therein made relating to the protection of the pay drawn as Senior PA in the RCT in the reverted post in TPJ Division as has been claimed by him.

6. In this O.A., the applicant states that on the recommendations of the 6th CPC, the Government introduced the Modified Assured Career Progression Scheme (MACPS) with effect from 01.09.2008. This is evidenced in document dated 19.05.2009 issued by the Department of Personnel & Training (Annexure A-6). The same Scheme was made applicable in the Railways with effect from 01.09.2008, under which, the employee becomes eligible for three financial upgradations at the intervals of 10, 20 and 30 years of regular service. The applicant who joined Railway Service on 30.08.1985 claims that he had completed more than 23 years as on 01.09.2008 and had got only two promotions, namely, the first as Senior Stenographer in TPJ Division and second as Senior PA in the RCT, Ernakulam. He contends that on his transfer from Baroda Division to TPJ Division, he was reverted to the Junior Stenographer post although he had received a promotion in Baroda as Confidential Assistant (Senior Stenographer). He contends that as per Railway Board Circular dated 23.11.2015 promotion granted earlier has to be ignored (Annexure A-7). Annexure A-7, inter-alia, states as follows :

“It is now further clarified that wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower Post/Grade from the promoted Post/Grade before being relieved, for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office.”

7. He claims that his first promotion in the Baroda Division has to be ignored as per above and that he is eligible to third financial upgradation with effect from 30.08.2015 when he completed 30 years of service having got only two promotions earlier. To the contrary, he was given third financial upgradation vide TPJ Division, Southern Railway, Office Order dated 09.06.2010 (Annexure A-8) to GP of Rs.4600/- with effect from 01.09.2008 which is incorrect because he had

completed only 23 years as on 01.09.2008 and, as such, he was not entitled to third financial upgradation. He states that the RCT, being a subordinate office of the Ministry of Railways, is a part of the Railways under the administrative control of the Railway Board. Thus, the third financial upgradation can be reckoned only with effect from 30.08.2015 on completion of 30 years and has to be given to the next higher Grade Pay of Rs.4800/-. He claims that this Tribunal in an identical O.A allowed the prayer of the applicant for third MACP (O.A.No.402/2014) and thus the rejection of his representation vide Annexure A-12 is to be quashed.

8. The respondents have submitted in their reply that the applicant was given third financial upgradation under MACP vide order dated 09.06.2010, whereas he filed this O.A only on 14.07.2016 after a delay of almost five years. If we take allowable period of limitation, he ought to have challenged the same by the year 2011. As such, the O.A is barred by the law of limitation. They further state that the promotion to the post of Senior Personal Assistant in the scale of Rs.6500-10500/- (5th CPC) was on an adhoc basis in the RCT and is not to be taken into account as it was not a regular promotion in his parent cadre. His contention that he is due for third financial upgradation under MACP Scheme with GP of Rs.4800/- with effect from 30.08.2015 is wrong as the circular relied upon by the applicant at Annexure A-7 dated 23.11.2015 is not the final one in this regard. The Railway Board, as per para 2(i), of its order No.RBE 8/2013 dated 31.01.2013 had clarified that in respect of those cases where benefit of pay protection has been allowed at the time of unilateral transfer to other organization/unit and thus the employee had carried the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of MACP Scheme. This provision was further clearly reiterated in the Railway Board letter dated 18.04.2016 in which it was clarified that in case of pay protection, the promotions

earned in the erstwhile Unit/Division will have to be counted for the purpose of MACP Scheme. Copies of the Railway Board's orders of 31.01.2013 and letter dated 18.04.2016 are produced at Annexure R-4(a) and R-4(b) and clearly do not favour the case of the applicant. Further, on a perusal of his Service Register, it is seen that the pay drawn by him in the higher post while at Baroda, namely, Rs.1560/- in the Senior Stenographer scale of Rs.1400-2600/- was protected on his unilateral transfer accepting lower grade in TPJ Division. He was drawing this protected pay of Rs.1560/- in the reverted scale of Rs.1200-2040 as on 13.07.1990 when he reported for duty. This pay protection continued when he was promoted to the post of Senior Stenographer in the scale of Rs.1400-2600/- on 09.04.1991 as his pay was retained at Rs.1560/-. Thus his first promotion at Baroda to the post of Confidential Assistant on 18.01.1990 is to be counted for the purpose of MACP. His second promotion was to the post of Senior Stenographer in TPJ Division on 09.04.1991. Hence, by the time of the introduction of the MACP Scheme, he had already enjoyed the benefit of two promotions. He was, however, eligible for the third financial upgradation having completed the required time and was accordingly given the same as per Annexure A-8 order dated 09.06.2010 effective from 01.09.2008 in PB-2 Rs.9300-34800/- with GP Rs.4600/-. He did not challenge this order and he is not entitled for further financial upgradation as per rules.

9. The respondents state that in an identical O.A.No.180/41/2015 filed by Shri.N.Venugopal & others, this Tribunal vide order dated 14.12.2016 dismissed the same following Railway Board's (Annexure R-4[b]) clarification. The Annexure A-14 order relied upon by the applicant is not applicable in the facts and circumstances. Moreover the Respondents filed O.P.(CAT) No.101/2017 challenging the said order and the Hon'ble High Court of Kerala had granted interim stay on 30.03.2017 as per Annexure R-4(d).

10. The Respondents state that in terms of the MACP Scheme, the employee becomes eligible for financial upgradations whenever he completes 10 years in a particular grade. The applicant was granted his second promotion in 1991. The MACP Scheme was implemented with effect from 01.09.2008. The applicant was eligible and therefore considered and granted third financial upgradation to Grade Pay Rs.4600/- vide Annexure A-8 order dated 09.06.2010. He had completed more than ten years in the Grade Pay Rs.4200/- by then. The fundamental premise of the Scheme is to take care of the lack of promotional avenues and resultant stagnation in one grade for a long time. In applicant's case he had got two promotions within ten years of his appointment. The promotion of the applicant as Senior Personal Assistant while on deputation to the RCT in the year 1998 cannot be treated as a regular promotion as it was outside his ordinary line of service, as his lien was maintained at TPJ Division, which is considered as a separate Zonal Railway in terms of Section 2(42) and 3 of Indian Railways Act 1989. He was posted in RCT, Ernakulam on the basis of transfer on deputation only.

11. We have gone through the records and documents produced in the matter by the parties. We have also heard Shri.C.S.G.Nair, learned counsel for the applicant and Shri.S.Radhakrishnan, learned counsel for the Railways in detail.

12. We have dealt with the matter relating to pay protection on reversion of the applicant from the RCT to TPJ Division elaborately in our order in O.A.No.180/1064/2016. We found therein that the applicant was posted in the RCT on a transfer on deputation basis and his promotion there was never treated as regular but was considered adhoc. Accordingly, we had not accepted his request for protection of pay drawn as Senior PA in the RCT on his reversion to the cadre. Thus his promotion there cannot be counted for the purpose of MACP.

13. We also note the Circular of the Railway Board at Annexure R-4(b) dated 18.04.2016 that a condition of ignoring promotion earned in previous organization/office has been stipulated as follows :- *“where the employee is reverted to lower post/grade from the promoted post/grade before being relieved for new organization”*. Evidently, as indicated in the Circular except in the specific case of being reverted before being relieved, promotion earned in the previous organization has to be reckoned for the purpose of MACP. Further, the same Circular states that it has been clarified by the DoPT that the aforementioned situation relates to the cases where employees do not get pay protection benefit. We note in the case of the applicant, he had got pay protection benefit when he moved from Baroda to TPJ, as shown in the details quoted earlier. Moreover, there was no order of reversion to a lower post before he was transferred and no specific order produced with respect to such reversion to a lower post/grade from the promoted post/grade at Baroda. The applicant was relieved only to join in the post of Junior Stenographer at TPJ Division from Baroda.

14. We note that the above circular squarely governs the position of the applicant and, thus, his initial promotion in Baroda in 1987 has to be considered as his first promotion, followed by the second promotion in TPJ Division in 1991. If this is accepted, it does not appear that the respondents had made any mistake in granting him third financial upgradation in his substantive pay with effect from 01.09.2008 under the MACP Scheme while he was serving in the RCT. Indeed, the order produced at Annexure A-8 has indicated the same correctly. As already clarified, the promotion as Senior PA with effect from 23.04.1998 cannot be taken as a regular promotion for the purpose of MACP Scheme as contended by the applicant as he was only given the same on an adhoc basis by the RCT. He was later reverted to the substantive pay drawn by him after being relieved in 2012.

15. We also note that the applicant was given a regular promotion on 26.10.2015 to the grade of Private Secretary II in PB-2 with GP Rs.4600/- without further pay fixation as the benefit had been given at the time of third financial upgradation under MACP Scheme as per pay records produced at Annexure R-4(e). Thus, we do not find that any clear case has been made by the applicant for the benefit of drawing third financial upgradation under MACP Scheme with GP Rs.4800/- with effect from 30.08.2015 in the light of the circulars and instructions provided on the subject as well as on the basis of contentions and records. We, accordingly, do not allow the O.A and the same is dismissed. No order as to costs.

(Dated this the 5th day of October 2020)

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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List of Annexures in O.A.No.180/01006/2016

- 1. Annexure A1 :** True copy of the letter No.RCT/ERS/Selection/NG dt:2.8.1996.
- 2. Annexure A2 :** True copy of the Office Order No. M&G/111/96 dt:8.8.1996.
- 3. Annexure A3 :** True copy of the Letter No.RCT/ERS/Selection/9 dated 18.2.1998 issued by the Railways Claims Tribunal.
- 4. Annexure A4 :** True copy of the Office Order No.2/1998 dt:11.5.1998 issued by the Additional Registrar, Railway Claims Tribunal, Ernakulam.
- 5. Annexure A5 :** True copy the Office Order No.RCT/ERS/9/Vol.V. dt:22.11.2012.
- 6. Annexure A6 :** True copy of the OM No.35034/3/2008-Estt.(D) dt:19.5.2009.
- 7. Annexure A7 :** True copy of the Circular No. PC-V/2009/ACP/2 dt:23.11.2015.
- 8. Annexure A8 :** True copy of the Office Order No.M&G/Admn. 57/2010 dt:9.6.2010.
- 9. Annexure A9 :** True copy of the representation dated 14.12.2015.
- 10. Annexure A10 :** True copy of the reminder dt:6.4.2016 to the 2nd respondent.
- 11. Annexure A11 :** True copy of the representation dt 9.6.2016 to the 2nd respondent.
- 12. Annexure A12 :** True copy of the letter dated 14.7.2016 issued by the Divisional Personnel Officer, Tiruchirapally Division.
- 13. Annexure A13 :** True copy of the representation dt:15.7.2016.
- 14. Annexure A14 :** True copy of the Order dt:8.7.2016 in OA No.402/14.
- 15. Annexure A15 :** True copy of the Private Secretary Grade II of Southern Railway.
- 16. Annexure A16 :** True copy of the Memo PBC No.222/15 dated 19.1.2016.
- 17. Annexure R4(a) :** Railway Board's order dated Copy of 31/01/2013.
- 18. Annexure R4(b) :** Board's dated Copy of Railway 18/04/2016 order.
- 19. Annexure R4(c) :** Copy of this Hon ble Tribunal's order dated 14/12/2016 in O.A.No.180/00041/2016.
- 20. Annexure R4(d) :** Copy of Hon'ble High Court of Kerala's interim order dated 30/03/2017 in OP(CAT) No.101/2017.

21. **Annexure R4 (e) :** Statement of pay drawn as per service records.
 22. **Annexure R4(f) :** Statement of pay if pay was not protected.
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