

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/412/2015
WITH
MISC. APPLICATION NO. 291/424/2015,
MISC. APPLICATION NO. 291/425/2015,
MISC. APPLICATION NO. 291/793/2019
&
CONTEMPT PETITION NO. 291/65/2015
AND**

**ORIGINAL APPLICATION NO. 291/413/2015
WITH
MISC. APPLICATION NO. 291/426/2015,
MISC. APPLICATION NO. 291/427/2015
&
CONTEMPT PETITION NO. 291/66/2015**

Order reserved on 01.12.2020

DATE OF ORDER: 15.12.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

**OA No. 291/412/2015 with MA No. 291/424/2015,
MA No. 291/425/2015 & MA No. 291/793/2019**

P.D. Mathur son of Shri R.D. Mathur, aged about 54 years, at present employed on the post of Accounts Assistant in the office Senior Divisional Finance Manager, NWR, Ajmer.

Address for Correspondence

C/o Shri Data Ram S/o Shri Gumana Ram R/o 154/27,
Sangam Vihar, Gali No. 4, Gaddi Road, Jons Ganj,
Ajmer – 305001.

....Applicant

Shri C.B. Sharma, counsel for applicant (through
Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur – 302017.
2. Financial Advisor and Chief Accounts Officer, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
3. Senior Divisional Finance Manager, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

CP No. 291/65/2015 in OA No. 291/412/2015

P.D. Mathur son of Shri R.D. Mathur, aged about 54 years at present employed on the post of Accounts Assistant in the office Senior Divisional Manager, NWR, Ajmer.

...Petitioner / Applicant.

Shri C.B. Sharma, counsel for Petitioner (through Video Conferencing).

VERSUS

1. Shri A.K. Prasad, Financial Advisor and Chief Accounts Officer, (FA & CAO), Hqrs. North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur -302017.
2. Shri R.L. Khandelwal, Senior Divisional Finance Manager, North Western Railway, Ajmer Division, Ajmer – 305001.

...Non-petitioners / Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

OA No. 291/412/2015 with MA No. 291/424/2015, MA No. 291/425/2015, MA No. 291/793/2019 & CP No. 291/65/2015 AND OA No. 291/413/2015 with MA No. 291/426/2015, MA No. 291/427/2015 & CP No. 291/66/2015

OA No. 291/413/2015 with MA No. 291/426/2015 & MA No. 291/427/2015

Data Ram son of Shri Gumana Ram, aged about 60 years, R/o 154/27 Sangam Vihar, Gali No. 4, Gaddi Road, Jons Ganj, Ajmer-305001, last employed on the post of Accounts Assistant in the office Senior Divisional Finance Manager, NWR, Ajmer.

....Applicant

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Financial Advisor and Chief Accounts Officer, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
3. Senior Divisional Finance Manager, North Western Railway, Ajmer.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

CP No. 291/66/2015 in OA No. 291/413/2015

Data Ram son of Shri Gumana Ram, aged about 60 years, R/o 154/27 Sangam Vihar, Gali No. 4, Gaddi Road, Jons Ganj, Ajmer – 305001, last employed on the post of Accounts Assistant in the office Senior Divisional Finance Manager, NWR, Ajmer.

Petitioner

Shri C.B. Sharma, counsel for Petitioner (through Video Conferencing).

VERSUS

OA No. 291/412/2015 with MA No. 291/424/2015, MA No. 291/425/2015, MA No. 291/793/2019 & CP No. 291/65/2015 AND OA No. 291/413/2015 with MA No. 291/426/2015, MA No. 291/427/2015 & CP No. 291/66/2015

1. Shri A K Prasad, Financial Advisor and Chief Accounts Officer, (FA & CAO) Hqrs North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-17.
2. Shri R L Khandelwal, Senior Divisional Finance Manager, North Western Railway, Ajmer – PIN 305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

With the consent of learned counsels for the parties OA No. 291/412/2015 with MA No. 291/424/2015, MA No. 291/425/2015, MA No. 291/793/2019 & CP No. 291/65/2015 and OA No. 291/413/2015 with MA No. 291/426/2015, MA No. 291/427/2015 & CP No. 291/66/2015 are taken up together for disposal as a common question of law and facts is involved in all these cases.

2. For the sake of convenience, the brief facts of OA No. 291/412/2015 (P.D. Mathur vs. Union of India & Ors.) are taken up. The OA No. 291/412/2015 has been filed by the applicant under Section 19 of the

Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) That the applicants may be permitted to pursue this joint application on behalf of four applicants under rule 4(5) of CAT Procedure Rule 1987.
- (ii) That the order dated 22.8.2014 (Annexure A/1), passed by 3rd respondent ordering withdrawal/cancellation of the benefits of 3rd financial Upgradation granted under MACP Scheme, and also subsequent orders thereof, if any, may be declared illegal and the same may be quashed and applicants allowed all the consequential benefits including refund of the amounts recovered / deducted from the salary of the applicants etc. etc.
- (iii) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.”

3. The brief facts of the case (OA No. 291/412/2015), as stated by the applicant, are that the applicant was appointed as Clerk Grade I (CG-I) on 03.08.1978. After rendering three years' service in CG-I, applicant became Accounts Assistant in up-gradation in 80% under restructuring and was allowed pay scale Rs. 1400-2600 w.e.f 10.08.1990. Since then the applicant

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is working on the post of Accounts Assistant without any further promotion but the pay scale was revised to 5500-9000 as per 5th CPC. As per Modified Assured Career Progression (MACP) Scheme, any employee, who remained in the same grade pay for 10 years, is entitled for up-gradation for which Railway Board also issued order dated 29.12.2011 and in pursuance of the same, the applicant was allowed next grade pay. The applicant was granted benefits of 2nd and 3rd financial up-gradation under the provisions of MACP Scheme. He was granted the benefits of 3rd MACP Scheme in GP 4800/- vide letter dated 17.10.2011 w.e.f 10.08.2010. The clarifications issued by the Railway Board vide order dated 29.12.2011, 14.02.2013 as well as letter dated 26.05.2014 issued by respondent No. 2, are contrary and inconsistent to the provisions of original scheme dated 10.06.2009. The applicant after due fixation, drew his pay and allowances in the pay band Rs. 9300-34800 with GP-Rs. 4800/-. But respondents, without any prior notice or hearing, withdrew the benefits allowed to the applicant vide impugned order dated 22.08.2014 (Annexure A/1). It is the case of the applicant that after 1990, he was not allowed any promotion and

only after implementation of MACP Scheme, he was granted 2nd financial up-gradation in GP-Rs. 4600 on the basis of due date as after 10 years and further he became entitled to 3rd financial up-gradation. But cancelling/withdrawing benefits is against the provisions of the MACP Scheme as the benefits were rightly allowed to the applicant due to stagnation of 20 years. It was also pointed out that MACP Scheme came into effect from 01.09.2008 and the same provides three financial up-gradations after completion of 10, 20 and 30 years of service and though ACP Scheme came into effect from 09.08.1999, but the applicant was not allowed benefit of 2nd ACP on the ground that he had not completed 24 years of service. In fact, the applicant was allowed higher pay only in 1990 and respondents rightly allowed benefits of 2nd and 3rd MACP due to stagnation for 10 years from the respective date of promotion. There was neither any misrepresentation nor fraud played on the part of the applicant in getting the benefit of pay fixation under 3rd MACP. As the action of the respondents is arbitrary, illegal and unjustified and as the applicant suffers recurring financial loss, he has no option but to approach the Tribunal for redressal of his grievance.

4. This Tribunal issued notices to the respondents and vide its order dated 21.07.2015, as an interim measure, operation and implementation of Annexure A/1 order dated 22.08.2014 was stayed till the next date of hearing.

5. The respondents, after issue of notices, have filed their reply. Respondents stated that the applicant has no reason to be aggrieved of the impugned order when he has neither completed 30 years of service since his appointment nor 10 years period since grant of MACP Scheme. As per the Scheme, an employee is eligible for grant of 3rd MACP provided he has completed either 30 years of service since his appointment or 10 years since the grant of 2nd MACP. Thus, the grant of benefit of 3rd MACP was erroneous. As it is clear from Annexure A/3, applicant was granted the benefit of 3rd MACP provisionally subject to clarification/amendment from Railway Board. Accordingly, its withdrawal cannot be said to be illegal. It is further stated that the applicant was appointed on 03.08.1987 instead of 03.08.1978 and the other facts being matter of facts and record are

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not disputed. It is further stated that the pay scale of the applicant has been revised as per the orders of the Railway Board from time to time. In view of clarification issued by the Railway Board vide letter dated 29.12.2011, the benefit of 3rd MACP granted to the applicant was erroneous. As per the clarification, it is clear that one can be entitled for 3rd MACP only after completion of 30 years of service from actual joining of the post in the entry grade or 10 years from the date of 2nd financial up-gradation, whichever is earlier. Admittedly, applicant had not completed any of the conditions in order to be eligible for grant of 3rd MACP. It is further stated that the scheme has to be read in its entirety and not in isolation. As seen from Annexure A/2, the same has been issued by Railway Board i.e. RBE No. 101/2009 and the same has been clarified vide Annexure A/4 by Railway Board itself. Thus, it is to be considered as clarified by the nodal competent authority. It is clear that the applicant has failed to refer to the conditions in order to be eligible for the 3rd MACP. Thus, the contention of the applicant that an employee, who remains in the same grade pay for 10 years is entitled for 3rd financial up-gradation is totally misconceived. It is further clarified by the

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respondents that applicant has failed to challenge the clarification issued by the Railway Board, which was in supersession of the earlier scheme. Therefore, making a mere averment without any challenge to the same is of no substance. Thus, applicant has no right to allege that the orders dated 29.12.2011 and 14.02.2013 as well as letter dated 26.05.2014 are contrary and inconsistent to the main scheme. It was further contended that the benefit of 3rd MACP, which was accorded to the applicant, was provisional subject to the clarification/amendment from Railway Board and, therefore, withdrawal of the same needs no compliance of principles of natural justice. Also, the said orders were implemented before being challenged, therefore, applicant has no say on the same. The respondents deny the contention of the applicant that since 1990, he has remained in the same pay. In fact after the introduction of MACP Scheme, applicant was granted 2nd financial up-gradation in the grade pay of Rs. 4600/- w.e.f 01.09.2008. It is, therefore, re-iterated by the respondents that an erroneous mistake can be corrected at any stage. Therefore, the submission regarding stagnation raised by the applicant is devoid

of any substance and the same deserves to be rejected. Also, one cannot be eligible to get the benefits under a scheme prior to implementation of the scheme especially when the same stipulates the date of its operation and it is very clear that the MACP scheme came into effect from 01.09.2008. Therefore, an employee cannot be allowed to enjoy the benefits at the cost of the state exchequer. The public money cannot be given in the hands of the employee, who is not entitled for the same. Thus, as per the clarification issued by the Railway Board, applicant has no case and is not entitled to the benefits, which he cannot get retrospective and the same is entitled only from the date of the scheme. Therefore, respondents stated that as there were inadvertent mistake in grant of 3rd MACP, the same was cancelled by the impugned order and the said order also states that the applicant will be given the same on completion of 30 years of service.

6. The applicant has not filed any rejoinder to rebut the submissions of the respondents.

7. Vide interim order dated 21.07.2015 passed by this Tribunal, the operation and implementation of Annexure A/1 order dated 22.08.2014 was stayed till the next date. The said interim order is continued till date.

8. The respondents have also filed an M.A No. 291/424/2015 for clarification of interim order dated 21.07.2015 as well as M.A. No. 291/425/2015 for modification/vacation of interim order dated 21.07.2015. It is the contention of the respondents that the impugned order in challenge was of 22.08.2014 and the Tribunal passed the interim order on 21.07.2015. Before the Tribunal passed the interim order, the impugned order was already implemented and the applicant was paid lesser salary and also recovery was being made. The applicant had challenged the impugned order after about a year only in July 2015. Therefore, after the interim order was passed ex parte by the Tribunal, in compliance of the directions of the Tribunal, the concerned respondents were directed that the recovery of the excess amount already paid to the applicant should not be made. Accordingly, no recovery is made since then till date.

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It was further stated that as the applicant was erroneously granted the benefit of 3rd MACP contrary to the Railway Board directives i.e. RBE No. 101/2009, the same was bound to be corrected and, therefore, the impugned order cannot be said to be illegal or unwarranted. Thus, as per the directions of the Tribunal dated 21.07.2015, no recovery is being made from the date of receipt of the copy of the order. It was further stated that in case the applicant is allowed to continue to be paid the excess payment due to erroneous grant of 3rd MACP, then, in such a case, it would be very difficult for the Railway Administration to recover the same. Thus, as the respondents did not intend to flout the directions of the Tribunal, yet in case due to misunderstanding, if any wrong action has been taken amounting to contempt of the orders of the Tribunal, the same may be pardoned and for which they tender their unconditional apology. Therefore, respondents pray that the order dated 21.07.2015 be clarified to the extent whether status quo ante as was existing prior to implementation of order dated 22.08.2014 is required to be made. Therefore, M.A. No. 291/424/2015 was filed for clarifying orders of the Tribunal dated 21.07.2015.

By way of the other M.A No. 291/425/2015, the respondents state that as the applicant was wrongly granted the benefit of 3rd MACP with GP of Rs. 4800/- and, thus, the same was corrected vide order dated 22.08.2014. Accordingly, applicant was not entitled for any interim relief. As the principle of balance of convenience and irreparable loss is against the applicant, on the other hand, the same is in favour of the respondents, therefore, the interim order dated 21.07.2015 deserves to be vacated or in the alternative, the same may be modified by staying the operation and implementation of Annexure A/1 to the extent of recovery only. As the applicant is enjoying the said benefit only due to the ex-parte stay granted by the Tribunal for which he is not entitled, the interim order deserves to be modified/vacated as the excess amount is being paid at the cost of public exchequer, which should not be done.

9. The applicant has failed to rebut the stand taken by the respondents in both the Misc. Applications filed by the respondents.

10. On the other hand, it is seen that the applicant has filed a Contempt Petition No. 291/65/2015 on the ground that in spite of stay order dated 21.07.2015 passed by the Tribunal, the respondents are yet recovering the amount from the salary of the applicant and that the applicant was paid reduced grade pay, which can be perused from the pay slip of the applicant for the month of July, 2015. It was further stated that only on objections raised by the applicant, the recovery for the month of July 2015 was restored vide Pay Slip for August 2015. The applicant further states that the basic pay as well as the grade pay have not been restored in spite of interim orders granted by the Tribunal in his favour. Thus, according to the applicant, the respondents have not fully implemented or complied with the directions of the Tribunal dated 21.07.2015. Therefore, the respondents are liable to be punished for contempt of court.

11. The respondents, after issue of notices in the Contempt Petition, have filed their reply stating that immediately after receipt of contempt notices, they have filed Misc. Applications for clarification of interim

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order dated 21.07.2015 as well as for modification / vacation of interim order dated 21.07.2015, which are still pending consideration. Also, it was further stated by the respondents that the salary bills of the month are prepared well in advance in the preceding month, therefore, the salary bill of August 2015 was accordingly made. However, soon after the knowledge of the interim order of the Tribunal, corrective steps have been taken and the applicant has been paid back the recovered amount. Since then no recovery has been made. It was further stated by the respondents that bare perusal of the interim order would clarify that it was an order directing recovery while the benefit of the 3rd MACP was cancelled vide order dated 31.07.2014. The Tribunal had never directed about the said order. Thus, any submission about restoring the basic and grade pay is neither just nor legal. Therefore, as the respondents have not flouted the orders of the Tribunal and further as the Misc. Applications filed by the respondents are pending consideration, the applicant has no ground to allege any contempt action to be taken against the respondents.

12. It is noticed that the respondents have further filed a Misc. Application No. 291/793/2019 for directions that they may be permitted to effect recovery of applicant Nos. 2 to 4 as per their request in view of applications of the said applicants, which are annexed with the said M.A. as Annexure MA/1.

13. Heard learned counsels for the parties through Video Conferencing and perused the material available on record as well as the judgments produced by the parties.

14. The learned counsel for the applicant vehemently argued that the present Original Application is pressed only by applicant No. 1 as applicant Nos. 2 to 4 have already taken permission from the Court that they may be allowed to be deleted from the array of applicants in this OA. Accordingly, Tribunal vide its order dated 15.07.2020 allowed the requests of the applicant Nos. 2 to 4. Now the present Original Application is only in respect of applicant No. 1. The applicant reiterated the submissions made earlier and further added that the applicant was rightly allowed the benefit of 3rd MACP from 2010 and the same

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cannot be withdrawn by the respondents without any notice or without mentioning any reasons for the said withdrawal. The applicant laid stress on the Scheme of MACP (Annexure A/2) and stated that since 1990 he has not been given any promotion nor any financial up-gradation. He further contended that the authority which granted benefits under MACP has decided/ issued/approved the orders of withdrawal/cancellation of the same. The administrative authority has no power to review its own order and, therefore, the impugned order deserves to be quashed as the same can only be passed / cancelled by the higher authority only. The impugned clarifications of the Railway administration are ex-facie inconsistent to the provisions of the main MACP Scheme and, therefore, the same also deserves to be quashed being in violation of Articles 14 and 21 of the Constitution of India. It was further argued that the date 01.09.2008 is the cut-off date only for giving actual benefits and not the eligibility date. One need not render ten years' service in the grade after 01.09.2008 and from subsequent date of grant of grade pay of Rs. 4600/-, the service in the grade shall be counted from the date of deemed date of eligibility. But the

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interpretation of the respondents for grant of 3rd MACP is not proper. If one has got MACP on one date, he would get 3rd MACP only after completing 30 years of service. The same is not the legal interpretation of the Scheme. Applicant belongs to Group 'C' and he has neither misrepresented nor played any fraud, therefore, as per the judgment passed by the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors, no recovery can be made. The applicant relied on some judgments/orders and few of them are as under:-

- i) State of Punjab & Others vs. Rafiq Masih (White Washer) & Others, reported in (2015) 2 SCC (L&S) 33.
- ii) Kalu Ram & Ors. vs. Union of India & Ors. (OA No. 290/00376/2014) decided by Jodhpur Bench of this Tribunal vide order dated 22.05.2019.
- iii) Madan Mohan Purohit & Ors. vs. Union of India & Ors. (OA No. 290/00182/2016) decided by Jodhpur Bench of this Tribunal vide order dated 01.01.2018 and confirmed by the Hon'ble Rajasthan High Court at Jodhpur vide order dated 09.07.2018 in D.B. Civil Writ No. 7068/2018.
- iv) Sunil Kumar vs. Union of India & Ors. (OA No. 050/00352/2016) decided by Patna Bench of this Tribunal vide order dated 12.12.2019.
- v) Smt. Manju Vashistha & Ors. vs. Union of India & Ors. (OA No. 1288/2014) decided by

Full Bench of CAT, PB, New Delhi vide order dated 23.05.2016.

15. On the other hand, the learned counsel for the respondents reiterated their stand taken earlier and argued that a benefit which is granted if provisional subject to any clarification /amendment at a later stage from Railway Board can be withdrawn at any stage without any pre-decisional /post decisional hearing. The same does not violate any principles of natural justice inasmuch as it does not deprive or curtail any existing right. As per the clarification issued by the Railway Board, the benefit of 3rd financial upgradation so granted had become erroneous and, therefore, rightly deserves to be cancelled as it is public exchequer money. The respondents relied on some judgments/orders and few of them are as under:-

- a) Union of India & Ors. vs. Kalu Ram (DB Civil Writ Petition No. 7297/2019) - vide order dated 17.02.2020, the Hon'ble Rajasthan High Court, Jodhpur confirmed the interim order dated 30.05.2019 till disposal of WP, whereby order of the Tribunal dated 22.05.2019 was stayed.
- b) Tika Ram vs. Union of India & Ors. (OA No. 060/00471/2017) decided by Chandigarh

Bench of this Tribunal vide order dated 01.08.2018.

- c) State of Punjab and Others vs. Rafiq Masih (White Washer) – reported in (2014) 8 SCC 883.
- d) State of Punjab and Others vs. Rafiq Masih (White Washer) and Others - reported in (2015) 4 SCC 334.

The respondents also relied on Section 15 of Railway Services (Pension) Rules 1993 (amended upto 17.06.2016).

Thus, respondents state that there is no illegality in their orders and the present Original Application deserves to be dismissed.

16. After carefully considering the facts of the case and the pleadings made by the parties on either side, the question which requires our consideration is whether the benefits of 3rd financial up-gradation granted to the applicant under the MACP Scheme was just and proper and in consonance with the Scheme along with the clarifications issued by the Railways and whether the same can be cancelled subsequently and recovered amount be refunded.

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17. It is clear that the applicant was appointed on 03.08.1987. He was granted 3rd financial up-gradation as per Annexure A/3. There was a proviso during grant of said benefit which clearly stated that the said financial up-gradation order issued under the MACP Scheme is provisional and subject to decision on writ petition pending with Supreme Court of India and any clarifications/amendments at later stage from Railway Board. The original Scheme of MACP dated 10.06.2009 (RBE No. 101/2009), (para 1 under Annexure-I), states as under:

"1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade-Pay."

Subsequently, the respondents issued clarifications to the original Scheme vide letters dated 29.12.2011 (Annexure A/4), 14.02.2013 (Annexure A/5) & 26.05.2014 (Annexure A/6). The relevant clarifications from letter dated 29.12.2011 are reproduced as under:

"xxxxx It is, thus, evident that 1st financial upgradation would be admissible on completion of 10 years of regular service from the date of actual joining of the post in the entry grade, 2nd financial upgradation on completion 20 years service from the date of initial appointment or 10 years from the date of 1st financial upgradation/promotion, whichever is earlier and 3rd financial upgradation would be admissible on completion of 30 years service from the date of initial appointment or 10 years from the date of 2nd financial upgradation/promotion, whichever is earlier, if the employee has not earned three promotions in thirty years span of regular service.

Further, the illustration under para-28 also demonstrates that 1st financial upgradation would be admissible on completion of 10 years of service from the date of actual joining of post in the entry grade, 2nd financial upgradation on completion of 20 years of service from the date of initial appointment or 10 years from the date of 1st financial upgradation/promotion, whichever is earlier and 3rd financial upgradation would be admissible on completion of 30 years service from the date of initial appointment or 10 years from the date of 2nd financial upgradation/promotion, whichever is earlier."

Also the letter dated 26.05.2014 clearly stated that *"Railway Board has clarified that 3rd financial upgradation under the MACP Scheme would be admissible either on completion of 30 years of service from the date of initial appointment or 10 year from the date of 2nd financial upgradation/promotion whichever is earlier. Further, since the MACP Scheme has been implemented w.e.f. 01.09.2008, it is absolute erroneous to construe that any employee is*

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eligible for MACPS benefit prior to that date.” It is also worth to mention that the MACP Scheme has come into effect from 01.09.2008. Therefore, in view of the clarifications, it is clear that the applicant had not fulfilled both the conditions in order to be eligible for grant of 3rd financial upgradation.

18. Thus, in order to be entitled for 3rd financial upgradation, an employee can be entitled for the same only after completion of 30 years of service from the date of initial appointment or 10 years from the date of 2nd financial upgradation/promotion, whichever is earlier. Admittedly, for being eligible for 3rd financial upgradation, the applicant was not fulfilling any of the conditions required for the same. Therefore, it is clear that after the original MACP Scheme was issued by Railway Board being RBE No. 101/2009 dated 10.06.2009, but subsequently there were several clarifications in respect of grant of 3rd financial upgradation under the MACP Scheme. The applicant though has annexed the clarifications issued by Railway Board to his OA, but has failed to challenge the same as to how the said clarifications are bad in law and the same cannot be accepted. As the benefit

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of 3rd MACP was provisional subject to clarification/amendment, therefore, withdrawal of the same cannot be said to be erroneous in absence of any challenge to the same. Here it would suffice to mention the relevant observations made by the Chandigarh Bench of this Tribunal in the case of Tika Ram (supra), which reads as under:-

"9. We have given thoughtful consideration to the entire matter. The only question that arises here for our consideration is whether the respondents can effect recovery of the excess amount paid to the applicant, or not?

10. The answer to the above poser lies in Rule 15 of the Railway Rules, 1993. Therefore, the same reads as under for better appreciation.

"Rules, 1993 (hereinafter the "Pension Rules") read as follows:

"15. Recovery and adjustment of Government or railway dues from pensionary benefits-

(1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

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(3) For the purposes of this rule, the expression "railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the W.P.(C) 4918/2014 Page 7 permissible period after the date of retirement of allottee) if any; (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) xxx xxx xxx

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) xxx

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) xxx

(ii) Recovery of losses specified sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service

gratuity, which are not subject to the pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

(a) In respect of the dues as mentioned in sub- clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub- clause (b) of clause (i) of this sub-rule-

(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) xxx

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this, the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (I) of this sub- rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer."

11. Rule 15 of Railway Rules, 1993 is very clear on this subject. It empowers the respondents to effect recovery and make adjustment of government dues such as over payment on account of pay and allowances or other dues like house rent, Post Office or Life Insurance Premia or outstanding advance, from the retirement, death terminal or service gratuity of its employees, even without obtaining his consent. It is not a matter of dispute that the applicant is not entitled to grant of grade pay of Rs.5400/- w.e.f. 01.07.2009, under the MACP Scheme, and it was erroneously granted to him. The action of the respondents in withdrawing that benefit while rectifying their mistake of overpayment has already been upheld by this Tribunal, while dismissing the O.A. filed by the applicant, vide its order dated 03.11.2015. Since at that time, there was no order of recovery, therefore, no finding was recorded by this Court qua that. Since the applicant was not entitled to the grade pay of Rs. 5400/-, which was erroneously granted to him, therefore, the action of respondents in effecting recovery in terms of Rule 15 of Railway Rules, 1993, cannot be held to be illegal."

Thus Rule 15 of the Railway Rules, 1993 is very clear that the Railways can effect recovery of an amount which is pertaining to over payment of pay and allowances even without obtaining his consent, or without the consent of the member of his family in case of deceased railway servant. Therefore, it is clear

that as per Rule 15 of Railway Services (Pension) Rules, 1993 and in view of the clarifications issued by the Railway Board and the proviso granted to the order of provisional grant of benefits of 3rd MACP, the impugned order dated 22.08.2014 pertaining to cancellation of 3rd MACP cannot be said to be bad in law.

19. Now coming to the judgments/orders relied by the applicant, none of them are applicable to the facts of the present case, except that of Kalu Ram (supra) and Smt. Manju Vashistha (supra). But the order dated 22.05.2019 passed by Jodhpur Bench of this Tribunal in the case of Kalu Ram (supra), relied by the applicant, has been stayed by the Hon'ble High Court of Rajasthan, Jodhpur vide interim order dated 18.09.2019 and also confirmed till disposal of the writ petition vide its order dated 17.02.2020. As far as Full Bench order dated 23.05.2016 passed by CAT, PB, New Delhi in the case of Smt. Manju Vashistha (supra) is concerned, the same is not applicable to the facts of the present case as in the said case neither Railway Board had issued clarifications nor the order of grant of 3rd financial upgradation stated that the same is

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provisional subject to clarifications/amendments issued at a later stage by Railway Board. Also since the applicant had accepted the order dated 17.10.2011 (Annexure A/3), he cannot subsequently raise a grievance that he was not given any pre-decisional hearing or any show cause notice before cancelling the benefits of 3rd financial upgradation under the MACP Scheme.

20. Coming to the question of recovery, the submission of the applicant that he is Group 'C' employee and, therefore, as per the law laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (supra) no recovery can be made, also cannot be accepted in view of the law laid down by the Hon'ble Supreme Court in the case of High Court of Punjab & Haryana vs. Jagdev Singh, reported in 2016 (5) SLR 133 (S.C.), wherein the Lordship after taking into consideration the case of Rafiq Masih (supra) have observed that if there was a condition stipulated at the time of granting some extra benefit of a higher post, that in future, if any infirmity is found, the excess amount may be adjusted/recovered, it is liable to be refunded and the same is accepted by the employee,

then in that eventuality, the authority exercising that option cannot be faulted and such recovery is permissible. Also Rule 15 of the Railway Services (Pension) Rules, 1993 is very clear as the same gives a right to the respondents to recover any amount of over payment. Also the same view is taken in the case of Tika Ram (supra) relied by the respondents.

21. Also in the case of Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors., reported in (2012) 8 SCC 417, the Hon'ble Apex Court, after taking into consideration the various decisions of this Court, had come to the conclusion that even if by mistake of the employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered.

22. Thus, as discussed above, the impugned order dated 22.08.2014 (Annexure A/1) deserves no interference as the same is just and proper. Accordingly, Original Application is dismissed. No order as to costs.

23. It is also made clear that as the impugned order dated 22.08.2014 (Annexure A/1) itself states that as the applicant completes 30 years of service, he shall be eligible for 3rd financial upgradation, accordingly orders to that effect should be passed by the respondents as and when the applicant becomes eligible for the same.

24. In view of the O.A. being dismissed, the interim order granted by this Tribunal vide order dated 21.07.2015 stands vacated. The respondents are directed to take steps accordingly and recover the amount to which the applicant is not entitled and pass necessary orders to that effect.

25. Accordingly, M.A. No. 291/424/2015 and M.A. No. 291/425/2015 are disposed of as infructuous. Also, M.A.No. 291/793/2019 is disposed of as infructuous, since applicant Nos. 2 to 4 have already been allowed to be withdrawn from the array of applicants at their request and nothing survives in the said M.A. Also nothing remains to be adjudicated in the Contempt

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Petition and thus C.P. No. 291/65/2015 stands dismissed. Notices are discharged.

26. In the light of the observations and discussions made above, Original Application No. 291/413/2015 is also dismissed. No order as costs. Accordingly, MA No. 291/426/2015 and MA No. 291/427/2015 are disposed of as infructuous. Contempt Petition No. 291/66/2015 also stands dismissed. Notices are discharged.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

Kumawat