

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

**ORIGINAL APPLICATIONS NO.170/1262/2019, 170/1314/2019,
170/1315/2019, 170/1316/2019 & 170/1317/2019**

ORDER RESERVED ON 09.03.2021

DATE OF ORDER: 12.05.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(In OA.No.170/1262/2019)

H.N.Shrinidhi
S/o H.S.NarayanaIyengar
Aged 59 years
Asst. Financial Advisor, Workshop
S.W.Railway, Mysore
R/o # 419, 19th Cross
Vijayanagar Railway Layout
Mysore-570016.

.....Applicant

(By Advocate Shri K.Shivakumar)

Vs.

1. Union of India
Rep. Secretary
Railway Board
Rail Bhawan
New Delhi-110001.
2. Principal Financial Advisor
South Western Railway
Rail Soudha
Gadag Road
Hubballi-580020.

....Respondents

(By Advocate Shri N.Amaresh)

(In OA.No.170/1314/2019)

S. Veerabhadraiah
 S/o S. Pompaiah
 Aged 60 years
 Rtd Sr. Asst. Divisional Finance Manager
 R/o #317/A, Andhra Halli Main Road,
 Vidyamanyanagar
 Bangalore 560091.

....Applicant

(By Advocate Shri K.Shivakumar)

Vs.

1. Union of India
 Rep. Secretary
 Railway Board,
 Rail Bhawan
 New Delhi-110001.

2. Principal Financial Advisor
 South Western Railway,
 Rail Soudha
 Gadag Road,
 Hubballi- 580020.

....Respondents

(By Advocate Shri N.Amaresh)

(In OA.No.170/1315/2019)

Ravindra Kumar Bhagat
 S/o Late Kandra Bhagat
 Aged 55 years
 Asst. Divisional Finance Manager,
 S.W. Railway,
 R/o #249, 11th Cross, 14th Main,
 Chamundeswari Railway Layout,
 Mysuru-570016.

...Applicant

(By Advocate Shri K.Shivakumar)

Vs.

1. Union of India
 Rep. Secretary

Railway Board
Rail Bhawan
New Delhi-110001.

2. Principal Financial Advisor
South Western Railway,
Rail Soudha
Gadag Road
Hubballi-580020.

....Respondents

(By Advocate Shri N.Amaresh)

(In OA.No.170/1316/2019)

Pooriya Naik
S/o Late Ramazi Naik
Aged 64 years
Rtd Sr. Asst. Financial Advisor
R/o #3748, 8th Cross, 10th Main,
G-Block, Datagalli 3rd Stage
Mysore-570022.

....Applicant

(By Advocate Shri K.Shivakumar)

Vs.

1. Union of India
Rep. Secretary
Railway Board,
Rail Bhawan
New Delhi-110001.

2. Principal Financial Advisor
South Western Railway,
Rail Soudha
Gadag Road
Hubballi-580020.

....Respondents

(By Advocate Shri N.Amaresh)

(In OA.No.170/1317/2019)

Mohammad Gafur
S/o KhasimPeeran
Aged 61 years

Rtd Sr. Asst. Financial Advisor
R/o Plot No. 7, Azad Park, Gadag Road,
Hubballi-580020.

....Applicant

(By Advocate Shri K. Shivakumar)

Vs.

1. Union of India
Rep. Secretary
Railway Board,
Rail Bhawan
New Delhi-110001.

2. Principal Financial Advisor
South Western Railway,
Rail Soudha
Gadag Road,
Hubballi-580020.

....Respondents

(By Advocate Shri N. Amaresh)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The Original Application Nos. 170/1262/2019, 170/1314/2019, 170/1315/2019, 170/1316/2019 and 170/1317/2019 are taken up together for disposal as a common question of law and fact is involved in all these cases. With the consent of learned counsels for the parties, the facts are extracted from Original Application No. 170/1262/2019 and the said case has been treated as a lead case.
2. The applicant, in his pleadings submitted through learned counsel Shri K. Shivakumar, has averred as follows:

- a) The applicant was initially appointed as Accounts Clerk on 25.02.1982 through the selection conducted by RRB, Bangalore. He earned his due promotions and was granted 3rd MACP in the scale of Rs.9300-34800 with Grade Pay of Rs.5400 w.e.f. 01.09.2008 while working as Senior Section Officer (Accounts) in Group-C cadre.
- b) He was promoted to Group-B service on 18.08.2017 as Assistant Financial Advisor in Scale Rs.9300-3480 with Grade Pay Rs.5400 and was posted to work at Central Workshop, South Western Railway, Mysore.
- c) The applicant is presently working as Assistant Financial Advisor (Group B) at Central Workshops, South Western Railways, Mysore. He was promoted to the post of Assistant Financial Advisor(AFA) in the scale of Rs.9300-34800 with Grade Pay of Rs.5400 in Accounts Department from the post of Senior Section Officer, a Group-C post in the scale of Rs.9300-34800 with Grade Pay of Rs.5400. While getting promotion to the post of Assistant Financial Advisor on 18.08.2017, he was not granted any fixation benefit on the plea that both the posts are carrying similar Grade Pays and no fixation benefit is due in the promoted post in view of 3rd MACP having been allowed with the fixation benefit in the Group-C post of Senior Section Officer.
- d) The applicant came to know that one employee in Madurai Division of Southern Railway has been extended the benefit of pay fixation though she was promoted from the post with the same Grade Pay based on the decision

of Madras Bench of this Tribunal and Hon'ble High Court of Judicature at Madras. The employee, namely Smt. Sornalakshmi, Traffic Inspector with Grade Pay Rs.4600 (due to granting of MACP) in Madurai Division of Southern Railway was promoted as Chief Controller in Grade Pay Rs.4600. Further to her promotion, she was not extended with the fixation benefit in the promoted grade on the plea that the benefit has already been extended while granting the MACP and the same cannot be extended at the time of promotion. Aggrieved with this decision of Southern Railway authorities, she approached the Madras Bench of this Tribunal in OA.No.1367/2014 with a prayer to order for extending the benefit of pay fixation in the promoted post of Chief Controller though she was drawing the same Grade Pay of Rs.4600 under MACP. Her prayer was considered and the OA was allowed by the Tribunal on 28.01.2016. This order of CAT was challenged by the respondents before the Hon'ble High Court of Judicature at Madras under Writ Petition No.34340/2016 and the High Court was pleased to dismiss the said Writ Petition on 29.09.2016 by confirming the order of this Tribunal. Further to the dismissal of the Writ Petition, the Southern Railway implemented the decision of the Tribunal and extended the benefit of pay fixation in her case.

- e) The applicant submitted a representation to the 2nd respondent on 17.04.2018, with a reminder dated 30.03.2019, with a request to extend the pay fixation benefit to him on his elevation as AFA in Group B service. The case of the applicant is similar to that of the issue decided by the Madras

Bench of this Tribunal. The promoted post of Assistant Financial Advisor, (Group-B post) carries duties and responsibilities of greater importance than that of the post of Senior Section Officer, (Group-C post) held previously by him.

- f) Further to the receipt of the representation of the applicant and other 4 officers, the 2nd respondent by his communication dated 28.05.2019 has advised the applicant that the order of the Madras Bench of this Tribunal is limited to the applicant in that OA and the benefit cannot be extended to him without the orders of the Railway Board.

3. The respondents, in their pleadings through their learned counsel, Shri N. Amaresh, have averred as follows:

- a) The applicant had been granted 3rd financial upgradation under MACP in Grade Pay of Rs.5400 of PB-2 w.e.f. 01.09.2008 in terms of Board's policy circular on MACPs dated 10.06.2009.
- b) The grant of financial upgradation under MACP is purely personal to the employee and it does not entail any change in the designation, classification, duties and responsibilities of the applicant. Further, while allowing the benefit of pay fixation under MACP scheme, the applicant was also allowed benefit of pay fixation in terms of para 4 of the Annexure to Board's letter dated 10.06.2009 which is reproduced as below:

“Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial up-gradation under the scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay

band and grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS.”

- c) The applicant has already been allowed benefit of pay fixation as admissible at the time of promotion. Further, in view of the instructions contained in para 4 of the Annexure to Board's letter dated 10.06.2009, a further pay fixation at the time of promotion is not admissible.
- d) In the context of the averments made in regard to the case of Smt. Sornalakshmi, it is submitted that in that case, the matter is related to lateral shift from the post of Station Master to Section Controller in the same Grade Pay and under Rule 1313(FR-22) (I)(a)(i) RII, IREC Vol. II whereas the case of the applicants relates to fixation of their pay on promotion after grant of financial upgradation under MACPS. The case of the applicant is altogether different with the case of Smt. Sornalakshmi and therefore, any claim based on Madras Bench of this Tribunal's order in that case is absolutely misplaced and illogical. Further, the submissions made in context of the developments related to the case of Smt. Sornalakshmi are irrelevant.
- e) Hon'ble Supreme Court while adjudicating similar issue in the case of *Union of India vs. Ashoke Kumar Banerjee (13th May 1998)* have held that the respondents, having received the same benefit in advance, while working in the lower post and not functioning in the higher post, is not entitled to the same benefit on his promotion to the higher posts. The Honourable Supreme Court has, in this case, observed as under:

For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says.

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty - five only, whichever is more".

Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(1)(a)(i) only once. Such an anomaly was not obviously intended by the FR.

4. Heard learned counsels for the applicant as well as the respondents.
5. The applicant is relying on a judgment of Madras Bench of this Tribunal in OA.No.310/1367/2014 which has in turn relied on the orders passed by Madras Bench of this Tribunal in OA.No.717/2006 dated 22.06.2007. At that point of time the MACP rules had not come into existence since these were notified on 10.6.2009. This case was concerned with grant of pay fixation under Rule 1313 of the Railway Establishment Code which is given only where the Railway Establishment is satisfied that the post to which an employee is appointed carries higher duties and responsibilities. It was also a case where there was a lateral shift from the cadre of Station Master to the cadre of Station Controller. This was strictly not a case of promotion within the same cadre and therefore did not deal with consideration of pay fixation on promotion within the same

cadre. In addition, in the aforesaid judgement, there is no consideration of the MACP rules, notified by the Ministry of Railways vide their letter dated 10.06.2009 and the provision contained therein, to disallow any additional pay fixation benefit, if it has already been drawn at the time of grant of MACP. Hence this judgement is not applicable to the present case and cannot be relied upon for granting relief.

6. The present case deals with the situation of promotion within the cadre from the post of Senior Section Officer (Accounts), a Group C post, to the post of Assistant Financial Advisor (AFA) a Group B post. The applicant, due to grant of MACP, has already drawn the benefit of pay fixation at the time of grant of MACP III. Moreover, by virtue of MACP III, he is now drawing the Grade Pay of Rs. 5400/- which is identical to the Grade Pay attached to the post of AFA. Hence this case is squarely covered under the MACP rules governing pay fixation to be given to persons who are in the same Grade Pay on account of getting the MACP benefit prior to their promotion in the higher Grade Pay.
7. The MACP rules, notified by the Ministry of Railways, on 10.6.2009, specifically provide that the benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the scheme. It is further clarified that there shall be no further fixation of pay at the time of regular promotion if it is in the same Grade Pay as granted under MACP. This rule specifically prohibits grant of additional financial upgradation benefit on grant of second pay fixation on promotion if promotion is in the same Grade Pay as is being drawn by the applicant due to MACP.

However, it has been clarified that if at the time of actual promotion, the promoted post carries a higher Grade Pay than what is available under MACP, no pay fixation would be available and only difference of Grade Pay would be made available.

8. Grant of an additional financial upgradation benefit on promotion, if the promotion is in the same pay scale has also been specifically ruled out by Hon'ble Supreme Court while adjudicating the issue in the case of *Union of India vs. Ashok Kumar Banerjee* (supra). It has observed that it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities, but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post.
9. The claim of the applicants is, therefore, devoid of any merit, and hence, the above captioned Original Applications are liable to be dismissed.
10. The Original Applications Nos.170/1262/2019, 170/1314/2019, 170/1315/2019, 170/1316/2019 & 170/1317/2019 are accordingly, dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)