

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.604/13

Friday, this the 30th day of August, 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. All India Loco Running Staff Association
Reg.No.17903/Southern Railway/Palakkad Division
Represented by its Divisional Secretary U.Baburajan
S/o.P.V Vasudevan
(Working as Sr.Assistant Loco Pilot,
Shornur Railway Station)
Residing at: Railway Quarters No.166/C
Ganeshgiri P.O, Shornur
Palakkad District. Pin – 679 123
2. G.Sanil Kumar
S/o.P.Gopinathan
Loco Pilot (Goods)/Southern Railway/Palakkad Division
Residing at: "Souparnika", Industrial Estate P.O
Melemurali, Palakkad – 678 731
3. E.K.Unnikrishnan
S/o.P.S Nair
Loco Pilot (Goods)/Southern Railway/Palakkad Division
Residing at: "Sreemandiram",
Melepuram P.O,
Olavakkod, palakkad – 678 002
4. S.Devarajan
S/o.N.Sukumaran
Loco Pilot (Goods)/Southern Railway/
Palakkad Division
Residing at: "Nandanam", Melemurali
Industrial Estate P.O
Palakkad – 678 731

... **Applicants**

(By Advocate Mr. T.C.Govindaswamy)

v e r s u s

1. Union of India, represented by the
General Manager, Southern Railway
Head Quarters Office, Park Town P.O
Chennai – 600 003

2. The Chief Personnel Officer
 Southern Railway
 Head Quarters Office, Park Town P.O
 Chennai – 600 003

3. The Sr.Divisional Personnel Officer
 Southern Railway, Palakkad Division
 Palghat – 678 002

4. The Secretary to the Government of India
 Ministry of Railways, Railway Board
 Rail Bhavan, New Delhi – 110 001

... Respondents

(By advocate Mrs. Sumathi Dandapani, Sr. & Mr.Thomas Mathew Nellimoottil)

This application having been heard on 22nd August 2013 this Tribunal on 30.08.2013 delivered the following :-

ORDER

BY HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

1. The first applicant in this OA is the All India Loco Running Staff Association, Palakkad Division and others are Loco Pilot (Goods). The case of the applicants is that the Modified Assured Career Progression Scheme (MACPS) was implemented by the Railways as per Railway Board Order dated 10-06-2009 vide Annexure A-5. Loco Running Staff of Palghat and other Divisions were granted the financial upgradations under the said MACPS. However, the benefits were sought to be withdrawn by clarification dated 23-11-2010 vide Annexure A-6. Aggrieved by the said Annexure A-6 order OA No. 484 of 2011 and connected cases were filed by some of the affected persons which were allowed vide Annexure A-7 order dated 22-02-2012 as modified by order dated 11-04-2012 in RA No. 15 of 2012.

2. It was during the pendency of the above OA that the applicants in this OA (save Applicant No.1) were granted financial upgradation vide

order dated 28-06-2011 at Annexure A-8. The benefits were enjoyed by the said applicants accordingly. However, vide Annexure A-1 order dated 13-12-2012, it was clarified that the ACP/MCP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues. Thus, financial upgradations under ACP/MACP Schemes CANNOT be to higher grade Pay than what can be allowed to an employee on his normal promotion. Invoking the same, Annexure A-2 to A-4 orders have been passed proposing withdrawal of the financial provisions granted to Applicants No. 2 to 4. Aggrieved by the same, this OA is preferred claiming the following reliefs:-

(1) Call for the records leading to the issue of Annexures A1, and A2 to A4 and quash the same.

(2) Direct the respondents to continue to grant the applicants the benefit of financial upgradations under the MACPS as if A1 , and A2 to A4 had not been issued at all;

3. Respondents have contested the O.A. According to them, the MACP Scheme has been introduced with a view to mitigating the financial hardships due to non availability of promotional avenues and the related instructions to the scheme are also to be read and interpreted in totality. As per the clairification dated 13-12-2012 (Annexure A-1) it has been clarified that the benefits cannot be more than what a person in the normal course of promotion could be getting. Promotion, in service law means promotion to a higher pay scale or to a higher post, as held by the Apex Court in the case of Union of India vs Pushpa Rani.



4. The applicants No. 2 to 4 belong to the running staff category of Loco Pilot (Goods). As per para 140 of IREM (Vol - I) the channel of promotion available in running staff category is as under:

Loco Pilot (Goods)
 {erstwhile Goods Drivers (All Goods Trains)}
 (PB-2 Rs.9300-34800 with GP Rs.4200 – With CPC scale)

Loco Pilot (Passenger)
 {Passenger Drivers (All Passenger Trains & EMU services)}
 PB-2 Rs.9300-34800 with GP Rs.4200 plus Rs.500 special allowance – VIth
 CPC Scale with higher rate of kilometerage allowance)

Loco Pilot (Mail)
 {erstwhile Mail Drivers (Superfast Mail & Express Trains)}
 (PB-2 Rs.9300-34800 with GP Rs.4200 plus Rs.1000 special allowance-
 VIth CPC scale with higher rate of kilometerage allowance)

5. After the implementation of VI CPC pay scales, all the above three posts carry the same Grade Pay i.e. Rs 4,200/. Since the Grade Pay of the post of Loco Pilot (Passenger) which is the promotional post as far as the applicants are concerned, is Rs 4,200/- they are not entitled for Grade Pay of Rs 4,600/. However, due to wrong interpretation of rules, they were granted financial upgradation in GP Rs 4,600/- vide Annexure A-8, which is not in conformity with the extant rules. The applicants were issued with the Show cause notices vide impugned Annexure A-2 to A-4. The respondents have also contended that in view of the categorical findings of the Apex Court in JT (1998) 3 SCC 216 and other cases, the present OA is not maintainable.

6. It has also been stated in the reply that the order dated 22-02-2012 in OA No. 561 of 2011 and similar other OAs and order dated 11-04-2012 in RA No. 16 of 2012, have already been stayed by the High Court of

✓

Kerala vide order dated 04-01-2013. Annexures A-2 to A-4 are only show cause notices for rectifying the anomaly in grant of financial upgradations with GP Rs 4600/- and recovery of overpayment is totally misconceived as these were issued keeping in view Tribunal's order dated 22-11-2011 in OA No. 973 of 2011.

7. Counsel for the applicant submitted that the case is identical to that in OA No. 561 of 2011 which was allowed by the Tribunal but the order of the Tribunal is under challenge before the High Court and the High Court has granted stay against the order. A stay would mean only a suspended animation and as such, the order passed by the Tribunal in the said OA could well be adopted in the present case in view of the fact that the facts are identical and the reliefs sought for are also identical. Of course, in the other case, there was no show cause notice issued, but recovery effected, while in the instant case, the show cause notice has been issued. The counsel further submitted that it is to be noted that the grant of financial upgradation to the applicants in this case is at a time when the OA No. 561 of 2011 was pending. The counsel thus submitted that it would be appropriate that the same order as in OA No. 561 of 2011 be passed in this case as well and make the same subject to the outcome of the writ petition pending before the High Court. In all expectation, the respondents may file a writ petition challenging the order that may be passed by the Tribunal in this OA.

8. Senior Counsel for the Railways succinctly brought the facts as to the difference in the running allowances available to the Loco Pilot Goods, Loco Pilot Passengers and Loco Pilot Mail/Express Trains and stated that

in so far as pay scales are concerned, including the GP, there is no difference and the MACP is based on the pay scales and not the other allowances. As such, the applicants are not entitled to any higher Grade pay than Rs 4,600/- . The senior counsel further argued that in case the applicants are permitted to enjoy the unintended financial benefits by way of financial upgradations, at a later point of time on the basis of the High Court Judgment, if recovery is to be effected, it would not be possible for the Railways to recover the same, the amounts being much larger and the applicants could not be in a position to repay. On the other hand, if the writ petition is dismissed by the High Court, the Railways would be in a position to make available the amounts due to the applicants.

9. Arguments were heard and documents perused. The case of the applicants, admittedly, is identical to that of in OA No. 561 of 2011 the order in which is under challenge before the High Court and stay operates. There, it has been stated that the recovery has been withheld and the same has not been effected. In the instant case, no reduction has taken place nor amount to be recovered worked out. The case stands at the stage of only show cause notice.

10. In view of the fact that the High Court is seized of the issue and a stay operates, the most appropriate course is that the respondents be directed to act on the basis of Annexure A-1 order by revising the Grade pay of the applicants from Rs 4,600 to Rs 4,200 but no recovery should be effected in respect of the excess payments made. The applicants shall render an undertaking that in the event of the High Court's order going against the employees, the excess amount would be refunded to the

Railways. The Railways on their part shall ensure payment of the amounts due to the applicants in case they do not succeed in the writ petition before the High Court.

11. The OA is disposed of in the above terms. No costs.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

SV



Dr.K.B.S.RAJAN
JUDICIAL MEMBER