

**Central Administrative Tribunal
Ernakulam Bench**

OA No.10/2010

Ernakulam, this the *02nd* day of *Sept*, 2011

CORAM

Hon'ble Mr.Justice P.R.Raman, Judicial Member

Hon'ble Mr.K.George Joseph, Administrative Member

K.M.Mariamamma, aged 56 years
W/o P.V.Mathukutty
Office Superintendent Gr.II
Southern Railway/Electrical Branch
Office of the Divisional Electrical Engineer (General)
Palghat Division/Palghat
Residing at "Bless Den", No.18/660
Thottingal, Mythrinagar
Near District Police Office, Palghat.

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India rep. by
the General Manager, Southern Railway
Headquarters Office, Park Town P.O.
Chennai-3.
2. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

Respondents

(By Advocate: Mr.Varghese John for Mr.Thomas Mathew
Nellimootil)

The Original Application having been heard on 18.08.2011, this
Tribunal on *02.09.11*.....delivered the following:

ORDER

By Hon'ble Mr.K.George Joseph, Member (A)

Aggrieved by the rejection of the claim for grant of the third financial up-gradation under the Modified Assured Career Progression Scheme (MACPS), the applicant has filed this OA for a direction to the respondents to grant her the third financial up-gradation with all consequential benefits of arrears of pay and allowances:



2. The applicant joined as Junior Clerk on 10.05.1976 in the Hubli (UBL) Division of the South Central Railway. She was promoted as Senior Clerk on 07.01.1980. She had applied for a transfer to Southern Railway on reversion as Junior Clerk. She joined the Palghat Division on 15.06.1983 subject to the condition that she would rank junior most in the seniority list of Junior Clerks. Thereafter, she was promoted as Senior Clerk on 25.4.1988 and as Head Clerk w.e.f. 18.08.1999 and further promoted as Office Superintendent Gr.II w.e.f. 05.10.2007. The effect of promotion as Office Superintendent Gr.II was nullified on account of merger of the pre-revised scales of pay of Rs.5000-8000 and Rs.5500-9000/- with retrospective effect from 01.01.2006 and grant of commonly placed pay band of Rs.9,300-34,000/- with Grade Pay of Rs.4200/-. Under the MACPS, a Government servant would get 3 financial up-gradations at intervals of 10/20/30 years of continuous regular service. The applicant was denied consideration for grant of the 3rd financial up-gradation w.e.f. 01.09.2008. She submitted a representation which was rejected vide Annexure-A1 order. Hence this OA.

3. The applicant submits that the contention in Annexure-A1 order that she had enjoyed three promotions was untrue. She had enjoyed only two promotions because the promotion granted in the Hubli Division and later in the Palghat Division initially were only to the same post carrying the same scale of pay, pay band and grade pay. Para 24 of Annexure-A2 has no application to the facts and circumstances of the case, but will apply to cases of reversion on request only to a post in the same cadre and not otherwise. It has to be read with para 5 of Annexure-A2. Therefore, Annexure-A1 is not made with due and proper application of mind.

4. In the reply statement filed on behalf of the respondents, it was submitted that in para 24 of Annexure-2 Scheme, it is clearly specified that "in case an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial up-gradations on completion of 20/30 years

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of regular service under the MACPS, as the case may be, from the date of initial appointment to the post in the new organization". In as much as she has earned three promotions in her railway service, no financial up-gradation under the MACPS is admissible to her on the plea that she had spent 10 years of continuous service on the same grade pay. On transfer to the Palghat Division as Junior Clerk she was given protection of pay in the grade of Sr. Clerk. At the time of promotion as Sr. Clerk in Palghat Division on 25.04.1988, her pay was fixed as per the provisions under Rule 1313 (i)(a) (1)(FR-22) R-II with reference to the protected pay.

5. We have heard Mr.T.C.Govindaswamy, learned counsel for the applicant and Mr. Varghese John for Mr.Thomas Mathew Nellimoottil, learned ACGSC appearing for the respondents and perused the records.

6. The applicant was promoted first as Senior Clerk in the Hubli Division on 07.01.1980. She was transferred to the Southern Railway as Junior Clerk on reversion on 11.06.1983 subject to the condition that she would rank junior most in the seniority list of Junior Clerks with protection of pay. She got second promotion again to the cadre of Senior Clerk on 25.04.1988 in the new organization. Her third promotion was as Head Clerk on 18.08.1999 and the fourth was as Office Superintendent with effect from 05.10.2007. Consequent upon implementation of the new pay scales from 01.01.2006 the pay scale of Head Clerk of Rs.5,500-8,000/- and that of the Office Supdt Gr.II of Rs.5500-9000 got merged into a single pay band of Rs.9300-34800 with grade pay of Rs.4200/-. In the result, her fourth promotion became ineffective to the extent of not having a higher grade. The question of ignoring the promotion under MACPS in terms of para 5 of Annexure to the letter dated 10.06.2009 at Annexure-A2 does not arise in respect of the fourth promotion because only three financial up-gradations, when promotions are not available for want of post, are provided under the MACPS. The applicant had availed of a transfer from Hubli Division of the South Central Railway to the Palghat Division of the Southern Railway on reversion from the post of Sr.

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Clerk to that of Junior Clerk. She had applied for this transfer on her own volition fully knowing that she was losing her promotion as Sr. Clerk and seniority in the cadre of Jr. Clerk, though with protection of pay, for the sake of a convenient place of posting.

7. Para 24 of Annexure-A2 Scheme reads as under:-

"24. In case, an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial up gradations on competition of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization."

8. As per the MACPS, the applicant is entitled for second and third financial up-gradations in the Palghat Division on completion of 20/30 years of regular service but as she has already earned four promotions including the first promotion in Hubli Division, she is not entitled for further financial up-gradation under the MACP Scheme. Financial up-gradation is granted under the MACPS on competition of 10/20/30 years of continuous regular service in the same grade of pay only in the absence of promotion, the employee being eligible for promotion, subject to the limit of three financial up-gradations. Even if the fourth promotion of the applicant as Office Supdt.Gr.II is ignored, she has earned the second promotion as Senior Clerk on 25.04.88 and the third promotion as Head Clerk on 18.08.1999 and she surrendered her first promotion in Hubli as Sr. Clerk on 07.01.1980 for inter-divisional transfer. Having got two effective promotions and one surrendered promotion, in terms of Para 24 of the Annexure to the Annexure-A2 MACPS, the applicant, as rightly held by the respondents, is not eligible for any financial upgradation. .

9. Devoid of merits, the OA is dismissed with no order as to costs.


(K. George Joseph)

Administrative Member


(Justice P.R. Raman)

Judicial Member