

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.94/2011

Dated this the // th day of November, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

- 1 M.Hussain, S/o Moideen Kutty
(Retd. Assistant Guard/Southern Railway,
Erode Railway Station), R/o Periyajadam House,
Thanave, Olavakkode - 678002, Palakkad.
- 2 M.Subramanian, S/o M.Krishnan
(Retd. Assistant Guard/Southern Railway,
Erode Railway Station), R/o Manichi Thodiyil House
Mannanur P.O, Palakkad - 678642.

...Applicants

(Mr.T.C.G.Swamy, Advocate)

Vs.

- 1 Union of India represented by the General Manager
Southern Railway, Headquarters Office, Park Town
Chennai-3.
- 2 The Divisional Personnel Officer, Southern Railway,
Salem Division, Salem.

...Respondents

(By Advocate Mrs.K.Giri ja)

The application having been heard on 20.10.2011 and the Tribunal held as under:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants, retired Assistant Guards of Salem Division, are aggrieved by the denial of the benefit of 2nd and 3rd financial upgradation and granting a lower rate composite transfer grant on account of their retirement.

- 2 The facts in brief are as follows. The applicants were initially

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appointed as Traffic Porters in Palakkad Division of Southern Railway. They were further promoted as Pointsman 'B', Pointsman 'A' w.e.f 1.8.1982. While so, they were selected and promoted as Assistant Guards on 20.12.1993 and 25.5.2000 respectively. With effect from 1.1.2006 the scale of pay of Traffic Porter and Pointsman 'B' was merged with a common replacement pay band of Rs.5200-20200 with GP Rs.1800. Similarly, the scale of pay of Pointsman 'A' and Assistant Guards were replaced by a common pay band Rs.5200-20200 with GP 1900. Thus, according to the applicant they were granted only one financial upgradation as on 1.1.2006. Therefore, they should have been granted the benefit of the 2nd financial upgradation under the Assured Career Progression Scheme (ACP) on 1.1.2006. Thereafter, on accepting the recommendations of the 6th CPC, a modified assured career progression Scheme (MACP) was introduced and it came into force w.e.f 1.9.2008 (Annx.A1). Accordingly the applicants who had voluntarily retired w.e.f 4.9.2008 and put in more than 30 years of service as on date are entitled to be considered and granted two financial upgradations effective from 1.9.2008. The Railway administration has to suo-motu taken up the matter and grant the same to the serving and retired eligible employees. Since the applicants did not get such benefits they submitted Annx.A2 representations to the 2nd respondent on 8.3.2010. Thereafter the applicants sought information under RTI Act to which the respondent by letter dated 22.6.2010 informed that the applicant is eligible to be granted the financial upgradation and the work is under process. They further submitted that as per rules, grant of composite transfer grant to an employee retiring from service, the amount payable would be an amount equal to the last pay drawn. Rule 903 of the Running Allowance Rules, 30% of the basic pay of the running staff shall be treated as pay for the pay element of the running allowance. Therefore, the composite transfer to a retiring running staff would be basic pay plus 30% of the basic pay. In the case of the applicants the 30% pay element of running allowance was not

taken in to account and on the contrary only basic pay was paid. The applicants represented to the 2nd respondent on 26.10.2009 and on 17.2.2010. He sought information under RTI Act to which his claim was rejected. The applicant has produced Annx.A9, Railway Board order RBE No.193 of 2008 dated 1.12.2008 in support of his contention.

3 The respondents contested the OA by filing their reply. In the reply it is submitted that consequent upon the implementation of the 6th Pay Commission due to merger of pay scale of Traffic Porter and Pointsman-B in the Grade pay Rs.1800 and Pointsman-A and Assistant Guard in Grade Pay 1900, the three promotions the applicants got were treated as one promotion i.e. From Grade Pay Rs.1800 to Rs.1900 during their entire service of more than 30 years. Hence they were granted 2nd and 3rd financial upgradation under MACP w.e.f 1.9.2008 and pay of the 1st applicant was fixed at Rs.11770 + 2000 and Rs.12190 + 2400 w.e.f 1.9.2008 and the 2nd applicant's pay was fixed at Rs.11200 + 2000 and Rs.11600+2400 w.e.f 1.9.2008 by order dated 25.5.2011. It is further submitted that on the basis of sanction of MACP to the applicants the difference in the settlement dues to the applicants were drawn and revised Pension Payment orders were issued as Annx.R2 and R3 respectively. It is also submitted that since the applicants were working as Running Staff (Assistant Guard) at the time of their voluntary retirement, in accordance with as per the provisions of para 924 of IREM Vo..I, 55% of the basis pay of the running staff shall be taken into account in the case of running staff retired/retiring on or after 1.4.79 and 30% of the basic pay shall be reckoned as pay for entitlement to Passes and PTOs and certain other specified purposes declared therein. As regards to Composite Transfer Grant, it is submitted that as per Rule 1643(D)(ii) of Indian Railway Establishment Code Vol.II (1987 Edition) the Transfer Grant is to be paid in terms of Basic Pay. Moreover, as per the Railway Board's letter dated 1.12.2008, Annx.A1, the Grade Pay for determining the transfer grant entitlement is as indicated in Railway Services (Revised Pay)

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Rules, 2008. Also the term 'Pay' for the purpose of these orders refers to basic pay as defined in Rule 3(8) of the Railway Services (Revised Pay) Rules, 2008 and includes non-practicing allowance if any admissible in addition. Thus, according to the respondents Rule 3(8) of the Railway Services (Revised Pay) Rules, 2008, Basic Pay in the revised pay structure means the pay drawn in the prescribed pay band plus the applicable grade pay but does not include any other type of pay like special pay, etc. Thus there is no provision in the Running Allowance Rules to include 30% of basic pay as pay for the purpose of granting of Composite Transfer Grant to the running staff. Hence running staff are entitled for payment of Composite Transfer Grant based on their Basic Pay only i.e Pay in the Pay Band plus relevant Grade Pay. It is also averred that under the Heading TA Entitlement on Retirement, Composite Transfer Grant on retirement shall be computed as equal to one month's pay last drawn in the prescribed Pay Band plus the applicable Grade Pay. Thus the applicants were paid the Composite Transfer Grant as per rules. As regards the 2nd financial up-gradation on 1.1.2006, it is submitted that as per the erstwhile ACP Scheme financial upgradation will be available in the next higher grade of pay when an employee complete 12 years of service in the same grade and not more than two financial upgradation is given in the entire service. Both the applicants had earned three promotions as Pointsman-B, Pointsman-A and Assistant Guard therefore they are not entitled for any benefit under the erstwhile ACP Scheme.

4 Heard the learned counsel for the parties and perused the record.

5 During the course of hearing the counsel for the applicants fairly conceded that his pay, granting MACP was refixed and differences in gratuity, commuted value of pension and encashment of leave worked out. Revised P.P.Os were also issued. Therefore, he has confined his prayer for grant of any difference in eligible composite transfer grant payable as per VI CPC and payment of 9% interest for the period from 1.10.2009 to the revised date of full and final payment of all pay/retiral benefits. According

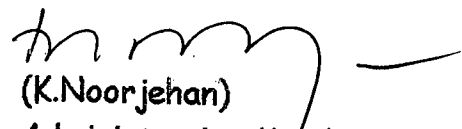
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to the counsel, Railway Board Circular No.101/2009 regarding introduction of MACP was issued on 10.6.2009 vide Annx.A1. But the respondents did not take any proactive action to refix their pay giving MACP benefit and issue revised PPO. It was done only 6 months after, the applicant filed the OA. Therefore, they are entitled to interest at least from 1.1.2010 if not from 10.6.2009. The undisputed fact remains that many clarifications were sought on implementation of MACP. The serving employees were given preference and their case settled much earlier while the retired personnel like the applicants were compelled to seek remedies before this Tribunal. Ofcourse, there is some force in the contention of the applicants too.

6 In the facts and circumstances of the case, I direct the respondents to pay an interest of 6% on all the entitled dues paid by counting the period from 1.1.2010 to the date of payment. The O.A is disposed of as above. No costs.

Dated the 11th November 2011

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(K.Noorjehan)
Administrative Member.