

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 99/2013

friday, this the 22nd day of January 2016

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

K. Shaji George, S/o. K.P. George,
Station Master/III, Soughern Railway,
Kuttipuram. Residing at Kusumapuri,
Sreemoolanagaram (P.O),
Ernakulam – 683 580.

...Applicant

(By Advocate M/s. Varkey & Martin)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Chennai – 600 003.
2. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division,
Palghat – 678 002. ...Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 14th December 2015, the Tribunal on 22nd January 2016 delivered the following :

ORDER

HON'BLE Mrs.P. GOPINATH, ADMINISTRATIVE MEMBER

The applicant was appointed as Assistant Station Master (ASM) in scale Rs. 330-560 in the direct entry grade of Station Master Cadre on 15.01.1982 in Hubli Division of South Central Railway. He applied for a transfer to Trivandrum Division of Southern Railway. In the meanwhile, he was promoted as Station Master Grade III on 28.12.1984. Due to non-availability of vacancy in Trivandrum or Palghat Division, the applicant was



offered a transfer to Tiruchirappalli Division of Southern Railway with a promise to send him to Trivandrum or Palghat Division later. Accordingly, the applicant joined Tiruchirappalli Division on 30.03.1984 and was absorbed in the lower grade of Rs. 330-560/1200-2040 as ASM. The applicant applied for a fresh transfer to Palghat Division, which materialized on 31.01.1996 and he was ranked the junior most ASM in scale Rs. 1200-2040/4500-7000 in Palghat Division. The applicant was promoted as Station Master Grade III in scale of Rs. 5000-8000 on 15.09.2001. The said pay scale was revised as PB-2 Rs. 9300-34800+GP 4200 with effect from 01.01.2006. He did not get any other promotion or upgradation under the erstwhile ACP Scheme, despite 24 years of service, due to the aforementioned transfers. While so, the applicant came across the Modified Assured Career Progression Scheme (MACPS) for Railway Employees circulated under Railway Board's letter No. PCV/2009/ACP/2 dated 10.06.2009. As per Annexure A-1(a) MACPS, three financial upgradations counted from the entry grade on completion of 10, 20 and 30 years of service is assured. Further, whenever any person spent 10 years continuously in the same grade pay, an upgradation is admissible.

2. As per para 24 of Annexure A-1(a) Railway Board O.M on MACPS, in case an employee after getting promotion/ACP seeks unilateral transfer to a lower post or lower scale, he will be entitled only for second and third financial upgradation on completion of 20/30 years of regular service under MACPS, as the case may be, from the date of his initial appointment to the post in the new organization. However, this restriction was done away with vide DoPT O.Ms No. 35034/3/2008-Estt (D) (Vol. II) dated 01.11.2010 and 04.10.2012. On the basis of Annexures A-1(a) MACPS, A-1 (b) and A-1(c)



.3.

clarifications, the applicant made several representations seeking the 2nd and 3rd financial upgradations, the last one being on 14.03.2012. In response to Annexure A-2, the applicant was granted 3rd MACP with effect from 01.07.2012 raising his grade pay to Rs. 4600/-. Having completed 30 years of service with only one promotion on hand, the applicant is eligible for one more upgradation with a grade pay of Rs. 4800/- in view of the provisions in Annexure-A1 (a) to A-1 (c) orders. The main relief sought by the applicant is :

“To declare that he is entitled to be granted MACP-II with Grade Pay 4600 with effect from 01.09.2008, MACP-III with Grade Pay 4800 with effect from 15.01.2012 and consequential fixation of band pay and arrears and direct the respondents accordingly.”

3. Respondents contest the relief and submit that the applicant was appointed as Assistant Station Master in scale Rs. 330-560 in Hubli Division with effect from 15.01.1982. While working thereon, he was promoted to scale Rs. 425-640 during the year January, 1985. While continuing as such he was transferred on request to Tiruchirappalli Division on Inter Railway One Way Transfer as Assistant Station Master in scale Rs. 1200-2040 with effect from 30.3.1994 on bottom seniority. The applicant had again applied for Inter Divisional Transfer to Palghat Division and was transferred as Assistant Station Master in scale Rs. 1200-2040 on bottom seniority. He joined in Palghat Division on 13.02.1996.

3.1 After joining in Palghat Division the applicant was promoted as Station Master Grade III in scale Rs. 5000-8000 with effect from 15.09.2001. After the implementation of VIth Pay Commission Report, the pay scale of Assistant Station Master was fixed in Pay Band -I Rs. 5200-20200 with



Grade Pay of Rs. 2800/-, Station Master in Pay Band – II Rs. 9300-34800/- with Grade Pay Rs. 4200/- and Station Superintendent in Pay Band II Rs. 9300-34800 with Grade Pay Rs. 4600/-. The normal promotion channel of the cadre in which the applicant is working is Station Superintendent which is in Pay Band-2 Rs. 9300-34800 with Grade Pay Rs. 4600/- and the normal promotion channel ends there. The applicant has already been extended the financial upgradation benefits of Grade Pay Rs. 4600/- through Annexure A-3 order on 30.09.2012.

3.2 Therefore, before completion of 20 years of regular service the applicant has got two promotions the first in Hubli in 1985 and the second as above and hence he becomes entitled for the grant of MACP-III only on completion of 30 years in Pay Band-2 Rs. 9300-34800 with Grade Pay Rs. 4600/- which is on 15.01.2012 or on completion of 10 years service in the same Grade Pay Rs. 4200/- whichever is earlier. The applicant was completing 10 years of service in Grade Pay Rs. 4200/- on 15.09.2011, but since he was undergoing a penalty of withholding of increment from 01.07.2011 for a period of one year and therefore the financial upgradation benefits has been extended to the applicant, on completion of penalty, with effect from 01.07.2012. Annexure A-1(a) letter specifies that an employee who seeks unilateral transfer to a lower post/scale after getting a promotion will be entitled only for 2nd and 3rd financial upgradation under MACP Scheme taking into consideration the date of initial appointment to the post in the new organization. It was submitted that Annexure A-1(c) has not been circulated by Railway Board while considering and extending the MACP benefits by Annexure A-3 order. It was circulated by Railway Board only on



31.01.2013. As per Annexure R-1 letter it is clarified that whenever an official in accordance with the terms and conditions of transfer on own volition to a lower post, is reverted to the lower post/grade from the promoted post/grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office. In respect of those cases where benefit of pay protection has been allowed at the time of unilateral transfer to other organization/unit and thus the employee had carried the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of MACP Scheme. Since the applicant was drawing Rs. 1760/- in the promoted post of Station Master in scale of Rs. 1400-2300 in Hubli as on the date of relief on 23.03.1994 and this pay was protected on joining in Tiruchirappalli Division on 30.03.1994 on reversion as Assistant Station Master which is a lower grade post, and hence this promotion is to be reckoned for the MACP Scheme. A copy of the relevant page of the applicant's Service Register showing the pay protection is produced as Annexure R-2. The applicant had earned promotion as Station Master in the old Division and the promotion was protected. Hence the promotion earned by the applicant in pre-transfer Division which was protected in post-transfer division will have to be reckoned for the purpose of MACP Scheme. Therefore, the applicant is not entitled for the 1st MACP. However, he is entitled for the grant of 2nd and 3rd MACP benefits on completion of 20 and 30 years of service in the immediate next higher grade pay in the hierarchy of revised Pay Bands as per the VIth CPC Pay Scales if no promotion is availed by the employee in the meantime.



4. The contention of the applicant is that the promotion granted to him on 28.12.1984 and lost on account of inter divisional transfer is to be ignored for grant of MACP. Applicant draws attention to Annexure-A1(c) DOP&T order which was circulated as RBE 8/2013 dated 31.1.2013 with a deviation. Respondents drew our attention to para 2(1) of the above order which states that wherever an official, in accordance with terms and condition of transfer on own volition to a lower post, is reverted to the lower grade/post on the promoted post/grade before being relieved for the new organization/office, such past promotion in the previous organization/office and where benefit of pay protection have been allowed at the time of unilateral transfer to other organization and thus the employee had carried the financial benefit of promotion earned in previous organization, the same has to be reckoned for the purpose of MACP Scheme. This according to applicant is a deviation from the DOP&T circular. DOP&T while circulating the MACP O.M in para 9 had stated that any interpretation/clarification of doubt as to the scope and meaning of the provision of MACP Scheme shall be given by the DOP&T. The respondents neither in the reply statement nor in the Annexure-R1 indicate that this mandatory consultation with DOP&T was made before making this deviation. However, the respondents state that Rule 123 of the Indian Railway Establishment Code Vol.I authorises full powers to the Railway Board to make rules of general application to Group C & D railway servants under their control which has statutory force. This applies to Annexure-A1 (a) order introducing MACP Scheme for railway employees. Annexure-R1 clarification has been issued by Railway Board pursuant to the discussions in the meeting of National Advisory Committee held on 17.7.2012 and 27.7.2012 with the staff side. The respondents aver that



applicant has not challenged any of the instructions issued by the Railway Board on grant of MACP benefits and the same has also not been set aside by any court of law and hence have statutory force.

5. The applicant was promoted as Station Master on 28.12.1984 from Assistant Station Master in scale Rs.330-560 to Rs.425-640 which was upgraded by IV CPC to (SM) Grade III to scale Rs.1400-2300 in Hubli Division. Though the applicant was reverted as ASM in scale Rs.1200-2040 on request transfer to Trichy on 30.4.1994, he was granted protection of last pay drawn in the promoted post of SM Grade III in scale Rs.1400-2300. He was also granted annual increment of Rs.40 from 1.1.1994 in scale Rs.1400-2300 up to 23.3.1994 when he was transferred from Hubli to Trichy. On 1.1.1995 applicant was drawing pay in scale Rs.1200-2040 as per table produced by respondents in para 4 of reply. But on 1.1.1996 on implementation of V CPC applicant was given replacement scale of Rs.4500-7000 which was the scale of SM Grade III of Rs.1400-2300 to which he was promoted while in Hubli. On joining Palghat Division he was promoted as SM Grade III in scale Rs.5000-8000 on 15.9.2001. Respondents state that since applicant was drawing Rs.6250/- in scale Rs.4500-7000 at the time of this promotion, his pay on 15.9.2001 was fixed at Rs.6350/- in scale Rs.5000-8000. The respondents also state that the equivalent scale in VI CPC of scale Rs.5000-8000 is Pay Band 2 Rs.9300-34800 with GP Rs.4200/-. It is not clarified which of the two scales Rs.4500-7000 or Rs.5000-8000 was the equivalent of SM Grade III scale Rs.1400-2300 to which applicant was promoted as SM Grade III in Hubli in 1985 to assess the respondents' averment of pay protection on request transfer.



6. In the case of the applicant the pay drawn by him in the promoted post in pre-transfer division is protected even though he came on reversion to lower grade as Assistant Station Master from Station Master Grade-III which is apparent from Annexure R-2. Learned counsel for the respondents also states that as per Rule 123 of the Indian Railway Establishment Code, Volume I full powers are given to the Railway Board to make Rules of general application to Group C & D railway servants under their control which has statutory force. Therefore, Annexure A-1 (a) order introducing the Modified Assured Career Progression Scheme to Railway employees and subsequent clarifications issued by Railway Board on the subject have statutory force. Annexure R-1 clarifications have been issued by Railway Board pursuant to the discussions in the meetings of National Advisory Committee held on 17.07.2012 and 27.07.2012 with the Staff side and with the concurrence of the Finance Directorate of the Ministry of Railways based on the authority of Annexure A-1(c). Therefore, these clarifications cannot be termed as "unauthorized clarifications" as contended by the applicant.

7. Annexure R-1 to R-3 order dated 31.01.2013 states

".....wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower Post/Grade from the promoted Post/Grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office. In respect of those cases where benefit of pay protection have been allowed at the time of unilateral transfer to other organization/unit and thus the employee had carried the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of MACP Scheme."

8. Attention of the Bench was drawn to para 5 and 24 of Annexure A-1(a) O.M of Railway Board MACP letter No. 101/2009 dated 10.06.2009 as follows :



"5. Promotions earned/up-gradations granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales /up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradations under Modified ACPS.

24. In case, an employee after getting promotion/ACP seeks unilateral transfer to a lower post or lower scale, he will be entitled only for second and third finance up-gradations on completion 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."

The above clarification appears in Railway Board MACP letter dated 10.06.2009[Annexure A-1 (a)].

9. Applicant's counsel draws attention to para 9 of DOP&T O.M No. 35034/3/2008-Estt. (D) dated 19.05.2009 on the MACP Scheme which states that any interpretation/clarification of doubt as to the scope of meaning of the provisions of the MACP Scheme shall be given by the establishment-D Division of DoP&T. He also draws attention to para 2(13) of DoP&T O.M. No. 35034/3/2008-Estt. D Vol. II dated 04.10.2012 wherein it has been clarified that whenever an official on his own volition seeks transfer to a lower post and is reverted to the lower post/grade from the promoted post/grade before being relieved for the new office, such past promotion in the previous office, will be ignored for the purpose of MACP in the new office. Respondent brings to our notice that the applicant was appointed as Assistant Station Master in Hubli on 15.01.1982 in pay scale Rs. 330-560. He was promoted as Station Master Grade III in scale 5000-8000 on 15.09.2001. He is entitled for 3rd MACP on 01.07.2012, though due in 2011, as he was undergoing the punishment of withholding of increment for one year. The applicant disputes the pay fixation/revision adduced in para 4 of reply statement for period beyond 5.4.1993. He also claims that



Annexure-R6 was not issued to him and any arrears accruing to him from revision of pay from 1.1.1996 to 1.7.2012 as shown in the Annexure was not paid to him.

10. Be that as it may, the Railway Board vide Annexure-A5 O.M modifies para 2(i) of Board letter of even number dated 31.1.2013 as follows thereby conforming to the DOP&T orders :

“.....wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower post/grade from the promoted post/grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office”.

11. The applicant in the O.A had been transferred to a lower post and was in scale of pay Rs.4500-7000 on 1.1.1996 as shown in para 4 of respondents reply. This is borne out by the fact that the applicant on promotion to SM Grade III on 15.9.2001 is given the higher pay scale of Rs.5000-8000 as shown in para 4 of respondents' reply statement. Therefore, the prayer in the O.A for grant of 2nd MACP with GP Rs.4600/- with effect from 1.9.2008 and 3rd MACP with GP Rs.4800/- with effect from 15.1.2012 is allowed. Consequential benefits arising therefrom shall be granted within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 22nd day of January 2016)


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER