

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORDER-SHEET**

**ORDERS OF THE TRIBUNAL**

05/03/2014

O.A. No.472/2010

Mr. C.B. Sharma, Counsel for the applicant.

Mr. Indresh Sharma, Counsel for the respondents.

Heard the learned counsel for the parties.

Order reserved.

M. Nagarajan  
(M. Nagarajan)  
Judicial Member

Anil Kumar  
(Anil Kumar)  
Administrative Member

✓

12.03.2014

Order pronounced today in the open court  
by the aforesaid Bench.

12/3/14

For C.O

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

Draft/ pre-delivery order in O.A. No. 472/2010 (Hazari Lal Meena Vs UOI) is respectfully submitted for approval.

*M. Nagarajan*  
(M. Nagarajan)  
Judicial Member

Hon'ble Shri Anil Kumar,  
Administrative Member

*I agree.*  
*Anil Kumar*  
I

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 472/2010**

**Order reserved on : 05/03/2014**

**Order pronounced on : 12./3/2014**

**Hon'ble Shri Anil Kumar, Administrative Member  
Hon'ble Shri M. Nagarajan, Judicial Member**

Hazari Lal Meena S/o Shri Narayan Meena, aged about 52 years, presently posted as Head Clerk, Office of Senior Section Engineer (P. Way) South, N.W.R. Jaipur, R/o Village Pachnda, Post Shivdaspura, District Jaipur.

.....Applicant

(By Advocate : Shri C.B. Sharma)

**V E R S U S**

1. Union of India, through the General Manager, North-Western Railway, Headquarter office, Opposite Railway Hospital, Jaipur.
2. The Divisional Railway Manager, Jaipur Division, Power House Road, Jaipur.
3. The Senior Divisional Engineer (South), Divisional Office, Power House Road, Jaipur.

.....Respondents

(By advocate : Shri Indresh Sharma)

**O R D E R**

**Per : Shri M. Nagarajan, Judicial Member**

The applicant has presented this O.A. exhibiting his grievance as to denial of financial upgradation provided under the Modified Assured Career Progression Scheme (hereinafter

*— T. J. —*

called as MACP scheme). The applicant claims that in view of the fact that he has completed 20 years of service as per the provisions contained in the MACP scheme, he is entitled for the benefit of financial upgradation.

2. In support of his claim, the facts pleaded by the applicant are that he was appointed on 26/05/1989 and completed 20 years of service on 25/05/2009, that as on 25/05/2009, he was in grade pay of Rs. 4200/-. He is entitled for grant of the benefit under the MACP scheme for having completed 20 years of service as on 25/05/2009. According to him, on account of introduction of said MACP scheme, the respondents should have granted him, the grade pay of Rs. 4600/- but the same was not granted by the respondents, which results in loss of about Rs. 1500/- per month.

A charge memo dated 26/05/2009 was served upon him on 30/05/2009 and as on the date on which he completed 20 years of service i.e. 25/05/2009, neither any charge memo was served on him nor any disciplinary proceedings were pending against him. He has challenged the said charge memo dated 25/05/2009 before this Tribunal in O.A. No. 131/2010 and the same is still pending. Since the year 2001, he is working as Head Clerk and his juniors are receiving more salary than him and despite this fact, the respondents have denied the benefit under the said MACP scheme on completion of 20 years of service. The enquiry,

TR. U. OF P.

initiated against him by serving the said charge memo dated 26/05/2009, has not been concluded in spite of the fact that Railway Board by its letter dated 03/04/1986 stipulates that the disciplinary proceedings initiated against a Railway servant should be finalized within 150 days. Narrating these facts, he has been making several requests for grant of the benefits, but there was no response and ultimately, he issued a notice dated 27/04/2010 through his counsel calling upon the respondents to extend the benefit, failing which he will be constrained to initiate appropriate legal proceedings and despite receipt of said notice dated 27/04/2010, the respondents have not granted the benefit under the MACP scheme. Hence, he presented this O.A. seeking a direction to the respondents to grant financial upgradation on completion of 20 years of regular service as provided under the MACP scheme.

3. The respondents have filed their reply. It is specifically contended therein that extension of the benefit of financial upgradation under the said scheme on completion of 20 years of regular service in a particular grade of pay is not an absolute one, but the same is subject to fulfillment of certain terms and conditions. While considering the case of the applicant for grant of benefit under said scheme on his completion of 20 years of regular service, it is found that a charge memo dated 26/05/2009 was served on him and hence, the denial of benefit under said MACP scheme to the applicant on completion of 20 years of regular service can not

be faulted upon and as such applicant is not entitled for any relief sought by the applicant in the O.A.

4. Heard the learned counsel for the applicant Shri C.B. Sharma and Shri Indresh Sharma, counsel for the respondents. Perused the pleadings and documents annexed to the pleadings of both the parties.

5. Shri C.B. Sharma, learned counsel for the applicant by inviting our attention to the provisions contained in the MACP scheme argued that respondents have not disputed the fact that as on 25/05/2009, the applicant has completed 20 years of his service and that he was in grade pay of Rs. 4200/- and as such the applicant is entitled for grant of benefit under the said scheme on completion of 20 years of regular service.

6. The learned counsel for the applicant further argued that the fact that a charge memo dated 26/05/2009 was issued and served on the applicant can not be an impediment for granting the benefit under said scheme. He submitted that the charge memo itself is dated 26/05/2009 and the same was served on him only on 30/05/2009. He argued that as on the date which the applicant completed 20 years of service i.e. 25/05/2009, neither the applicant was in receipt of any charge memo nor he was facing any departmental inquiry. He contended that any departmental inquiry initiated subsequent to the date of completion of 20 years regular service can not be a reason at all for denying of the benefit

under the said scheme. He further argued that in view of the fact that the applicant completed 20 years of regular service as on 25/05/2009 and the charge memo dated 26/05/2009 came to be served on 30/05/2009, the respondents can not deny the extension of the benefit under the MACP scheme.

7. The learned counsel for the applicant further argued that though as per Railway Board's letter dated 03/04/1986, an inquiry initiated against a Railway servant should be concluded within 150 days, the same was not concluded and as such the pendency of the inquiry initiated against him by issuing charge memo dated 26/05/2009 can not be assigned as a reason for non-extension of the benefit under the scheme.

8. Per contra, the learned counsel for the respondents Shri Indresh Sharma submitted that the respondents did not dispute the fact that the applicant has completed 20 years of regular service on 25/05/2009 and that as per the MACP scheme, he is entitled for grant of benefit under MACP scheme, on his completion of 20 years of regular service. But, contended that the mere fact that the applicant has completed 20 years of service on 25/05/2009, itself does not entitle him for the benefit under the said scheme since, he did not fulfill all the eligibility criteria prescribed under the MACP scheme. In support of this contention, he invited our attention to Para 18 of the MACP scheme which reads as under:

—  
—  
—

“18. In the matter of disciplinary/penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 and instructions issued there under.”

9. Upon hearing learned counsel for both the parties, the question that arises for our consideration is “Whether the charge memo dated 26/05/2009 which was served on 30/05/2009 can be a reason for denial of financial upgradation under the MACP scheme?”

10. We have perused Para 18 of the MACP scheme. A reading of Para 18 of the said scheme reveals that the grant of MACP scheme is subject to rules governing normal promotion. As per rules of normal promotion, a government servant has a right to be considered for promotion. In the process of considering the case of Govt. servant for promotion, as on the date of such consideration of if a Govt. servant was already in receipt of a charge memo, in such cases, sealed cover procedure is required to be adopted and the sealed cover will be opened after the conclusion of the departmental inquiry and accord of promotion depends upon the outcome of the inquiry.

11. We are told that the Screening committee constituted for consideration of grant of financial upgradation under the said MACP scheme met subsequent to 10/06/2009. The

—  
R. U. S. P.

applicant himself admits that charge memo dated 25/05/2009 was served upon him on 30/05/2009. Thus it is clear that as on the date on which Screening Committee met i.e. subsequent to 10/06/2009 for considering the case of the officials who were in grade of Rs. 4200/- and who have completed 20 years of regular service, the applicant was already in receipt of the charge memo dated 26/05/2009. As per Para 18 of the MACP scheme grant of benefit under the MACP scheme shall be subject to rules governing normal promotion. The Hon'ble Supreme Court in the case of Union <sup>s</sup> of India vs. K.V. Jankiraman (AIR 1991 SC Page 2010) has held that an employee has no right for promotion and he has only a right to be considered for promotion.

12. No doubt that applicant has completed the 20 year of regular service on 25/05/2009. But such completion of 20 years of regular service on 25/05/2009 is one of the eligibility criteria for considering his case for extension of the benefit under the scheme. As per the scheme, it is not routine that immediately on the next day of completion of 20 years of regular service the financial upgradation shall be extended. On the other hand it is provided therein that granting the benefit is subject to the recommendations of Screening Committee. It is an admitted fact that the Screening Committee met subsequent to 10/06/2009. The applicant himself admits that the charge memo dated 26/05/2009 was served on him on 30/05/2009.

✓

13. On perusal of the letter dated 10/06/2009 (Annexure-A/9), we find that as per the said letter/circular, the Screening Committee is required to meet twice in a year for considering the case of officers who have completed 20 years of regular service. Para 6 of the letter reads as:

“6. In order to prevent undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year – preferably in the first week of January and first week of July of a year for advance processing of the cases maturing in that half. Accordingly, cases maturing during the first-half (April-September) of a particular financial year shall be taken up for consideration by the screening committee meeting in the first week of January. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year.”

14. The scheme itself was introduced in the year 2009, which would be operational w.e.f. 01/01/2008. For the first time all the General Managers Indian Railways were directed to grant financial upgradation under the MACP scheme to Railway Servants through the letter dated 10/06/2009 by the Director, Pay Commission, Railway Board. Immediately, on receipt of the instructions contained in the said letter dated 10/06/2009 the screening committee met. As already observed, as on 10/06/2009, the applicant was already in receipt of said charge memo dated 26/05/2009. As per the aforesaid Para 6 of the letter dated 10/06/2009 (Annexure-A/1), the Screening Committee is supposed to meet in the first week of January and in the first week of July. As on first week of January 2009, the applicant has not completed 20

years of service, but, admittedly he completes his 20 years of service in the week of May 2009. But, in the case on hand, the screening committee met subsequent to 10/06/2009 and as on the date on which the Screening Committee met for considering the cases of the officers who have completed 20 years of regular service, the applicant was already in receipt of the said charge memo dated 26/05/2009 and as such, the denial of financial upgradation to applicant for having completed 20 years of regular service under the MACP can not be faulted upon. Accordingly, we answer the question articulated above in affirmative and as such no direction can be issued to the respondents as prayed by the him. Hence, the O.A. deserves to be dismissed. Accordingly, the O.A. is dismissed. No order as to costs.

ந.நா  
(M. Nagarajan)  
Judicial Member

Anil Kumar  
(Anil Kumar)  
Administrative Member