

(Reserved on 29.08.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/01253/2013

Allahabad this the 11th day of September, 2018

**Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member - J**

1. Rikhi Ram son of Luttar Ram
2. Shyam Babu Keshri son of Purasottam Das
3. Varun Kumar Sheel son of Late D.K. Sheel
4. Ravi Nandan Ram son of H.B.C. Ram
5. Suresh son of B.P. Sharma
6. Vinod Kumar Jha son of Kameswar Jha
7. Raj Kumar Pathak son of Jagar Narain
8. Prabhu Mochi son of Chattu Mochi
9. Shivi Narain Prasad son of Mahesh Ram
10. Mool Chand son of Prabhu Dayal

(All are working as Guard under Allahabad Division and some of them retired).

Applicants

By Advocates: Shri A.K. Srivastava

V E R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.

Respondents

By Advocate: Shri Dinesh Mishra

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member-A.

In this Original Application (in short OA, there are 10 applicants who are working as Guards under the respondents and being aggrieved by the fact that the respondents are not allowing them the benefit of financial upgradation under the Scheme of Modified Assured Career Progression (in short MACP) of the Government/Railway Board although most of them have completed 30 years of service and have got only one promotion/upgradation. The applicants were appointed as Guards after being selected through a general departmental competitive examination as direct recruitment as per the recruitment rules and their appointment as Guard is treated as first appointment as per the Railway Board letter dated 12.9.2012 (Annexure A-1). It is stated in the OA that in other divisions, the Guards are being allowed the benefit of MACP and in this zone/division, some guards are allowed, which is a discrimination against the applicants. Being aggrieved, the applicants have sought the following main relief through the OA:-

“8.1 to issue writ, order or direction in the nature of mandamus to provide the 2nd MACP and 3rd MACP as per services of the applicants and comply the order passed by the Ministry of Railway and Railway Board in regard to MACP Scheme applies for GDCE quota applicants / contained as Annexure A-1 and A-2 to the Compilation No. II of the Original Application.”

2. The applicants have also filed the MA No. 4039/2013 under rule 4(5) of the CAT (Procedure) Rules, 1987 to be permitted to file the OA jointly. It is seen from the record that although the case was considered on different dates, but the MA No. 4039/2013 is yet to be disposed of. In this case, the grievance and the relief sought for are common for all 10 applicants. Hence, before proceeding further, we allow the MA 4039/2013 under the rule 4(5), allowing the applicants to jointly pursue their grievance through this OA.

3. The respondents have filed the counter reply and mainly relied on the Railway Board letter dated 23.12.2010 (Annexure CA-1 to the counter reply). In the Annexure CA-1 to the counter reply, the Railway Board letter dated 10.2.2011 has been enclosed, which states as under:-

“Subject: Grant of MACPS benefit to Guards category –
clarification regarding

(No. PC-V/2010/MACP/7/ECR, dated 10.2.2011)

With reference to the letter above, it is stated that the matter has been examined in consultation with Department of Personnel & Training and it is clarified that every financial upgradation is to be counted as upgradation and offset against the financial upgradation under MACPS in terms of Board's letter dated 10.6.2009. (Bahri's RBO 101/2009, p-127). Therefore, the placement / grant of higher Grade Pay from Goods Guard to Sr. Goods Guard on Non-functional basis should be reckoned as upgradation for the purpose of MACP Scheme.

Further, the categories of Passenger Guard (5000-8000) & Sr. Passenger Guard (5500-9000) have been merged and allotted Grade Pay Rs. 4200/- in PB-2 vide Board's letter dated 11.9.2008 (Bahri's RBO 108/2008, p-122). In terms of para -8 of the Board's letter dt. 10.6.2009 the promotion from Sr. Goods Guard to Passenger Guard should be counted for the purpose of MACPS and in terms of Para – 5 of the said letter, the promotion from Passenger Guard to Sr. Passenger Guard should be ignored for MACPS. Therefore, an employee appointed as Goods Guard has earned following three promotions / financial upgradations till he reaches Mail / Express Guard, viz: -

- (i). From Goods Guard to Sr. Goods Guard
- (ii). From Sr. Goods Guard to Passenger Guard
- (iii). From Sr. Passenger Guard to Mail / Express Guard
[Passenger Guard to Sr. Passenger Guard to be ignored].”

4. From the letter dated 10.2.2011, the movement of the Guards from Senior Goods Guard to Passenger Guard has been considered to be a promotion. This has been disputed by the applicants in the Rejoinder, in which a copy of the judgment of this Tribunal dated 1.1.2003 in OA No. 829/200 – Gulam Mustafa Vs. Union of India and others in which the question as to whether the movement of a Guard from Senior Goods Guard to Passenger Guard is a promotion, was examined and it was held that it is not a promotion, as both the posts have the same pay scale.

5. We have heard the learned counsels for the parties, who reiterated their respective contentions in the pleadings. The applicant's counsel submitted a copy of the order of Jhansi division, by which the benefit of MACP was granted to the running staff including the guards. Learned proxy counsel for the respondents mainly depended on the Railway Board's clarification vide the letter dated 10.2.2011, copy of which is enclosed to the counter reply.

6. The question to be decided in this case is whether the posting/transfer of senior goods guard, which was the first promotion post for the applicants, to the post of passenger guard is to be treated as a promotion or a lateral entry. The respondents, by virtue of the Railway Board letter dated 10.2.2011, have treated it as a promotion. But it is seen that in a number of cases before Tribunal (one case is cited by the applicants in the Rejoinder), it is already settled that the posting of senior goods guard as passenger guard does not involve any promotion. It is unfortunate that after implementing the decision relating to the issue in other cases of the employees, the respondents have raised the dispute again which is a legally settled issue.

7. The issue has been settled by this Tribunal and the order of the Tribunal has been upheld by Hon'ble Allahabad High Court. One such case of Union Of India through G.M., E.C.R. vs. Central Administrative Tribunal and Ors in the Writ – A No. 18244/2013 vide the judgment dated 19.7.2013. As the main issue has been decided in the judgment, it is quoted below:-

“Case :- WRIT - A No. - 18244 of 2013

Petitioner :- Union Of India Thru G.M., E.C.R. And Ors.

Respondent :- Central Administrative Tribunal And Ors.

Counsel for Petitioner :- Praveen Kumar Srivastava,
Tarun Varma

Counsel for Respondent :- Shyamal Narain, S.C.

Hon'ble Laxmi Kanta Mohapatra, J.

Hon'ble Rakesh Srivastava, J.

(Delivered by Hon'ble L.K. Mohapatra, J.)

Heard Sri Tarun Verma, learned counsel appearing for the petitioners and Sri Shyamal Narain, learned counsel appearing for the respondents.

The East Central Railway through its officers has filed this writ application challenging the judgement and order passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application 1241 of 2011 (Sachchidananda Ram and Ors Vs. Union of India and Ors.) in Annexure-VIII.

The original application before the Tribunal was filed by the respondent Nos. 2 to 30. The case of the above respondents before the Tribunal was that all of them were working in the cadre of Guards under Mughal Sarai Division of the East Central Railway. The Sixth Central Pay Commission, Ministry of Railways, Government of India (Railway Board) had initially floated a Scheme called **Assured Career Progression Scheme (ACPS)** and subsequently replaced the same by way of introducing a new scheme called **Modified Assured Career Progression Scheme (MACPS)**. Under the new Scheme, the previous system of granting two promotions/financial upgradations after 12 and/or 24 years of regular services was substituted by a new arrangement of granting three promotions/financial upgradations after 10, 20 and 30 years of regular service. All the above private respondents had entered into service as Goods Guard in the initial Scale of Rs. 2800/-. Their progression in service is Goods Guard- Senior Goods Guard-Passenger Guard-Senior Goods Guard and finally Mail/Express Guard. The scale of Senior Goods Guard and Passenger Guard was one and the same i.e. Rs.5000-8000 and therefore placing a Senior Goods Guard as Passenger Guard does not amount to promotion and it is a case of lateral induction. After the new scheme i.e. **Modified Assured Career Progression Scheme (MACPS)** was adopted by the Railways, all the private respondents were extended the benefits of the scheme under different orders in 2010. They were given financial upgradation to the pay-scale of Rs. 4600-4800 (from Rs. 4200/-) depending on their entitlement and based upon their length of service. This benefit was extended to them after conducting screening inquiry as envisaged under the Scheme. After such upgradation, the private respondents started getting their enhanced salary but had not been paid the arrears. When the matter stood thus, in response to certain queries made by some of the Zonal Railways, the Railway Board issued a letter dated 10th February, 2011 addressed to the General Managers of East Central Railway, the South Central Railway, the Central Railway and the South-East Central Railway, clarifying, *inter alia* that in terms of the Board's letter dated 10.6.2009 on the subject of MACPS, the promotion from Senior Goods Guard to Passenger Guard should be counted for the purpose of MACPS whereas in terms of

Para 5 of the said letter, the promotion from Passenger Guard should be ignored for MACPS since the categories of Passenger Guard (5000-8000) and Senior Passenger Guards (5500-9000) had been merged and allotted Grade Pay of Rs. 4200/- in Pay Band-II. On the basis of the above letter of the Railway Board, the General Manager East Central Railway, Hazipur issued a letter dated 21.2.2011 directing that if any action contrary to the above clarification issued by the Board had been taken, the same should be rectified. In compliance of the above letter, the impugned order dated 20th May, 2011 was issued cancelling earlier orders granting the benefit under MACPS to the said private respondents and reducing/ refixing their pay by treating their movement from Senior Goods Guard to Passenger Guard as promotion and counting the same for the purpose of MACPS. The above order dated 20th May, 2011 was challenged by the private respondents before the Tribunal on the ground that movement from Senior Goods Guard to Passenger Guard cannot be treated as a promotion as both the posts carry the same grade pay. The Tribunal accepted such contention of the private respondents, placed reliance on a Judgment of Ernakulam Bench of Central Administrative Tribunal in a similar matter and allowed the original application.

Challenging the above order of the Tribunal, the East Central Railway through its officers has filed this writ application on the ground that movement of Senior Goods Guard to the post of passenger Guard is a promotion and the private respondents were wrongly given the benefit of upgradation of pay under MACPS. Therefore, on the basis of the clarification issued by the Railway Board in its letter dated 10.2.2011, grant of such benefit in favour of the private respondents had to be cancelled.

Therefore, the sole question to be decided in this writ petition is as to whether the movement of a Senior Goods Guard to the post of Passenger Goods Guard is a promotion or not. If it is not a promotion, the private respondents will be entitled to the benefits of MACPS.

The above question appears to have been set at rest by judicial pronouncement. A copy of the judgement and order passed by the Central Administrative Tribunal, Allahabad Bench in Original Application No. 1268 of 2004 disposed of on 1st February, 2006 (Mithilesh Kumar And Ors. Vs. Union of India And Ors.) was produced before the Court for perusal. In the said judgement, the Tribunal specifically held that movement of Senior Goods Guard whose payscale is 5000-8000 when posted as Passenger Guards will be only lateral induction and not exactly a promotion. While holding thus, two judgements of Calcutta Bench of the Tribunal had been relied upon by Allahabad Bench of the Central Administrative Tribunal. There is no dispute that in a similar matter filed by A. Haldhar and 37

others, the Tribunal passed a similar order and the same was challenged before this Court by the Railways in Civil Misc. Writ Petition No. 51293 of 2006. The writ petition was dismissed on 15.9.2006 and the Railways preferred an appeal before the Supreme Court vide Special Leave to Appeal (Civil) No.26787 of 2008. The said Special Leave Appeal was also rejected on 7.12.2011. Therefore, the law has been settled to the effect that movement of a Senior Goods Guard to the post of Passenger Guard is not a promotion and is a lateral induction.

Undisputedly, the Senior Goods Guards and Passenger Guards were in the same scale of pay i.e. 5000-8000. Vide Board's Letter dated 11.9.2008, two categories of Passenger Guard and Senior Passenger Guard (5500-9000) have been merged and allotted Grade Pay of Rs.2400/- in Pay Band-II (RBE-108/2008). Whereas, earlier the post of Senior Passenger was a promotional post for Passenger Guards. So far as the private respondents are concerned, undisputedly, they were initially recruited as Guard and (earlier grade pay received one financial upgradation i.e. from 2800 to 4200 assigned for both Senior Goods Guard/ Passenger Guard) when they moved from the entry level of Goods Guard to the next higher post of either Senior Goods Guard or Passenger Guard. There was no further promotion so far as the private respondents are concerned. Since it has already been held by judicial pronouncement that the post of Senior Goods Guard and Passenger Guard have the same grade of pay and movement of a Senior Goods Guard to the post of Passenger Guard, is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per MACPS, they were entitled to two more financial upgradations. This is exactly what has been held by the Ernakulam Bench of the Central Administrative Tribunal in a batch of original applications, which was relied upon by the Tribunal in the impugned judgement.

For the reasons stated above, we find no justification to interfere with the impugned order of the Tribunal. The writ petition is accordingly dismissed."

8. Above judgment of Hon'ble Allahabad High Court has been followed by Hon'ble M.P. High Court in the case of Union Of India vs M.S. Hashmi on the issue pertaining to applicability of MACP for the Guards under Railways and vide order dated 20 November, 2015 in Writ petition No. 13031/2013, it was held as under:-

"10: We have no hesitation in accepting the aforesaid reasonings of the Division Bench of Allahabad High Court, for the simple reason that a categorical statement should

have been made in that respect by the petitioners herein that in fact persons like respondent were granted the benefit of promotion in terms of the Regulations or Rules made by the petitioners in due course of time including the financial benefits and upgradation. Secondly, merely because of the merger of the pay scales any movement of Senior Goods Guard to the post of Passenger Guard was not to be treated as a promotion unless otherwise provided under the Service Rules. If it was a promotion, in what manner such consideration was done and whether that was granted to the persons like respondent in due course of employment in terms of those Regulations or not, was required to be proved by the petitioners. Nothing in that respect has been produced before the Tribunal. A bald statement that the MACPS would not be applicable in case of persons like respondent is not enough since it is required to be demonstrated by the petitioners themselves that the said MACPS is made for a specific purpose and for specific class of employees who have remained in stagnation in the matter of promotion for a long time. Broadly interpreting the provisions of paragraph 5 and 8 of the aforesaid MACPS, we are of the considered opinion that no error of law was committed by the Tribunal in making the said Scheme applicable for the persons like respondent. However, since certain facts were not clarified by the petitioners before the Tribunal, that opportunity to conduct an enquiry in that respect and to examine the cases of each and every individual separately was granted by the Tribunal by the impugned order. We are of the considered opinion that even such an opportunity was not required to be granted to the petitioners in view of the fact that though petitioners being employer were having all the information in respect of so-called promotion of respondent, the said information was not produced before the Tribunal in adequate manner. However, we are not inclined to interfere in the order of the Tribunal only and are not willing to disturb the said liberty granted by the Tribunal for the reason the said aspect is not called in question by the respondent before us.”

9. Similar view was taken by Hon'ble Patna High Court in the case of The Union Of India & Ors vs Sri Surendra Kumar in Writ petition no. 6398/2016 filed by Union of India against the order dated 20.5.2015 of Patna Bench of the Tribunal in OA No. 663/2013 in which the Tribunal had set aside the cancellation order of the respondents cancelling the MACP benefit granted to the Guards in similar situation as the applicants in this OA before us. Hon'ble Patna High Court in the Writ filed by the Union of India against the order of the Tribunal, vide the judgment dated 28.2.2017, held as under:-

"2. For factual background and for better appreciation, the Court reproduces Para 2.2 to 2.6 of the order of the CAT, which crystallizes the core issue and the reason for the present dispute.

"2.2. Prior to 01.01.2006 [i.e. before 6th Pay Commission] the pay and post of the applicant was as under :-

[i] For Mail Guard	- Rs.
5500-9000	
[ii] For Sr. Passenger Guard	- Rs.
5500-9000	
[iii] For Passenger Guard	- Rs.
5000-8000	
[iv] For Sr. Goods Guard	- Rs.
5000-8000	
[v] For Goods Guard	- Rs.
4500-7000	

2.3 After implementation of the 6th CPC w.e.f. 01.01.2006, the pay scales of the above posts held by the applicant were revised as under:-

[i] For Mail/Express Guard Rs. 9300-34800 + Gr. Pay Rs. 4200 [ii] For Sr. Passenger Guard Rs. 9300-34800 + Gr. Pay Rs. 4200 [iii] For Passenger Guard Rs. 9300-34800 + Gr. Pay Rs. 4200 [iv] For Sr. Goods Guard Rs. 9300-34800 + Gr. Pay Rs. 4200 [v] For Goods Guard Rs. 5200-20200 + Gr. Pay Rs. 2800 with an allowance of Rs. 500/- for Mail/Express Guard not forming part of pay.

2.4 Due to revision of pay, pay scale of Mail Guard, Sr. Passenger Guard, Passenger Guard and Sr. Goods Guard stood merged in one single Pay Band of Rs. 9300-34800 + GP of Rs. 4200 known as PB 2, while pay scale of Goods Guard was fixed at Rs. 5200-20200 + GP of Rs. 2800 falling under PB 1. As per the applicant, the Govt. has introduced Modified Assured Career Progression [MACP] Scheme by replacing existing ACP Scheme for financial upgradation after completion of 10, 20 & 30 years of continuous service w.e.f. 01.09.2008 as per the recommendation of the 6th Pay Commission.

2.5 Clause 5 of the said MACP Scheme has stipulated that if promotion / upgradation has been already granted under the ACP scheme to those grades, which now carry the same grade pay due to merger of pay scales Patna High Court CWJC No.6398 of 2016 dt.28-02-2017 recommended by Sixth CPC, shall be ignored for the purpose of granting upgradation under MACPS.

2.6. Keeping in view all the guidelines and instructions, the Screening Committee constituted as per provisions of the Scheme considered the illegibility for upgradation of „Guard Cadre“ of Samastipur Division and having found as many as 53 Guards of different categories fit for upgradation, the result was published on 22.03.2010 [Annexure-2] by the Divisional Railway Manager [Personnel], Samastipur. Thereafter, those 53 guards were

granted upgradation by an order dated 17.05.2010 [Annexure-2/1]. Hence, the pay of the applicant was fixed on the basis of financial upgradation and payment was made vide notification dated 29.03.2010 [Annexure-3].

2.6 Thereafter, up-to-date arrear from 01.09.2008 was also paid to the applicant and he continued to receive payment of salary on the basis of such fixation of pay on upgradation."

3. The Tribunal thereafter, after having heard extensively the submissions of the parties, concludes as under:-

"5. We have heard both the parties and perused the record. It is noted that according to the applicant, he was rightly granted financial upgradation as per clause 5 of the MACP Scheme vide order dated 17.05.2010, whereas according to the respondents, as per the interpretation / direction of the Railway Board vide order dated 10.02.2011, the applicant is not entitled for financial upgradation and thus, the said benefit was rightly withdrawn by the respondents. From perusal of the MACP Scheme, it is observed that Clause 5 of the said Scheme has stipulated with illustration as follows :-

"Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradation of posts recommended by the 6th Pay Commission shall be ignored for the purpose of granting upgradations under the modified ACPS.

Illustrations:

The pre-revised hierarchy [in ascending order] in a particular organization was as follows :-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

[a] A Railway servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 01.01.2006, in his case as on 01.01.2006, he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

[b] Another Railway servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both [a] & [b] above, the promotions/financial upgradations under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 01.01.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and

Rs. 6500-10500 recommended by the Sixth CPC. As per the RS [RP] Rules, both of them will be granted Grade Pay of Rs. 4200 in the Pay Band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of [a] and [b] above to the next higher Grade Pays of Rs. 4600 and Rs. 4800 in the Pay Band PB-2."

6. From the perusal of the said illustration, we are of the opinion that the case of the applicant is similar and identical to the said illustration and as per the said stipulation of the MACP Scheme itself, the applicant is entitled for financial upgradation, which was granted to him on 17.05.2010 and there is no scope for interpretation of the said Scheme by the Railway Board. Moreover, the same issue was considered by the CAT, Allahabad Bench vide order dated 20.12.2011 in OA 1241 of 2011 and also by this Tribunal vide order dated 25.02.2014 in OA No. 721 of 2012, wherein the said order of the Railway Board was considered by this Bench and it was observed that the applicants were entitled for the said financial upgradation as per the MACP Scheme. Thus, we are of the view that this issue has already been settled by this Tribunal, which has also been affirmed by the Hon'ble High Court, Allahabad and we do not find any reason to deviate from the same."

10. In another case involving interpretation of para 8 of the guidelines on MACP by the DOPT, Hon'ble Delhi High Court, vide the judgment dated 9.5.2016 in W.P. (C) No. 9266/2015 in the case of Govt. of NCT of Delhi & Anr. vs. S.K. Saraswat & Ors., has held as under:-

"4. In order to appreciate and understand the controversy, we would like to refer to the basic facts. The respondents, 55 in number are direct appointees to the post of Principal. Their pay-scale as in the case of Education Officer and Assistant Director of Education prior to the implementation of the Sixth Pay Commission was Rs.10,000 - 15,200. The pre-revised pay scale in the promotional post of Deputy Director of Education was Rs.12,000 - 16,500. On the recommendation of the Sixth Pay Commission, the pay scales of Principal, Education Officer and Assistant Director of Education were enhanced and merged with the pay scale of Deputy Director of Education, i.e. Rs.12,000 - 16,500. Accordingly, employees holding the post of Principal, Education Officer, Assistant Director of Education or Deputy Director of Education became entitled to an equal/identical pay-scale of Rs.12,000 - 16,500, and revised pay scale of Grade Pay of

Rs.7600 in Pay Band -3 [Rs.15,600 - 39100]. It is in this factual matrix that the issue arises whether the Tribunal was justified in accepting the plea and contention of the respondents that they would be entitled to first financial upgradation in the Grade Pay of Rs.8700, second financial upgradation in the Grade Pay of Rs.8900 and third financial upgradation in the Grade Pay of Rs.10000.

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7. In order to decide the controversy, we would like to reproduce and interpret the relevant clauses of the MACP Scheme, which for the sake of convenience, are reproduced below:-

"1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/ organization will be given only at the time of regular promotion.

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4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing

financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.

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

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS. xxxx 6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a

result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB- 2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

7. With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (1) (a) (1) to get his pay fixed in the higher post/ grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-1C dated 13.09.2008.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, Grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

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13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

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19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee."

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16. This brings us to paragraph 8, which is the bone of contention. We would first begin with paragraph 8.1, for it indicates and reflects the intention behind paragraph 8. As a result of the Sixth Pay Commission's recommendations, a separate Grade Pay of Rs.5400 in Pay Band-3 was created as a new entry grade. The same Grade Pay of Rs.5400 was also stipulated in Pay Band-2. MACP Scheme envisages upgradation by grant of the next higher grade pay. Paragraph 8.1 clarifies that Grade Pay of Rs.5400 in Pay Band-2 and Grade Pay of Rs.5400 in Pay Band-3 will be treated as separate grade pays for the purpose of grant of financial upgradation under the MACP Scheme. Paragraph 8.1, therefore, clarifies the position, because the Grade Pay of Rs. 5400 is to be found as the last grade pay in Pay Band-2 and the first grade pay at the entry level in Pay Band-3. Paragraph 8.1 stipulates how to compute financial upgradations in such cases where a government servant is entitled to financial upgradation and was getting Grade Pay of Rs.5400 in Pay Band-2.

17. Paragraph 8 also deals with computation for the purpose of MACP Scheme. In the beginning itself, we would say and accept that paragraph 8 is ambiguous and confusing. It is not happily worded. One way of reading the said paragraph, which consists of one sentence, is in the manner suggested by the petitioners i.e. promotions in the hierarchy which have the same grade pay shall be counted for the purpose of MACP Scheme. In other words, if the promotional post carries the same grade pay, the promotion will still be counted or treated as financial upgradation for the purpose of the MACP Scheme. However, this interpretation would be counter to and is in conflict with the precept and foundation of the MACP Scheme, which, as noticed above, refers to the immediate next higher grade pay in the hierarchy given in Section 1, Part-A of the first schedule of the Rules. The difficulty in accepting this interpretation is that it will over-turn the basis and edifice of the said Scheme and would be contrary to paragraphs 1, 2, 4, 5 and 6.2. We have already noticed these paragraphs, including paragraph 2 and interpreted the same. Paragraph 2 states that financial upgradation under the MACP Scheme cannot be understood and applied with reference to promotional pay-scales, for the same can be different. This is clear from the second sentence of paragraph 2. The third and the last sentence of paragraph 2 by way of an illustration accepts that the higher grade pay attached to the next promotional post in the hierarchy will be given at the time of regular promotion. We would observe that use of word "higher" in the last sentence is for the purpose of demonstration to rule out confusion and ambiguity. It is possible that the next higher promotional post may well have pay-scale of the lower post. It is in this context that the recommendations of the Sixth Pay Commission in paragraph 6.1.15 are relevant. If the legislature i.e. the Government, which had issued the Scheme, wanted to restrict financial upgradation and not collate it to the next higher grade pay in the hierarchy, it would have stipulated as such in Section 1, Part-A of the Rules. The said stipulation, would have been properly clarified and so stated in paragraph 2 itself. The second sentence of paragraph 2 expressly and clearly states that the grade pay at the time of financial upgradation under the MACP Scheme can in some cases be different from the pay-scale/grade pay applicable on regular promotion. The second sentence does not refer only to the situation where the grade pay is higher in the promotional post. The third sentence in paragraph 2 is also by way of an illustration.

Consequence of the interpretation, as suggested by the petitioners would be an absurdity, contradiction and cause hardship. We would hesitate to observe that this was the legislative intent. Such interpretation would frustrate the core foundation of the Scheme.

18. What is covered and referred to under paragraph 8 of the MACP Scheme, is the promotion earned in the post. The promotions should have been earned and, therefore, should have been granted. In the present case, the Principals have not earned any promotion since the date they were appointed upon direct selection as Principal. Paragraph 8 for this reason alone would not be applicable, for the respondents have not earned any promotion. Read literally also, paragraph 8 of the MACP Scheme would not obstruct or bar the respondents' contention.

19. It is equally possible to interpret Rule 8 as laying down the principle that promotions earned carrying the same pay-scales as mentioned in Section 1, Part-A of the First Schedule will be accounted for and counted. We would prefer and accept this interpretation for when we interpret paragraph 8, we must reflect upon the context and objective of the Scheme and not read the said paragraph in isolation. Paragraph 8 is a homogenous part and parcel of the whole Scheme. We should compare the paragraph with the other paragraphs and the setting in which the paragraph occurs. The expression "same grade pay" would refer to the grade pay mentioned/given in Section 1 , Part-A of the first schedule of the Rules. In other words, the promotions earned by a government servant in the grade pay given in the promotional hierarchy when identical to or the same as the grade pay in the hierarchy given in Section 1 , Part-A of the first schedule of the Rules would be counted for the purpose of the MACP Scheme. Thus, when a government servant had earned promotions in the past, we would have to refer to the grade pay mentioned in Section 1, Part-A of the first schedule of the Rules, before and post the said promotion. The corresponding increase given to a government servant on promotion in terms of financial upgradation of the grade pay would be counted for the purpose of the MACP Scheme. Three illustrations would make this position clear. In Pay Band-1 [Rs 5200-20200], the Grade Pay hierarchy is Rs 1800-1900-2000-2400-2800. Now three scenarios can be visualised. A government employee granted three promotions in the corresponding Grade Pay of Rs 1900, 2000 and 2400, would not be entitled to the benefit of MACP scheme. He has earned three promotions to posts carrying the same

grade pay as per Section 1, Part-A of the first Schedule of the Rules. In the second situation, a government servant drawing a Pay Scale equal to Grade Pay of Rs 1800 on promotion draws a Grade Pay of Rs 2400. In other words, he skips Grade Pays of Rs 1900 and 2000. This is because pay grades in the promotional hierarchy are not identical and in progression as per Section 1, Part-A of the first Schedule of the Rules. This government servant would not be entitled to grant of another financial upgradation in terms of paragraph 8 of the MACP Scheme, as he had received three upgradations on being promoted and grant of the Grade Pay of Rs 2400. Skipped upgradations would be counted. In the third situation, a government servant is promoted, but in the same grade pay of Rs 1800. Notwithstanding the promotion as the grade pay remains the same, in terms of the MACP Scheme, the government employee would be entitled to financial upgradation to Grade Pay of Rs 1900 after 10 years, Rs 2000 after 20 years and Rs 2400 after 30 years. As per paragraph 8, promotion to the same grade pay is not counted.

20. In a given case, the promotional post may carry a grade pay higher than the grade pay in the hierarchy of the revised pay bands given in Section 1, Part-A of the first schedule of the Rules or carry the same grade pay. This is possible. The MACP Scheme refers to financial upgradations between two successive grades mentioned in the said schedule of the Rules and not to the next grade pay applicable and payable on regular promotion. Therefore, in case a government servant has earned promotion as a result of which his grade pay increased by two grades, say from Grade Pay Rs.1800 in Pay Band-I to Grade Pay of Rs.2400 in the same pay band ignoring the in-between Grade Pays of Rs 1900 and Rs.2000, then while computing or counting the financial upgradation for the purpose of MACP Scheme, the missed grade pay of Rs 1900 and Rs 2000 would be considered. The reason is that the said government servant had with promotion earned upgradation of Grade Pay from Rs.1800 to Rs. 2400, i.e., he had received financial upgradations of Grade Pay of Rs.1900 and 2000 to reach the scale of Rs.2400. Paragraph 8 seeks to negate the said benefit which a government servant gets, in view of the pay-scale applicable to the next higher promotional post. In such cases, benefit of MACP Scheme would be curtailed and computed accordingly. Equally the same principle would apply when the promotional post carries the same pay scale as the lower post in the feeder cadre. In such cases,

in terms of paragraph 8, benefit under MACP Scheme with reference to immediate higher grade pay will apply. This would be just and fair, for financial upgradations would be equal across different organizations/cadres, when the MACP Scheme is applied. It will nullify and correct the ill affect when pay-scales in promotional posts are fixed contrary to the hierarchy of grade pay etc. mentioned in Section 1 , Part-A of the first schedule of the Rules. This will ensure equality and equal treatment of all government employees. This would also be in consonance with the concept that financial upgradation under the MACP Scheme is based upon the grade pay principle and not the grade pay applicable to the next higher promotional post.

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25. This brings us to the decisions relied upon by the petitioners, Government of Tamil Nadu and Another Vs. S. Arumugham and Others (1998) 2 SCC 198, Ekta Shakti Foundation Vs. Government of NCT of Delhi (2006) 10 SCC 337 and Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others (2007) 4 SCC 737 relating to the scope of judicial review in matters of policy. In the present case, we have interpreted the MACP Scheme. Tribunals and Courts have power to interpret a scheme. We have not formulated a new policy or modified the existing policy/Scheme. We have only interpreted the Scheme in terms of the language and clauses in the MACP Scheme. Rule of literal interpretation as suggested by the petitioners in the present case would lead to absurdity and contradictions. As noticed above, two or more interpretations are palpable and apparent. In such circumstances, Courts/Tribunals are empowered to interpret the provisions applying purposive interpretation keeping in mind the object, and rationale of the scheme. The interpretation suggested by the petitioners would be counter- productive and destructive of the other clauses of the Scheme itself.”

11. As per the interpretation of Hon’ble Delhi High Court of the MACP Scheme, which has been done keeping in view the overall objective of the Scheme as recommended by the 6th Pay Commission, the promotion in the same pay scale will be counted for MACP purpose, but promotion to a post with same grade pay and same pay band will not be counted.

12. Shri Dinesh Mishra, learned counsel for the respondents submitted his written submissions as per order dated 29.08.2018. In the written submissions, the contentions in the counter reply are reiterated. It is stated that as per the Railway Board letter dated 10.02.2011, which was issued after consulting DOPT, every financial upgradation is to be counted for MACP. Hence, movement of Goods Guard to Sr. Goods Guard as higher grade pay should be reckoned as upgradation for the purpose of MACP. Similarly, Passenger Guard and Sr. Passenger Guard pay scales have been merged, hence, it will not be treated as promotion / upgradation. Mainly, the instructions as per the letter dated 10.02.2011 of the Railway Board have been reiterated in the written submission furnished by learned counsel for the respondents.

13. In the present case of the Guards, as seen from para 9 of this order, the posts of Mail/Express Guard, Senior Passenger Guard, Passenger Guard and Senior Goods Guard, which are promotional posts, carry the same pay band and grade pay i.e. Rs. 9300-34800/- with grade pay of Rs. 4200/- w.e.f 1.1.2006 after implementation of the recommendations of 6th Pay Commission. Prior to 1.1.2006, these posts were under the pay scale of Rs. 5500-9000 for the post of Mail Guard and Senior Passenger Guard; the pay scale of Rs. 5000-8000 for the post of Passenger Guard and Senior Goods Guard. The Railway Board, vide the letter dated 10.2.2011, has clarified that the promotion from Passenger Guard to Senior Passenger Guard should not be counted for MACP, but the promotion of Senior Goods Guard to Passenger Guard and then from Senior Passenger Gaurd to Mail/Express Guard should be counted for the purpose of MACP. Applying the interpretation of the MACP Scheme in the light of the recommendations of 6th Pay Commission, promotion involving same pay scale/pay band and same grade pay should not be counted for the purpose of MACP. Since, pay scale for the posts of Mail/Express Guard, Senior Passenger Guard, Passenger Guard and Senior Goods Guard carry have been

merged to one pay band and one grade pay, the promotion among these posts shall not be counted for the purpose of the MACP by applying the ratio of the judgment of Hon'ble Allahabad High Court and Hon'ble Delhi High Court as discussed respectively in the paragraph 7 and 10 of this order. This interpretation is not in accordance with the letter dated 10.2.2011 of the Railway Board at Annexure CA-1 to the counter reply.

14. In this context, we also take note of the submissions the learned counsel for the applicants that the respondents, in some selected cases, have allowed the benefit of MACP to the Guards/Mail Guards. The example of one Shri Vijendra Narayan, who retired in 2013 as Mail Guard at the grade pay of Rs. 4800/- has been cited in the Rejoinder. An office order issued in 2010 granting MACP benefits to some of the Guards in Jhansi division has been produced submitted at the time of hearing. Learned counsel explained that the order in Jhansi division was prior to the issue of clarification issued by the Railway Board letter dated 10.2.2011.

15. In view of the judgment dated 19.7.2013 of Hon'ble Allahabad High Court in Writ-A No. 18244/2013, which has also been reiterated in the judgments as discussed in para 8 and 9 of this order and keeping in view the interpretation of Hon'ble Delhi High Court on MACP Scheme as discussed in para 11 above, we allow the OA and direct the respondents to consider the benefit of financial upgradation of MACP in terms of the judgment of Hon'ble Allahabad High Court dated 19.7.2013 in the Writ-A No. 18244/2013, as discussed in paragraph 7 of this order.

16. The OA is allowed as above. There is no order as to costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...