

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00629/2014

Wednesday this the 28th day of February, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

1. P.A. Abdul Rasheed,
Aged 46 years, S/o. P.M. Ali,
Sr. Assistant Loco Pilot (SNP)/ Southern Railway/
Ernakulam Junction Railway Station/ Trivandrum Division,
Residing at: "PARALI HOUSE", Muttom,
Thaykkattukara P.O., Ernakulam District – 683 106.
 2. R.S. Ramesh,
Aged 48 years, S/o. K.R. Ravivarma Thamban Varma,
Loco Pilot/ Shunting/ Southern Railway/ Nagercoi Junction
Railway Station/ Trivandrum Division,
Residing at: "PUNARTHAM", Eswar Vilas,
Mariyappalli P.O., Kottayam District, Pin – 686 013.
- **Applicants**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 600 003.
 2. The Chief Personnel Officer
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
 3. The Divisional Personnel Officer
Southern Railway, Trivandrum Divisional Office,
Trivandrum – 695 014.
 4. The Divisional Railway Manager,
Southern Railway, Trivandrum Divisional Office,
Trivandrum – 695 014.
- **Respondents**

(By Advocate – Ms. P.K. Radhika)

This Original Application having been finally heard on 21.2.2018, the Tribunal on 28.02.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

OA No. 629/2014 is filed by Shri P.A. Abdul Rasheed, Senior Assistant Loco Pilot (SNP) and Shri R.S.Ramesh, Loco Pilot (Shunting) working under the Southern Railway, Trivandrum Division aggrieved by the alleged denial of ACP/MACP benefits to them.

2. The reliefs sought in the OA are as under:

- (a) Declare that the applicants are entitled to be considered and granted the benefit of the 1st financial up-gradation under the ACPS with effect from 9.6.2005 in scale Rs. 4000-6000 and declare further that the applicants are entitled to be considered and granted the benefit of the 2nd financial up-gradation under the MACPS with effect from 9.6.2013 in PB-I+GP Rs. 2,800/- and direct the respondents accordingly.*
- (b) Direct the respondents to consider and grant the applicants the benefit of the financial up-gradation under the ACPS/MACPS as declared above and direct further to grant all the consequential arrears of pay and allowances arising therefrom;*
- (c) Award costs of and incidental to this application;*
- (d) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case*

3. The brief facts of the case are as under:

First applicant joined Southern Railway, Chennai Division as Assistant Loco Pilot and obtained a promotion as Loco Pilot (Goods) in the scale Rs. 5000-8000. On his request he was transferred to Trivandrum Division in the Assistant Loco Pilot grade and joined there on 3.7.2002. He submits that the Railway Administration has not granted him the first financial up-gradation due after completion of 12 years service

from 9.6.1993 and the 2nd MACP with effect from 9.6.2013, even though he was eligible for the same. Same is the case of the 2nd applicant. Applicants stated that as per RBE No.101/2009 which was later modified as RBE No.188/2010, the promotions granted prior to the inter-divisional transfer are to be ignored for the purpose of grant of financial up-gradation under the MACPS. Applicants have produced RBE No.188/2010 as Annexure A2. The applicants had filed representations dated 12.6.2014 (Annexures A3 and A4) for grant of ACP/MACP benefits. But there has been no response to these representations. Hence they have filed the present OA.

4. As grounds they submit that refusal on the part of the respondents to consider and grant the ACP/MACP benefits to them is arbitrary, discriminatory, contrary to law and violative of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution of India. Non-consideration of representations without assigning any reason is arbitrary, discriminatory, contrary to law and thus is unconstitutional, according to the applicants.

5. Per contra, respondents have filed a reply statement refuting the allegations in the OA. They have taken a preliminary objection of limitation as the OA has been filed after nine years. First applicant was transferred to Trivandrum Division on 3.7.2002 on reversion and his pay was protected at the maximum of the scale ie.Rs. 4590/-. He was later promoted as Senior Assistant Loco Pilot with Grade Pay of Rs. 2400/- w.e.f. 1.5.2010. First applicant was medically decategorized and worked against SNP from 23.7.2013. The service rendered from the date of medical decategorization will not be reckoned for the benefit of MACP. Hence he is not eligible for 2nd financial up-gradation. Since the 2nd applicant's case is similar, the respondents have not mentioned his case elaborately. They have produced a Railway Board Circular (RBE

8/2013) (Annexure R1) in which para 2(i) says:

“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.”

6. A counsel statement has been filed by the respondents producing Annexure R2 which is an Office Memorandum dated 21.10.2009 issued by the Ministry of Personnel, Public Grievances and Pensions, in which it is stated that in cases of appointment of Government servants to posts carrying lower Grade Pay under FR 15(a) on their own request, the pay in the pay band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower posts. The applicants were transferred to a post having the pay scale of Rs. 3050-4590 and their pay was fixed at the maximum of lower post pay scale ie., Rs. 4590 and balance given as personal pay which is to be absorbed in future increments.

7. Applicants have filed a rejoinder producing Annexure A5 stating that the Annexure R1 dated 4.10.2012 produced by the respondents is in distortion of the original Office Memorandum of the DOP&T dated 4.10.2012. They have filed MA 1218/2016 to accept a true copy of the order in OA 591/2014 passed by this Tribunal, which was allowed and the document was taken on record.

8. Respondents have also filed a detailed reply statement stating that the applicants had earlier filed OA 892/2010 alongwith six others for a declaration that they are entitled to have their pay fixed at Rs. 4590/-, which was allowed by this Tribunal vide order dated 6.3.2012 (Annexure R2). This order was complied with and Annexures R3 and R4 orders were issued. They have stated that these facts have not

been disclosed by the applicants in the present OA. Hence they are precluded from filing another OA with a modified prayer in order to derive undue benefits. Since the applicants have earned two promotions in their parent department, they are not entitled to any ACP/MACP benefits. They are entitled for only 3rd MACP benefits after completion of 30 years service. However after joining Trivandrum Division, they have been granted promotion to the Grade Pay of Rs. 2400/- and as such they are not eligible for the 2nd MACP benefits also. The order of the Tribunal produced by the applicants in OA 591/2014 has been appealed against in OP (CAT) No.59/2017 which is pending consideration. In the Railway Board's letter dated 18.4.2016 (Annexure R7) the condition for ignoring the promotion earned in previous organization/office has been stipulated thus:

“.....now board vide their letter No.PC-V/2009/MCP/9/SR dt. 18.4.2016 (copy enclosed) have clarified that the cases of employees who seek transfer to lower post on earning promotion in the old organization and the benefit of pay fixation has been protected at the time of joining new organization on reversion, then the promotion earned in the previous organization has to be reckoned for the purpose of MACPS.”

9. Respondents have placed on record the service particulars of both applicants as under:

Applicant No.1

<i>S.No</i>	<i>Post</i>	<i>w.e.f</i>	<i>Pay scale</i>	<i>Remarks</i>
<i>1</i>	<i>TraineeAssistant Driver</i>	<i>06/07/93</i>		<i>50 week's training</i>
<i>2</i>	<i>Absorbed as Regular Asst.Driver</i>	<i>05/25/94</i>	<i>Rs.950-1500</i>	
<i>3</i>	<i>Shunter</i>	<i>06/24/99</i>	<i>Rs.4000-6000</i>	
<i>4</i>	<i>Goods Driver</i>	<i>02/24/01</i>	<i>Rs.5000-8000</i>	
<i>5</i>	<i>Transferred to TVC Division on own request</i>	<i>07/03/02</i>	<i>Rs. 3050-4590</i>	<i>Pay fixed Rs. 4270+PP Rs.30/-</i>
<i>6</i>	<i>Pay refixed on 8.8.2013</i>	<i>07/03/02</i>	<i>Rs.3050-4590</i>	<i>Pay refixed as Rs. 4590/- in maximum of scale</i>

7	<i>Sr.ALP (promotion)</i>	<i>05/01/10</i>	<i>Rs.5200-20200 GP Rs.2400/-</i>	<i>11040+2400 GP 1.5.2010 11410+2400 GP 1.7.2010 (pay protected in IDT to TVC Dn.)</i>
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Applicant No.2.

<i>S.No</i>	<i>Post</i>	<i>w.e.f</i>	<i>Pay scale</i>	<i>Remarks</i>
<i>1</i>	<i>TraineeAssistant Driver</i>	<i>06/07/93</i>	<i>Rs.950/-</i>	<i>50 week's training</i>
<i>2</i>	<i>Absorbed as Regular Asst.Driver</i>	<i>05/25/94</i>	<i>Rs.950-1500</i>	
<i>3</i>	<i>Shunter (promotion)</i>	<i>06/24/99</i>	<i>Rs.4000-6000</i>	
<i>4</i>	<i>Goods Driver (Promotion)</i>	<i>03/23/02</i>	<i>Rs.5000-8000</i>	
<i>5</i>	<i>Transferred to TVC Division on own request</i>	<i>07/03/02</i>	<i>Rs. 3050-4590</i>	<i>Pay fixed Rs. 4270+PP Rs.30/-</i>
<i>6</i>	<i>Pay refixed on 8.8.2013</i>		<i>Rs.3050-4590</i>	<i>Pay refixed as Rs. 4590/- in maximum of scale</i>
<i>7</i>	<i>Sr.ALP (promotion)</i>	<i>05/01/10</i>	<i>Rs.5200-20200 GP Rs.2400/-</i>	<i>11830+2400 GP 1.7.2011 12260+2400 GP 1.7.2012 (pay protected in IDT to TVC Dn.)</i>

10. Shri T.C. Govindaswamy, learned counsel appearing for the applicants and Smt. P.K.Radhika, learned standing counsel for the respondents have been heard and documents/records placed on record have been perused. As the grievance of the applicant is of a continuing nature, the question of limitation does not arise in this case.

11. The admitted facts are these: the two applicants had joined Southern Railway, Chennai Division as Assistant Loco Pilots on 7.6.1993 and were absorbed as regular Assistant Loco Drivers on 25.5.1994. Their initial pay scale was Rs.950-1500 (Rs.3050-4590 as per 5th CPC). They were promoted as Goods Drivers on 24.2.2001

and 23.3.2002 respectively and raised to the pay scale of Rs.5000-8000. They made a request for transfer to TVC Division and on their unilateral request, were transferred to Trivandrum where they joined on 3.7.2002 as Assistant Loco Drivers, thereby forfeiting the promotion earned in Chennai Division. In Trivandrum Division, they were promoted as Senior Assistant Loco Pilot on 1.5.2010 and were placed in the scale of Rs.5200-20200 with GP of 2400/-. The prayer in the OA is for granting the two applicants the first financial up-gradation under ACP with effect from 9.6.2005 (on completion of 12 years service) in scale Rs.4000-6000 and second financial up-gradation under MACP with effect from 9.6.2013 (on completion of 20 years service) in PB1 + GP Rs.2800/-. The applicants have called to their assistance the orders of this Tribunal in OA No.591/2014 wherein identical demands were dealt with. They contend that they had forfeited the promotion which they earned in their erstwhile division and were 'fixed' in the lower Assistant Loco Pilot grade of Rs.3050-4590 when they reported at TVC Division. Thus, by virtue of the fact that they had not enjoyed a promotion for 12 years, they are eligible for first ACP up-gradation in the promotional scale in the hierarchy of 4000-6000 (PB1+GP 2400) on completion of 12 years from 9.6.1993 i.e., with effect from 9.6.2005. It was only later that the applicants came to be promoted as Senior Assistant Loco Pilots in PB-1 + GP 2400 when they had already served for 8 years in TVC Division. In consequence, the applicants also claim for the second MACP benefit on completion of 20 years of total service on 9.6.2013 in PB-1 + GP Rs.2800.

12. In the counsel statement, the respondents contend that the pay of the applicants when they joined at Trivandrum Division from Chennai on unilateral request transfer had been protected. On 3.7.2002 when they joined as Assistant Loco Pilot at TVC Division, their pay was re-fixed at Rs.4590 in the scale of 3050-4590. It is not known how this amounts to protection of pay for the applicants who were earning a pay

of Rs.5150 in the scale of Rs.5000-8000 in Chennai Division before they were transferred. When the learned counsel for the respondents pressed this argument further during the hearing (after having put it forward in the counsel statement), the service books of the applicants were called for and perused. It is unambiguously seen that their salary which they were enjoying in the erstwhile Chennai Division was not protected and they were fixed on the lower scale on transfer to TVC Division.

13. Based on the erroneous contention that the pay of the applicants had been protected during the inter-division transfer, their eligibility for the second MACP has been objected to by the respondents. On the subject of financial up-gradation under MACP for staff who joined another unit/organization on request, the following is extracted from Railway Board letter RBE No.08/2013 dated 31.01.2013:-

2(i). Railway Board's letter of even number dated 28.12.2010 provides that in case of transfer 'including unilateral transfer on request', regular service rendered in previous organization / office shall be counted along with the regular service in the new organization / office for the purpose of getting financial up-gradations under the MACP Scheme. However, financial up-gradation under the MACP Scheme shall be allowed in the immediate next higher grade pay in the hierarchy of revised Pay Bands as given in Railway Services (Revised Pay) Rules, 2008. It is now further clarified that 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 MACPS in the new organization/office. In respect of those cases where benefits 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."(Emphasis supplied).

14. Clearly this implies that the employees on inter-division transfer will be eligible for ACP/MACP based on length of service if they have not earned a promotion in the previous organization. As mentioned elsewhere, the promotion they earned in their erstwhile division has been forfeited and now their eligibility for ACP/MACP benefit is not to be denied. This position has been further reiterated in the circular issued by

Southern Railway, Chennai at Annexure R7. The critical condition which would make the employee ineligible is the fact whether he/she has been given the benefit of pay protection while joining the new organization on reversion. In the case before us, it is clear that no such protection was afforded to the employees.

15. A contention was raised by the learned counsel for the respondents that the second applicant had been medically decategorized and the portion of his service after the decategorisation cannot be considered while reckoning service for grant of ACP/MACP. This is not a valid argument, as existing regulations does not make any such exclusion.

16. The applicants had cited an order of this Tribunal which examined the identical question in OA 591/2014 and issued order dated 21.6.2016 (Annexure A6). Therein even the grades of the applicants as well as the pay scales were identical and this Tribunal had ordered as below:

*“12. Therefore, the first applicant is entitled to get the first financial up gradation under the ACP Scheme to the grade pay of Rs. 2400/- w.e.f. 22.1.2007 and he is entitled to get the second financial up gradation on completion of 20 years from 1.7.1991 the date of entry into service to the GP of Rs. 2800/-. The respondents will pass appropriate orders as ordered above, but it is made clear that the arrears of pay/allowances would be limited for a period of three years prior to the filing of the OA. (See the decision of the Hon'ble Supreme Court in **Union of India Vs. Tarsem Singh – (2008)2 SCC L&S 765.***

13. The claim of the 2nd applicant is also allowed. He is entitled to get the second financial up gradation under the MACP Scheme in GP Rs. 2800/- w.e.f 24.7.2010 (on completion of 20 years from his entry into service). Here also, the arrears would be limited to a period of three years prior to the date of filing of the OA.”

17. Learned counsel for the respondents submitted a copy of the DoPT O.M., dated 5.11.2012 (Annexure R9) relating to the application of FR 15(a) by which the pay of a Government servant holding a post on regular basis being fixed at a stage equal to the pay drawn by him in the higher grade. We see no connection with the issue under consideration here as no pay protection was allowed to the applicants consequent to

their shift to TVC division.

18. We have considered the rival contentions in detail with reference to the documents submitted and the pleadings made by the two learned counsels. The applicants did not get any benefit of pay protection and as admitted by the respondents in the counsel statement submitted, their pay on reversion was fixed at the maximum of the lower grade. Thus when they joined TVC Division on unilateral request transfer, they lost the higher grade as well as the promotion earned in the erstwhile Division. On the strength of regulations available and by virtue of the order of this Tribunal in OA No.591/2014, the applicants have a justifiable case to claim the benefit sought for. Thus the OA succeeds. However, it is ordered that the financial benefits accruing to the applicants on account of this order will be restricted to three years prior to the filing of the OA. The OA is disposed of as above. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

(U.Sarathchandran)
Judicial Member

kspps/aa.

List of Annexures by Applicants

Annexure A-1	-	True copy of Railway Board order bearing RBE No. 101/2009 dated 10.06.2009.
Annexure A-2	-	True copy of Railway Board order bearing RBE No. 188/2010 dated 28.12.2010.
Annexure A-3	-	True copy of representation dated 12.06.2014 submitted by the first applicant.
Annexure A-4	-	True copy of representation dated 12.06.2014 submitted by the second applicant.
Annexure A-5	-	True copy of the office memorandum of the DoP & T bearing No. 35034/3/2008-Estt.(D) (Vol.II) dated 04.10.2012.
Annexure A-6	-	A True copy of the order in OA No. 180/591/2014 dated 21.06.2016 rendered by Hon'ble CAT,

Ernakulam Bench.

List of Annexures by Respondents

- Annexure R-1 - True copy of Railway Board's letter No. PC-V/2009/ACP/2 dated 31/01/2013 (RBE 08/2013).
- Annexure R-2 - A true copy of the Office Memorandum dated 21/10/09.
- Annexure R-2(a) - True copy of the Order dated 6th March 2012 in OA No. 892/2010.
- Annexure R-3 - True extract of the Memorandum No. V/P524/VI/Rg/Fixation/Vol VII dated 26.04.2013.
- Annexure R-4 - True extract of the Memorandum No. V/P524/VI/Rg/Fixation/Vol VI dated 08.08.2013.
- Annexure R-5 - True copy of the Order in CP(C) No. 41/13 in OA No. 892/10 dated 18th July 2013.
- Annexure R-6 - True copy of the Interim Order of the Hon'ble High Court of Kerala in OP(CAT) No. 59/2017(Z) dated 21st February 2017.
- Annexure R-7 - True copy of PBC No. 45/2016 issued under letter No. P(R)535/P/MACP/Vol.IV dated 26.04.2016 along with Railway Board's letter No. PC-V/2009/MACP/9/SR dated 18.04.2016.

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PPS to Member