

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ERNAKULAM BENCH**

**Original Application No.180/01066/2014**

Wednesday, this the 8<sup>th</sup> day of August, 2018

**C O R A M :**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

P.P.Sajeev,  
S/o.Padmanabhan,  
Junior Accounts Assistant,  
Dy.FA & CAO/CN Office, Ernakulam.  
Residing at Pathinettil House,  
Pulikkuttiserry P.O., Kottayam.

...Applicant

**(By Advocate – M/s.Varkey & Martin)**

**V e r s u s**

1. Union of India represented by the General Manager,  
South Railway, Chennai – 600 003.
2. The Financial Advisor & Chief Accounts Officer,  
Southern Railway, Chennai – 600 003.

...Respondents

**(By Advocate – Mr.Thomas Mathew Nellimoottil)**

This Original Application having been heard on 3<sup>rd</sup> August 2018, the Tribunal on 8<sup>th</sup> August 2018 delivered the following :

**O R D E R**

**Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

O.A.No.180/1066/2014 is filed by Shri.P.P.Sajeev, Junior Accounts Assistant, Deputy FA & CAO/CN Office, Ernakulam, aggrieved by the denial of 2<sup>nd</sup> financial upgradation under Modified Assured Career Progression Scheme (MACPS) with effect from 30.1.2012. The applicant was appointed in Railways under Sports Quota as temporary Peon in scale Rs.196-232 on a starting pay of Rs.223/- with effect from 19.9.1986. He

.2.

passed the selection for promotion from Group D to Group C and was appointed as Accounts Clerk in scale Rs.950-1500 with effect from 30.1.1992. He had appeared for the selection test against promotional quota. The applicant was further promoted as Junior Accounts Assistant with effect from 26.11.2003 (regularized on 27.4.2006). He has not been granted any other promotion since entering Accounts Cadre on 30.1.1992. His pay scale was revised on adoption of 5<sup>th</sup> Pay Commission and further on 1.1.2006 when the 6<sup>th</sup> Pay Commission was adopted.

2. On the ground that he has more than 20 years of service counted from the direct entry grade of Accounts from 30.1.1992 and having enjoyed only one promotion in 2003, he made a representation on 3.2.2014 seeking 2<sup>nd</sup> financial upgradation in terms of para 1 of the MACP Scheme. A copy of the said representation is at Annexure A-3. In the said representation the applicant has contended that his entry into direct entry grade was on 30.1.1992 and his first upgradation, due on completion of 10 years, had been set off against his promotion as Junior Accounts Assistant on 1.11.2003. He sought 2<sup>nd</sup> financial upgradation on completion of 20 years from the date of entry into direct entry grade. By impugned order at Annexure A-4 dated 29.10.2014 the respondents have replied stating that the applicant had been promoted as Accounts Clerk against promotional quota and not against direct recruitment quota and hence his direct entry grade cannot be taken as Accounts Clerk. Thus he would only be eligible for 3<sup>rd</sup> financial upgradation under MACP Scheme only during 2016.

.3.

3. In the reply statement filed the respondents have contended on the same lines. It is maintained that the applicant had entered service as a temporary Peon with effect from 19.9.1986 and his appointment as Accounts Clerk had been by way of promotion and hence that stage cannot be considered as his direct entry grade. The next promotion as Junior Accounts Assistant with effect from 26.11.2003 (regularized on 27.4.2006) is to be treated as 2<sup>nd</sup> promotion. Thus having earned two promotions in his career the applicant will be eligible for only his 3<sup>rd</sup> financial upgradation on completion of 30 years of service from 1996 ie. in 2016.

4. Shri.Martin G Thottan, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil appearing for the Railways were heard.

5. This Tribunal in O.A.No.180/523/2014 has considered the very same question wherein the judgment of the Madras High Court in W.P.No.30629/2014 which arose from O.A.No.1088/2011 has been referred. In that case the Madras High Court held :

“9. What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which, the first respondent got appointed on 22.9.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust it against Modified Assured Career Progression-I.”

.4.

6. The respondents had approached Hon'ble Supreme Court by filing SLP No.4848/2016 which came to be dismissed. Drawing from these judgments this Bench of the Tribunal in O.A.No.180/523/2014 had ruled that the employee who had completed 20 years of service counted from direct entry grade are eligible for higher grade pay under MACP Scheme-2. Shri.Martin G Thottan also referred to decision dated 14.12.2016, 14.2.2007 and 8.7.2016 of this Bench in O.A.No.180/41/2015, O.A.No.688/2005 and O.A.No.180/402/2014 respectively, as other cases wherein it has been held that the promotions earned by way of participation in a competitive selection process cannot be treated as promotion for the purpose of denying MACP benefits.

7. On an examination of the case in detail we are of the view that the judicial orders referred to hold the field in this dispute. The O.A succeeds. The applicant is to be granted the reliefs as sought in full which shall be granted with all consequential benefits within a period of 30 days from the date of receipt of a copy of this order. No costs.

(Dated this the 8<sup>th</sup> day of August 2018)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

asp

**List of Annexures in O.A.No.180/01066/2014**

- 1. Annexure A-1** – A true copy of the O.M.No.35034/3/2008-Estt.(D) dated 19.5.2009 issued by DoP&T, Govt. of India.
  - 2. Annexure A-2** – A true copy of the Railway Board's letter RBE No.101/2009 dated 10.6.2009 annexed with MACPS.
  - 3. Annexure A-3** – A true copy of the applicant's representation dated 3.2.2014.
  - 4. Annexure A-4** – A true copy of the letter No.P535/HQA/MACPS/ADMN/Vol.I dated 29.10.2014 issued by 2<sup>nd</sup> respondent.
  - 5. Annexure A-5** – A true extract of para 171(1) of IREM.
  - 6. Annexure A-6** – A true copy of the Railway Board's letter No.PC-V/2009/ACP/2 dated 29.12.2011.
-