

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/001013/2014
Original Application No. 180/000067/2015

Friday, this the 28th day of September, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. **Original Application No. 180/001013/2014** -
1. T.K.Chandran, aged 53 years, S/o. Krishnan,
 Senior Section Engineer, Trichur, Trivandrum Division,
 Southern Railway, Residing at Flat No. F-1, Hi-Life Seasons,
 Apartment, Civil Lane, Trichur.
2. P.S. Unnikrishnan, aged 52 years, S/o. V.K. Sankunny,
 Senior Section Engineer, Aluva, Trivandrum Division,
 Southern Railway, Residing at Krishna Anugraha,
 Mound Road, Aluva. **Applicants**

(By Advocate : M/s. Varkey & Martin)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Chennai – 600 003.
2. Divisional Personal Officer, Southern Railway,
 Trivandrum – 695 014. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil)

2. **Original Application No. 180/000067/2015** -
1. M.K. Sasidharan Pillai, aged 55 years, S/o. Krishna Pillai,
 Assistant Executive Engineer, Southern Railway Construction,
 Ernakulam Junction, Permanent Address : Indeevaram,
 Karappuzha, Sastham Koil Road, Kottayam-3.
2. S. Rajendran, aged 56 years, S/o. T. Senguttuvelu,
 Assistant Divisional Engineer, Track Machine, Southern Railway
 Divisional Office, Thiruvananthapuram-14, Permanent address,
 No. 151-B, Kuriakaran Palayam, Netaji Nagar, Erode-2.

3. S. Haridasan, aged 54 years, S/o. Velayudhan Nair M,
 Assistant Divisional Engineer, Southern Railway,
 Ernakulam South, Permanent Address : V.C. Daffodils Apartments,
 Parakkat Lane, Patturaikkal, Thiruvambadi PO,
 Thrissur -680 022. **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 PO, Chennai – 3.

2. The Chief Personnel Officer, Southern Railway,
 Headquarters Office, Park Town PO, Chennai-3.

3. The Chief Administrative Officer, Southern Railway Construction,
 Ernakulam Junction, Ernakulam, Kochi –
 682 016. **Respondents**

(By Advocate : Mrs. P.K. Radhika)

These applications having been heard on 25.09.2018, the Tribunal on 28.09.2018 delivered the following:

O R D E R

Per Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-1013-2014 and 180-67-2015 have common points of fact and law involved and hence are being disposed of through this common order.

2. The relief claimed by the applicants in OA No. 180-1013-2014 are as under:

“I) Declare that the applicants are eligible and entitled to reckon the training period undergone by them for the purpose of grant for 3rd financial up-gradation under MACP scheme and direct the respondents accordingly.

II) Direct the respondents to grant the 3rd financial up-gradation to the applicants w.e.f. 28.3.2013 and 13.4.2013 respectively on completion of 30 years of service from their initial appointment.

III) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. The relief claimed by the applicants in OA No. 180-67-2015 are as under:

“(i) Declare that the non-feasance on the part of the 1st and 2nd respondent to grant the applicants the benefit of the 3rd financial up-gradation in PB2 + GP Rs. 5400/- with effect from 19.12.2011, 29.5.2011 and 21.5.2011 respectively, is arbitrary, discriminatory, contrary to law and hence, unconstitutional.

(ii) Direct the 1st and 2nd respondents to forthwith consider and grant the applicants, the benefit of the 3rd financial upgradation in PB-2 + GP Rs. 5400 with effect from 19.12.2011, 29.5.2011 and 21.5.2011, respectively with all consequential benefits including arrears of pay allowances therefrom.

(iii) Direct the respondents to pay the applicants' interest @ 9% p.a., to be calculated month after month from the date from which the arrears fell due to be compounded annually up to the date of full and final settlement of the same.

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

4. The brief facts of the case are that the applicants two in number in OA No. 180-1013-2014 were initially appointed as Apprentice PWI Grade-III on 28.3.1983 and 13.4.1983 respectively. The applicants three in number in OA No. 180-67-2015 were initially appointed as Permanent Way Inspector (PWI in short) Grade-III in the pay scale of Rs. 425-700/- on 19.12.1981, 29.5.1981 and 21.5.1981 respectively. They have undergone inservice training as per rules and were posted at various stations. They also being transferred from place to another. The applicants in OA No. 180-1013-2014 were absorbed against working post with effect 28.4.1984 and 26.3.1984 respectively and applicants in OA No. 180-67-2015 were absorbed from

2.12.1982, 29.5.1982 and 21.5.1982 respectively. After introduction of VIth Pay Commission various scales in the grade of Junior Engineer/Section Engineer were merged and there are at present only two categories in the cadre of PWI presently designated as Junior Engineer (Permanent Way) in pay band-2 plus Grade Pay of Rs. 4,200/- and Senior Section Engineer (Permanent Way) in pay band-2 plus Grade Pay of Rs. 4,600/-. It is further submitted that the applicants in OA No. 180-67-2015 were in PB-2 plus Grade Pay of Rs. 4,600/- with effect from 1.1.2006 and were granted 2nd financial upgradation in PB-2 plus Grade Pay of Rs. 4,800/- with effect from 1.9.2008. Thereafter the applicants in OA No. 180-67-2015 were promoted to the next promotional post in hierarchy i.e. Assistant Divisional Engineer in the pay scale of Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,800/- vide order dated 16.6.2010. The applicants in OA No. 180-1013-2014 completed 30 years of service on 28.3.2013 and 13.4.2013 respectively and applicants in OA No. 180-67-2014 completed 30 years on 18.12.2011, 28.5.2011 and 20.5.2011 respectively and they became entitled for grant of 3rd financial upgradation in PB-3 plus Grade Pay of Rs. 5,400/- with effect from the above mentioned dates. The same were not granted to them.

5. Notices were issued to the respondents. Reply statements have been filed by the respondents in both the OAs raising preliminary objection that the applicants were granted three promotions/financial upgradations and placed in the immediate next higher Grade Pay of Rs.5400/- with effect from 28.4.2014 and 26.3.2014 respectively (in OA No.180-1013-2014) and

w.e.f. 19.12.2012, 29.5.2012 and 22.5.2012 respectively (in OA No. 180-67-2015). The respondents submitted that regarding the eligibility for MACP scheme for the applicants in OA No. 180-67-2015 the details are furnished as under:

	M.K. Sasidharan Pillai	S. Rajendran	S. Haridasan	Remarks
Date of appointment	19.12.1981	29.5.1981	22.5.1981	
Date of regular absorption in scale 5,000-8,000/-	19.12.1982	29.5.1982	22.5.1982	These two scales merged in VI Pay Commission
Date of 1 st promotion to scale 5500-9000/-	25.2.1987	31.3.1987	1.5.1987	
Date of 2 nd promotion to scale 6500-10500/-	8.7.1993	1.3.1993	2.3.1993	These two scales merged in VI Pay Commission
Date of 3 rd promotion to scale 7,450-11,500	1.11.2003	8.4.2003	24.6.2003	
Date of 4 th promotion to scale 7,500-12,000	24.6.2010	20.8.2010	17.6.2010	Due to the above merger this promotion became 2 nd promotion
Date of 3 rd MACP	19.12.2012	29.5.2012	22.5.2012	

It is submitted by the respondents that on completion of initial training the applicants in OA No. 180-1013-2014 were absorbed on regular basis with effect from 28.4.1984 and 26.3.1984 respectively and applicants in OA No. 180-67-2015 on 2.12.1982, 29.5.1982 and 21.5.1982 respectively and their pay scales were fixed in tune with VIth Pay Commission. Since the post carrying pay scale of Rs. 5,000-8,000/- merged with Rs. 5500-9000/- and 6500-10500/- merged with Rs. 7,450-11,500/- the applicants became

eligible for 3rd financial upgradation under the MACP scheme. The respondents reiterated the stand taken by the applicants in regard to the promotions given to them.

6. Heard Mr. Martin G. Thottan learned counsel appearing for the applicants in OA No. 180/1013/2014, Mr. T.C. Govindaswamy learned counsel appearing for the applicants in OA No. 180/67/2015, Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents in OA No. 180-1013-2014 and Mrs. P.S. Radhika learned counsel appearing for the respondents in OA No. 180-67-2015. Perused the records.

7. The short point raised before this Tribunal by these applicants were that they are entitled to get 3rd financial upgradation in PB-2 plus Grade Pay of Rs. 5,400/- with effect from 28.3.2013 and 13.4.2013 respectively (in OA No.180-1013-2014) and w.e.f. 19.12.2011, 29.5.2011 and 21.5.2011 respectively (in OA No. 180-67-2015). The MACP scheme is annexed with the Original Application as Annexure A2 (in OA No.180-67-2015). Paragraph 9 is relevant and it is extracted below:

“9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

8. A plain reading of clause 9 of MACP scheme envisaged that MACPs shall commence from the date of joining of the post in direct entry grade on a regular basis or on absorption/re-employment basis, meaning thereby that the applicants are entitled for getting 3rd MACP after completion of their 30 years of service from the date of joining to the post in the direct entry grade on regular basis. The counsel for the applicants has laid emphasis that training period should be considered for all practical purposes even for the seniority, and then MACP and should also be given from the date of their entry to the post prior to joining of the post i.e. inclusive of the training period as well. The respondents negated the issues and submitted therein that pre-training period before joining the post is a mandatory one and they were granted during this training period stipend only. There was no employer employee relationship as on that date.

9. Shri Govindaswamy learned counsel for the applicant submitted that the respondents have given them the minimum of the pay scale but he has admitted that they have been given only stipend plus other benefits under the rules.

10. In support of the stand taken by the respondents learned counsel has cited a judgment of the apex court in ***Haryana Power Generation Corporation Limited & Ors. v. Harkesh Chand & Ors.*** - (2013) 2 SCR 593 where similar issue had been raised and it was held by the Hon'ble apex court as under:

“28.On a scrutiny of the promotion policy, the ACP Scheme and the communications, we find that the High Court has erred in its appreciation of the contents of the promotion policy and the conditions incorporated in the scheme and the clarificatory letters issued from time to time and their essential purport. The Board, on 14.3.1990, substituted and added certain clauses to the recruitment and promotion policy. We have reproduced the same earlier and on a proper scrutiny, it is perceivable that 50% posts are to be filled by direct recruitment from amongst persons who have passed 2 years ITI course with Matric as minimum qualification and such directly recruited Plant Attendants Grade-II would remain on training for a period of two years on the regular pay scale of Plant Attendant Grade-II to be allowed by the Board from time to time, and the other 50% is to be filled up by direct recruitment from amongst persons who have passed two years ITI course with middle examination with two years experience or ITI one year course with middle examination and with three years experience of similar works. Such directly recruited Technician Grade-II shall remain on training for a period of two years in the regular pay scale. The clarificatory letter has to be read in the said context and we are disposed to think so as the persons appointed under the policy in the regular pay scale are required to go on training. The clarification sought related to grant of increment and computation of period that is spent as trainee in the capacity of Plant Attendant Grade-II and in that context, the clarification issued was that the training of all categories on training would be counted. It is worthy to note that the respondents were not recruited under the said policy. They were appointed as apprentices ITI trainee on 28.3.1987 and they were not given any kind of post. It is only mentioned that they may be appointed as Plant Attendant Grade-II/Technician Grade-II. Thereafter, they were appointed on different dates as Officiating Technician Grade-II. The regular pay scale was given from the date of appointment. Prior to that, it was a fixed pay. They were not working on a post. They did not belong to any cadre. In fact, they were not recruited and, hence, the term trainee which has been referred to in various clarificatory letters has been misconstrued by the High Court.”

The Hon'ble Supreme Court has held that during the training period they are not working on the post and they did not belong to any cadre. In fact they were not recruited and hence the term training which has been referred in various clarificatory letters had been misconstrued by the High Court and therefore, they are not entitled for counting the said period for grant of ACPs. The Hon'ble apex court has relied upon its earlier judgment in ***U.P. State Electricity Board v. Shiv Mohan Singh & Anr.*** -(2004) 8 SCC 402 in ***Harkesh Chand***'s case supra. It further held as under:..

“22. In U.P. State Electricity Board v. Shiv Mohan Singh and Another – (2004) 8 SCC 402, A.K. Mathur, J., speaking for Hegde, J. and himself, while dealing with the status of apprentice, has stated thus: -

“Therefore a combined reading of the sections as well as Rules makes it clear that apprentices are only persons undergoing training and during that training they are entitled to get a particular stipend, they have to work for fixed hours and at the end of period of training they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice trainee and during the period of training they will not be treated as workmen. Only obligation on the part of the employer is to impart them training as per provisions of the Act and Rules and to pay them stipend as required under Rule 11 and beyond that there is no obligation on the part of the employer to accept them as his employees and give them the status of workmen. There is no relation of master and servant or employer and employee.”

11. Learned counsel Mr. Govindaswamy has cited a judgment of this Tribunal dated 23.11.2011 in OA No.870 of 2010 whereby this Tribunal has held that training being an essential part of service there is no reason not to count the period spent on training for seniority in the grade. This order of the Tribunal is not at all applicable in the present case as the issue before the Tribunal in OA No.870 of 2010 was with regard to seniority. However, it is not the issue here.

12. Shri Thomas Mathew Nellimoottil, has cited a judgment of Delhi High Court in ***Union of India & Anr. v. Afroz Ahmed & Ors.*** - 2007 (1) SLJ 455 Delhi. The relevant part of the judgment is extracted below:

“10. The said provision provides that seniority amongst incumbents of a post in a grade was/is determined by the date of appointment in that grade. In cases, where appointment was/is partially by promotion and partially by direct recruitment, inter se seniority in case of promotees shall be date of regular promotion after due process and in case of direct recruits seniority inter se depends upon the date of joining the work after due process. Note to para 302 states that in case training period of a direct recruit was/is curtailed due to exigencies of service, the date of joining the working post by a direct recruit would nevertheless be the date on which the direct recruit would have/had joined the working post after completion of prescribed period of training.

11. Para 302 and the note clearly states that seniority in the case of a direct recruit is/was to be counted from his date of joining and his date of joining is/was the date when a direct recruit joins/joined a working post

after successful completion of the prescribed period of training. If we read the said rule along with the Apprenticeship Agreement, the relevant clauses of which have been reproduced above, in our opinion the ratio of the decision of the Supreme Court in the case of Prafulla Kumar Swain (supra) would be applicable in the present case. The respondents were deemed to be inducted in service w.e.f. successful completion of the 24 months apprenticeship period and not from the date of initial selection or appointment as apprentice. Therefore, we feel that ld. tribunal has erred in its decision. Kuttiyappan's case (supra) relied upon by ld. tribunal does not support the stand of the respondents. In the said case, Supreme Court had examined both paras 302 and 306 and pointed out that they operated in different situations. However, while interpreting para 302 it was held that if training was one of the conditions of the selection process, then unless training was complete, the appointment did not take place on regular basis. This is in consonance with the view taken by us.”

The Hon'ble High Court held that the respondents were deemed to be inducted in service w.e.f. Successful completion of 24 months apprenticeship period and not from the date of initial selection or appointment as apprentice. The said judgment is passed by the Hon'ble Delhi High Court in the case of employees of the Northern Railway.

13. In view of the above facts and circumstances and the legal position, this Tribunal is of the view that the applicants have undergone training and after completion of the training period they have been absorbed on the said posts with effect from 28.4.1984 and 26.3.1984 respectively (in OA No. 180-1013-2014) and w.e.f. 2.12.1982, 29.5.1982 and 21.5.1982 respectively (applicants in OA No. 180-67-2015) and have been granted 3rd MACP exactly after completion of 30 years of service. Therefore, this Tribunal holds that the applicants are not entitled to pre-poning of the dates of their grant of MACP in view of the above circumstances and the law laid down by the apex court and Hon'ble High Court in the issue.

14. The Original Applications fail and are dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/001013/2014**APPLICANTS' ANNEXURES**

Annexure A1 – True copy of the office order bearing No. 140/2014/WP dated 1.8.2014.

Annexure A2 – True copy of the representation submitted by the applicant dated 5.8.2014.

Annexure A3 – True copy of the Railway Board Order bearing No. PC-V/2009/ACP/2 dated 29.12.2011.

Annexure A4 – True copy of the clarification issued by the Railway Board dated 28.3.2011.

Annexure A5 – True copy of the extract copy of the seniority list of Senior Section Engineer/Permanent Way of Southern Railway.

Annexure A6 – True copy of the letter bearing No. V/P.535/1/MACP/Vol.III dated 23.9.2014.

Annexure A7 – True copy of the letter bearing No. V/P.535/I/MACP/Vol.III dated 19.9.2014.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of Railway Board's letter No. PC-V/2004/ACP/1 dated 14.12.2004.

Annexure R2 – True copy of Railway Board's letter No. 2009/Sec(E)/PM-2/6 (MACP) dated 29.4.2011.

Annexure R3 – True copy of the Office Order No. 32/83/WP dated 6.4.1983 (appointment order of the 1st applicant).

Original Application No. 180/00067/2015**APPLICANTS' ANNEXURES**

Annexure A1 – True copy of office order No. J/W 103/82 dated 7.10.1982 issued in favour of the 1st applicant transferring him from Bommidy (BQI) to Thiruchirappalli Fort (TP).

Annexure A2 – True copy of Railway Board Order bearing No. RBE No. 101/2009 dated 10.6.2009.

Annexure A3 – True copy of Personnel Branch Circular No.54/2013 dated 20.5.2013 issued from the office of.

Annexure A4 – True copy of orders bearing NO. HPB (o) 368/2010 dated 16.6.2010 issued by the first respondent.

Annexure A5 – True copy of the office order bearing NO. TM/28/2014 dated 25.4.2014 issued by the first respondent.

Annexure A6 series – True copy of the representations submitted by the applicants addressed to the second and the forwarding relating thereunto.

Annexure MA1 – True copy of order bearing No. HPB(O) 297/2015 dated 8.5.2015, issued by the 1st respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the Railway Board vide this office letter No. P(r)535/P/MACPS/Volo.III dated 13.1.2015.

Annexure R2 – True copy of the Railway Board vide letter No. PC-V/2009/ACP/9/SR dated 20.1.2015.

Annexure R3 – True copy of the order dated 8.5.2015.

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