

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00187/2016

DATED THIS THE 21st DAY OF JULY, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

M.S.Sharma
Station Master
Mysore Division
Southern West Railway.Applicant

(By Advocate M/s. Ratio Legis)

Vs.

1. Union of India
Rep. by the Secretary
Ministry of Railways
Railway Board
New Delhi.
2. The General Manager
South West Railway
Hubli.
3. The Sr.Divisional Personnel Officer
Mysore Division
South West Railway
Mysore.Respondents

(By Advocate Sri. J.Bhaskar Reddy)

O R D E R(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking a direction on the respondents to extend MACP with Grade Pay of Rs.4800/- w.e.f. 1.9.2008.

2. The applicant submits that he was appointed as an Assistant Station Master in March, 1984 in the grade of Rs.330-560. Thereafter he was appointed as Station Master Gr.III(SM III) in the grade of Rs.1400-2300 in the year 1986. While working as such, the restructuring of cadre was done and the applicant

was upgraded to the post of Station Master Gr.II in the pay scale of Rs.5500-9000 in the year 2003. Following the implementation of the 6th Pay Commission recommendations, the grades viz Rs.5000-8000, Rs.5500-9000 were merged in the scale of Rs.6500-10500 which was then upgraded to Rs.7450-11500. Hence, the promotions earned after many years of service were distorted and the juniors and seniors were brought into one block without any service benefits. Following his entry as Station Master Gr.III, he did not receive any further promotion since the promotion earned earlier was nullified due to merger of scales and brought under one pay band with same grade pay i.e. Rs.9300-34800+GP 4200. The persons who joined in the subsequent years were upgraded to the pay band of Rs.9300-34800 with grade pay of Rs.4800 through MACP. Hence the applicant has raised the industrial dispute(Annexure-A2) but there was no agreeable settlement reached in the conciliation. Due to rejection by the respondents of his demand, the reconciliation is failed. Hence, he has approached this Tribunal seeking the relief.

3. The applicant has referred to the Railway Board Circular No.101/2009 saying that the financial upgradation under MACP will be admissible whenever person stays in the same grade pay for over 10 years continuously. He also referred to the illustrations given in the said RBE circular and says based on the illustrations given he is eligible to be extended two financial upgradations and the Grade Pay of Rs.4800/- w.e.f. 1.9.2008 and the denial of the same is untenable in law.
4. The respondents have filed a reply statement wherein they have mentioned the service particulars of the applicant and stated that the applicant was initially appointed as Assistant Station Master in the scale of Rs.330-560 which is equivalent to grade pay of Rs.2800/- following 6th Pay Commission

recommendation. Subsequently, he was promoted as Station Master Gr-III in the scale of Rs.425-640/- on 28.5.1986 and the said scale is equivalent to grade pay of Rs.4200 following 6th CPC. The pay scale of Rs.425-640 i.e. Rs.5000-8000 and the pay scale Rs.5500-9000 were merged in single Pay Band i.e. PB-2 scale Rs.9300-34800+4200(Grade Pay) w.e.f. 1.1.2006. Hence, the promotion given from scale Rs.5000-8000 to Scale Rs.5500-9000 was ignored for the purpose of grant of financial upgradation under MACPS. Thereafter, he was promoted as Station Master Gr-I in scale of Rs.6500-10500 which is equivalent to Grade Pay Rs.4600 w.e.f. 15.10.2007. The MACP Scheme has come into existence from 1.9.2008 on implementation of the 6th Pay Commission w.e.f. 1.1.2006 in terms of RBE No.101/2009. In terms of MACPS, the service status of each employee is to be reviewed as 1.9.2008 and the total number of years of service put in and the number of promotions earned in different grade pays are to be reckoned. If an employee who has put more than 10 years of service and less than 20 years of service and not earned any promotion is to be granted 1st and 2nd financial upgradations as on 1.9.2008. The 3rd financial upgradation is to be granted after completion of 30 years of service or 10 years of service from the date of last promotion/financial upgradation. They have also referred to the further clarification issued by the Railway Board on 27.6.2014 saying that in some cases, 3rd financial upgradation under MACP scheme was being allowed on completion of 20 years of service from 1st promotion considering deemed 2nd MACPS of the concerned employee well before 1.9.2008. Such an assumption is blatantly flawed and by Board's letter dt.29.12.2011 it was clarified that 3rd financial upgradation is admissible either on completion of 30 years' service from the date of initial appointment or further 10 years from the date of 2nd financial upgradation/promotion, whichever is earlier (Annexure-R2). From the service particulars, it is evident that the applicant had earned

two promotions as on 1.9.2008 i.e. GP of Rs.4200 w.e.f. 28.5.1986 and Rs.4600 w.e.f. 15.10.2007. Since the applicant has completed 24 years of service as on 1.9.2008 and earned two promotions, he is not eligible for grant of 3rd financial upgradation as on 1.9.2008, as he has not completed 30 years of service or has not completed 10 years from the last promotion. Therefore, he is eligible for grant of 3rd financial upgradation w.e.f. 12.10.2014 which has been granted.

5. The respondents have further submitted that the applicant along with other Station Masters had raised the issue of MACPS through recognized Union of South Western Railway to CPO/SWR/UBL. The subject was discussed in detail during the meeting and the minutes of the meeting is at Annexure-R5. The applicant had submitted representations for grant of 3rd financial upgradation under MACP on the lines of financial upgradation granted to Station Masters and the same were disposed of and communicated to the applicant(Annexure-R8). Therefore, the financial upgradations have been given to the applicant as per rules and the contention of the applicant does not merit consideration.
6. The applicant has filed a rejoinder in which he had reiterated the submission made in the OA and submitted that since the applicant has not received any further promotion since his joining as Station Master Gr.III in the year 1986, he should be granted next MACP to the Grade Pay Rs.4800 w.e.f. 1.9.2008.
7. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submission made in the OA referred to RBE No.101/2009 and stated that since the applicant has not earned promotion after he became Station Master Gr.III in 1986, he is eligible to be extended the financial upgradation thereby raising the pay to GP 4800 w.e.f. 1.9.2008. He also referred to the orders passed by the Chennai Bench of this Tribunal

wherein it was held that the person having completed 20 years from the date of his first promotion was automatically eligible for 2nd and 3rd financial upgradations w.e.f. 1.9.2008 itself. He also referred to the order of Ernakulam Bench of the Tribunal which has given similar benefits. Therefore, he prayed for granting similar relief to the applicant and said that the applicant should be granted Grade Pay of Rs.4800/- w.e.f. 1.9.2008.

8. The Learned Counsel for the respondents referred to the reply statement and submitted that the applicant was first given promotion in 1986 and subsequent promotion earned by him was not taken into consideration for the purpose of MACPS. However he got 2nd promotion in 2007 to the grade pay of Rs.4200. They referred to the clarification given by DoPT which was communicated by a letter dated 27.6.2014 saying that a person is eligible for 3rd financial upgradation only after completion of 30 years' service from the date of initial appointment or 10 years from the date of 2nd financial upgradation/promotion, whichever is earlier. Therefore, he submits that the applicant is entitled to 3rd MACP only in 2014 which has already been granted and not earlier.
9. We have carefully considered the facts of the case and submissions made by either side. It is evident from the records and the service particulars provided by the respondents that the applicant has joined as Trainee Assistant Station Master(ASM) in 1983 and was absorbed as ASM w.e.f. 12.10.1984. He was promoted to the grade of Station Master Gr.III in the grade of Rs.425-640 in 1986. Thereafter, he was given promotion to the grade of Station Master Gr.II in the scale of Rs.5500-9000 and then to Station Master Gr.I in the scale of Rs.6500-10500. Following 6th Pay Commission recommendation the pay scale of Rs.5000-8000, Rs.5500-9000 were merged and come under the

scale of Rs.9300-34800 with grade pay of Rs.4200. The respondents treated the applicant's appointment from ASM which is equivalent to Grade Pay Rs.2800 to that of Station Master Gr.III which is equivalent to Grade Pay Rs.4200 as 1st promotion. His subsequent promotion from SM Gr.III to SM Gr.II was ignored. He was given promotion as SM Gr.I in Grade Pay Rs.4600 as 2nd promotion. He was given 3rd financial upgradation w.e.f. 12.10.2014 in Grade Pay Rs.4800. Though there is lack of clarity in the contention made by the applicant, the main thrust is that subsequent to his first promotion in the year 1986, the applicant did not receive any further promotion and hence is entitled financial upgradations under MACP from 1.9.2008 raising his grade pay to Rs.4800. The applicant has referred to the decision of the Chennai Bench of this Tribunal saying that since he had completed more than 20 years of service from the date of his first promotion, at the time of introduction of MACP, he is automatically eligible to be granted 2nd and 3rd financial upgradation w.e.f. 1.9.2008 itself. The respondents, on the other hand, have referred to the subsequent circular of 2014 saying that a person is eligible to financial upgradation either on completion of 10 years from the last promotion or on completion of 30 years of service. The applicant got grade pay of Rs.4600 on his promotion on 15.10.2007. The issue here is whether the applicant is entitled to next financial upgradation to GP Rs.4800 on 1.9.2008 as claimed or from 2014 as indicated by the respondents.

10. Similar issue was earlier considered by the Chennai Bench of this Tribunal in OA.No.714/2012 741/2012 and 774/2012 wherein the applicants were Station Masters and were initially granted 2nd financial upgradation w.e.f. 1.9.2008 and which was subsequently sought to be revised on the basis of the same analogy given by the respondents herein that they were entitled to financial upgradation either from 10 years from the date of last promotion or on completion of 30 years of service whichever is earlier. The Chennai Bench of the Tribunal vide its order dated 18.11.2016 in the above mentioned cases

held vide para-4 & 5 as follows:

4. Heard the learned counsel for the applicant and the respondents and perused the pleadings and other material on record. It is not in dispute that the applicant had joined as Assistant Station Master on different dates and promoted as Station Master Grade III in approximately two years time from the date of his entry into service. The exact date of his promotion as Station Master Grade III as indicated by the respondents was 31.7.86. As per para-28(a)(i) of the MACP Scheme, if the 1st regular promotion was granted before completion of 10 years of service, the subsequent upgradations shall be at the end of 10 years each from the date of such first promotion. In such cases, completion of 30 years of service would not be mandatory for the grant of the third upgradation.

5. In view of the above, the applicant herein, having completed 20 years from the date of his first promotion even before the introduction of the MACP Scheme on 1.9.08, was automatically eligible for second and third financial upgradations w.e.f. 1.9.08 itself. The impugned orders and show cause notices of the respondents based on an erroneous reading of the MACP Scheme and a mistaken notion that the 3rd financial upgradations could be granted only on completion of 30 years cannot be sustained.

11. This Tribunal in OA.No.794/2016 also took a similar view and held that when the MACP came into effect from 1.9.2008, the applicant therein had completed more than 10 years of service from the first promotion and hence any stipulation that he will get 3rd MACP after 10 years from the 2nd financial upgradation defies logic. It was held that logically a person should be given 3rd MACP only after 20 years of service from the date of first promotion since the applicant therein had got 1st promotion after 8 years of service.

12. In this case the applicant had got 1st promotion in 1986 and 2nd promotion in 2007 raising his scale to the grade pay of Rs.4600 i.e. after implementation of 6th pay commission recommendation. Therefore, he is entitled to grant of 3rd MACP with grade pay Rs.4800 w.e.f. 1.9.2008. Hence we are of the view that the applicant is also entitled to the 3rd MACP w.e.f. 1.9.2008 to the Grade Pay Rs.4800 consequent upon completion of 20 years of service from first promotion on the same analogy as in the judgment passed by the Chennai Bench of the Tribunal in similar cases and referred to earlier. Therefore the respondents are directed to issue necessary orders giving the 3rd financial

upgradation under MACP to the applicant from 1.9.2008 within a period of three(3) months from the date of receipt of a copy of this order.

13. The OA is allowed in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

