

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.1116 of 2013**

**Reserved on: 25.10.2018**

**Order pronounced on: 26.10.2018**

Between:

1. P. Srinivasulu, S/o. Late Raghavaiah ,  
Aged about 63years, Occ: Sr. Section Officer (Accounts) (Retd.),  
R/o. Plot No. 63, Road No.1, West Chandragiri Colony,  
Vedabhavan Road, Safilguda, Secunderabad.
2. T. Muniprasad, S/o. Raghavaiah,  
Aged about 60 years, occ: Asst. Accounts Officer (Retd),  
Office of FA & CAO, South Central Railway, Secunderabad.
3. U.S.S. Prakasa Rao, S/o. U. Sobhanadri Rao  
Aged about 59 years, Occ: Sr. Section officer (Accounts),  
Office of FA & CAO/ South Central Railway, Secunderabad.
4. R. Suryanarayana Murthy, S/o. late R.A.P. Sastry  
Aged about 58 years, Occ: Asst. Accounts Officer,  
Office of FA & CAO/ South Central Railway, Secunderabad.
5. S. Karunakaran, S/o. T. Subramaniyan  
Aged about 54 years, Occ: Sr. Section Officer (Accounts)  
Office of FA & CAO/ South Central Railway, Secunderabad.
6. V.T.Venkata Ramana, S/o. V.S. Tukaram,  
Aged about 46 years, Occ: Travelling Inspector of Section Accounts,  
Office of FA & CAO/ South Central Railway, Secunderabad.
7. S. Sounder Rajan, S/o. late V.M. Seshadri  
Aged about 56 years, Occ: Accounts Assistant,  
Office of FA & CAO/ South Central Railway, Secunderabad.
8. M. Narender Reddy, S/o. late M. Vasudeva Reddy  
Aged about 50 years, Occ: Accounts Assistant,  
Office of FA & CAO/ South Central Railway, Secunderabad.

...Applicants

**And**

1. Union of India, Represented by  
The Secretary, Railway Board,  
Rail Bhavan, New Delhi-110001.

2. South Central Railway,  
Represented by the General Manager,  
Rail Nilayam, Secunderabad.
3. The Financial Advisor & Chief Accounts Officer,  
South Central Railway, Rail Nilayam, Secunderabad.

...Respondents

Counsel for the Applicant	...	Mr. Siva
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Railways

**CORAM:**

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

**ORDER**

*{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}*

The OA is filed for non grant of 3<sup>rd</sup> financial upgradation under MACP vide lr dt 20.6.2013 of the 3<sup>rd</sup> respondent.

2. The facts of the case are that the applicants joined the respondent organisation as clerk grade II and got promoted as clerk grade I. Clerk grade I posts in which the applicants were working, on restructuring of the cadres, were upgraded as Accounts Assistant. The hierarchy of the cadre before restructuring in the ascending order was Clerk grade –II, Clerk grade I, sub head and Section officer. While restructuring in 1987, eighty percent of clerk grade I were upgraded as Sub Head and introduced the grade of Accts Asst, which the applicants claim is neither a promotion nor an upgradation but it is just a merging of cadre of clerk grade I and sub head. Later the applicants were promoted as Section Officer. The Modified Assured Career Progression Scheme (MACP) entitles an employee for 3 financial upgradations in a span of 30 years at intervals of 10, 20, 30 years if one were to stagnate at any particular level for 10 or more years, without any promotion. As per the scheme the applicants profess that they got only two promotions, considering the merger of Clerk

Grade I and Sub Head, and that they are eligible for the 3<sup>rd</sup> financial upgradation under the said scheme. The applicants sought the 3<sup>rd</sup> financial upgradation but it was denied and hence the present O.A.

3. The contention of the applicants is that respondents are treating the promotion to clerk grade I and upgradation as Accounts Asst as two promotions which is incorrect. Similar issue fell for consideration before Honourable Chennai Bench of this Tribunal in OA 335 of 2007 and it was allowed. The respondents contested the same in a W.P No 21112 of 2009 in Honourable High Court of Madras which was dismissed and finally the SLP filed in Honourable Supreme Court vide CC 9422/2011 on the same issue was dismissed on merits. Therefore the issue has attained finality and hence they are eligible for the 3<sup>rd</sup> financial upgradation.

4. The respondents claim that as per proceedings dt 18.6.1987, the creation of functional grade and the number of posts to be placed in the higher grade in 80:20 ratio for clerk grade –I including existing sub heads is 80 percent for the scale of Rs 1400 -2600 and 20 percent for Rs. 1200- 2040 as per table given below.

I	Section Officers (A/cs), Inspector of Stores Accounts (ISA), Inspector of Station Accounts (TIA)	Rs.2000-60-2300-EB-75-3200	80%
		Rs.1640-60-2600-EB-75-2900	20%
II	Clerk Grade I (Including Existing Sub-Heads)	1400-40-1600-50-2300-EB-2300-EB-60-2600	80%
		Rs.1200-30-1560-EB-40-2040	20%

Further, proceedings dt 27.8.1987 designated the staff in Rs 1200- 2040 as Junior Accounts Assistants and those in Rs 1400 – 2600 as Accounts Asst. The Junior Accts Assts are eligible for promotion to Accounts Asst after a minimum

of 3 years of service and passing the App. II A exam. The applicants were accordingly promoted on different dates as Accounts Assts. The respondents further state that the Railway Board while introducing the ACP scheme has clarified vide lr dt 19.2.2002 that when only a part of the posts are placed in a higher scale and rest retained in existing grade, then it involves creation of another grade and hence any placement of employees in the higher scale shall be considered as promotion. Therefore, the applicants movement from clerk grade I to Accounts Asst. has to be treated as promotion. Under MACP scheme the applicants got 3 promotions from clerk grade II to grade I and from clerk grade I to Accounts Asst and there on as section officers. Hence they are ineligible for the 3<sup>rd</sup> financial upgradation.

5. Heard the learned counsel and perused the documents on record.

6. The respondents main contention is that the upward movement of the applicants from Clerk grade –I to Accounts Asst has to be treated as a promotion and that it was not properly explained before the Honourable Chennai bench of this Tribunal and also before the Honourble Madras High Court. However, the fact remains that there was revision of the scale and which benefit when extended cannot be considered as a promotion by the Respondents. The Honourable Supreme Court has observed on quiet a few occasions that if any restructuring of posts takes place it does not amount to promotion. In the present case the applicants were working in the pay scale of Rs 1200-2400 which on restructuring was revised to Rs 1400- 2600. Therefore there is no vertical movement to be treated as a promotion. It is only a lateral movement involving no ascent, which is the basic premise of a promotion. The change occurred because of restructuring but not because of promoting the official which is the crux of the issue. The Honourable Chennai Bench of this Tribunal, Honourable

Madras High court and Honourable Supreme Court have gone into the merits of the case and have decided the issue in favour of the applicants. Therefore it is a fully covered case and has attained finality as the law of the land has been set in this case by the Honourable Supreme Court. Hence any order issued by the Respondents contrary to the law laid by the Honourable Supreme court is illegal. In fact, Respondents being a model employer, need to have extended the benefit to the applicants on its own volition, in the light of the observations of the superior judicial forums in the matter. We need to respectfully abide by the observations of the Superior Judicial forums as per the observation of the Honourable Supreme Court in Sub-Inspector Rooplal vs Lt. Governor, (2000) 1 SCC 644.

7. Hence in view of the facts stated above and judicial pronouncements thereof, the action of the respondents is illegal, arbitrary and unjust. The impugned order issued by the Respondents vide Ir no AAD/REP/MACPS/V dt 20.6.2013 is quashed. The O.A fully succeeds. Hence the respondents are directed to consider:

- i) Grant of the 3<sup>rd</sup> financial upgradation to the applicants from the date on which they fulfilled the eligibility criteria with consequential benefits thereof.
- ii) Time frame fixed to implement the order is 3 months from the date of receipt of the order.

8. The OA is allowed. No order to costs

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 26<sup>th</sup> day of October, 2018

*evr*