

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

Original Application No.021/00341/2016

Original Application No.020/00629/2016 & MA 728/2017

Original Application No.021/00858/2016 & MA 463/2018

Original Application No. 020/00706/2016

Original Application No. 020/00715/2016 & MA 389/2017

**Reserved on: 05.10.2018 &
08.10.2018**

Order pronounced on: 10.10.2018

O.A.No.021 /341 of 2016

Between:

1. J.Venkata Ramana, S/o J.Rama Sastry,
aged 56 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
2. B.V.Ramana Murthy, S/o B.Babu Rao,
aged 53 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
3. G.V.S.Mallikharjuna Rao,
S/o G.Prasada Rao, aged 55 years,
Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
4. C.Suryanarayana Rao, S/o C.S.Subba Rayudu,
aged 53 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
5. K.Venkata Prasad, S/o K.Chiranjeevi Rao,
aged 54 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
6. Ch.V.Ramana Rao, S/o Ch.Subba Rao,
aged 55 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
7. A.M.Madhusudan, S/o A.Mallaiah,
aged 54 years, Occ: Mail Guard,

O/o The Station Manager,
South Central Railway, Secunderabad R.S.

8. M.Gopala Krishna Rao, S/o M.Rama Joga Rao,
aged 51 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
9. Anil Kumar Rajwanshi, S/o B.R.Rajwanshi,
aged 51 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
10. Malik Asghar, S/o Asghart Raza,
aged 53 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
11. K.S.N.Murthy, S/o K.KasiViswanatham,
aged 59 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
12. B.Shankar, S/o Mallesh, aged 55 years,
Occ: Mail Guard, O/o The Station Manager,
South Central Railway, Secunderabad R.S.
13. T.Sreenivas, S/o T.N.Ranga Chari,
age 53 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
14. S.V.Srinivasa Babu, S/o S.V.Narasdimha Rao,
aged 56 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
15. N.Rajender Nath, S/o N.Rajalingam,
aged 58 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Kazipet R.S.
16. B.Uma Maheswar Rao, S/o B.K.Rama Krishna,
aged 55 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.
17. Ram Karan Meena, S/o Bhagwan Sahai Meena,
aged 50 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Kazipet R.S.

18. M.J.Bhoyar, S/o Jondharaji Bhoyar, aged 57 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Kazipet R.S.
19. H.S.Bagde, S/o Sharwan Dajiba, aged 52 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Kazipet R.S.
20. B.Bheema, S/o B.Panthuliya, aged 51 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Secunderabad R.S.
21. T.Murali, S/o T.Venkateswarlu, aged 50 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Secunderabad R.S.
22. P.S.Murthy, S/o P.Kumara Swamy, aged 53 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Secunderabad R.S.Applicants

And

1. Union of India represented by The Chairman, Railway Board, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer, South Central Railway, Secunderabad Division, Sanchalan Bhavan, Secunderabad.Respondents

O.A.No.020 /629 of 2016

Between:

1. M.J.Subhakar, S/o M.Ch.Subhakar Reddy, aged 49 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway,

Vijayawada Division, Vijayawada R.S.

2. S.E.P.C.S.R.Patrudu, S/o S.Satyanarayana Patrudu, aged 58 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
3. Rehman Shariff, S/o Ahamed Shariff, aged 49 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
4. A.N.V.Ramana, S/o. A.V. Narayana Swamy, aged 49 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
5. N.Venkata Venu Gopal, S/o. N. Gangaiah, aged 45 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
6. Satyanarayana Purushotham Singh, S/o K.Satyanarayana Singh, aged 57 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
7. M. Bhimaiah Raju, S/o M.Krishna Murthy, aged 51 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
8. S.Phanindra Babu, S/o. Narasimha Raju, aged 55 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
9. James Herbert Paul, S/o J.Went Worth Paul, aged 54 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
10. V.Surya Prakasa Rao, S/o V.Lakshmana Rao, aged 52 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.
11. T.V.Rama Raju, S/o. T. Bangaru Raju, aged 51 years, Occ: Mail Guard, O/o The Station Manager, South Central Railway, Vijayawada Division, Rajahmundry R.S.

12. V. Ranga Babu, S/o. V.Y.Ramanuja Charyulu ,
aged 49 years, Occ: Mail Guard,
O/o The Station Manager, South Central Railway,
Vijayawada Division, Vijayawada R.S.

13. K.V.Tajuddin Babu, S/o. K. Anjaneyulu,
aged 52 years, Occ: Mail Guard,
O/o The Station Manager, South Central Railway,
Vijayawada Division, Rajahmundry R.S.

14. T.V.Rama Murthy, S/o. Suryanarayana,
aged 55 years, Occ: Mail Guard,
O/o The Station Manager, South Central Railway,
Vijayawada Division, Rajahmundry R.S.

15. P.Veera Bhadra Rao, S/o. Venkata Raju,
aged 54 years, Occ: Mail Gurard,
O/o The Station Manager, South Central Railway,
Vijayawada Division, Rajahmundry R.S. ...Applicants

And

1. Union of India rep. by the
The Chairman, Ministry of Railways,
Railway Board, Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

4. The Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada Division, Vijayawada. ...Respondents

O.A.No.021 /858 of 2016

Between:

1. A.S.V.Sainath, S/o A.Subbaiah Chetty,
aged 51 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.

2. V.Kumaraswamy, S/o V.Rama Rao,
aged 52 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.

3. M.Somasekhar, S/o Suryanarayana,
aged 49 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.

4. V.Krishna Prasad, S/o V.Satyanarayana,
aged 51 years, Occ: Mail Guard,
O/o The Station Manager,
South Central Railway, Secunderabad R.S.Applicants

And

1. Union of India represented by
The Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Chief Personnel Officer,
South Central Railway,
Rail Nilaya, Secunderabad.

4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

...Respondents

O.A.No.020 /706 of 2016

Between:

1. J.Rama Krishna, S/o. J. Satyanarayana,
aged 60 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. B.P. Street, Satyanarayananapuram
Vijayawada – 520 011.

2. Md.Kaleemulla, S/o. Fakir Ahmed,
aged 66 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. 76-8/1-12/A, Brahmanandam Vari Street,
Opp: RTC Workshop, Bhavanipuram
Vijayawada – 520 012.

3. J.V.R.Devanandam, S/o. J. Ramaniah
aged 65 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o.18-8-20, 5th Lane, Kedareswarapeta
Vijayawada – 520 001.

4. S.Koteswara Rao, S/o Kotaiah,
aged 60 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D. No. 3/85, Vulavapadu (Reserve) Village,
Vulavapadu Mandal, Prakasam Dist.
5. T.Asoka Prasad, S/o. Satyanarayana Prasad,
aged 63 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D.No. 5-225/3, Kataraju Building Road,
Behind Bhashyam School, Bommuru – 533 124
Rajahmundry (Rural). E.G. Dist.
6. S.Ramachandra Reddy, S/o. Konda Reddy
aged 61 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D. No. 4-243/22, Ramadevi Gardens
Rajavolu - 533 124; Rajahmundry (Rural) – E.G. Dist.
7. D.Atcharao Reddy, S/o. D. Sanyasi Reddy,
aged 61 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D. No. 4-13-19, Vijayalaxmi Street,
Alcot Gardens, Rajahmundry – 533 101.
8. Y.Babu Rao, S/o. Prasada Rao ,
aged 64 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. H.No. 3, Road No. 4, Sector – I,
Lotus Land Mark, Kedareswarapeta,
Vijayawada – 520 003.
9. B.Krishna Prasad, S/o. B.Venkataswamy,
aged 64 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D. No. 21-9/2-57A, Madhura Nagar, Bhavi Street,
Ramadevi School Road, Vijayawada – 520 011
10. B.Nageswara Rao, S/o. B.Laxmaiah,
aged 67 years, Occ: Mail Guard (Retd.)
Vijayawada Division; S.C. Railway,
R/o. D. No. 40-26-41/1, Saibalaram Residency,
Plot No. 401, Sri Ram Nagar, Vijayawada – 520 010.

...Applicants

And

1. Union of India rep. by the
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.Respondents

O.A.No.020/715 of 2016

Between:

1. S.Kishore Kumar, S/o Venkateswarlu,
aged 49 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
2. M.Solman Raju, S/o Zachraiah,
aged 50 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
3. Sk.Subhani, S/o Sk.Madar Saheb,
aged 51 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
4. K.Nooka Naidu, S/o K. Pothuraju,
aged 57 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
5. V.Srihari Rao, S/o Seshagiri Rao,
aged 52 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
6. B.D.R. Babu, S/o. Joseph,
aged 57 years, Occ:Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001
7. S.A.K.Babavali, S/o S.A.Nabi Saheb,
aged 53 years, Occ: Mail Guard,
O/o The Station Manager, Vijayawada Division,
South Central Railway, Vijayawada – 520 001Applicants

And

1. Union of India rep. by the
The Chairman, Ministry of Railways,
Railway Board, Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada. ... Respondents

Counsel for the Applicants ... Mr. KRKV Prasad (in all OAs)

Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for Railways
(OA 341/2016)

Mr. V.V.N. Narasimham, SC for Railways
(OA 629/2016)

Mr. M. Venkateswarlu, SC for Railways
(OA 858/2016)
Mr. V. Vinod Kumar, SC for Railways
(OA Nos. 706 & 715/2016)

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***
Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER

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

These OAs are filed for non grant of financial upgradation by the respondents under Modified Assured Career Progression Scheme (MACPS). The issues being identical coupled with the fact that identical reliefs are being sought against the same respondents this common order is being issued.

2. Brief facts of the case are that the applicants are placed in the direct entry grade of Goods Guard of the respondents organisation and have been promoted as Senior Passenger Guard and Mail /Express Guard as portrayed below:

Category	Pay scale	Grade pay	Remarks
Goods Guard	Rs.5200-20200	Rs.2800	
Sr. Goods Guard	Rs.9300-34800	Rs.4200	
Sr. Passenger guard	Rs.9300-34800	Rs.4200	
Mal/Express Guard	Rs.9300-34800	Rs.4200	Addl. Charge allowance of Rs.500

As seen from the table the Grade Pay is the same for Senior Goods Guards onwards. The applicants' grievance is that while affording the applicants the financial upgradations under the MACPS which ineluctably involve grant of higher grade pay, respondents are treating the movement with the very same grade pay as upward and are thus denying them financial upgradation under MACPS. Hence these OAs.

3. The contention of the applicants is that under MACP scheme, in case of stagnation at a particular grade for 10 or more years financial upgradation by way of grant of next higher grade pay is provided for. The applicants are stuck at Rs 4200 grade pay even though they are eligible for 2nd and 3rd financial upgradations to the Grade Pay of Rs.4600 & 4800 respectively. The Railway Board orders conveyed through Serial Circular Nos.85/2009 (RBE No.101/2009) and 25/2011 denying financial upgradation have been subjected to judicial scrutiny and found invalid. They quoted certain judicial orders favouring their plea. Further, divisions like Nanded, Guntakal and Hyderabad under the same South Central Railway zone have granted the financial upgradation keeping in view the Judicial pronouncements made, whereas the respondents are resisting it for no valid reasons which is ex-facie illegal.

4. The Respondents rebut the claim of the applicants contending that they have not got any Railway Board orders in consonance with the judicial orders spoken of. Hence they need necessarily follow the Railway Board orders communicated through circulars cited above and as per the same applicants are not eligible. They too have cited judicial pronouncements buttressing their defense. Besides, the respondents have pointed out in the additional affidavits filed that some of the applicants have been given promotions from lower grades like Khalasi to TNC/ office clerk thereon to Commercial Clerk and thereafter to Sr. Commercial Clerk before becoming Goods Guard in the same PB-1 of (Rs.5,200-20,200) with grade pays of Rs.1800, Rs.1900, Rs.2000 and Rs.2400 respectively and therefore their argument is that they have got 3 to 5 promotions in their career and hence are in eligible. The applicants movement on promotion in running categories will lead to grant of mileage allowance and other financial benefits. Besides, every promotion entails one increment which has to be considered while granting financial upgradation under MACPS are other averments made by the respondents.

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

6. As per MACPS, as circulated vide RBE No. 110/2009, there shall be three financial upgradations from entry grade on completion of 10,20 and 30 years of service, provided an employee stagnates at a particular grade for 10 or more years. Para 2 of the said scheme reads as under:

“2. The MACPS envisages merely placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised Pay Bands and Grade Pay as given in Section-I, Part-A of the first schedule of the Railway Services (Revised Pay) Rules, 2008. Thus, the Grade Pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher Grade Pay attached to the next promotion post in the

hierarchy of the concerned cadre/ organization will be given only at the time of regular promotion.”

7. The point to be noted is that the financial upgradation has to be the immediate next higher grade pay. Mark the words ‘**next higher**’ and ‘**grade pay**’ which are crucial for arriving at a decision. This is exactly what the Honourable Jodhpur Bench of this Tribunal in OA 436/Jodhpur/2013, on which the respondents are banking, has referred to at para 6 with an example at para 20 which states as under:

“...Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word ‘merely’ in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/ organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced. The decision is reproduced in extenso:-

4. At para 20 of the said judgment, their Lordships were pleased to note that the very same issue had come up for consideration before this Court in WP (C) No. 3420/2010 in the High Court of Rajasthan in the case of R.S. Sengor & Others v. Union of India and others, decided on 04.04.2011. Their Lordships quoted:

20. *This very issue had come up for consideration before this Court in WP (C) No. 3420/2010 R.S. Sengor & Ors. Vs. Union of India & Ors, decided on April 04, 2011. In said case the petitioners were in Pay Band-1 and had a corresponding grade pay of Rs.1900/- . The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs.2400/- . The petitioners therein claimed that since the next hierarchical post had a pay band of Rs.2400/-, they should, on financial upgradation, under the MACPs, be granted the grade pay of Rs.2400/- . However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs.2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post..”*

We are in agreement with the findings of the Honourable Jodhpur Bench of this Tribunal in OA 436/2013, as the applicants are asking for a similar relief. Therefore the judgment cited by the respondents does not come to their rescue. In fact, applicants in OA 436/2013 of Jodhpur, sought a higher grade pay of Rs 6600 which is higher than the next higher grade pay of Rs 4600 granted to them. This is not permissible under MACPS and was rightly held so by the Honorable Jodhpur bench.

9. Now an analysis of para 8 of Annexure I in Sl. Circular 85/2009 (RBE No.101/2009) which states that "*Promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS*" and this will apply in the case of promotion from Sr. Goods Guard to Passenger Guard and accordingly promotion from Sr. Goods Guard in PB-2 with GP Rs.4200 to Passenger Guard in PB-2 with GP Rs.4200 shall be counted for the purpose of MACPS. In terms of Para -5, Annexure I of the above RBE No. 101/2009, the promotion from Passenger Guard to Sr. Passenger Guard should be ignored for MACPs since the Grade Pay of both Passenger Guard and Sr. Passenger Guard carry the same Grade Pay of 4200 due to merger of pay scales from 01.01.2006 in 6th CPC pay scales.

10. To answer this let us get to the very objective of the MACPS which is emphatic that financial upgradation to the immediate next higher grade pay has to be granted as an antidote to stagnation in a particular grade for 10 or more years. In the present case it is to Rs.4600 and Rs.4800 and not rivet them to Rs.4200, which is against the very spirit of the MACPS making the argument of the respondents spineless. More so, when such clauses are inserted in a scheme creating some confusion the clause with a broader interpretation of the scheme in tune with the objective of the scheme has to be take into consideration and not

the narrower one which does not further the objective of the scheme. This has been observed so by the Honorable Supreme court in **Bhakra Beas Management Board vs. Kishan Kumar Vij, (2010) 8 SCC 701**, as under:-

32. *It has been stated by Lord Dunedin, in Murray v. IRC, AC that:*

“...It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a Judge to declare a statute unworkable.”

Continuing further, the Apex Court also has observed that while interpreting the provisions of any law, such interpretation should be to secure the object. Thus, observed the Apex Court – The principle was reiterated by him in a later judgment in Whitney v. IRC, AC at where he observed:

“.... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.”

Consolidating the above, the Apex Court then observed-

“33. The aforesaid observations make it abundantly clear that the courts will, therefore, reject the construction which is likely to defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. In view of this, to attain the fruitful results of the 1990 Order we have to get it to a meaningful and proper construction which would achieve the object for which it was passed, rather than to give a narrower construction which may defeat the very purpose of passing the said order.”

Para 8 therefore comes under the purview of narrow interpretation of the scheme and does not promote the very spirit of the MACP scheme.

11. Other allied observations which go against para 8 are that, promotion is a vertical ascent leading to additional responsibilities with attendant financial hike. It cannot be one way with only additional responsibilities but not the eligible financial gain. Then the very meaning of promotion is lost. In 6th CPC the Grade

pay mostly reflects the post held by the employee. Higher the post the higher the grade pay. This is the general principle that is to be followed. Anything contrary is unfair. In the present case it is horizontal movement within the same grade pay and hence cannot be construed as a promotion since it is not vertical. The same view has been held by the Honorable Jaipur bench of this tribunal in OA 468/2011, which has been relied upon by this Tribunal in OA 718/2016, vide order dated 16.02.2018, wherein it has been observed as under:

“The very same issue fell for consideration before the Jaipur Bench of C.A.T. in OA.468/2011 and batch. In the said case the Tribunal following the order of C.A.T. Allahabad Bench in O.A. 1241/2011 which was upheld by the Allahabad High Court in W.P.18244/2013 and also the order of the C.A.T. Ernakulam Bench in OA.484/2011 and batch held that the legal position has been well settled by the judicial pronouncements in the said cases by taking the view that the movement of Senior Goods Guard to the post of Passenger Guard cannot be considered as a promotion for the purpose of considering the benefits of MACP.”

Going further, the Honorable Jaipur, Ernakulam, Ranchi, Jabalpur Benches of this Tribunal and the Honorable High Court of Jharkhand in WP (S) No 4754 of 2015 dt 10.3.2016 and Honorable High Court of Allahabad in CWJC No. 18244/2013 dt 19.7.2013 have upheld the view favouring grant of financial upgradation as has been sought by the applicants in the present OAs.

The judgment of the Honorable High Court of Jharkhand has stated as follows:

“5. What appears to the Court is that in terms of the Railway Board’s Letter/ Policy Decision dated 10thFebruary, 2011, the financial up-gradation to Guard category under MACP was reviewed and thereafter, different orders were issued with regard to recovery of excess payment made by way of MACP. The respondent-applicants also being aggrieved of adverse view of the financial upgradation extended to them, knocked the door of Central Administrative Tribunal, Circuit Court, Ranchi (CAT, Ranchi), through the medium of OA/051/00027/2014 taking the plea that the aforesaid Letter/ Policy Decision dated 10th February, 2011 stands quashed by different Benches of CAT,

which order is upheld in CWJC No. 18244/2013 decided on 19.07.2013 by the High Court of Allahabad. Not only that, the earlier writ petition being WP No. 51293/2006 on the same issue was also dismissed on 15.09.2009 and the Special Leave to Appeal (Civil) 26787/2008 preferred by the Railways before Hon'ble Supreme Court also dismissed on 07.12.2011. All these aspects have been duly considered by learned CAT, Ranchi while allowing the aforesaid OA/051/00027/2014.

6. *Mr. Pathak, learned senior counsel in the aforesaid background feels himself to be handicapped in assailing the impugned order of the learned CAT, Ranchi. Viewed thus, we do not find any substance in the instant petition, which calls for dismissal. Ordered accordingly.*

7. *Consequently, IA No. 5672 of 2015 also stands disposed of."*

12. Attending to the points raised by the respondent counsel regarding promotions prior to entering into the grade of goods guard and allowances given to the running staff, it is to be adduced that posts referred to for which promotions given belong to a different cadre all together dealing with mostly administrative functions. The Guard cadre is a technical cadre and the direct entry grade for this grade is Goods Guard as has been discussed and decided by this Bench in OA No. 718 of 2016 vide order dated 16.02.2018, with reference to the claim of the respondents that some of the applicants have got promotion prior to the grade of Goods Guard from the cadres of Khalasi, Office Clerk, Commercial Clerk, Sr. Commercial Clerk, etc. MACPS speaks about grant of financial upgradation from the direct entry grade and hence the earlier promotions cannot be reckoned. Running allowance is a special allowance granted for covering certain mileage. It has nothing to do with the MACPS. A mere digressive point raised. One more aspect raised in the additional affidavit is that an additional increment is given when a promotion is awarded though the grade pay is the same. Here again we have to reaffirm that the MACPS is all about moving to the next higher grade when one is stagnating in the same grade

pay. Movement in the same pay band with small hikes of pay has not been stated anywhere in the MACPS. Therefore S1 Circular No.79/2014 quoted by respondent does not have much relevance to the issue in question for reasons discussed above. The fulcrum of the MACPS is the grade pay and not anything else. In the present case there is genuine stagnation at the grade pay of Rs 4200 and the movement to the next higher grade pay has to be allowed as per MACPS. This issue has been examined by a galore of judicial pronouncements as stated in DOPT letter quoted in S1 circular 137/212 and have concluded that promotion within the same grade pay cannot be taken into consideration under MACPS. It is not that the scheme makers were not aware of the factors raised by the respondents, but they were, and hence the proviso of next higher grade pay. The promotions given in grades below the goods guard will be ignored nor the services rendered thereof.

13. Being on the subject of promotion the Honourable Principal Bench of this Tribunal in OA 141 of 2012 quoting Honourable Delhi High court judgment in WP (C) No. 3420/2010 reproduced below, has upheld the principle of granting next higher grade pay.

“1. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years of Rs.4800/- and not Rs.5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts. Hence, in view of the judgment of the Honble High Court, it is evident that the next higher Grade Pay has to be given and not the Grade Pay in the next hierarchical post. It is immaterial that the next hierarchical post is DNS and on that post

the Grade Pay is Rs.5400/-, but while granting the third financial upgradation under MACPS, the benefit is to be granted as per the provisions thereof, and it is the next higher Grade Pay which is admissible to an employee, and the next higher Grade Pay is Rs.6600/-. Since ANS is in the Grade Pay of Rs.5400/-, while granting the benefit of third MACPS, ANS will be given the Grade Pay of Rs.6600/- which is the next Grade Pay.

9. Hence, in view of the judgment of the Honble High Court of Delhi, in view of the wordings of the MACPS, as well as in view of the MACPS allowed to ANS of AIIMS, the applicants are entitled to the Grade Pay of Rs.6600/- and not Rs.5400/-. The order passed by the respondents dated 20.12.2011 is not in accordance with the MACPS and it is against the very spirit of the MACPS, and if the contention of the respondents is to be accepted, then no financial upgradation will be given to the ANS even after grant of third MACPS, which is not the intention of introduction of the MACP Scheme, and the applicants are entitled to the Grade Pay of Rs.6600/- and no recovery will be made from the applicants of the difference paid to them. The OA deserves to be allowed.”

14. The respondents moved the Honourable Supreme Court against the Judgment of the Honorable High Court of Jharkhand in SLP 4501/2017 dt 24.3.2017 but it was dismissed as it was found that there was no reason to intervene. Similarly the verdict of the Honourable High Court of Allahabad was upheld by the Supreme Court in SLP No 13421 of 2014 dt 29.8.2014.

15. When different divisions of the same zone ie South Central Railway and the Azmeer division of North Western Railway zone coming under the same Railway Ministry, extended the benefit under MACPS to similarly placed employees like the applicants, the proper course of action for the respondents, who are a part and parcel of the Railways, was to extend the similar benefit as was observed by the Honourable Supreme Court in ***G.C.Ghosh vs Union of India*** reported in ***1992 (19) ATC 94*** where it was held as under:

“In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving the Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment. . .”

The MACP and the pay revision have been coeval and on the recommendations of the VI Central Pay Commission. Existence of the same Grade Pay for both promotional post and the feeder grade post is not uncommon in various grades and in various departments which the Pay Commission is conscious of. And, equally conscious has been the Pay Commission when it introduced in MACP scheme the “next higher grade pay”. Instead of recommending the grade pay attached to the promotional post, the Pay Commission recommended next higher grade pay as financial upgradation. This conscious decision would be frustrated and stultified if due regard to the term ‘next higher grade pay’ is not given and the Grade Pay of the promotional post is granted. In contra distinction to the earlier ACP Scheme, which afforded, the higher pay scale attached to the promotional post, the MACP contemplates only the next higher Grade Pay. The Grade Pay consists of Rs.1800, 1900, 2000, 2400, 2800, 3200, 3600, 4000, 4400, 4800, 5200, 5600, etc., Grant of the immediately next higher Grade Pay is the financial upgradation under the MACP scheme. It has no nexus with the Grade Pay attached to the promotional post. For example, a feeder post may carry the Grade pay of Rs 4,200 and its promotional post may have Rs 4,800 as the Grade Pay. When a person stagnates in the Grade Pay of Rs 4,200/- without getting the next promotion which carries a grade pay of Rs 4,800/-, he becomes entitled for grant of financial upgradation, which would be the Grade Pay of 4600/- and not 4,800/-. This next higher grade envisaged in the MACP Scheme, is thus, independent of the grade pay attached to the next promotional post.

16. Therefore facts stated above make it crystal clear that the respondents have operated the MACPS against its very objective of providing financial relief against stagnation in a given grade. Many Judicial pronouncements cited above have favoured the applicants in granting financial upgradation. Above all the Honorable Supreme Court has upheld the decisions made in favour of the applicants on more than one occasion as cited above. The law is therefore well settled. The action of the respondents is against the very tenets of MACPS/Fundamental Rules and is therefore arbitrary as well as illegal. The applicants have made out a case which succeeds.

17. Therefore the respondents are directed to consider the following:

- i) Grant the 2nd /3rd financial upgradations to the immediate next higher Grade Pay under MACPS, as and when due to the applicants along with consequential benefits like fixing of pay from time to time with increments, payment of arrears due and other eligible benefits that flow consequent to this order.
- ii) take up with the 1st respondent for revising the guidelines on the subject in view of the Honourable Supreme Court rejecting the plea of the respondents on more than one occasion.
- iii) this verdict be treated as judgment in rem, till the guidelines are revised by 1st respondent, in order not to drive similarly placed employees for similar relief to this Tribunal, working in Railway zones coming under the ambit of this Tribunal, as observed by Honorable Supreme Court in G.C.Ghosh vs Union of India (supra). This will help in saving precious National Resources in terms of use of Men, Money, Material and prevent needless litigation.

- iv) to be alert to judicial pronouncements and take prompt action to attend to grievances of the employees by taking up with the appropriate authorities on which the Honourable Superior Judicial forums have taken a view and not to procrastinate the same for years despite clear observations. The issue has been delayed inordinately albeit other divisions of the same zone implementing in synchronisation with the decisions of the Honourable Judicial forums. The respondents not doing so and depriving the applicants the financial benefits legally due, calls for an exemplary costs to be imposed on respondents, but we refrain to do so hoping that the respondents in future would take note and act as advised in the best interests of the respondents organisation and the employees.
- v) Time calendared to implement the order is 3 months from the date of receipt of this order.

18. It is worth citing at this juncture the observations of the Apex Court in the case of ***Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan (2003) 1 SCC 197*** wherein, the Apex Court has observed –

"An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

19. In the result, the OAs are allowed. Consequently, pending MAs shall stand disposed of. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, 10th day of October, 2018

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