

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

**Original Application No.20/649/2016 & MA No. 52/2017
with OA No.020/716/2016**

Reserved: 20.09.2018

Order pronounced: 24.09.2018

OA 649/2016

Between:

1. N. Veerabhadra Rao, S/o. N. Subbarao,
Aged 53 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
2. S.S. Padmakara Rao, S/o. Krishna Rao,
Aged 53 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
3. B.P.S.C. Kumar, S/o. B. Atchuta Rao,
Aged 52 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
4. N.H. Subrahmanyam, S/o. N.S. Rama Rao,
Aged 54 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
5. K.V.V. Bhaskara Rao, S/o. Krishna Murthy,
Aged 49 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
6. Sd. Imtiyaz, S/o. Md. Mastan,
Aged 59 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.

7. P. Mohanbabu, S/o. P. Venkateswara Rao,
Aged 55 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
8. N.V. Sudhakara Rao, S/o. Bikshalu,
Aged 55 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
9. P.S.R. Seshu, S/o. P. Chandra Rao,
Aged 50 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
10. K. Sureshbabu, S/o. K. Srikrishna Rao,
Aged 49 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
11. K. Jashuva Kumar, S/o. K. Srinivasa Rao,
Aged 48 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
12. S. Yusuf Basha, S/o. S. Hassan,
Aged 52 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.
13. A. Vijaya Sankar, S/o. Venkateswarlu,
Aged 52 years, Occ: Mail Guard,
O/o. The Station Manager,
Vijayawada Division, South Central Railway,
Vijayawada – 520 001.

... Applicants

And

1. Union of India, Rep. by
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,
Vijayawada Division, Vijayawada.

... Respondents

Counsel for the Applicants	...	Mr. K.R.K.V. Prasad,
Counsel for the Respondents	...	Mr. T. Hanumantha Reddy, SC for Rlys

OA 716/2016

Between:

1. S. Subrahmanyam, S/o. Sevanoo,
Aged 61 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. 30-20-3/1, Sri Ramana Towers,
Charparla Vari Street, Sitarampuram,
Vijayawada – 520 003.
2. M. Venkateswara Rao, S/o. M. Narasimha Rao,
Aged 62 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. 23-35-32, A.S. Rao Street,
Laxmi Nagar, Satyanarayanapuram,
Vijayawada – 520 011.
3. M. Syam Prakash, S/o. Bhuchander,
Aged 61 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. 23-35-55, A.S. Rao Street,
Laxmi Nagar, Satyanarayanapuram,
Vijayawada – 520 001.
4. K.V. Tulasi Ram, S/o. K. Venkata Chalapathi,
Aged 61 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. No.16, Krishnan Koil West Street,
Palayamkottai, Tirunelveli – 627 002, Tamilnadu.
5. M. Syam Sudhakar, S/o. William,
Aged 64 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. Bitragunta Village, Bhogolu Mandal,
SPSR Nellore District.
6. K. Karunakar Rao, S/o. K.V. Subbaiah,
Aged 63 years, Occ: Mail Guard (Retd.),

Vijayawada Division, SC Railway,
R/o. H. No. 4-23-76, Jayanthipeta, Perala Post,
Chirala Taluq, Prakasam Dist.

7. P.J. Kantha Raju, S/o. Samuals
Aged 65 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. P.S. Towers, Flat No. 504, Ammapada,
Gowthami Block, Bhavanipuram Outagency,
Vijayawada – 520013.
8. P. Krishna Mohan, S/o. Mallayya Sastry,
Aged 63 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. 1st Street, Shambhu Nagar,
ALCOT Gardens, Rajahmundry – 533 101.
9. V.S.R.K. Patnaik, S/o. Jagadesh Patnaik,
Aged 63 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. #2-43-1/30, Dora Apartments,
A C Gardens, Rajahmundry – 533 101.
10. K.V.V. Suryanarayana, S/o. K. Narasimha Murthy,
Aged 63 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. Villa No. 11, D.B.V. Raju Villas,
Divan Cheruvu, Rajanagaram Mandal,
East Godavari District.
11. B.V. Prabhakara Rao, S/o. Gurriah,
Aged 64 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. D. No. MIG-16, APHB Colony,
Near C.R. Reddy Engineering College,
Vatluru Village, Paddapadu Mandal, Krishna District.
12. C. Venkata Rao, S/o. Sanyasaiah,
Aged 63 years, Occ: Mail Guard (Retd.),
Vijayawada Division, SC Railway,
R/o. Flat No. 402, GK Towers, Ashramam Road,
Padamatalanka, Vijayawada – 520010.

... Applicants

And

1. Union of India, Rep. by
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,
Vijayawada Division, Vijayawada.

... Respondents

Counsel for the Applicants ... Mr. K.R.K.V. Prasad,
Counsel for the Respondents ... Mr. T. Hanumantha Reddy, SC for Rlys

CORAM:

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

COMMON ORDER

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

As the issue involved and the relief sought are common, these OAs were heard together and are disposed vide a common order.

2. These OAs have been filed against non grant of 2nd and 3rd financial upgradations under MACP Scheme.

3. Brief facts of the case:

The applicants have joined as Goods Guard in the respondents organization and are presently working as Mail/ Express Guards in Vijayawada division of South Central Railway. In the VI CPC the hierarchy of the running cadre is as under:

1	2	3	4
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

The lateral movement of the applicants from Senior Goods Guard to Sr. Passenger Guards and thereon to Mail/Express Guard is being treated as a

promotion by the respondents and therefore the applicants are not being given the second and third financial upgradations due to them. Hence, these OAs.

4. The applicants are contending that under MACP Scheme there is only one change in Grade Pay from 2800 to 4200 which can be treated as promotion and not the others since grade pay remains constant. They also state that despite various judicial pronouncements by Ernakulam, Jabalpur, Ahmedabad, Jaipur Benches of this Tribunal about the folly in treating the lateral movement as promotion, the respondents are still not providing relief as is required to be provided under MACP Scheme. The applicants also point out that as per para 5 of annexure I of MACP Scheme notified vide RBE No.101/2009, promotions earned/ upgradations granted under ACP scheme in the past to those grades in the changed scenario of MACP scheme under VI CPC scales have to be ignored. Further, the main plea of the applicants is that they got promotions only from PB-1 with GP Rs.2800 to PB-2 with GP of Rs.4200. On completion of 20 years of service, the applicants ought to have been given second financial upgradation to the GP of Rs.4600/- and on 30 years completion, third financial upgradation to the GP of Rs.4800/-. The application of the para 8 of Annexure I of the RB Circular vide RBE No.101/2009 to the applicants is incorrect as per the applicants version.

5. Respondents state that the promotional avenues of the employees working in running categories is different from the employees working in non-running categories. In running categories, there are three services viz., Goods, Passenger and Express/Mail. In Goods and Passengers services, there will be two different scales i.e. one is basic grade and the other is senior grade. The movement from basic grade to senior grade in a service will be on non-functional basis and from one service to another, will be on functional basis. Each movement of the

employees in the running categories will usher in financial benefits to them. As per the respondents, the applicants have joined as Goods Guards and earned three promotions i.e. Senior Goods Guard, Passenger Guard/ Sr. Passenger Guard and Mail/ Express Guard. Hence, the applicants are not eligible for any financial upgradations under MACP as per Railway Board Circular No.25/2011. They claim that as per para 8 of the Annexure I of RBE No. 101/2009 promotions earned in the posts carrying same grade pay in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACP. Hence, the request of the applicants for grant of GP 4600 and 4800 is not tenable and also the judgments rendered by other Tribunals cannot be made applicable to the applicants.

6. Heard the learned counsel and perused relevant records.

7. The MACP scheme has been formulated to avoid stagnation. The lateral movement of the applicants with the same GP of Rs.4200 from Senior Goods Guard onwards to Mail/Express Guard would mean stagnation. The respondents stated that the orders tendered by the other Tribunals may not apply to them. However, this Tribunal in OA 977/2012, dated 20.08.2018 has delivered a verdict on the same issue that financial upgradation has to be provided in view of the grade pay being the same from Senior Goods Guard to Express Guard. As the issue has come up once again, it would be pertinent to adduce the observations of the different Benches. Observations of the Hon'ble Allahabad High Court in WP (A) No. 18244/2013 are as under:

“Since it has already been held by judicial pronouncements that the post of Senior Goods Guard and Passenger Guard have the same grade pay and the movement of a Senior Goods Guards to the post of Passenger Guard is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per the MACP, they were entitled to two more financial upgradations. This is exactly what has been held by Ernakulam Bench of

the Central Administrative Tribunal in a batch of original applications which was relied upon by the Tribunal in the impugned judgment for the reasons stated above, we find no justification to interfere with the impugned order of the Tribunal. The writ petition is accordingly dismissed.”

The said judgment of the Hon’ble Allahabad High Court has also been confirmed by the Hon’ble Supreme Court in their judgment dated 29.8.2014 in SLP No. 13421 of 2014. The Ajmer Division of the Railway has implemented the order of the Hon’ble Allahabad High Court vide letter No. 656/ET/MACP/Guard/1 dt.13.10.2014. The case is thus fully covered by the judgments stated. In fact, the very philosophy of having MACP was to motivate employees towards better productivity by removing the element of stagnation. In the present case, the stand of the respondents is against this philosophy of the MACP. The observations of the Hon’ble Delhi High Court in WP (C) No.9266/2015 dated 9.5.2016, which were extracted in OA 977/2012 of this Tribunal has explained the very percept and foundations of the MACP scheme. We would not like to repeat the same for the sake of brevity. However, the essence of the judgment is that the MACP scheme does away with the reference to the pay scale on regular promotion in the hierarchy of posts in a particular cadre to which the Government servant belongs. It specifically refers to the next higher grade pay in the hierarchy as given in Section 1 Part-A of I Schedule of the Rules which is to be construed as a promotion. Therefore, in view of the judicial pronouncements made and the Hon’ble Supreme Court confirming the same, we find no reason to prevent relief sought by the applicants in these OAs. Hence, the respondents are directed to consider providing the second and third financial upgradations with all consequential benefits that would flow from granting the said financial upgradatons from the dates due to them. This order

is to be implemented within a period of three months from the date of receipt of this order.

8. OAs are accordingly allowed. MA No. 52/2017 in OA 649/2016 also stand disposed of. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 24th day of September, 2018

evr