

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00652/2016

Jabalpur, this Tuesday, the 10th day of April, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Narendra Sharma, S/o Late Murlidhar Sharma,
Aged about 62 years
2. Gurmeet Singh, S/o Charan Singh aged about 49 years,
3. Pitambar Sati, S/o Bhawani Dutt Sati, aged about 51 years,
4. Y.N.Pandey, S/o K.N.Pandey, aged about 51 years,
5. N.D.Pare, S/o Late Vallabh Pare, aged about 57 years,
6. S.KBhangley, S/o S.B.Bhangley, aged about 52 years,
7. Smt. Vandna Chaturvedi, W/o D.N.Upadhyaya, aged about 52 years,
8. J.K.Madan S/o N.D.Madan, Aged about 49 years,
9. B.L.Meena, S/o Chhajjee Lal Meena, aged about 53 years,
10. R.K.Rai, S/o Bhawani Prasad, aged about 55 years,
11. Surendera Prasad, S/o Angrahitram, aged about 64 years,
Retired Mail Guard
12. Satish Lawania, S/o Rajendra Nath aged about 64 years,
13. R.K.Agnihotri, S/o Suraj Prasad, aged about 62 years,
Retired mail Guard.
14. M.L.Soni, S/o Kishan Lal, aged about 60 years,

15. Nagesh Chourey, S/o C.L.Chourey, aged about 60 years,
16. D.K.Pandey S/o Udit Narayan Pandey, aged about 65 years,
17. B.K.Joshi, S/o J.P.Joshi, aged about 59 years,
18. P.K.Gour S/o P.S.Gour aged about 51 years, Mail Guard

All are working as mail guard except applicant No. 1 & 11 to 16 are retired from department of respondent No.3 on the post of Mail Guard & R/o C/o N. D.Pare, 10 Unity Society, Surya Nagar, Behind New Kamla Nagar Police Station, Nehru Nagar, Bhopal, M.P.-462003

-Applicants

(By Advocate –Shri A.K.Pare)

V e r s u s

1. Union of India, through General Manager, West Central Railway, Opposite Indira Market, Civil Lines, Jabalpur-482001

2. Divisional Railway Manager, West Central Railway, Near Railway Station, Bhopal-452001

- Respondents

(By Advocate –Shri Vijay Tripathi)

(Date of reserving the order:-29.01.2018)

O R D E R

By Ramesh Singh Thakur, JM

The applicant has filed this Original Application and has sought for quashing of Annexure A-10 dated 08.04.2016. This Original Application has been filed by the applicant against the order dated 24.08.2011 (Annexure A-1) & 10.10.2011 (Annexure A-2), by which the benefits of Modified Assured Career Progression (MACP) has been withdrawn and order of recovery of

overdrawn payment, from the salary of the applicant has been issued.

2. The applicant has sought for the following relief in this Original Application:-

“8(i) Issue a writ/writs, order/orders, direction/directions of the appropriate nature to the respondents.

(ii) Direct the respondents to re-fix the salary of the applicants after granting financial benefits of Grade Pay of Rs. 4600/- under MACP Scheme w.e.f. their respective dates and pay arrears with interest of 12% per annum by quashing the order dated 08.04.2016.

(iii) direct the respondents to re-fix the pension of the retired applicants (i.e. Applicant NO. 1 & 11 to 16) after granting financial benefits of Grade Pay of Rs. 4600/- & Rs. 4800/- under MACP Scheme w.e.f. their respective dates and pay arrears with interest of 12% per annum by quashing the order dated 08.04.2016.

(iv) Direct to award the cost of petition.

(v) Any other relief which this Hon'ble CAT may deems fit and proper looking to the facts and circumstances of the case in the interest of justice.”

3. The case of the applicant is that on attaining the age of superannuation, the applicants Nos. 1 and 11 to 16 stood retired from the respondent department from the post of mail guard and applicant No. 2 is working in the respondent department. The applicants along with 47 others were granted financial benefits under MACP scheme with effect from their respective dates vide order dated 21.07.2010. Thereafter the respondents have cancelled

the said order vide order dated 24.08.2011, a copy of which is annexed as Annexure A-1. The applicant have submitted their joint application against the above said order on 01.09.2011. The applicants have also approached to their union, who on their turn also submitted their representation to the respondent No.2, a copy of joint representation dated 01.09.2011 of applicants and union representation dated 01.09.2011 are annexed as Annexure A-4 and A-5. The respondents have not given any response to their representations and on 08.09.2011 the reminder was given to the respondents which is annexed as Annexure A-6. Now the respondent No.2 instead of considering the representation and his reminders submitted by the applicant, issued order for effecting deduction of already paid wages and his arrears under MACP scheme, a copy of order dated 10.10.2011 is annexed as Annexure A-2.

4. Aggrieved by Annexure A-1 & A-2 the applicants approached the Hon'ble Tribunal and vide order dated 11.12.2012 (Annexure A-7) the Tribunal passed order in Original Application No. 962/2011. The respondents have filed a writ petition before the Hon'ble High Court of Madhya Pradesh at Jabalpur against the order of this Tribunal and the Hon'ble High Court vide its order

dated 06.01.2016 has dismissed the said Writ Petition No. 3773/2013, a copy of which is annexed as Annexure A-8.

5. The applicants have approached the respondents through their counsel, who has sent a legal notice for compliance of the order dated 11.12.2012 passed by this Tribunal in Original Application 962/2011 and order dated 06.01.2016 passed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 3773/2013, a copy of notice dated 07.04.2016 is annexed as Annexure A-9. The respondent No.2 has maliciously, dishonestly and deliberately passed the order dated 08.04.2016 without application of mind, a copy of which is Annexure A-10.

6. The grounds of the applicants are that the act of the respondents is perverse and bad in law. Consequently, in the facts and circumstances of the case, the respondents have failed to act as model employer, which is against the well settled principles of service jurisprudence. Action of non-grant of MACP financial up gradation by the respondents are illegal, arbitrary, malafide, unconstitutional, unfair and unjust and against the well settled principles of natural justice.

7. The respondents have filed their reply and it has been submitted by the replying respondents that in compliance of the order passed by this Tribunal in Original Application No. 962/2011

dated 11.12.2012 and Hon'ble High Court Madhya Pradesh at Jabalpur in Writ Petition No. 3733/2013 dated 06.01.2016, the DRM/BPL has passed a speaking order dated 08.04.2016 (Annexure A-10). It has been submitted by the replying respondents that the applicants have been appointed or inducted as Goods Guard and granted due promotions till they got the post of Mail Guard. It has been submitted by the replying respondents that it was noticed that all have got three or more than three promotions in their service career upto Mail Guard. After implementation of MACP scheme dated 10.06.2009 (RBE No. 101/2009), a copy of which is annexed as Annexure R/1. It has been further submitted that vide letter dated 10.02.2011 issued by the Ministry of Railways it has been clarified that the promotion earned in their hierarchy having same grade pay posts will be counted as promotion, a copy of letter dated 10.02.2011 is annexed as Annexure R-2). So in compliance of this instruction and in terms of the conditions of RBE No. 101/2009 the respondent department has cancelled the order granting MACP to the applicant and recovery of arrears was correctly ordered by the replying respondents vide its letter dated 10.10.2011 (Annexure A-2).

8. The applicants have also filed rejoinder and has reiterated its earlier stand taken in the Original Application. It has been

specifically submitted by the applicants that the Hon'ble Tribunal in O.A. 962/2011 has allowed the claim of the applicants and the respondents against the said order filed a Writ Petition which has been dismissed. So the respondents maliciously denied the claim of the applicants.

9. We have heard the learned counsel for the parties and have also gone through the documents attached with the pleadings.

10. In the instant case the main issue before us is regarding grant of MACP to the applicants which has attained finality. It is true that the applicant had earlier filed Original Application No. 962/2011 and vide order dated 11.12.2012, this Tribunal have disposed of the Original Application and operative portion of the order is as under:-

“(11). In view of the aforesaid, we quash the impugned order dated 24.8.2011 (Annexure A-1) and order dated 10.10.2011 (Annexure A-2) and direct Respondent No.2 to consider and dispose of the applicants' joint representation dated 01.09.2011 and 08.09.2011 (Annexure A-5 and A-6) by a reasoned and speaking order within a period of 3 months from the date of receipt of copy of this order, while keeping in view the observations made in this order.

(12) The OA is disposed of accordingly. No order as to the costs.”

11. It is also clear as per Annexure A-8 the replying respondents have preferred a Writ Petition No. 3773/2013 which was finally disposed of vide order dated 06.01.2016, which is as under:-

“Not on Board; taken up upon Mention Memo.

Shri A.K.Pare, learned counsel for the petitioner.

Sri Sandeep K. Shukla, learned counsel for the Union of India.

Counsel for the parties in all fairness submit that the issue raised in this Writ Petition is already answered in Writ Petition No. 13031/2013 and connected cases decided on 20.11.2015.

For the same reasons, this writ petition is dismissed.”

12. In the order of Hon’ble High Court of Madhya Pradesh, it has been specifically held by the Hon’ble High Court that counsel for the parties in all fairness submits that the issue raised in this petition is already answered in Writ Petition No. 13031/2013 and connected cases decided on 20.11.2015 and for the same reasons the Writ Petition is dismissed. Meaning thereby the Hon’ble High Court has dismissed the Writ Petition and the issue has already been covered in Writ Petition No. 13031/2013. We have perused the judgment passed by the Hon’ble High Court in Writ Petition No. 13031/2013 which has been disposed of alongwith the other connected matters on 20.11.2015. The main contention in this Writ Petition is regarding the interpretation of Para 5 & 8 of the MACP. The Hon’ble High Court has finally held as under:-

“(10). We have no hesitation in accepting the aforesaid reasonings of the Division Bench of Allahabad High Court, 13 for the simple reason that a categorical statement should have been made in that respect by the petitioners herein that in fact persons like respondent were granted the benefit of promotion in terms of the Regulations or Rules made by the petitioners in due course of time including the financial benefits and upgradation. Secondly, merely because of the

merger of the pay scales any movement of Senior Goods Guard to the post of Passenger Guard was not to be treated as a promotion unless otherwise provided under the Service Rules. If it was a promotion, in what manner such consideration was done and whether that was granted to the persons like respondent in due course of employment in terms of those Regulations or not, was required to be proved by the petitioners. Nothing in that respect has been produced before the Tribunal. A bald statement that the MACPS would not be applicable in case of persons like respondent is not enough since it is required to be demonstrated by the petitioners themselves that the said MACPS is made for a specific purpose and for specific class of employees who have remained in stagnation in the matter of promotion for a long time. Broadly interpreting the provisions of paragraph 5 and 8 of the aforesaid MACPS, we are of the considered opinion that no error of law was committed by the Tribunal in making the said Scheme applicable for the persons like respondent. However, since certain facts were not clarified by the petitioners before the Tribunal, that opportunity to conduct an enquiry in that respect and to examine the cases of each and every individual separately was granted by the Tribunal by the impugned order. We are of the considered opinion that even such an opportunity was not required to be granted to the petitioners in view of the fact that though petitioners being employer were having all the information in respect of so-called promotion of respondent, the said information was not produced before the Tribunal in adequate manner. However, we are not inclined to interfere in the order of the Tribunal only and are not willing to disturb the said liberty granted by the Tribunal for the reason the said aspect is not called in question by the respondent before us.

(11). In view of the discussions made herein above, we find no force in these writ petitions, which deserve to be and are hereby dismissed. However, looking to the facts and circumstances of the case, parties to the writ petitions to bear their own cost.

Ordered accordingly.”

13. The contention of the counsel for the applicant is that the issue regarding interpretation of Para 5 and Para 8 of the MACP

scheme has already been done by the Hon'ble High Court and the issue has been settled and the verdicts of the Hon'ble High Court of Madhya Pradesh has attained finality.

14. On the other hand the contention of the replying respondents is that though the Hon'ble High Court has passed the order but at the same time the Hon'ble High Court observed that "***However, since certain facts were not clarified by the petitioners before the Tribunal, that opportunity to conduct an enquiry in that respect and to examine the cases of each and every individual separately was granted by the Tribunal by the impugned order***". The main contention of the counsel for the replying respondents is that the Hon'ble High Court while considering C.M.W.P. No. 18244/2013 have not deliberated the policy objective behind the MACP Scheme and therefore, have not considered the relevance of instructions/clarifications issued for the purpose of MACP Scheme in the light of policy perspective as the judgment of the Hon'ble High Court of Allahabad had been relied upon by the Hon'ble High Court of Madhya Pradesh. Moreover, the Hon'ble High Court has not gone through the legality of instructions and the same has not been quashed as such.

15. It is clear from the judgment of the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 13031/2013, particularly in

Para 10 as discussed supra that the Hon'ble High Court has clearly held that the "***Hon'ble Court did not inclined to interfere in the order of the Tribunal only and are not willing to disturb the said liberty granted by the Tribunal for the reason the said aspect is not called in question by the respondent before us.***" Meaning thereby the verdict of the Hon'ble High Court is final and has attained finality. Later on, the judgment passed by the Hon'ble High Court dated 20.11.2015 has also been relied upon by the judgment passed by the Hon'ble High Court in 3773/2013 decided on 06.01.2016, whereby the order passed by this Tribunal in Original Application No. 962/2011 dated 11.12.2012 has been upheld.

16. In view of the above, we are of the considered view that all the issue has already been discussed by the Hon'ble High Court and by this Tribunal as mentioned above and has attained finality. Resultantly this Original Application is allowed and the order dated 08.04.2016 (Annexure A-10) is quashed and set aside. The respondents are directed to refix the salary of the applicant after granting the financial benefits of Grade Pay of Rs. 4600/- under MACP scheme and the respondents are also directed to refix the pension of the applicants Nos. 1 & 11 to 16 after granting financial benefits of Grade Pay of Rs. 4600/- & Rs. 4800/- under MACP

scheme with effect from their respective dates with all consequential benefits within a period of 60 days from the date of receipt of certified copy of this order. No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

rn

**(Navin Tandon)
Administrative Member**