

**Reserved****CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : BILASPUR****Original Application No.203/00428/2015**Jabalpur, this Monday, the 1<sup>st</sup> day of January, 2018**HON'BLE MR. V. AJAY KUMAR, JUDICIAL MEMBER**  
**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**

Pradeep Kumar Mishra, son of Shri Raja Ram Mishra,  
aged about 50 years,  
presently posted as Senior Section Engineer (PW)  
Track Cell in the Office of Principal Chief Engineer,  
South East Central Railway,  
Bilaspur (Chhattisgarh) – 495004.

**-Applicant**

(By Advocate – Shri Amrito Das)

**V e r s u s**

1. South East Central Railway  
through the General Manager, Headquarters,  
Bilaspur, Chhattisgarh – 495004.

2. Chief Personnel Officer,  
South East Central Railway,  
Personnel Department, Bilaspur,  
Chhattisgarh – 495004.

3. Senior Personnel Officer (Headquarters),  
South East Central Railway,  
Personnel Department, Bilaspur,  
Chhattisgarh – 495004.

**-Respondents**

(By Advocate – Shri R.N. Pusty)

(Date of reserving order : 24.08.2017)

**O R D E R****By Navin Tandon, AM.**

The applicant is aggrieved by the implantation/interpretation  
of Modified Assured Career Progression Scheme (MACPS) in his  
case and has filed this Original Application.

2. The brief facts of the case are that the applicant was selected as Permanent Way Mistry (PWM) in the recruitment process having carried out by Railway Recruitment Board (RRB) Mumbai and was appointed on the post of PWM in pay scale of 1400-2300 [4<sup>th</sup> Central Pay Commission (CPC)] vide order dated 25.04.1989 (Annexure A/2). He applied for and got selected for promotion as Junior Engineer (JE) Grade II through General Departmental Competitive Examination (GDCE) vide order dated 20.04.1999. Subsequently, he was promoted as Section Engineer in 2006. The applicant is seeking 2<sup>nd</sup> financial upgradation under MACPS after completing 20 years of service, i.e. April, 2009.

3. The applicant has sought for the following reliefs:

*“(8.1) This Hon’ble Tribunal may kindly be pleased to quash and set aside the order dated 23.03.2015 (Annexure A/1).*

*“(8.2) This Hon’ble Tribunal may kindly be pleased to direct the respondent-authorities to grant the benefit of 2<sup>nd</sup> financial upgradation under the MACPS to the applicant with effect from April 2009.*

*“(8.3) Any other relief (including the cost of the present proceedings) which this Hon’ble Tribunal deem just, fair and equitable in the circumstances of the case may be granted.”*

4. The applicant submits that the post of PWM, to which he was initially appointed, was given a Grade Pay of Rs.4200/- in 6<sup>th</sup> CPC, the same as JE Grade II. In fact, post of PWM, JE Grade II

and JE Grade I were merged together in Grade Pay of Rs.4200/- with the implementation of 6<sup>th</sup> CPC. Meaning thereby the promotion which the applicant received having participated in GDCE in the year 1995 stood nullified as everybody in the cadre of PWM were redesignated as Junior Engineers with the Grade Pay of Rs.4200/-. All those junior to him have been considered for 2<sup>nd</sup> financial upgradation from 20 years of date of joining, whereas in case of applicant, his promotion as JE is being considered as first promotion, as communicated vide impugned order dated 23.03.2015 (Annexure A-1).

**5.** The respondents submit that his promotion from PWM to JE was conducted by RRB as a fresh candidate on 20.04.1999 and subsequently regularized on 19.04.2000. The applicant was promoted from JE-II to Senior Section Engineer (SSE) on 08.12.2006. It is their case that as per para 8 of MACPS (Annexure A/3), the applicant's promotion from PWM to JE will be reckoned for purpose of granting MACP. They have further placed reliance on RBE No.100/2012 dated 03.10.2012 (Annexure R-1) to say that subsequent to his promotion as JE, which provides for filling up of vacancies in a grade by direct recruitment, past services will not be counted for the purposes of MACPS. Accordingly, the applicant has been informed vide order dated 23.03.2015 (Annexure A-1).

6. Heard both the parties.

7. Learned counsel for the applicant submitted that he is being penalized for being meritorious and having taken extra steps to study for, appear and succeed in competitive examination, which his other batchmates did not do. While those junior to him have been given 2<sup>nd</sup> financial upgradation w.e.f. April, 2009, he is being denied the same and will be given only w.e.f. 08.12.2016. He has also brought out examples where several persons in various cadres/Railway zones have been given financial upgradations as sought for by him. He further submitted that his case should be considered as per Para 5 of MACPS, which ignores all the promotions earned/upgradations granted due to merger of pay scales for granting upgradation under MACPS.

8. Learned counsel for the respondents averred that the applicant is being treated as Direct recruit as the recruitment rules of Permanent Way Inspectors (PWI) [subsequently redesignated as Junior Engineer (Track)] Grade III provide for  $66\frac{2}{3}\%$  by direct recruitment through RRB's and  $33\frac{1}{3}\%$  by promotion by selection of PWM, having qualification of Diploma in Engineering. Therefore, the case of applicant is correctly covered under Para 8 of MACPS.

9. The relevant extracts of the provisions referred to are as under:

9.1 Extracts of Paragraphs 5 and 8 of the MACPS (RBE 101/2009 dated 10.06.2009):

*“(5). Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.*

**Illustration-1**

*The pre-revised hierarchy (in ascending order) in a particular organization was as follows:Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500.*

*(a) A Railway servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500.*

*(b) Another Railway servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.*

*In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth CPC. As per the RS(RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in*

*the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.*

.....

*(8). 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”.*

9.2. Railway Board’s letter RBE 100/2012 dated 12.09.2012

(Annexure R/1):

*“References have been received from Zonal Railways seeking clarification regarding grant of benefits under MACPS in respect of the employees qualifying through LDCE/GDCE. The matter has been examined in consultation with Department of Personnel & Training (DoP&T), the nodal department of Government on MACPS and it has been decided as under:-*

*(i) if the relevant RRs provide for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade though LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such case, past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP Scheme.*

*(ii) if the relevant RRs prescribe a promotion Quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP Scheme”.*

9.3 Railway Board’s letter dated 12.07.2011 (extracted from the order of Hon’ble High Court of Delhi in WP(C) 1738/2014):

*“With reference to the above, it is stated that the instructions on MACP Scheme are categorical and*

*unambiguous. The same should be strictly adhered to, in terms of para-8 of annexure to Board's letter dated 10.06.2009 (RBE No. 101/2009) 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. Northern Railway's decision to decide MACP cases contrary to these instructions is a clear violation of the prescribed policy instructions. It is thus advised that corrective steps to rectify the error may be taken at the earliest and all such MACP cases in future to be decided strictly in accordance with the extant instructions on the subject."*

**10.** The judgment in OA 2815/2011 of Principal Bench of this Tribunal, delivered on 15.02.2013, have dealt with the application of paragraphs 5 and 8 of MACPS in the case of Assistant Station Masters getting promoted as Controllers in Northern Railway. The relevant paragraphs 5 and 6 of the judgment read as under:

*"(5). While the General Manager granted the applicants benefit of Clause-5 of the Scheme, the Railway Board has clarified that the cases of the applicants have to be dealt with under Clause-8 of the MACP Scheme. Thus, the issue to be decided is whether Clause-5 or Clause-8 would be applicable for deciding the cases of applicants. Counsel for applicants stated that there is contradiction between Clause-5 and Clause-8 of the Scheme whereas counsel for respondents argued that Clause-5 deals only with ACP cases and not cases of substantive promotions. We are not inclined to accept either of the two view points. In our opinion a mere reading of Clause-5 quoted above would make it clear that it deals with cases in which promotions/upgradations under the ACP Scheme have*

*been earned prior to acceptance of the new pay scales as recommended by the 6th CPC. On the other hand, Clause-8 deals with promotions earned after acceptance of new pay scale. This is clear from the fact that Clause-8 mentions 'grade pay' in the promotional hierarchy, a concept which was introduced only after acceptance of 6th Pay Commission recommendations. Prior to that there was no provision of grade pay. In the instant case, the contention of the applicants is that in the old pay scales they had earned promotion Rs.5000-8000 to Rs.5500-9000. In our opinion since these two grades have been merged in the revised pay scales and have been put in Pay Band-II with Grade Pay of Rs.4200/- these promotions have to be ignored as per Clause-5 of the MACP Scheme while considering their cases for 3rd upgradation in MACP. If this is not done, then those juniors to the applicants who were still working in the pay scale of Rs.5000-8000 would get placed in the new pay scales in Pay Band-II with Grade Pay of Rs.4200/- and would be entitled to two upgradations under the MACP Scheme to reach Grade Pay of Rs.4800/- whereas applicants would remain entitled to one MACP and would only reach grade pay of Rs.4600/-. Thus, an anomalous situation would be created in which juniors would get more pay than their seniors. Thus Railway Board have erred in giving the clarification vide their impugned letter dated 12.07.2011.*

**(6).** *Under these circumstances, the O.A. is allowed and the impugned order dated 12.07.2011 of the Railway Board is quashed. The respondents shall consider grant of MACP benefit to the applicants as per Clause-5 of the Scheme within six weeks from the date of receipt of a certified copy of this order. There shall be no order as to costs."*



**11.** The respondents in OA 2815/2011 filed Writ Petition in Hon'ble High Court of Delhi, which was decided on 28.10.2014 [W.P.(C)No.1738/2014 & C.M. No.3639/2014]. The relevant paragraphs 15 to 19 of the order of the Hon'ble High Court are reproduced below:-

*“(15). On perusal of Clause -5 of the scheme, this Court is of the view that the promotion earned by the employees under the ACP scheme in the grade –which now have the same Grade Pay due to their merger, will not be considered for granting them MACPS. In the instant case, the respondents had earned promotions in pay scale of Rs.5000-8000 and Rs.5500-9000, which have been merged and placed in the PB-II with Grade Pay of Rs.4200. Therefore, the promotion of the respondents in the same Grade Pay will be ignored for the purpose of granting them MACPS.*

*(16). It is clear that clause-5 would apply in cases where the promotions were given to the employees prior to application of the recommendations of the 6<sup>th</sup> CPC. Prior to such recommendations, the respondents secured their promotions in the pay bands of Rs.5000-8000 and Rs.5500-9000. Therefore, after the application of the 6<sup>th</sup> CPC, the aforesaid promotions will be considered as one promotion/ financial upgradation. Thereafter, the MACP Scheme came into being, whereby the employees would be entitled to financial upgradations after completion of 10, 20 and 30 years of their service, if they were not granted regular promotion. In the instant case, the respondents had completed their 30 years in service and as per the aforesaid discussion, they had obtained only one promotion/ financial upgradation as per Clause-5. In the opinion of this Court, as only one promotion had been granted to the respondents, they are entitled to the benefit of two more financial upgradations. Thus, the respondents should be placed in the Grade Pay of Rs.4800 after their 3<sup>rd</sup> financial upgradation.*

*(17). In Tejbir Singh Dagar (W.P.(C)No.840/2012 decided on 03.01.2014), under the scheme, the salary of the petitioners was fixed lower than the salary of the juniors. This Court directed the respondents to upgrade the pay of the petitioner as per the ACP Scheme during the application of the 5<sup>th</sup> CPC. However, the aforesaid order was not implemented. In the meantime, the 6<sup>th</sup> CPC came into being and the earlier anomaly of the petitioner—regarding lower pay than that of their juniors continued. The respondents justified their actions before the Court on the ground that as per Condition 20, MACP Scheme, ‘no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/ Grade pay under the MACPS.’ The Court, allowing the petition, held: “It does not appeal to the common sense of a reasonable man that Scheme which has been envisaged/ formulated to benefit those employees who are stagnating in the same rank, either due to lack of promotion or failure to clear the departmental examination, by granting them financial upgradation to such stagnant employees, would prejudice meritorious and hardworking employees, who had qualified the Limited Departmental Competitive Examination and climb the ladder of success. They cannot be penalized for their efficiency in securing a promotion to next rank instead of stagnating in same rank. The scheme is a welfare scheme for those employees who stagnate. It is certainly not intended to prejudice senior personnel by compelling them to draw lesser salary than those junior and less meritorious than them. The scheme certainly did not envisaged the disadvantage it was causing to its bright employees. Such working of the Scheme would result in rewarding those who did not succeed in the competitive examination.”*

*Further, this Court in Tejbir Singh Dagar (supra) also placed reliance on the case of Union of India vs. Jagdish, (1997) 3 SCC 176, wherein it was held that Article 39 (d) of the Constitution was the guiding factor in interpreting FR-22 and the Principle of stepping up contained in the Fundamental Rules applies when a junior person in the same post starts receiving more salary than his senior on the same post.*

*(18). In the present case also, the respondents—being more meritorious, are suffering and drawing a lesser Grade Pay due to the reason that they obtained two promotions – but in*

*the same Grade Pay , which was merged by the 6<sup>th</sup> CPC. No junior in the same post can draw more salary than his seniors.*

*(19). In view of the foregoing discussion, this Court finds no reason to interfere with the decision of the CAT. The writ petition is, accordingly, dismissed, but with no order as to costs”*

**12.** We feel that the case of the applicant is covered by the above two judicial pronouncements, wherein the first promotion from PWM to JE took place on 20.04.1999 before 6<sup>th</sup> CPC was implemented. Hence, para 5 of MACPS will be applicable in the case of the applicant.

**13.** Accordingly, we have no hesitation in quashing the impugned order dated 23.03.2015 (Annexure A/1).

**14.** The Original Application is allowed. The impugned order dated 23.03.2015 (Annexure A/1) is quashed and set aside. The respondents are directed to consider grant of MACP benefit to the applicant as per para 5 of the MACPS within six weeks from the date of receipt of a certified copy of this order. No costs.

**(Navin Tandon)**  
**Administrative Member**

*am*

**(V. Ajay |Kumar)**  
**Judicial Member**