

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00836/14

Reserved on: 23.02.2018
Pronounced on: 14.03.2018

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER

1. Tirath Raj, son of Late Ram Kishore, Guard (Mail), posted at Samastipur.
2. Ajay Kumar Srivastava, son of S.N. Lal Guard (Mail), posted at Samastipur.
3. Bir Jha, Son of Belbhadra Jha, Guard (Mail), posted at Darbhanga.
4. Binod Kumar Singh, son of R.B. Singh, Guard (Mail), posted at Samastipur.
5. Devendra Raj Kamal, son of Bishwanath, Guard (Mail), posted at Samastipur.
6. Md. Abuear Zahidi, son of Abdul Samad, Guard (Mail), posted at Darbhanga.
7. Arun Kumar, son of Dinesh Thakur, Guard (Mail), posted at Muzaffarpur.
8. Abdul Mannan Ali, son of Md. Tappa Mian, Guard (Mail), posted at Muzaffarpur.
9. Mishri Lal Ram, son of Santosh Ram, Guard (Sr. Passenger), posted at Narkatiyaganj.
10. Hare Ram Mishra, son of Ramakant Mishra Guard (Sr. Passenger), posted at Muzaffarpur.
11. Birendra Kishore, son of R.N. Karn, Guard (Sr. Passenger), posted at Muzaffarpur.
12. Prahlad Prasad, son of Ramdeo Prasad, Guard (Sr. Passenger), posted at Muzaffarpur.
13. Vijay Shankar Singh, son of Ram Dhani Singh, Guard (Sr. Passenger), posted at Samastipur.
14. Subhash Chandra Mishra, son of Sita Ram Mishra, Guard (Sr. Passenger), posted at Darbhanga.
15. Subhash Chandra Srivastava, son of Achhaya Narayan, Guard(Passenger), posted at Darbhanga.
16. Dipu Kumar Prasad, son of Y.K. Prasad, Guard (Passenger), posted at Samastipur.
17. Kalim Ahmad Ansari, son of S.A. Ansari, Guard (Passenger), posted at Samastipur.
18. Prahlad Prasad Gupta, Son of Ramayan Pd. Gupta, Guard (Passenger), posted at Darbhanga.

19. Arbind Kumar Singh, son of Ram Raj Singh, Guard (Passenger), posted at Narkatiyaganj.
20. Satya Prakash Tiwari, son of Sarda Tiwari, Guard (Passenger), posted at Narkatiyaganj.
21. Raghvendra Kumar, son of Bishwanath Jha, Guard (passenger), posted at Muzaffarpur.
22. Biharilal Rai, son of Sheo Nandan, Guard (Passenger), posted at Samastipur.
23. Anil Kumar Mallik, son of V.N. Mallik, Guard (passenger), posted at Darbhanga.
24. G.N.P. Verma, son of S.M.P. Verma, Guard (Passenger), posted at Samastipur.
25. Brij Mohan Prasad, son of Deo Narayan Prasad, Guard (Passenger), posted at Narkatiyaganj.
26. Devendra Rai, son of R.C. Rai, Guard (Passenger), posted at Samastipur.
27. A.N. Mishra, son of Bishwanath Mishra, Guard (Passenger), posted at Darbhanga.
28. Vinod Kumar Choudhary, son of R.C. Choudhary, Guard (Passenger), posted at Muzaffarpur.
29. Indra Mohan Jha, son of Yogendra Jha, Sr. Guard (Goods), posted at Darbhanga.
30. Avinash, son of Late Rai Devendranath, Sr. Guard (Goods) at Samastipur.
31. Shashi Bhushan Thakur, son of Bind Narayan Thakur, Guard (Goods), posted at Narkatiyaganj/Samastipur.

..... Applicant.

- By Advocate: - Mr. A. Hakim

-Versus-

1. The Union of India through the Secretary, Railway Board Bhawan, New Delhi.
2. The General Manager, E.C. Railway, Hajipur.
3. The Chief Personnel Officer, E.C. Railway, Hazipur.
4. The Divisional Personnel Officer, E.C. Railway, Samastipur.

..... Respondents.

- By Advocate(s): - Mr. Bindhyachal Rai

ORDER

Per A.K. Upadhyay, A.M.:- The applicants have filed this OA seeking the following reliefs:-

- “(i) To set aside/quash the orders dated 12.08.2014, 14.08.2014 and 25.08.2014 as contained in Annexure-5 series.
- (ii) To restore the benefit under MACP Scheme to the applicants.
- (iii) To direct the respondent authorities to extend the benefit arising out of decisions of Learned Tribunal, Ernakulam Bench, the Hon’ble High Court of Allahabad as affirmed by Hon’ble Supreme Court and also this Learned Tribunal as contained in Annexures - 6, 7 and 8 to the applicants.
- (iv) To direct the respondent authorities to refund the amount recovered from the salary of the applicants to them with 18% interest per annum.
- (v) To grant any other relief and/or reliefs in the facts and circumstances of the case”

2. The applicants in this case are Mail Guards (applicant no. 1 to 8), Sr. Passenger Guard (Applicants 9 to 14), Passenger Guards (applicants 15 to 28), Sr. Goods Guard (applicants 29 and 30) and Goods Guard (applicant no. 31). A scheme of financial upgradation known as Modified Career Progression Scheme (MACP in short) was introduced w.e.f. 01.09.2008 pursuant to the 6th CPC recommendations. The scheme provided for three financial upgradations at intervals of 10, 20 and 30 years of continuous regular service provided an employee did not get regular promotion in the meanwhile. Prior to MACP another scheme of financial upgradation known as Assured Career Progression (ACP) was operational from October, 1999 to 31.08.2008 which provided for two financial

upgradations on completion of 12/24 years of service. The present case is concerned only with MACP. In accordance with the MACP scheme, the applicants were granted second, or second and third MACP w.e.f. 01.09.2008, depending on the number of years of service in each case by orders dated 22.03.2010 and 17.05.2010 placed at Annexure/2 series. On the basis of these orders, their pay was fixed after the upgradation on second MACP in Pay Band 9300-34800+GP 4600, on third MACP in the Pay Band 9300-34800+ GP 4800 respectively w.e.f. 01.09.2008 by order dated 29.03.2010 (Annexure-3). Accordingly, the applicants were also paid salary and arrears on that basis.

3. The dispute arose when the respondents by order dated 10.12.2010 withdrew the financial upgradations stating that in their normal channel of promotion, the applicants had already got two or more promotions. Therefore, the said upgradation was erroneously given and the applicants were asked to submit their explanation, if any, to the authorities.

4. The aforesaid notice was challenged by the applicants in OA No. 10/2013 citing the judgments of Ernakulam Bench of the Tribunal and Hon'ble High Court of Allahabad holding that movement from Senior Goods Guard to Passenger Guard carrying the same Grade Pay is a lateral induction and cannot be counted as promotion for the purpose of MACP. The Tribunal in its judgment dated 02.04.2014 in OA No. 10/2013 in the case filed by the applicants

made a reference to the aforesaid judgments. It was observed that promotion to a post without financial benefit is not a promotion for the purpose of ACP or MACP. Therefore, the respondents were directed to pass appropriate order on eligibility of MACP of each individual applicant stating clearly the different financial upgradations/promotion each employee has got. In pursuance of the above direction the impugned orders dated 12.08.2014, 14.08.2014 and 25.08.2014 have been passed which have been placed at Annexure-5 series.

5. The learned counsel for the applicant Shri A. Hakim submitted that this issue has already been adjudicated by the Ernakulam Bench of the Tribunal in (i) OA No.484/2011 along with a batch of OAs by order dated 22.02.2012 (Annexure A/6), (ii) the judgment of the Hon'ble High Court, Allahabad dated 19.07.2013 in Writ A No. 18244 of 2013 (Annexure A-7), (iii) OA No. 721/2012 of CAT, Patna Bench – order dated 25.02.2014 (Annexure A-8). During the course of argument, the applicant's counsel also placed on record CAT, Patna Bench's judgment dated 20.05.2015 in OA No. 663 of 2013 on a similar matter, which has also been affirmed by the Hon'ble Patna High Court in CWJC No. 6398 of 2014 by judgment dated 28.02.2017. In these judgments the Tribunal and other courts have examined the hierarchy of promotion in the Railways in Guard cadre and the relevant Railway Board's circulars about the manner in

which the MACP has to be implemented, and in all these cases the OAs have been allowed.

6. The respondents have filed their written statement. It has been stated that the MACP was given to the applicants initially erroneously as the provisions laid down in RBE No. 101/2009 was overlooked. Accordingly, the applicants were given notice vide order dated 10.12.2010 for withdrawing the benefits. It has also been contended by the respondents that the hierarchy of posts for Guards is as follows:-

Goods Guard → Sr. Goods Guard → Sr. Passenger Guard → Mail Guard

The promotion from Goods Guard 5200-20200 GP 2800 to Sr. Goods Guard PB 9300-34800+GP 4200 is given on non-functional basis but benefit of pay fixation is given and it is taken as financial upgradation. It has also been further submitted that Sr. Goods Guard to Sr. Passenger Guards, as also Sr. Passenger Guard to Mail Guard are treated as financial upgradation because benefit of pay fixation is given even though all these posts carry the same PB 9300-34800+ GP 4200. Accordingly, the respondents contend that since the applicants had already got two or more regular promotions/financial upgradations, it was realized that they had been granted the second/third MACP erroneously and therefore the notices were issued.

7. Heard the parties and perused the documents.

8. Both the parties agree that the basic instrument by which the MACP was introduced in the Railways is RBE No. 101/2009 dated 10.06.2009 (Annexure A-1). The respondents have enclosed a letter dated 10.02.2011 from the Railway Board purportedly giving some clarifications with respect to RBE No. 101/2009. Therefore, these will be read together and it will be examined whether the respondents' action is consistent with the spirit of the aforesaid basic instrument vide RBE No. 101/2009. While doing so, we shall also refer to the judgments cited by the applicants in similar cases by which similar matter has already been examined in detail several times.

RBE No. 101/2009

The first two paragraphs of this scheme read as follows:-

“1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10,20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay.

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 1, 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/organisation will be given only at the time of regular promotion.”

9. It is clear from the above that the key words are financial upgradation “ *in the immediate next higher Grade Pay in the*

hierarchy of the recommended revised pay bands and Grade Pay as given in Section-1 Part A of the First Schedule of the Railway Services (Revised Pay) Rules, 2008". Thus, it is clear that any movement from one post to another carrying the same Grade Pay would not amount to promotion/financial upgradation. Therefore, any such definition provided by the Railway Board with regard to Goods Guard would have to be held contrary to their basic policy of MACP. Therefore, the clarification issued by the Railway Board vide letter dated 10.02.2011 (Annexure R/2) are contradictory to the policy of MACP in RBE No. 101/2009 in as much as some movements from one designation to another carrying the same Grade Pay has been treated as promotion. A 'clarification' cannot override the basic instrument, if it has the effect of negating the benefits given by the basic instrument.

10. Another key provision in the Scheme is Para-5 of the Scheme which is as follows:-

" 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."

11. Thus, this matter has to be examined on the touchstone of the aforesaid para 1,2 and 5 of the MACP scheme as circulated vide RBE No. 101/2009 dated 10.06.2009. All the judgments cited by the applicant have taken note of the hierarchy of the pay scales of the Goods Guard. The hierarchy and the pay scale of the Goods

Guard cadre before 01.01.2006 and after 01.01.2006, i.e. post 6th CPC are as follows:-

Sl. No.	Designation	Pay scale Pre 01.01.2006	Pay scale After 01.01.2006
1	Mail Guard	5500-9000	9300-34800+GP 4200
2	Sr. Passenger Guard	5500-9000	9300-34800+GP 4200
3	Passenger Guard	5000-8000	9300-34800+GP 4200
4	Sr. Goods Guard	5000-8000	9300-34800+GP 4200
5	Goods Guard	4500-7000	5200-20200+GP 2800

12. In the light of the above chart and reading it harmoniously with MACP scheme vide RBE No. 101/2009, the courts have held in a number of cases that all the movements within the 4200 Grade Pay shall not be counted as promotion and only movement from the Grade Pay of 2800 to that of 4200 shall be counted as one promotion.

13. CAT, Patna Bench's judgment dated 20.05.2015 in OA 663/2013 on the aforesaid lines has also been affirmed by Hon'ble Patna High Court in CWJC No. 6398 of 2016 by judgment dated 28.02.2017.

14. In conclusion, the Railways' action in withdrawing the benefits of 2nd/3rd MACP is erroneous and contrary to the scheme. The OA is accordingly allowed. The impugned orders dated 12.08.2014, 14.08.2014 and 25.08.2014 contained in Annexure A-5 series are quashed and set aside. The respondents are directed to

restore the MACP granted earlier to the applicants within three months of receipt of a copy of this order. No order as to costs.

[Jayesh V. Bhairaiva]
Judicial Member
Srk.

[A.K Upadhyay]
Administrative Member