

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00473/2015

Thursday, this the 14th day of March, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Babu Prabhakaran, aged 60 years
S/o Prabhakaran
Retired Mopla Khalasi/Mason, South Central Railway
Tirupati. Residing at Shibu Bhavanam, Ithottuva
West Kallada P.O., Kollam. Applicant

[Advocate: Mr. Martin G.Thottan]

versus

1. Union of India represented by the General Manager
South Central Railway, Rail Nilayam
Secunderabad.
2. The Chief Administrative Officer, Construction
South Central Railway, Central Railway
Secunderabad.
3. The Deputy Chief Engineer, Guage Conversion
South Central Railway, Tirupati. Respondents

[Advocate: Mrs. K. Girija]

The OA having been heard on 12th March, 2019, this Tribunal delivered the following order on 14.03.2019:

ORDER**By E.K.Bharat Bhushan, Administrative Member**

This OA is filed by Sri Babu Prabhakaran, retired Mopla Khalasi/Mason, South Central Railway, residing at Kollam, against the failure of the respondents to grant second financial upgradation under MACP with due benefits to the applicant. The relief sought in the OA is as follows:

"Declare that the applicant is entitled to get the 2nd financial upgradation in PB Rs.5200-20200+GP 2800 under MACPs from 23.3.2012, with all consequential benefits and direct the respondents accordingly."

2. The applicant joined as Mopla Khalasi under the 2nd respondent on 20.4.1979. He was granted temporary status in the scale of pay Rs.330-480 (3rd PC) w.e.f. 1.1.1983. The said scale was revised as Rs.1200-1800 w.e.f. 1.1.1986 as part of 4th PC and as Rs.3050-4590 w.e.f. 1.1.1996 as part of the 5th PC. The applicant was regularized as Artisan Grade-III in scale Rs.3050-4950 (presently PB Rs.5200-2200+GP 1900) on 13.6.2001.

3. A financial upgradation on adhoc basis was granted to him under the erstwhile ACP Scheme w.e.f. 29.4.2004 to the scale Rs.4000-6000 (Annexure A1). The pay scale Rs.4000-6000 was revised as PB Rs. 5200-20200+GP Rs.2400 w.e.f. 1.1.2006. The applicant claims that he was due for MACP benefit after 10 years of service w.e.f. 1.9.2008 but was denied the same. He made several representations for the above purpose. A copy of the last representation made on 17.5.2014 made to the 2nd respondent enclosing a copy of Railway Board letter No.RBE 215/2009 for counting 50% of the temporary status service for MACP is produced as Annexure A3, but this was also to no avail.

4. The applicant has put in nearly 31 years' service from 1.1.1983 to 30.11.2014. Reckoning 50% of temporary status service from 1.1.1983 to

12.6.2001, he has 22 years, 7 months and 22 days of qualifying service for pension. This is adequate qualifying service for obtaining MACP benefits as 2nd financial upgradation. Thus the applicant claims that he is eligible for 2nd MACP benefit from 23.3.2002 with consequential benefit in Grade Pay leading to enhanced pensionary benefits w.e.f. 1.12.2014.

5. The respondents have filed a reply statement wherein it is stated that the applicant was granted temporary status in the scale Rs.260-400 and not in scale Rs.330-480 (3rd Pay Commission). He got the benefit of one adhoc promotion to the scale Rs.330-480 w.e.f. 19.5.1984 (Annexure R2). It was this enhanced scale which came to be further increased to Rs.1200-1800 (4th Pay Commission) and further to Rs.4000-6000 w.e.f. 1.1.1996 (5th PC).

6. As regards the Grade Pay, he has been allowed the GP of Rs.2000 w.e.f. 1.9.2008 in scale Rs.5200-20200 i.e. next grade pay to the initial grade pay of Rs.1900 in the regular post. Further his pay has been continued in adhoc promotional pay of Rs.5200-20200 with GP of Rs.2400 without being reverted. Thus it is argued that two benefits had accrued to the employee owing to the fact that if the adhoc promotion had not been taken into account, his Grade Pay would have been fixed in the initial GP of Rs.1900 for the first 10 years and in the second 10 years Rs.2000, but the respondents had allowed him to continue on Grade Pay of Rs.2400. Thus the applicant has already got two financial upgradations from the eligible entry grade of GP Rs.1900 and to the GP Rs. 2000 and 2400 respectively.

7. Heard Mr.Martin G.Thottan, learned counsel on behalf of the applicant and Mrs. K.Girija, Standing Counsel for the respondents.

8. The applicant has not been beneficiary of any formal promotion as he retired from the category in which he entered service. He got the benefit of one up-gradation, having been upgraded to Rs.330-400. The said Grade was elevated to Rs.3050-4590 at the time of 5th Pay Commission. As per Annexure A1, issued on 18.7.2006, it is seen that the scale Rs.3050-4590 was revised as Rs.4000-6000. The only financial upgradation he has got so far is the first one mentioned.

9. Now the question is whether he is eligible for the benefits under the 2nd MACP for which an employee becomes eligible when he completes 20 years of service without promotion. The applicant has spent 22 ½ years of reckonable service (calculating 50% of temporary service) and is thus eligible for the same. As the scale of pay Rs.4000-6000 came to be revised to Rs.5200-20200+ GP of Rs.2800, there appears to be no inadmissibility in his claiming the Grade Pay of Rs.2800 from the date he completed 20 years of service. The respondents, counting these as adhoc promotions, have stated that he has progressed from Grade Pay of Rs.1900 and ought to have been fixed at GP of Rs.2000 but instead, he was granted the higher GP of Rs.2400. We do not think, this was a fair calculation. Having got the benefit of one promotion, he is eligible for the 2nd MACP from the date he completed 20 years of service which was on 23.3.2012. The applicant is eligible for the next stage in Grade Pay and having been in receipt of GP of Rs.2400, he is eligible for GP of Rs.2800 as claimed. The arguments to contrary made by the respondents are not valid. The applicant cited the orders of this Tribunal in OA No.609 of 2017 wherein the benefits were allowed to an employee who figures in the very same list as the applicant herein. However, the thrust of that case was more on the question whether the applicant therein could claim the benefit of 20 years of service.

10. In the conspectus of the facts and circumstances, the present OA succeeds.

The applicant is eligible for a higher Grade Pay of Rs.2800 from the date he completed 20 years of service. This benefit is to be allowed to the applicant as arrears of pay and allowances and suitable changes are to be made in his pension. These orders are to be implemented as expeditiously as possible and in any case within three months of receipt of this order. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

Annexure A1: Copy of memorandum No.P.Con.GC.TPTY.12 dated 18.7.2006.

Annexure A2: Copy of the Railway Board's letter RBE No.101/2009 dated 10.6.2009 annexed with MACPS.

Annexure A3: Copy of Railway Board letter RBE No.215/2009 dated 4.12.2009.

Annexure A4: Copy of the service certificate No.018540 with the working sheet of terminal benefits on the reverse, issued by the 3rd respondent on 30.11.2014.

Annexure MA1: Copy of the representation dated 17.5.2014 submitted by the applicant.

Annexures filed by the respondents:

Annexure R1: Copy of the order No.18/86(DEN/C-II Miryalguda vide office order No.DEN/C/MLG/E.8 dated 9.10.1986.

Annexure R2: Copy of the relevant pages of the Service Register of the applicant.

Annexure R3: Copy of pay structures of 3rd, 4th, 5th and 6th Pay Commission.

Annexure R4: Copy of the CPO/SC's letter No.P/E/407/PCI/Ph-II Vol.VII dated 13.6.2001.