

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00917/2014

Thursday, this the 11th day of April, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. Jevi George.P,
S/o.C.Packianathan,
Guard – Mail & Express,
Southern Railway, Thiruvananthapuram – 695 001.
Residing at No.253, IIInd Cross Street,
Ponnappa Nadar Colony, Nagercoil,
Kanniyakumari District – 629 004, Tamil Nadu.
2. Krishnaswamy S.,
S/o.U.Sudalaimadan,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Plot No.III,
Abdul Reman Mujalala Nagar,
V.M.Chajhiram, Palayamkottai,
Tirunelveli – 627 011, Tamil Nadu.
3. Anilkumar B, S/o.Haskaran,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Geetha Bhavan,
Sree Krishna Nagar, House No.42,
Asramam, Kollam – 691 002.
4. Dileep.S., S/o.N.Sadanandan,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Sreesylam, House No.72,
Krishna Nagar, Land 4, Peroorkada P.O.,
Thiruvananthapuram – 695 005.
5. Bimial.V.S.,
S/o.P.Vasudevan Pillai,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Pavithram, TC-17/305/(1),
Chadiyara Lane, Poojapura,
Thiruvananthapuram – 695 012.

6. Mathewkutty.G.,
S/o.C.Geevarghese,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Marry Land, Cheerankavu,
Ezhukone P.O., Kollam – 691 505.
7. Johnthomas.M.,
S/o.M.Y.Thomas,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Muringasseril Kanamoottil House,
Kumbanad P.O., Thiruvalla – 689 547, Kerala State.
8. Sivaprasad.V.,
S/o.Velukutty Chettiar,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Vilayil, Thodiyoor P.O.,
Karunagapally, Kollam – 690 523.
9. Thomas.D., S/o.K.T.Devasia,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Koduvatjara House,
Kurisummoodu P.O., Chaganacherry,
Kottayam – 686 104.
10. Ajikumar.M.S.,
S/o.K.P.Sivasankara Pillai,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Bharathy, Mathruka Nagar,
House No.3, Uliya Kovil, Kollam – 691 019.
11. Subhash Kumar.K., S/o.P.Kumaran,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Karthika, T.C.6/1633(2),
Nethaji Road, PKP Lane, Vattiyourkavu P.O.,
Thiruvananthapuram – 695 013.
12. Rajendran.K.,
S/o.M.Kalimuthu Chettiar,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at No.29/13-1,
Marimutharamman Koil Street,
Vadiveeswaram, Kottar P.O., Nagercoil,
Kanyakumari – 629 002, Tamil Nadu.

13. Krishnakumar.A.,
S/o.K.Janardhanan Pillai,
Mail Guard, Southern Railway,
Thiruvananthapuram – 695 001.
Residing at Roheni, Villikulathu Veedu,
Kaikulangara, Kollam – 691 012. ...Applicants

(By Advocate – Mr.U.Balagangadharan)

v e r s u s

1. The General Manager,
Southern Railway, Park Town,
Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters,
Park Town, Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Divisional Office, Thiruvananthapuram – 695 001.
4. The Divisional Railway Manager,
Thiruvananthapuram Division,
Thiruvananthapuram – 695 001.
5. The Secretary (Establishment),
Railway Board, New Delhi – 110 011. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 4th April 2019, the Tribunal on 11th April 2019 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/917/2014 is filed by Shri.Jevi George.P and 12 others who are Mail Guards working in Thiruvananthapuram Division of Southern Railway. They are aggrieved by the order of the 3rd respondent which, *inter-alia*, seeks to cancel the financial upgradation granted under the Modified Assured Career Progression (MACP) Scheme on the ground that promotions made to categories which have since been merged have to be

reckoned while examining the eligibility for MACP upgradation. A copy of the impugned order is at Annexure A-1. The reliefs sought in the O.A are as follows :

1. Call for the records leading to Annexure A-1 and set aside the same as legally unsustainable.
2. Call for the records leading to Annexure A-2 and strike down in Clause 8 MACP Scheme appended thereto.
3. Direct the 3rd respondent continue to pay salary in terms of financial upgradations granted as per Annexure A-3.
4. Declare that the applicants are entitled to be granted financial upgradations as per Annexure A-3 under Annexure A-2 MACP Scheme untrammelle by Clause 8 in Annexure A-2 MACP Scheme.
5. Grant such other relief that the Hon'ble Court may feel fit in the facts and circumstances of the case.

2. All the applicants except 12 and 13 had commenced their service as Goods Guard through Railway Recruitment Board (RRB). The 12th and 13th applicants initially joined as Ticket Clerk and Commercial Clerk respectively and then changed their category as Goods Guard. The service particulars of the applicants are given in the table below :

Appl.	Date of joining, post	1 st promotion post and scale of pay	2 nd promotion post and scale of pay	3 rd promotion post and scale of pay	4 th promotion post and scale of pay
1 st	14.3.1977, Goods Guard 'C'	Sr. Goods Guard, Not fixed	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.1400-2600/-	Mail Guard, Rs.1400-2600/-
2 nd	28.10.1987, Goods Guard	Sr. Goods Guard, Not fixed	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.1400-2600/-	Mail Guard, Rs.1400-2600/-
3 rd	30.5.1986, Goods Guard	Sr. Goods Guard, Not fixed	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
4 th	17.12.1990, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
5 th	23.10.1989, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
6 th	17.4.1989, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
7 th	17.4.1989, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-

8 th	17.4.1989, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
9 th	17.4.1989, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
10 th	23.7.1990, Goods Guard	Sr. Goods Guard, Rs.1350-2200/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
11 th	17.12.1990, Goods Guard	Sr. Goods Guard, Not fixed	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.5500-9000/-	Mail Guard, Rs.5500-9000/-
12 th	17.10.1976, Ticket Collector	Guard B, Rs.330-560/-	Passenger Guard, Rs.1350-2200/-	Sr.Passenger Guard Rs.1400-2600/-	Mail Guard, Rs.1400-2600/-
13 th	24.12.1985, Pro-comm.Clerk	Goods Guard, Rs.975-1540/-	Sr.Goods Guard Rs.1200-2040/-	Passenger Guard Rs.5500-8000/-	Sr.Passenger Guard, Rs.5500-9000/-
					Mail Guard, Rs.5500-9000/-

3. The hierarchy of posts in the cadre of Guard as existed during the 5th Pay Commission/6th Pay Commission is as follows :

Designation	Pre-existing scale 5 th PC	Scale of pay 6 th PC
Goods Guard	Rs.1200-2040/-	Rs.4500-7000/-
Passenger Guard	Rs.1350-2200/-	Rs.5000-8000/-
Sr.Passenger Guard	Rs.1400-2600/-	Rs.5500-9000/-
Mail Guard	Rs.1400-2660/-	Rs.5500-9000/-

4. Thus the post of Senior Passenger Guard and Mail Guard carried with it the same scale of pay undeniably. All these posts were achieved through promotion and they were made after due process of selection and successful candidates came to occupy higher responsibilities as well. With the adoption of the 6th Pay Commission Report with effect from 1.1.2006 the pay of the applicants came to be fixed in PB2 Rs.9300-34800/- with GP of Rs.4200/-. The revised Pay Band appeared as below :

Name of post	5 th PC Scale of Pay	6 th PC Pay Bands	Grade Pay
Goods Guard	Rs.4500-7000/-	Rs.5200-20200/-	Rs.2800/-
Pass. Guard	Rs.5000-8000/-	Rs.9300-34800/-	Rs.4200/-
Sr.Pass. Guard	Rs.5500-9000/-	Rs.9300-34800/-	Rs.4200/-
Mail Guard	Rs.5500-9000/-	Rs.9300-34800/-	Rs.4200/-

5. Thus, as could be seen from the above, scale of pay of Passenger Guard, Senior Passenger Guard and Mail Guard were merged and replaced by a common scale of Rs.9300-34800 with GP of Rs.4200/-.

6. As a part of 6th Pay Commission Report MACP Scheme came to be introduced and this was *mutatis-mutandis* adopted by the Railway Board through RBE No.101/2009 dated 10.6.2009. The annexure, appended to the Scheme, provides, under Clause 5, the following :

“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 to pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

Illustration

The pre-revised hierarchy (in ascending order) in a particular organization was as follows :

Rs.5000-8000/-, Rs.5500-9000/- & 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, ie., 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/- and 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.”

7. This essentially meant that promotions earned to those grades which now carry the same Grade Pay due to merger of pay scale/upgradation of posts recommended by the 6th CPC **are to be ignored** for the purpose of granting upgradations under MACP Scheme. Since, in the instant case, the three posts of Senior Goods Guard, Senior Passenger Guard and Mail Guard were merged and brought to PB-2 with Grade Pay of Rs.4200/-, the Clause 5 of MACP Scheme would come into operation and the promotions they earned from the post of Senior Goods Guard to Passenger Guard and Passenger Guard to Senior Passenger Guard and Senior Passenger Guard to Mail Guard are to be ignored. As the applicants have been the beneficiary of two promotions in their career ie. Commercial Clerk to Goods Guard and Goods Guard to Senior Goods Guard, they would be eligible for financial upgradations with effect from 1.9.2008 as was granted to him as per reference No.1.

8. It is maintained that this issue of eligibility for second and third financial upgradations had been considered by this Bench in O.A.No.650/2011 and a host of other cases. Other Benches have also considered the identical issue and it has been held by the Tribunal consistently that consequent upon the merger of posts all the promotions earned to the merged posts which carry same Grade Pay in the revised Pay Band are to be ignored while extending the benefits of financial upgradations under MACP Scheme. The respondents in all

these cases had put forward the condition under Clause 8 of the Scheme as the reason to refuse the benefits. However, their contentions had been dismissed by the Tribunal.

9. Unfortunately the Senior DPO, Thiruvananthapuram issued a notice dated 24.3.2014 seeking to cancel the two financial upgradations granted to the applicants as per Annexure A-2, a copy of the notice being at Annexure A-5. The applicants submitted their detailed objections to the aforesaid notice, but ignoring the contentions raised by the applicants, the respondents were about to reduce the pay and start recovery cancelling the financial upgradations granted to them already under MACP. At this stage, the applicants approached this Tribunal by filing O.A.No.180/446/2014 and this Tribunal was pleased to stop all recoveries pursuant to Annexure A-4 notice by its judgment dated 27.6.2014 (Annexure A-6). Subsequently a hearing was held by the 3rd respondent on 2.9.2014 and he passed an order dated 20.10.2014 rejecting the contention of the applicants on the ground that Clause 8 of the MACP Scheme would stand in the way of their demand.

Clause 8 reads as follows :

“ 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.”

10. It is maintained by the applicants that the promotions referred to, had been a result of a due process of selection in the absence of an upward revision. Such a movement cannot be termed as promotion, it could only be a horizontal move which is a deputation or a transfer. The respondents move to cancel the benefits granted without considering the strong

contentions that had been raised before them and particularly the support of Clause 5 of the MACP Scheme, is arbitrary and irrational. It is true that order in O.A.No.605/2011 had been challenged and its operation had been stayed by the Hon'ble High Court but in view of the decision of the Hon'ble High Court in **Abdu Rahim v. District Collector (2009) 4 KLT 485**, a judgment does not lose its binding effect on the ground that it has been stayed.

11. The authorities have rightly granted the benefits to the applicants in view of the fact that all the financial upgradations referred were granted during the 5th Pay Commission regime and it is necessary that the promotions granted to the posts which were merged in the 6th Pay Commission ought to be ignored. The very purpose of the MACP Scheme is to provide a safety net for those who are stagnating at a certain level. Clause 5 had been introduced in the Scheme with the clear intent to avoid the kind of predicament which faces the applicants. The very object of MACP Scheme is to ensure that any promotions which are granted on functional basis without change in emoluments are to be ignored while considering eligibility for financial upgradations under MACP Scheme. Clause 8 of Annexure A-2 is repugnant and inconsistent with the Scheme and is liable to be struck down.

12. The respondents have filed a reply statement disputing the contentions raised in the O.A. At the initial stage it is maintained that the O.A is liable to be dismissed on account of the non-joining of concerned

parties. The DoPT which is the nodal and competent Ministry in the matter has not been impleaded and a challenge against any of the provisions of Annexure A-2 Scheme can be made only after impleading the Ministry. Secondly, the O.A is opposed on the ground of delay as Annexure A-2 is dated 10.6.2009 whereas the present O.A challenging the clause in the Scheme is dated 27.10.2014. While admitting that the categories to which the applicants had been promoted, namely, Senior Goods Guard, Senior Passenger Guard and Mail Guard stand merged, there are other benefits such as Special Allowances which are over and above the pay in the scale plus GP. A Special Allowance of Rs.500/- drawn by the Mail Guard is referred to in this context.

13. The MACP Scheme has been devised considering all these contingencies and Clause 8 of Annexure A-2 clearly makes it mandatory that promotions earned in the post carrying same Grade Pay in the promotional hierarchy would be counted for the purpose of MACP Scheme. The three posts referred to in the O.A are continued as distinctly different posts but are given same Pay Band and Grade Pay and they also take their place as posts in the promotional hierarchy as per Recruitment Rules. It is recalled that the applicants have been given benefits of fixation of pay whenever they got promoted to these posts. Each post is having separate nomenclature and also different assignment of work. Thus it is Clause 8 of the Scheme and not Clause 5 which should govern the case of the applicants. The order in O.A.No.650/2011 had been challenged and a stay has been obtained from the Hon'ble High Court of Kerala in O.P.(CAT)

No.548/2013. The applicants having not stagnated in their career as they have obtained promotions as revealed in the tabular form in the O.A at para 4.2, there is no logic of seeking financial upgradations over and above the promotions obtained.

14. Heard Shri.U.Balagangadharan on behalf of the applicants and Shri.Thomas Mathew Nellimoottil on behalf of the respondents. The respondents have cited the order they obtained in O.A.No.39/2014 from this Tribunal wherein a view had been taken that promotions obtained to posts which were subsequently merged will need to be taken into account while considering eligibility for promotions. However, on the side of the applicants several judgments have been produced which are as follows :

1. O.A.No.050/836/2014 – Patna Bench of this Tribunal
2. O.A.No.310/68/2015 – Madras Bench of this Tribunal
3. 2010 (3) KHC 377 – Hon'ble High Court of Kerala
4. 2009 (4) KHC 283 – Hon'ble High Court of Kerala
5. (1993) 25 ATC 789 – Ernakulam Bench of this Tribunal
6. OP (CAT) No.29/2015 – Hon'ble High Court of Kerala
7. WP(C) No.5082/2013 – Hon'ble High Court of Delhi
8. WP(C) No.3420/2010 – Hon'ble High Court of Delhi
9. WP(C) No.5146/2012 – Hon'ble High Court of Delhi

15. The issue has been exhaustively covered in the order of this Tribunal in O.A.No.484/2011 wherein through a common order which dealt with O.A.Nos.507/2011, 561/2011, 610/2011, 647/2011 and 650/2011 a view was taken that the grant of MACP in all these cases were in order. It went on to rescind the impugned order issued by the respondents cancelling the

MACP granted and ordering recovery. While the order referred to is under stay, its interpretation of the case remains especially in the light of the various decisions listed by the applicants. The respondents had raised a contention that the O.A is time barred due to delay in filing. As the benefits sought for are of a continuing nature and its cancellation would have long term consequences both in pay and pension, we are of the view that the question of limitation does not apply in this case.

16. As has been stated and also argued by the learned counsel for the applicants, MACP is a measure adopted by the Government in order to ensure that employees do not suffer stagnation in the event of absence of promotional avenues. The applicants in this case have enjoyed promotions from the category of Goods Guard to Mail Guard, from Goods Guard they were promoted to Passenger Guard and from Passenger Guard to Senior Passenger Guard and thereupon as Mail Guard. Under the 5th Pay Commission the Senior Goods Guard and Passenger Guard had same scale of pay and the Senior Passenger Guard and the Mail Guard also enjoyed an identical scale of pay. With the adoption of the 6th Pay Commission all the three categories of Passenger Guard, Senior Passenger Guard and Mail Guard came to be merged in so far as their emoluments are concerned and were put in PB Rs.9300-34800/- with GP of Rs.4200/-. Thus one can infer that the promotions to these three categories came to be nullified from the perspective of revision of pay. The question being considered now is their eligibility for a higher Grade Pay from Rs.4200/- in the form of a third financial upgradation. The respondents had taken a decision in accordance

with their main contention and order at Annexure A-1 issued on 20.10.2014 is on the lines of this intent. However, using the interpretation present in Clause 8 of the Scheme the respondents are on the verge of cancelling the third financial upgradation under MACP Scheme by taking into account the 'promotion'.

17. After considering all factors, we see no reason to disagree with the decision that this Tribunal itself had taken in O.A.No.650/2011. The fact that this order has not attained finality does not preclude us from adopting the same stand which we adjudge as correct. However, we refrain from setting aside Clause 8 as unconstitutional as the Administrative Ministry which formulated the Scheme under MACP has not been impleaded as a party.

18. We direct the respondents to retain the benefits already issued under Annexure A-1. In the event any recovery has been made in respect of any of the applicants the same shall be refunded to them within a period of three months from the date of receipt of a copy of this order.

19. The O.A stands disposed of as above. No order as to costs.

(Dated ts the 11th day of April 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

List of Annexures in O.A.No.180/00917/2014

1. **Annexure A1** - A true copy of the impugned order dated 20.10.2014.
2. **Annexure A2** – A true copy of the MACP Scheme dated 10.6.2009.
3. **Annexure A3** – A true copy of the proceedings of the Sr.DPO, Thiruvananthapuram dated 22.10.2010.
4. **Annexure A4** - A true copy of the judgment dated 22.2.2012.
5. **Annexure A5** - A true copy of the notice No.V/P/524/II/VI PC MACPS dated 24.3.2014.
6. **Annexure A6** - A true copy of the judgment in O.A.No.180/446/2014 dated 27.6.2014.
