

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00270/2015**

**Thursday, this the 13<sup>th</sup> day of June, 2019**

**CORAM:**

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

Sunilkumar C., aged 46 years, S/o. Kochukrishnan,  
 Senior Section Engineer/Permanent Way/Palakkad East,  
 Residing at Krishna, 11/463, Kakkothiyal Nagar, Kannadi Post,  
 Palakkad – 678 701. .... **Applicant**

**(By Advocate : Mr. T.C. Govindaswamy)**

**V e r s u s**

1. Union of India, represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhavan, New Delhi – 110 001.
2. The General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai – 3.
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town PO, Chennai – 3.
4. The Senior Divisional Personnel Officer, Southern Railway, Palakkad Division, Palakkad-2. .... **Respondents**

**(By Advocate : Mrs. Girija K. Gopal)**

This application having been heard on 29.05.2019 the Tribunal on 13.06.2019 delivered the following:

**O R D E R**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

“(i) Declare that the applicant is entitled to be considered and granted the second financial up-gradation under the MACP scheme in PB2-GP Rs. 4800/- with effect from 3.7.2013 and direct the respondents accordingly.

(ii) Direct the respondents to grant the applicant the second financial upgradation under the MACP scheme in PB2 + GP Rs. 4800/- with effect from 3.7.2013, and direct further to grant the consequential benefits thereof.

(iii) Award costs of and incidental to this application;

(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant is working as Senior Section Engineer/Permanent Way in PB-2 plus Grade Pay of Rs. 4,600/-. In the present application he is aggrieved by the non-feasance on the part of the respondents to grant him financial upgradation under MACP scheme in PB-2 Rs. 9,300-34,800/- with Grade Pay of Rs. 4,800/- with effect from the due date.

3. The applicant was initially appointed as Trainee Supervisor/Permanent Way with effect from 23.12.1989 and on successful completion of training, applicant was absorbed against a working post with effect from 26.6.1991 in the then grade of Rs. 1,400-2,300/-. The next promotion in the hierarchy is the post of Junior Engineer Grade-II which also carried same scale of pay of Rs. 1,400-2,300/-. However, with effect from 1.1.1996 Junior Engineer/Permanent Way were given a replacement scale of Rs. 5,000-8,000/- as against the replacement scale of Rs. 4,500-7,000/- granted to the Supervisors/Permanent Way. Applicant was promoted as Junior Engineer/Permanent Way Grade-II in the scale of Rs. 5,000-8,000/- with effect from 9.5.1997 and later as Junior Engineer/Permanent Way Grade-I in the scale of Rs. 5,500-9,000/-. These two grades of Rs. 5,000-8,000/- and 5,500-9,000/- were merged along with the posts with

replacement PB-2 of Rs. 9,300-34,800/- with Grade Pay of Rs. 4,200/- with effect from 1.1.2006. Thus as on 1.1.2006 applicant had only one promotion/upgradation. Later the entire cadre of Supervisors/Permanent Way in PB-1 plus Grade Pay of Rs. 2,800/- was replaced by the cadre of Senior Permanent Way Supervisors in PB-2 plus Grade Pay of Rs. 4,200/- with effect from 22<sup>nd</sup> March, 2007. The net result is that the applicant had no promotion/upgradation as on 22.3.2007 and all applicant's juniors and seniors who had not been promoted as Junior Engineer/Permanent Way through LDCE have been granted the same pay band PB-2 plus Grade Pay of Rs. 4,200/- w.e.f. 22.3.2007. On recommendation of the VIth CPC MACP scheme was implemented with effect from 1.9.2008. The financial upgradation in PB-2 with Grade Pay of Rs. 4,600/- was given to the applicant. Later the applicant was promoted as Senior Section Engineer/Permanent Way in the PB-2 plus Grade Pay of Rs. 4,600/- vide order dated 11.11.2010. The applicant made representation for grant of next financial upgradation in PB-2 plus Grade Pay of Rs. 4,800/- with effect from 23<sup>rd</sup> December, 2009 on completion of 20 years of service. It was rejected vide letter dated 5<sup>th</sup> June, 2013. Thereafter, the cadre of Senior Permanent Way Supervisors in PB-2 plus Grade Pay of Rs. 4,200/- was merged with the cadre of Junior Engineer/Permanent Way w.e.f. 3.7.2013 as per RBE No. 64/2013. In the light of the above merger the promotion granted to the applicant as Junior Engineer/Permanent Way in PB-2 plus Grade Pay of Rs. 4,200/- with effect from 9.5.1997 got obliterated and the same has to be ignored in the light of paragraph 5 of the MACP scheme.

4. Notices were issued to the respondents. Respondents entered appearance through Mrs. Girija K. Gopal who filed a reply statement contending that the applicant was appointed as Apprentice Permanent Way Mistry through RRB on 23<sup>rd</sup> December, 1989 with a stipendiary pay of Rs. 1,400/-. On successful completion of training he was posted as Permanent Way Mistry in the pay scale of Rs. 1,400-2,300/- on 26.6.1991. As per paragraph 143 of IREM Volume-I Chapter-I Section B Sub Section-V the posts in the category of Permanent Way Mistry in the pay scale of Rs. 1,400-2,300/- (RPS) [4<sup>th</sup> CPC scale]/Rs. 4,500-7,000/- (RSRP) [5<sup>th</sup> CPC scale] shall be filled as under:

“i. 25% by direct recruitment through Railway Recruitment Boards.

ii. 25% by a Limited Departmental Competitive Examination from amongst Gangmen/Keymen/ Mates with the qualification of 10+2 with Science and Mathematics and having put in a minimum of three years regular service. Shortfall, if any, should be made good from amongst Gangmen/Keymen/ Mates having the qualification of Matriculation/HSLC with three years regular service. Further shortfall, if any, shall be added to the direct recruitment quota.

iii. 50% by promotion of Departmental staff having the qualification of Class X Board Examination. Shortfall, if any, should be made good by LDCE.”

As per note No. 3 to paragraph 143 channel of promotion/higher grades – the Permanent Way Mistry is eligible for promotion by way of selection to the post of Permanent Way Inspector Grade-III in the scale of pay of Rs. 1,400-2,300/- with further promotional avenues as under:

(i) Permanent Way Inspector Gr-II in pay scale Rs.1,600-2,660/- (4<sup>th</sup> CPC)

(ii) Permanent Way Inspector Gr-I in pay scale of Rs. 2,000-3,200/- (4<sup>th</sup> CPC)

(iii) Chief Permanent Way Inspector in pay scale Rs. 2,375-3500/- (4<sup>th</sup> CPC)

5. On 26<sup>th</sup> July, 1996 the post of Permanent Way Mistry has been re-designated as Supervisor (Permanent Way). The Permanent Way Inspector Grade-III - Rs. 1,400-2,300/- was re-designated as Junior Engineer Grade-II (Permanent Way), Permanent Way Inspector Grade-II - Rs. 1,600-2,660/- to Junior Engineer Grade-I (Permanent Way) and lastly Permanent Way Inspector Grade-I/Chief Permanent Way Inspector – 2,375-3,500/- to Sr. Section Engineer (Permanent Way). It is further submitted that the re-designation will not entail any change in duties and responsibilities, level of supervision, selection procedure, classification under HOER and eligibility conditions prescribed for various posts or the avenues of promotion. The percentage distribution of posts in the various scales of pay for the different categories will also remain unchanged by the revision of designation. Further pursuant to implementation of 5<sup>th</sup> CPC recommendations, the posts of Permanent Way cadre have been granted pay scales as under:

- i) Supervisor (Permanent Way) - Rs. 4,500-7,000/- (RSRP)
- ii) Junior Engineer Grade-II (Permanent Way) - Rs. 5,000-8,000/- (RSRP)
- iii) Junior Engineer Grade-I (Permanent Way) - Rs. 5,500-9,000/- (RSRP)
- iv) Section Engineer (Permanent Way) - Rs. 6,500-10,500/- (RSRP)
- v) Sr. Section Engineer (Permanent Way) - Rs. 7,450-11,500/- (RSRP)

6. As per Annexure A1 order RBE 45/07 dated 22.3.2007 it has been decided to phase out the existing category of Track Supervisor (erstwhile Permanent Way Mistry/Supervisors) in scale of Rs. 4,500-7,000/- and introduced the category of Senior Permanent Way Supervisor in the pay

scale of Rs. 5,000-8,000/-. The mode of filling up of the post of newly created Senior Permanent Way Supervisor has been provided in condition No. 3 which states that as a one time exception the existing regular incumbents of the posts of Track Supervisors (erstwhile Permanent Way Mistries/Supervisors Permanent Way) would be absorbed in the category of Senior Permanent Way Supervisor through promotion through modified selection procedure which will be based on scrutiny of service records and confidential reports without holding any written viva-voce test. The applicant had participated in the selection on 22.3.2007 for promotion as Junior Engineer Grade-II in the pay scale of Rs. 5,000-8,000/ - against the 33 1/3% quota and he was promoted on 9.5.1997. It is further submitted that pursuant to implementation of VIth pay commission recommendations as per the Railway Board order No. 103/2008 the posts carrying pay scale of Rs. 4,500-7,000/- were placed in PB-1 with Grade Pay of Rs.2,800/-; the posts carrying pay scale of Rs. 5,000-8,000/- and Rs. 5,500-9,000/- have been merged and placed in PB-2 with Grade Pay of Rs. 4,200/- and the posts carrying pay scale of Rs. 6500-10,500/- and pay scale of Rs. 7,450-11,500/- have been merged and given Rs. 4,600/- Grade Pay. Accordingly, the posts of Junior Engineer-II and Junior Engineer-I have been merged and designated as Junior Engineer (Permanent Way) in PB-2 with Grade Pay of Rs. 4,200/-, the posts of Section Engineer (Permanent Way) and Senior Section Engineer (Permanent Way) have been merged and designated as Sr. Section Engineer (Permanent Way) in PB-2 with Grade Pay of Rs. 4,600/-. As per the Railway Board circular dated 10.6.2009 it was provided that the grades which are merged shall be ignored for the purpose of grading

upgradation under MACPs. Since the post of Junior Engineer Grade-II (Permanent Way) - Rs. 5,000-8,000/- (RSRP) and Junior Engineer Grade-I (Permanent Way) - Rs. 5,500-9,000/- (RSRP) have been merged and placed in PB-2 with Grade Pay of Rs. 4,200/- the promotion earned by the applicant from the post of Junior Engineer Grade-II (Permanent Way) to the post of Junior Engineer Grade-I (Permanent Way) has been ignored and the applicant was granted 2<sup>nd</sup> financial upgradation in PB-2 with Grade Pay of Rs. 4,600/- w.e.f. 1.9.2008 which is the next Grade Pay in the hierarchy of posts recommended by the Pay Commission as well as the Grade Pay of Senior Section Engineer (Permanent Way) i.e. his next promotional post. The applicant was also granted promotion to the post of Senior Section Engineer (Permanent Way) in PB-2 with Grade Pay of Rs. 4,600/- with effect from 19<sup>th</sup> March, 2011. Since the applicant has already been extended the pay fixation benefit at the time of granting of the 2<sup>nd</sup> financial upgradation with effect from 1.9.2008 he is not entitled for further fixation benefits at the time of regular promotion to the post of Senior Section Engineer (Permanent Way). As per Annexure A1 Railway Board order No. 45/2007 the applicant had already earned promotion to the post of Junior Engineer-II (Permanent Way) from 9.5.1997. Though the said order will be effective from the date of its issue, as such the said order will not have any impact upon the service condition of the applicant. Similarly by Annexure A5 Railway Board order No. 64/2013, the posts of Senior (Permanent Way) Supervisors was merged with that of Junior Engineer and the applicant already stood promoted to the post of Senior Section Engineer (Permanent Way) which is still a higher post with effect from 19<sup>th</sup> March, 2011. Thus

the respondents prayed for dismissal of the Original Application.

7. Heard Mr. T.C. Govindaswamy learned counsel appearing for the applicant and Mrs. Girija K. Gopal learned counsel appearing for the respondents. Perused the records as well as the argument notes submitted by the counsel for the applicant.

8. The vital question which has to be decided in the present Original Application is whether the applicant is entitled for 2<sup>nd</sup> financial upgradation under the MACP scheme in PB-2 with Grade Pay of Rs. 4,800/- w.e.f. 3.7.2013 or not ?

9. On going through the facts and the pleadings of the case it transpires that the applicant in the nut shell was appointed in PB-1 with Grade Pay of Rs. 2,800/- and he has earned promotion to the post with Grade Pay of Rs. 4,200/- in PB-2 (on implementation of 6<sup>th</sup> Pay commission) with effect from 9.5.1997. He was granted 2<sup>nd</sup> financial upgradation to the Grade Pay of Rs. 4,600/- under MACP scheme with effect from 1.9.2008 on completion of 20 years of service with only one promotion. He was subsequently promoted to the post of Senior Section Engineer (Permanent Way) with Grade pay of Rs. 4,600/- with effect from 19<sup>th</sup> March, 2011. Thus, in 20 years service applicant has got two financial upgradations in Grade Pay of Rs. 4,200/- and Rs. 4,600/- and the third financial upgradation will be due to the applicant with effect from 1.9.2018. The contention of the applicant is having no basis whatsoever that he has been deprived of the benefit of his juniors being

given Rs. 5,000-8,000/- scale because it was a one time measure which has been adopted by the respondents and applicant was duly given the benefit of next promotion post in PB-2 with Grade Pay of Rs. 4,600/- on implementation of the VIth Central Pay Commission after the merger of Rs. 5,000-8,000/- and Rs. 5,500-9,000/-. Thereafter Rs. 6,500-10,500/- and Rs. 7,450-11,500 have also been merged. Accordingly, the post of Junior Engineer Grade-II and Junior Engineer Grade-I was merged and was placed in PB-2 with Grade Pay of Rs. 4,200/-. Because of this merger the applicant has been given 2<sup>nd</sup> financial upgradation in Grade Pay of Rs. 4,600/- with effect from 1.9.2008 which is the next Grade Pay in the hierarchy. So in the entire 20 years of career applicant has got two jumps first in Grade Pay of Rs. 4,200/- and second in Grade Pay of Rs. 4,600/- and the 3<sup>rd</sup> financial upgradation will be given to the applicant only in 1.9.2018 in accordance with law.

10. Therefore, after going through the rule position, this Tribunal is of the view that the Original Application has no merit whatsoever and the same is liable to be dismissed. We order so. There shall be no order as to costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 180/00270/2015****APPLICANT'S ANNEXURES**

**Annexure A1** - True copy of the Railway Board Order bearing RBE No. 45/2007 dated 22.3.2007.

**Annexure A2** - True copy of order bearing RBE No. 101, dated 10.6.2009 issued by the Railway Board.

**Annexure A3** - True copy of Memorandum bearing No. P(S) 608/1/4/SE/P.Way/Vol.III, dated 11.11.2010, issued by the 4<sup>th</sup> respondent.

**Annexure A4** - True copy of a letter bearing No. J/P 535/IX/MACP/Vol.I, dated 5.6.2013, issued by the 4<sup>th</sup> respondent.

**Annexure A5** - True copy of the Railway Board order bearing RBE No. 64/2013 dated 3.7.2013.

**Annexure A6** - True copy of the representation dated 3.10.2014 addressed to the fourth respondent.

**Annexure A7** - True copy of representation submitted by the applicant addressed to the 3<sup>rd</sup> respondent dated 6.10.2014.

**RESPONDENTS' ANNEXURES**

**Annexure R1** - True copy of Railway Board's order RBE 61/1996 dated 26.7.1996.

**Annexure R2** - True copy of Railway Board's order RBE 94/2007 dated 3.7.2007.

**Annexure MA1** - Copy of the Railway Board's letter dated 15.10.1997.

**Annexure MA2** - Copy of the Railway Board's letter dated 17.10.2001.