

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00929/2015

Wednesday, this the 27th day of February, 2019

CORAM:

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

1. Shri S.Rajan,
Aged 55 years,
S/o Sadasivan,
Chief Pharmacist,
Railway Health Unit,
Kollam, Trivandrum Division,
Southern Railway,
Residing at Railway Quarters No.141.,
Kollam.
2. Shri K.K.Jose,
Aged 56 years,
S/o K.V.Kuriakose,
Pharmacist,
Railway Health Unit,
Ernakulam, Trivandrum Division,
Southern Railway,
residing at House No.A-II-4,
Mavelipuram, Kakkanad P.O.,
3. Shri T.P.Sasi,
Aged 56 years,
S/o P.K.Prabhakaran,
Pharmacist Grade-I,
Railway Health Unit,
Kollam,
Trivandrum Division,
Southern Railway,
Thadathil House,
Arpoorkara East P.O.,
Kottayam.

4. Shri N.K.Rajesh,
Aged 47 years,
S/o M.G.Karunakaran,
Pharmacist Grade II,
Railway Health Unit,
Ernakulam, Trivandrum Division,
Southern Railway,
Residing at Nirappel House,
Preumbaikkadu P.O.,
Kottayam.
5. Shri E.Abdul Shukoor,
Aged 47 years,
S/o S.Ebrahim Kutty,
Pharmacist Grade II, Railway Health Unit,
Alleppy, Trivandrum Division,
Southern Railway, Rayhan,
Vettuveni, Harippad P.O.,
Alleppy.
6. Shri Vinston Joe J.,
Aged 49 years,
S/o K.Joseph,
Pharmacist,
Railway Hospital Pettah,
Trivandrum Division ,
Southern Railway,
Andivilakam, Pirayail,
Peyed P.O., Trivandrum.
7. Shri P.P.Mathai,
Aged 51 years,
S/o P.A.Paulose,
Pharmacist,
Railway Health Unit,
Thrissur.
Trivandrum Division,
Southern Railway,
Residing at Pankodan House,
Kombanad Post,
Ernakulam District.Applicants

(By Advocate M/s.Varkey & Martin)

.3.

V e r s u s

1. Union of India,
Represented by
General Manager,
South Railway, Park Town,
Chennai – 600 003.
2. The Senior Divisional Personnel Officer,
South Railway, Trivandrum Division,
Trivandrum-14.Respondents

(By Advocate Mr. Sunil Jacob Jose for Respondents)

This application having been heard on 20th February, 2019, the Tribunal on 27th February, 2019 delivered the following :

O R D E R

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

The OA is filed by Pharmacists working at Railway Hospital/Health Unit in the Trivandrum Division of the Southern Railway. They are aggrieved by the action of the respondents in withdrawing the benefits of financial upgradation granted to the applicants under MACP. The reliefs sought in the OA are as follows:

- I) Call for the records leading to the issue of Annexures A5 to A11 and quash the same.
- II) Declare that the applicants are entitled to retain the MACP benefits granted to them and eligible for refund of recovered amounts made from their salary.
- III) Direct the respondents not to make any recovery and to refund the amounts already recovered from the salary.
- IV) Pass such other orders or directions as deemed fit.

.4.

2. The applicants while working as Pharmacists in Pay Band of Rs.9300-34800 + Grade Pay Rs.4200 were granted first and second financial upgradation under MACP Scheme. The orders relating to this financial upgradation are at Annexure A1, A2 and A3. As per these orders, applicants-1to3 were fitted in Grade Pay of Rs.4800 and other applicants at Grade Pay of Rs.4600 in Pay Band Rs.9300-34800. The respondents by identical letters dated 23.09.2015 informed the applicants that Pharmacist with Grade Pay of Rs.4200 (entry grade) in PB-1 (Rs.5200-20200) merged with Pharmacist with Grade Pay of Rs.4200 in PB-2 (Rs.9300-34800) and this amounts to a financial upgradation, which is to be counted for the purpose of MACP. Thus it was informed by impugned order that the applicants were ineligible for Grade Pay of Rs.4800 as on 01.09.2008. This meant that the 3rd MACP to the GP of Rs.4800 would be available only on completion of 30 years of service respectively counted from date of entry into service.

3. It is maintained in the OA that the impugned orders are contrary to the orders of Madras Bench of the Tribunal in OA No.335/2007 which ruled that upgradation of accounts staff in scale 1200-2040 to scale 1400-2600 was not a promotion. The Tribunal in that context, ruled that “there is no promotion and it is only revision of pay on account of the restructuring of post”. This is a view that has been affirmed by the Hon'ble Supreme Court. Further, the applicants argue that there can be no recovery from them on the ground that there has been over payment in view of **State of Punjab and Ors. Vs Rafik**

.5.

Masih (White washer) & Ors. reported in **2015(1) KLT 429 (SC)**, they being Group 'C' employees.

4. The respondents have disputed the contentions raised in the OA through a written reply statement. It is submitted that the discrepancy was detected by the Audit Department who advised correction of financial upgradation under MACP Scheme and to review excess amount paid. As per the order of Railway Board (Annexure R1), it has been clearly stated that every financial upgradation is to be treated as an upgradation.

5. Heard Shri Martin for the applicant and Shri Sunil Jacob Jose for the respondents. Apart from the orders of the Madras Bench of the Tribunal in OA No.335/2007, since upheld by the Hon'ble Apex Court, this Tribunal in OA No.142/2014 had taken an identical view in the matter of whether financial upgradation is to be taken into account while granting MACP benefits. This Tribunal had decided:

“..... We are unable to agree with the respondents when they argue that every financial upgradation is to be counted as upgradation to be offset against the financial upgradation under MACPs especially in matters relating to the upgradation occurring as a consequent of restructuring of the cadres based on the recommendations of Pay Commissions or by way of policy decisions. Therefore, denial of ACP/MACP benefits to the applicants on the ground that they received promotion at the time of upgradation of posts will not stand in the eye of law.

In the light of the above discussion, we hereby quash and set aside Annexure A11 and direct the respondents to consider Annexures A4 to A6 and pass appropriate orders to grant the applicants financial upgradation due to them and give all consequential service benefits with retrospective effect from the date of their eligibility.”

.6.

6. OA succeeds. The relief sought for in the OA are granted. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00929/2015

1. **Annexure A1** – True copy of the office order No.06/2011/MD dated 01/03.03.2011.
2. **Annexure A2** – True copy of the office order No.05/2011/MD dated 28.02.2011.
3. **Annexure A3** – True copy of the office order No.10/2011/MD dated 08/18.04.2011.
4. **Annexure A4** – True copy of the representation dated 12.06.2015 submitted by the 1st applicant.
5. **Annexure A5** – True copy of the Order No.V/P.483/MD dated 23.09.15 issued for the second respondent's office.
6. **Annexure A6** – True copy of the Order No.V/P.483/MD dated 23.09.15 issued for the second respondent's office.
7. **Annexure A7** - True copy of the Order No.V/P.483/MD dated 23.09.15 issued for the second respondent's office.
8. **Annexure A8** - True copy of the Order No.V/P 483/MD dated 23.09.15 issued for the second respondent's office.
9. **Annexure A9 to A11** - True copy of the Order No.V/P. 483/MD dated 23.09.15 issued for the second respondent's office.
10. **Annexure R1** - True copy of the Railway Board's letter No.PC-V/2009/ACP/2 dated 20-04-2010.
11. **Annexure R2** – True copy of the Railway Board's letter No.PC-VI/2010/IR-N/2 dated 19.11.2010.
12. **Annexure A12** – True copy of the Memorandum No.V/P.524/vii/6PC/MD (Pharmacists) dated 02.05.2009 issued by the 2nd respondent.
13. **Annexure A13** – True copy of the memorandum No.V/P/535/VII/Pharmacist/Vol.II dated 07.04.2011.
