

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/36/2019 & MA 41/2019

Date of Order: 21.1.2019

Between:

1. P. Venkatram Reddy, S/o. late P.R.K. Reddy,
Aged 53 years, Occ: Mail Guard, Group B
O/o. The Station Manager,
South Central Railway, Secunderabad RS.
2. A.B.V. Prasad, S/o. A.L.K. Murthy,
Aged 54 years, Occ: Mail Guard,
O/o. The Station Manager,
South Central Railway, Secunderabad RS.
3. Anand E.T., S/o. B. Toppo,
Aged 50 years, Occ: Mail Guard,
O/o. The Station Manager,
South Central Railway, Secunderabad RS.

... Applicants

And

1. Union of India, represented by
The Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

... Respondents

Counsel for the Applicants ... Mr. K R K V Prasad

Counsel for the Respondents ... Mr. V. Vinod Kumar, SC for Railways

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicants are challenging the decision of the respondents in not granting the 2nd financial upgradation under MACP Scheme even after completing 20 years of service. The applicants also filed MA 41/2019 seeking permission to file single OA. MA is allowed and the applicants are permitted to join in single OA.

3. Applicants joined the respondents organisation as Goods Guards with a Grade Pay of Rs.2800/- in the years 1990/1992. Later they were promoted as Senior Goods Guard, Passenger Guard/Senior Passenger Guard and are presently working as Mail/Express Guard. With the advent of 6th CPC, the Passenger Guard and Senior Passenger Guard posts got merged. As a result the hierarchy of the Guard Cadre with Grade pay is as follows:

Category	Pay scale	Grade pay	Remarks
Goods Guard	Rs.5200-20200	Rs.2800	
Sr. Goods Guard	Rs.9300-34800	Rs.4200	
Sr. Passenger guard	Rs.9300-34800	Rs.4200	
Mal/Express Guard	Rs.9300-34800	Rs.4200	Addl. Charge allowance of Rs.500 is allowed

The table makes it evident that a Goods Guard gets only one financial upgradation to the next higher grade pay of Rs 4200, though he renders 20 years of service or more. MACP scheme envisages that employees are to be given financial upgradation to the next higher grade pay if they stagnate in a given grade pay for 10 or more years of service. An employee is allowed 3 financial upgradations in a service span of 30 years. Applicants claim that according to the MACP scheme they should get the 2nd financial upgradation to the grade pay of Rs.4600/- after completion of 20 years. Despite representing on 30.1.2017 the respondents have not acceded to their request and hence the present OA.

4. The applicants contend that similarly placed employees in Hyderabad, Nanded and Guntur divisions under the control of the respondents were extended the benefit. Denying the same to them is unfair. Honourable benches of this Tribunal namely Jabalpur, Ernakulam and Ahmedabad have dealt with an identical issue and issued favourable orders. This Tribunal in OA 341/2016 and batch has delivered a judgment favouring the applicants therein, while dealing with a similar matter and involving the same respondents. Despite such orders which are in rem the respondents not conceding to the request of the applicants is illegal, arbitrary and discriminative.

5. Heard both the learned counsel. Sri KRKV Prasad appearing for the applicants submitted that since this is a fully covered case the OA be allowed. Learned counsel for the respondents submitted that the OA be disposed by directing the respondents to dispose of the representations made by the applicants.

6A. Documents placed on record were perused. As pointed out by the learned counsel for the applicants this Tribunal has allowed an identical issue pertaining to MACP (Modified Assured Career Progression Scheme) in OA 341/2016 and batch vide order dt 10.10.18. The MACP scheme *per se* envisages movement to the next higher grade pay. The applicants got the 1st financial upgradation to the grade pay of Rs.4200. Thereafter they stagnated at Rs.4200 though they moved up the cadre to the level of Mail/Express Guard and also put in 20 or more years of service. As per the MACP scheme the applicants have to move to the next higher grade pay of Rs.4600/- after completion of 20 years of service. The need to grant next higher grade pay has been extensively dealt in OA 341/2016 & batch. While allowing the said OA it was expounded that lateral movement on account of promotion within the same grade pay cannot be treated as promotion

under MACP. The reason is, it negates the main objective of overcoming stagnation in a given grade. The operative part of the judgment which reflects the essence of the judgment is as under:

“The MACP and the pay revision have been coeval and on the recommendations of the VI Central Pay Commission. Existence of the same Grade Pay for both promotional post and the feeder grade post is not uncommon in various grades and in various departments which the Pay Commission is conscious of. And, equally conscious has been the Pay Commission when it introduced in MACP scheme the “next higher grade pay”. Instead of recommending the grade pay attached to the promotional post, the Pay Commission recommended next higher grade pay as financial upgradation. This conscious decision would be frustrated and stultified if due regard to the term ‘next higher grade pay’ is not given and the Grade Pay of the promotional post is granted. In contra distinction to the earlier ACP Scheme, which afforded, the higher pay scale attached to the promotional post, the MACP contemplates only the next higher Grade Pay. The Grade Pay consists of Rs.1800, 1900, 2000, 2400, 4200, 4600, 4800, 5400, 6600, etc., Grant of the immediately next higher Grade Pay is the financial upgradation under the MACP scheme. It has no nexus with the Grade Pay attached to the promotional post. For example, a feeder post may carry the Grade pay of Rs 4,200 and its promotional post may have Rs 4,800 as the Grade Pay. When a person stagnates in the Grade Pay of Rs 4,200/- without getting the next promotion which carries a grade pay of Rs 4,800/-, he becomes entitled for grant of financial upgradation, which would be the Grade Pay of 4600/- and not 4,800/-. This next higher grade envisaged in the MACP Scheme, is thus, independent of the grade pay attached to the next promotional post.

16. Therefore facts stated above make it crystal clear that the respondents have operated the MACPS against its very objective of providing financial relief against stagnation in a given grade. Many Judicial pronouncements cited above have favoured the applicants in granting financial ugradation. Above all the Honorable Supreme Court has upheld the decisions made in favour of the applicants on more than one occasion as cited above. The law is therefore well settled. The action of the respondents is against the very tenets of MACPS/Fundamental Rules and is therefore arbitrary as well as illegal.”

B. The above judgment was based on the verdicts of the Honourable High Courts of Jharkhand and Allahabad favouring the petitioners in WP(S) No.4754 of 2015 dt 10.3.2016 and CWJC No.18244/2013 dt 19.7.2013 respectively wherein an identical issue was dealt. Further Honourable Supreme Court has

upheld the verdict of the Honourable High Court of Jharkhand on the subject in SLP 4501/2017 dt 24.3.2017. Besides, Honourable Jaipur, Ranchi, Ernakulam, Ahmedabad, Jabalpur Benches of this Tribunal have also held a view favouring the grant of financial upgradation as sought by the applicants. Thus there can be no second opinion that the matter has attained finality.

C. That apart, it is surprising that the respondents themselves have granted financial upgradation to similarly placed employees in Hyderabad, Nanded and Guntur Divisions without approaching this Tribunal. Denying similar benefit to the applicants from Secunderabad Division is against the orders of the Honourable Supreme Court in ***G.C.Ghosh v Union of India, 1992 (19) ATC 94***, wherein it was held that, if one Railway Division extends a benefit then it is improper for any other Railway Division not to extend the same benefit to similarly placed employees.

D. In fact, the verdict in OA 341/2016 and batch was ordered in rem, so that grievances of similarly placed employees could be settled without approaching this Tribunal. The objective was to curb unnecessary litigation, wasteful expenditure and loss of valuable man-hours of all the stake holders. Despite there being a clear order to this effect, the respondents not acting on the representations of the applicants is disturbing to note. The respondents, we hope, will not give room for such repetition in future.

E. The result of the aforesaid discussion is that the decision of the respondents to reject the request of the applicants for 2nd financial upgradation under MACP is arbitrary, discriminative and illegal. Hence, the respondents are directed to consider as under:

- i) To grant the 2nd financial upgradation to the applicants under MACP Scheme to the Grade Pay of Rs.4600 on completion of 20 years of service
- ii) Based on (i) above, the pay of the applicants be fixed from time to time, draw arrears and grant consequential benefits thereof.
- iii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iv) The OA is accordingly allowed at the admission stage itself.
- v) There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 21st day of January, 2019

evr