

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : INDORE**Original Application No.201/01043/2017**Indore, this Wednesday, the 19th day of December, 2018**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBERGopal Singh Chauhan, S/o Late B.S. Chauhan, Age – 52 years,
Occupation-Service (Chief Law Assistant), R/o-164, Vyanktesh
Nagar, Airport Road, Indore – 452009 **-Applicant****(By Advocate – Shri Manuraj Singh)****V e r s u s**1. Union of India through General Manager, Western Railways,
Church Gate, Mumbai – 400020.2. Dy. Chief Personnel Officer (HQ), Western Railways,
Church Gate, Mumbai – 400020.3. Dy. Chief Engineer (Construction), Western Railways, In
front of Platform No.1, Railway Station, Indore – 452009.**-Respondents****(By Advocate – Shri P.R. Bhatnagar)***(Date of reserving order : 17.12.2018)***ORDER****By Ramesh Singh Thakur, JM.**

The applicant is aggrieved by the order dated 05.01.2017
(Annexure A-1), whereby his request for grant of benefits under
the Modified Assured Career Progression (MACP) scheme, has
been rejected.

2. The applicant has, therefore, sought for the following reliefs:

“**8.1** issue appropriate writ direction or order quashing the impugned order dt. 05.01.2017 (Annexure A/1) with a further direction to the respondents to grant benefits of MACP Scheme at par with co-employees with arrears and other consequential benefits with interest.

8.2 issue allow this OA with costs.

8.3 any other appropriate relief which this Hon’ble Court deem fit may kindly be awarded to the applicant.”

3. The brief facts of the case, as narrated in the Original Application, are that the applicant was initially appointed as Telecom Maintainer (TCM) Grade-III on 1988. He was promoted as TCM Grade-II on 21.07.1992 and thereafter as TCM Grade-I on 22.07.1993. In 2003, an examination was conducted by the respondents for selection to the post of Law Assistant amongst the serving Railway employees having five years’ regular service and possessing a Degree in Law. The applicant submits that he had also appeared in the examination and after declaring successful, he was appointed as Law Assistant on 11.02.2003. Thereafter, he was promoted as Chief Law Assistant vide orders dated 09.09.2008 (Annexure A-2).

4. The applicant submits that after recommendations of the Sixth Central Pay Commission, the pay scales of Law Assistant and Chief Law Assistant were merged into one single common Grade Pay and the Law Assistants and Chief Law Assistants were placed in the same pay scale. In the year 2009, the Railway Board brought into effect MACP scheme, which became applicable on 01.09.2008. Under the said scheme, the financial upgradations at the intervals of 10, 20 and 30 years service in the same grade pay, were provided. The case of the applicant is that he has completed 10 years of service on 11.02.2013 in the same Grade Pay, therefore, he became entitled for grant of benefit of MACP scheme in 2013.

5. The applicant therefore, submitted a representation dated 08.09.2016 (Annexure A-3) for grant of such benefit, which was rejected on 05.01.2017 (Annexure A-1) on the ground that applicant's selection as Law Assistant was by way of promotion and, therefore, he is not entitled for the financial upgradation under the MACP scheme.

6. The submission of learned counsel for the applicant is that the applicant was selected as Law Assistant through examination. However, the respondents have ignored this fact

and have arbitrarily rejected his claim for grant of benefit under the MACP. As a result of non-consideration of applicant's case for grant of financial upgradation under MACP scheme, his juniors Shri Manmohan Joshi (CLA) and Deepak M. Apandkar (CLA) are getting higher pay than him, which is in contravention of Article 39(d) of the Constitution of India.

7. The respondents have filed their reply. In their preliminary objection, it has been submitted that on recommendation of 6th CPC, the Railway Board vide their letter dated 10.06.2009, have introduced the MACP scheme in supersession of the previous ACP scheme, which was made effective w.e.f. 01.09.2008. As per the scheme, a person who has spent 10 years of continuous service in the same Grade Pay, is entitled for grant of MACP subject to fulfillment of other laid down conditions and number of promotions already earned.

8. In regard to applicant's submission that some of his juniors are getting higher pay than him, it has been submitted by the respondents that Para 20 of RBE No.101/2009 (Annexure R-1), specifically provides that financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no

additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/Grade Pay under the MACPS. Further, in Para 9, it has been clearly provided that no stepping up of pay in Pay Band or Grade Pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme.

9. It has been further submitted by the respondents that Railway Board, vide letter dated 12.09.2012 (Annexure R-2), have clarified that induction of an employee through LDCE/GDCE may be treated as direct recruitment for the purpose of grant of benefit under the MACP and the past regular service shall be counted for further benefits, if any, under the MACP scheme. Since the applicant was promoted as Law Assistant upon passing of the departmental selection conducted against 60% promotional quota on 11.02.2003, therefore, he is not entitled for grant of benefit under the MACP scheme, as he had already got three promotions in his career.

10. We have heard the learned counsel for the parties and have gone through the pleadings and documents available on record.

11. It is an admitted fact that the applicant was initially appointed as TCM-III on 1988 and was promoted as TCM Grade-II on 21.07.1992 and thereafter as TCM Grade-I on 22.07.1993. The main issue in the instant Original Application is whether appointment of the applicant as Law Assistant was as a result of promotion under 60% promotional quota or by way of selection through 40% direct recruitment quota, as has been claimed by the applicant.

12. It is seen from the reply that the post of Law Assistant was merged with the post of Chief Law Assistant as per RBE 161/2009, which provides that promotion to the post of CLA will be ignored for the purpose of benefit under MACP scheme but promotion as Law Assistant shall be counted as promotion.

13. The learned counsel for the respondents had attracted our attention to RBE No.100/2012 (Annexure R-2), whereby the treatment of employees selected under LDCE/GDCE scheme, has been clarified. The relevant Para of the said clarification reads thus:

“References have been received from Zonal Railway seeking clarification regarding grant of benefits under MACPS in respect of the employees qualifying through LDCE/GDCE. The matter has been examined in

consultation with Department of Personnel & Training (DoP&T), the nodal department of Government of MACPS and it has been decided as under:-

- (i) if the relevant RRs provided for filling up of vacancies in a grade by Direct Recruitment, induction of an employee to that grade through LDCE/GDCE may be treated as Direct Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP Scheme.
- (ii) if the relevant RRs prescribe a promotion Quota to be filled on the basis of LDCE/GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any, under the MACP Scheme.”

A bare reading of Annexure R-2 makes it clear that a promotion quota filled on the basis of LDCE/GDCE, shall be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits under the MACP Scheme.

14. Furthermore, as per Para 131 of Indian Railway Establishment Manual, Vol.-I (Annexure R-3), the conditions are prescribed for filling up the post of Law Assistants, which read as under:

“131. (1) The Posts in the category of Law Assistants In the pay scale of Rs.6,500-10,500 will be filled as under:-

- (i) 40% by direct recruitment from open market; and
- (ii) 60% by promotion by general selection from amongst eligible serving employees, shortfall, if any being added to direct recruitment.”

15. In the instant case, the respondents have been able to justify their stand that selection of the applicant to the post of Law Assistant was against 60% quota by way of promotion by general selection amongst eligible serving employees and not against 40% direct recruitment. Therefore, they have rightly treated the same as a promotion for the purpose of MACP. In regard to applicant's claim that his juniors are getting higher pay than him, it has clearly been provided in RBE No.101/2009, that no stepping up of pay in the Pay Band or Grade Pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme. Hence, the submission of the applicant in this regard, does not appear to be valid.

16. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble High Court of Gujarat at Ahmedabad in R/Special Leave Applications Nos.11958 of 2017 to 11965 of 2017 dated 24.10.2018 (**Union of India vs. U.H. Yadav**) to the fact that the applicant is similar to that of the case decided by

the Hon'ble High Court of Gujarat. However, we find force in the contention of learned counsel for the respondents that RBE No.100/2012 dated 12.09.2012, specifically clarifies the position for treatment of employees selected under LDCE/UDCE scheme and the same was not discussed in the judgment of Hon'ble High Court of Gujarat in the above referred cases. Therefore, the judgment referred above is distinguishable to the facts of the present case.

17. Learned counsel for the applicant has also placed reliance of the judgment of Hon'ble High Court of Madras in Writ Petition No.30629 of 2014 dated 04.02.2015 (**Union of India & Ors. vs. D. Sivakumar and another**). In that case, the issue involved regarding stagnation of the petitioners in the post of Postal Assistant and adjustment of their first appointment against MACP-I. However, in the instant case, it is not in dispute that the applicant was promoted as TCM Grade-II on 21.07.1992 and thereafter as TCM Grade-I on 22.07.1993 and his further promotion to LA was on the basis of 60% promotional quota by general selection amongst eligible serving employees. Hence, the ratio laid down in the case of **D.**

Sivakumar (supra) shall not be applicable to the facts and circumstances of the present case.

18. In view of what has been stated above, we do not find any fault in the action of the respondents in rejecting applicant's claim for grant of benefit under the MACP scheme. Accordingly, the O.A is dismissed, being devoid of merit. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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