

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA 255 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

- 1(a) Rajtarangini Kanungo, aged about 51 years, W/o Late Braja Behari Kanungo.
- 1(b) Biyashree Kanungo, aged about 31 years, married daughter of Late Braja Behari Kanungo.
- 1(c) Saktiprasad Kanungo, aged about 28 years, S/o Late Braja Behari Kanungo,
All are residents of Vill-Kathtiapada, PO/PS/Dist-Jagatsinghpur, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Chief Personnel Officer/E.Co.Rly./E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Senior Divisional Personnel Officer, E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist. – Khurda.
4. Senior divisional Operating Manager, E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist. – Khurda.
5. Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 2.8.2019

Order on : 8.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA with the prayer for following reliefs:-

- “(i) To quash the order dtd. 5.2.2014 under Ann. A/4 and order dtd. 16.12.2014 under Ann. A/7 so far as the applicant is concerned;
- (ii) And to direct the respondents to restore the Grade pay of Rs.4600/- as 2nd financial upgradation and grant 3rd financial upgradation w.e.f. September, 2011 in PB-II with GP of Rs.4800/- under the MACP Scheme and payment of consequential financial benefits;

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall every pray.”

The original applicant, during pendency of the OA, expired on 19.10.2016 and vide the order dated 1.7.2019 on the MA No. 413 and 414 of 2019, the substitution application was allowed and the applicant was substituted by his wife, daughter and son.

2. The original applicant was initially appointed as Goods Guard under the respondent-railways on 17.9.1981 and then was promoted as Senior Goods Guard. Then he was promoted to the Passenger Guard on 19.4.2001. Thereafter, he was promoted to the post of Mail Guard on 3.7.2002. After introduction of the MACP Scheme, he was allowed 2nd financial upgradation under MACP Scheme with the Grade Pay of Rs. 4600/- w.e.f. 1.9.2008 vide order dated 23.9.2010 (Ann.-A/2). He is aggrieved by the fact that vide order dated 5.2.2014(Ann.-A/3), the above benefit allowed to him under MACP Scheme was withdrawn by the respondent No. 3 in the light of the Railway Board circular RBE No. 142/2012 dated 13.12.2012 (Ann.-A/4). The representations were submitted by him, but the respondent no. 3 rejected the same vide order dated 16.12.2014 (Ann.-A/6). The orders at Annexure-A/3 and A/4 have been impugned in this OA by the applicant, who also claims the benefit of 3rd financial upgradation under the MACP Scheme. The applicant retired from service on 31.10.2015.

3. The grounds advanced in the OA are that under similar circumstances, the Allahabad Bench of the Tribunal in OA No. 1241/2011 had allowed benefit under MACP Scheme to the railway employees similarly placed as the applicant and the order of the Tribunal was upheld by Hon'ble Allahabad High Court in Writ-A No. 18244/2013 vide the order dated 19.7.2013. Another OA No. 51/27/2014 was also allowed by Patna Bench of the Tribunal vide order dated 14.1.2015 (Ann.-A/8) following the order of the Allahabad Bench. It is submitted that as per the ratio of the judgments of Hon'ble Apex Court in the case of K. Ajit Babu & Others vs. Union of India & Others reported in 1998 Vol-I ATT 28, S.I. Rooplal vs. Lt. Governor reported in 2000 SCC (L&S) 213 and Official Liquidator vs. Dayananda & Others reported in (2009) I SCC (L&S) 943, the original applicant was entitled for a similar relief and the OA should be allowed quashing the impugned orders.

4. The respondents in their Counter have explained the hierarchical structure for the posts to which a railway Guard is generally promoted during his service. The original applicant was recruited initially as Goods Guard at GP of Rs. 2800/-. His promotion channels w.e.f. 1.1.2006 were Sr. Goods Guard, Passenger Guard, Sr. Passenger Guard, Mail/Express Guard and for all these promotional posts, the revised pay structure w.e.f. 1.1.2006 is in Pay Band-2 and the GP of Rs. 4200/-. It is further submitted that the original applicant was promoted to the post of Sr. Goods Guard/Passenger Guard w.e.f. 23.4.1998 and then he was promoted to the post of Guard (P) w.e.f. 18.4.2001 and then to the post of Mail/Express Guard w.e.f. 3.7.2002. It is stated that on promotion to the post of Mail/Express Guard, the original applicant was allowed Rs. 500/- as additional allowance on which the DA was admissible. The original applicant was allowed 2nd MACP benefit with the GP of Rs. 4600/-

w.e.f. 1.9.2008 vide order dated 23.9.2010 (Ann.-A/3) counting all his promotions to be one promotion. It is further stated in the Counter that vide the letter dated 13.12.2012 in RBE No. 142/2012 (Ann.-A/4), the Railway Board clarified that no employee can get the benefit of financial upgradation under ACP/MACP to a Grade Pay which is higher than the GP applicable for their normal promotional post. After such clarification, the original applicant was not entitled for the GP of Rs. 4600/- under 2nd MACP as the GP of the highest post in the promotional hierarchy for the Guards was Rs. 4200/- and hence, the excess payment wrongly paid to the applicant was to be recovered.

5. No Rejoinder on behalf of the applicants has been filed in this OA.

6. The matter was heard. Learned counsel for the applicant argued that on the orders of Allahabad and Patna Bench of the Tribunal in similar cases in which the Guards similarly placed as the applicant were allowed the relief as prayed for in this OA. Learned counsel for the respondents submitted that the action of the respondents is as per the RBE No. 142/2012 (A/4) which has not been challenged in the OA and hence, no relief can be granted to the applicants.

7. We have considered the submissions as well as the pleadings of both the parties. The main issue to be decided are whether the order of Allahabad Bench of the Tribunal in OA No. 1241/2011 which was upheld by Hon'ble Allahabad High Court and the order of Patna Bench of the Tribunal in OA No. 51/27/2014 (Ann.-A/8) are applicable to the present case and whether the applicants in this OA are entitled for the reliefs prayed for.

8. The order of the Allahabad Bench of the Tribunal in OA No. 1241/2011 was upheld vide order dated 19.7.2013 of Hon'ble Allahabad High Court in Writ Petition No. 18244/2013, in which it was held as under:-

"The East Central Railway through its officers has filed this writ application challenging the judgement and order passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application 1241 of 2011 (Sachchidananda Ram and Ors Vs. Union of India and Ors.) in Annexure-VIII. The original application before the Tribunal was filed by the respondent Nos. 2 to 30. The case of the above respondents before the Tribunal was that all of them were working in the cadre of Guards under Mughal Sarai Division of the East Central Railway. The Sixth Central Pay Commission, Ministry of Railways, Government of India (Railway Board) had initially floated a Scheme called Assured Career Progression Scheme (ACPS) and subsequently replaced the same by way of introducing a new scheme called Modified Assured Career Progression Scheme (MACPS). Under the new Scheme, the previous system of granting two promotions/financial upgradations after 12 and/or 24 years of regular services was substituted by a new arrangement of granting three promotions/financial upgradations after 10, 20 and 30 years of regular service. All the above private respondents had entered into service as Goods Guard in the initial Scale of Rs. 2800/-. Their progression in service is Goods Guard- Senior Goods Guard-Passenger Guard-Senior Goods Guard and finally Mail/Express Guard. The scale of Senior Goods Guard and Passenger Guard was one and the same i.e. Rs.5000-8000 and therefore placing a Senior Goods Guard as Passenger Guard does not amount to promotion and it is a case of lateral induction. After the new scheme i.e. Modified Assured Career Progression Scheme (MACPS) was adopted by the Railways, all the private respondents were extended the benefits of the scheme under different orders in

2010. They were given financial upgradation to the pay-scale of Rs. 4600-4800 (from Rs. 4200/-) depending on their entitlement and based upon their length of service. This benefit was extended to them after conducting screening inquiry as envisaged under the Scheme. After such upgradation, the private respondents started getting their enhanced salary but had not been paid the arrears. When the matter stood thus, in response to certain queries made by some of the Zonal Railways, the Railway Board issued a letter dated 10th February, 2011 addressed to the General Managers of East Central Railway, the South Central Railway, the Central Railway and the South-East Central Railway, clarifying, *inter alia* that in terms of the Board's letter dated 10.6.2009 on the subject of MACPS, the promotion from Senior Goods Guard to Passenger Guard should be counted for the purpose of MACPS whereas in terms of Para 5 of the said letter, the promotion from Passenger Guard should be ignored for MACPS since the categories of Passenger Guard (5000-8000) and Senior Passenger Guards (5500-9000) had been merged and allotted Grade Pay of Rs. 4200/- in Pay Band-II. On the basis of the above letter of the Railway Board, the General Manager East Central Railway, Hazipur issued a letter dated 21.2.2011 directing that if any action contrary to the above clarification issued by the Board had been taken, the same should be rectified. In compliance of the above letter, the impugned order dated 20th May, 2011 was issued cancelling earlier orders granting the benefit under MACPS to the said private respondents and reducing/refixing their pay by treating their movement from Senior Goods Guard to Passenger Guard as promotion and counting the same for the purpose of MACPS. The above order dated 20th May, 2011 was challenged by the private respondents before the Tribunal on the ground that movement from Senior Goods Guard to Passenger Guard cannot be treated as a promotion as both the posts carry the same grade pay. The Tribunal accepted such contention of the private respondents, placed reliance on a Judgment of Ernaculum Bench of Central Administrative Tribunal in a similar matter and allowed the original application.

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Undisputedly, the Senior Goods Guards and Passenger Guards were in the same scale of pay i.e. 5000-8000. Vide Board's Letter dated 11.9.2008, two categories of Passenger Guard and Senior Passenger Guard (5500-9000) have been merged and allotted Grade Pay of Rs.2400/- in Pay Band-II (RBE-108/2008). Whereas, earlier the post of Senior Passenger was a promotional post for Passenger Guards. So far as the private respondents are concerned, undisputedly, they were initially recruited as Guard and (earlier grade pay received one financial upgradation i.e. from 2800 to 4200 assigned for both Senior Goods Guard/ Passenger Guard) when they moved from the entry level of Goods Guard to the next higher post of either Senior Goods Guard or Passenger Guard. There was no further promotion so far as the private respondents are concerned. Since it has already been held by judicial pronouncement that the post of Senior Goods Guard and Passenger Guard have the same grade of pay and movement of a Senior Goods Guard to the post of Passenger Guard, is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per MACPS, they were entitled to two more financial upgradations. This is exactly what has been held by the Ernaculum Bench of the Central Administrative Tribunal in a batch of original applications, which was relied upon by the Tribunal in the impugned judgement.

For the reasons stated above, we find no justification to interfere with the impugned order of the Tribunal. The writ petition is accordingly dismissed."

9. It is seen that the applicant in OA No. 1241/2011 before Allahabad Bench had got promotion upto the level of Passenger Guard where as the applicant in OA No.271/2015 had been promoted upto the level of the Sr. Passenger Guard and in OA No. 272/2015, to the level of the Mail/Express Guard. The issue in that case was whether the movement from Sr. Goods Guard to Passenger Guard was a lateral movement or it is to be counted as a

promotion for the purpose of MACP. In this OA, the movement of the applicant from Sr. Goods Guard to Sr. Passenger Guard is claimed as a promotion by the respondents vide order dated 16.12.2014 (Ann.-A/6) by which the appeal submitted by the applicant against the decision to cancel the MACP benefit was rejected by the respondents. The order dated 16.12.2014 (Annexure A/6) states as under:-

"Sub: Grant of financial upgradation under MACP Scheme for the staff of Guards Categories in Operating Department.

Ref: Your representation dated 2.12.2014.

Your group representation has been carefully studied and on verification of the Railway Board rules and guidelines it is clarified that

In terms of the RBE No. 142/2014 dated 13.12.2012, it is clarified that the financial upgradation under MACP Schemes CANNOT be to higher grade pay than what are allowed to an employee on his normal promotion. In such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay.

Again in terms of RBE No.54/2014 dated 22.5.2014, contained in the table chart SI.No.09 to 11, it is stated that Avenue of promotional chart of Guard cadre is as :

Goods Guard (GP 2800/-) – Sr.Goods Guard (GP 4200/-) – Sr. passenger Guard (GP 4200/-) – Mail Express Guard (GP 4200/-)

Accordingly you are getting 03 promotions and further no requirement of granting higher grade pay (viz. 4600/- & 4800/-) under financial upgradation under MACP Scheme in terms of the RBE No. 101/2009. So restoration of the higher Grade Pay (viz.4600/- & 4800/-) is not allowed in this regard.

Hence the group representation vide dated 2.12.2014 is hereby disposed of."

10. In the Counter, the respondents have enclosed copy of the RBE No. 54/14 at Annexure R/2 to the counter in both the OAs, in which it was clarified as under:-

"Please refer to para 3 of Boards letter No. PC-III/2003/CRC/6 dated 09.10.2003 (RBE No.177/2003) and PC-III/2004/CRC/7 dated 06.04.2004 (RBE No. 78/ 2004) advising that the benefit of fixation of pay under Rule 1313 (FR22) (I) (a) (1) R-II would be no longer available in the case of movement from lower grade to higher grade in the non-functional situations where there is no change in duties as in the case of movement from Goods Guards to Sr. Goods Guards and Goods Drivers to Sr. Goods Driver etc. However, the benefit of fixation under above rule would be admissible in the cases of functional promotion such as Sr. Goods Guard to Passenger Guards and Sr. Goods Drivers to Passenger Drivers etc. though in identical scale of pay. The above methodology was in supersession of that advised vide Boards letter No. PCIII/93/CRC/1 dated 14.07.1993 (RBE No.106/93).

2. Consequent upon recommendations of 6th CPC as accepted by government, a new pay structure comprising running pay bands and Grade Pay has come into force w.e.f. 1.1.2006 and methodology of pay fixation in the revised pay structure is stipulated in Railway Services (Revised Pay) Rules, 2008 read with schedules circulated vide Board's letter No.PC VI/2008/I/RSRP/1 dated 11.09.2008 and various clarifications issued on subsequent dates. Further various Grades in the categories of Running staff (in pre-revised scales Rs.5000-8000, 5500-9000 and 6000-9800) have been merged and provisional revised designations of merged grades have been issued vide Board's letter No. PC-VI/2008/I/1/1 dated 14.09.2010 (PC-VI No. 226; RBE No. 134/2010). Further a new component of 'Additional Allowance' has been introduced. Fixation of pay on promotion from one grade pay to another in revised pay structure effective from 01.01.2006 is governed by Rule 13 of RS (RP) Rules,

2008, which provides for benefit of one notional increment at the time of such fixation. Further, benefit of pay fixation as above has been permitted in certain specified situation of pay fixation from one category of running staff to another in same Pay Band and Grade Pay vide Board's letter No. PC VI/2011/TC/1, dated 12/09/2013 (PC VI-No. 317; RBE No.95/2013).

3. However, clarifications are being sought from various Railways regarding methodology of pay fixation to be followed in various - functional and non-functional situations concerning running staff in revised pay structure effective from 1.1.2006. The issue has been under examination in consultation with Ministry of Finance/DOP&T and it is clarified that in various situations of fitment / promotion of Running staff in Revised pay structure, fixation of pay would be as follows:

S.No.	Position in 6th CPC pay structure		
	Feeder category*	Fed/Promotional category*	Remarks
9	Goods Guard PB1 GP Rs.2800	Sr. Goods Guard (Non-functional) PB2 GP Rs.4200	Promotional increment under Rule 13 of RS(RP) Rules, 2008 would be admissible
10	Sr. Goods Guard (Non-functional) PB2 GP Rs.4200	Sr. Passenger Guard PB2 GP Rs.4200	Functional-I promotion in same Pay Band /Grade Pay following non-functional placement. Promotional increment under Rule 13 of RS(RP) Rules, 2008 would not be admissible
11	Sr.Passenger Guard PB2 GP Rs.4200	Mail/Express Guard PB2 GP Rs.4200+ Rs.500 (Addl.AL1owance).	Benefit of promotional increment under Rule 13 of Revised Pay Rules, 2008 Rules permitted vide Board's letter No. PC V1/2011/IC/1 dated 12/09/2013.

11. It is seen from the stipulations in the RBE No. 54/2014 as extracted above that for movement from Sr. Goods Guard to Sr. Passenger Guard, there is no change in the pay scale or Grade Pay and no increment is allowed for fixation of pay. This is similar to the movement from Sr. Goods Guard to Passenger Guard, which was held to be a lateral movement and not promotion in the order dated 19.7.2013 of Hon'ble Allahabad High Court as extracted by us earlier. It is seen that vide the order dated 16.12.2014 (A/6), the movement of the original applicant from Sr. Goods Guard to Sr. Passenger Guard for which no pay fixation benefit by adding promotional increment is admissible as per the serial no. 10 of the RBE No. 54/2014 (Annexure-R/2 of the Counter), has also been taken as a promotion whether it can be treated as promotion for the purpose of MACP will be relevant to decide whether the applicant will be entitled for MACP benefit.

12. The impugned order dated 5.2.2014 (Ann.-A/3) cancelled the MACP benefit allowed earlier to the original applicant and it also stated that "arrears if already paid to the above staff may be recovered." The reason mentioned in the order dated 5.2.2014 is the clarifications issued in the RBE No. 142/2012 (Ann.-A/4), which states as under:-

"Sub :- Grant of financial upgradation under MACP Scheme-Clarification reg.

References have been received from Zonal Railways seeking clarification as to what Grade pay would be admissible under MACP Scheme to an employee holding feeder post in a cadre where promotional post is in the same Grade pay. The matter has been examined in consultation with Department of personnel & Training (DOP&T), the nodal department of the Government on MACP Scheme and it is clarified that ACP/MACP Schemes have been introduced by the Government in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues. Thus, financial upgradations under ACP/MACP Schemes CANNOT be to higher Grade pay than what can be allowed to an employee on his normal promotion. In such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay.

This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

It is noticed that the reason for not allowing the MACP benefit to the applicant was not mentioned in the order dated 5.2.2014 (Annexure A/3). It is noticed that the RBE No. 142/2012 clarified that the MACP benefit cannot be allowed to any staff at a GP higher than the GP of the promotional post permissible for the concerned staff and if the GP of the promotional post is same as the feeder post, then the MACP cannot be allowed in a higher GP. There is nothing in the said circular about the eligibility of a staff for MACP benefits as it specified the highest limit for the GP permissible under MACP. In the order dated 16.12.2014 (A/6), the reason mentioned was that the applicant had already availed three promotions. There is no discussion in the said order as to how the applicants had availed three promotions, particularly in respect of the movement from Sr. Goods Guard to Sr. Passenger Guard for which no financial benefit was admissible as per the RBE No. 54/2014.

13. In view of the discussions above, since the order dated 16.12.2014 considered the movement from the posts of Sr. Goods Guard to Sr. Passenger Guard to be promotion although no pay fixation benefit as applicable for a promotion is allowed, the appeal of the applicant deserves to be re-considered by the respondent authorities in the interest of justice. Accordingly, the matter is remitted to the Respondent No. 1 for re-consideration of the appeal of the applicant with reference to the point whether the movement of the applicant from Sr. Goods Guard to Sr. Passenger Guard is to be treated as a promotion in view of the fact that no pay fixation benefit as applicable for promotion is allowed in this case as clarified in the Railway Board circular RBE No. 54/2014 (Annexure R/2 of the counter) and both the feeder as well as the promotional post have the same Grade Pay of Rs.4200/-. In the order dated 19.7.2013 of Hon'ble Allahabad High Court, the movement from Sr. Goods Guard to Sr. Passenger Guard was not considered as a promotion in view of orders passed in earlier cases. The Respondent No.1 is to keep these orders in mind while reconsidering the appeal of the applicant and after such re-consideration, if it

is found that the movement from the post of Sr.Goods Guard to Sr. Passenger Guard is not a promotion, then the case of the original applicant for grant of benefit of financial upgradation under MACP Scheme is to be considered as per the extant rules and all consequent benefits are to be extended. Respondent No. 1 is to pass a speaking order after re-consideration as above and pass a speaking order, a copy of which is to be communicated to the applicants within four months from the date of receipt of a copy of this order.

14. The OA is disposed of accordingly. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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