

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.1297 of 2015

Reserved on : 10.11.2016

Pronounced on: 17.11.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

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1. Ajay Kumar Das, S/o. Late Sisir Kumar Das, aged about 61 years, retired as Ch. OS at present residing at 13C/2, Parui Daspara Road, PO. Sarsuna, Kolkata-700 061.
2. Subal Chandra Sarkar, S/o. Late Krishnapada Sarkar, aged about 63 years, retired as Chief SWI at present residing at 6A/6, Surya Sen Nagar (Extn.), Sarsuna, Kolkata-700 061.
3. Partha Sarathi Ghosh, S/o. Late Nalikasha Ghosh, aged about 62 years, retired as Ch OS at present residing at Vill & PO. Hat Krishnanagar, PS. Patrasayer, Dist. Bankura, PIN-722206.
4. Tapash Banerjee, S/o. Late Abhay Charan Banerjee, aged about 62 years, retired as Ch OS at present residing at 8 UK Dutta Road, Shrachi Abasan, Kolkata-28.
5. Malabika Das, W/o. Sri Kamal Das, aged about 56 years retired as Chief OS at present residing at Flat No. 9, 167, M.B.Road, Howrah-711104.
6. Malay Chandra Bose, S/o. Late S.C.Bose, aged about 64 years, retired as Chief WI at present residing at 90/1, Dr. L.M.Bhattacharjee Road, Kolkata-700 014.

.....Applicants

-VERSUS-

1. UNION OF INDIA, through General Manager, South Eastern Railway, Garden Reach, Calcutta-700 043.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700 043.

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3. Sr. Personnel Officer (Engg/Hq), South Eastern Railway, Garden Reach, Calcutta-700 043.
4. Secretary, Railway Board, Rail Bhawan, New Delhi-1.
5. Dy. Director, Pay Commission - V, Railway Board, New Delhi-1.
6. Chairman, Railway Board, Rail Bhawan, New Delhi-1.
.....Respondents

Counsel for the Applicant :Mr.C.Sinha, Advocate
 Counsel for the Respondents :Mr.L.K.Chatterjee, Counsel
 Ms.N.S.Alam, Counsel

ORDER

MS.JAYA DAS GUPTA, AM:

06(six) Applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, jointly, seeking the following reliefs:

"(a) Liberty to be granted under Rule 4 (5) (a) of the CAT (Procedure) Rules, 1987 to file and maintain the application jointly;

(b) To set aside and quash impugned O.O. No. SER/P-HQ/EP/49/2015 dated 09.06.15 issued by Sr. Personnel Officer (Engg & HQ) for Chief Personnel Officer as regard applicants are concerned;

(c) To set aside and quash impugned due and drawn statement No. SER/P-HQ-EP/240 dated 16.7.15 of respective applicants issued by Sr. Personnel Officer (Engg & HQ) for Chief Personnel Officer;

(d) To set aside and quash impugned letter No. SER/P-HQ/EP/215/MACP/Personnel dated 21.10.2014 issued by Sr. Personnel officer (Engg/HQ), South Eastern Railway, Garden Reach of respective applicants;

(e) To set aside and quash impugned railway Board's letter No. PC-V/2009/ACP/21/SER dated 28.7.2014 circulated under letter No. SER/P-HQ/Ruling/o/931 (32) dated 11.08.2014;

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(f) To set aside and quash impugned letter No. PC-V/2009/ACP/21/SER dated 27.2.13 issued by Dy. Director, Pay Commission -V, Railway Board;

(g) To direct the respondents to restore the Grade Pay of Rs. 4800 as granted to the applicants under MACP scheme as Financial up gradation and allow the applicants to enjoy the same without making any recovery;

(h) Any other order(s) as the Hon'ble Tribunal deems fit."

2. It is the case of the Applicants that they were working as Junior Clerks in the scale of Rs. 260-400/- in the personnel Department of the Railway. They were promoted to officiate as Senior Clerk on regular measure against direct recruitment quota reserved for serving railway employees as per the order dated 10.11.1980. Their main contention is that this movement from Junior Clerk to Senior Clerk in the Personnel Department of the Railway is a process of direct recruitment and not promotion. Hence, they are aggrieved when the order granting them the benefits of third MACP was directed to be withdrawn. All of them retired from service prior to such withdrawal order. Hence the OA has been filed for redressal of their grievance.

3. Per contra, the contention of the Respondents is that the movement of the applicants from Junior Clerk to Senior Clerk was as per the extant railway Board's order/circular/Rules. It is not a direct recruitment but promotion and thus, they are not eligible to get the

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benefits of third MACP. Accordingly, they have prayed for the dismissal of this OA.

4. Hard both. Consulted the records.
5. The dates of appointment and retirement of the applicants are given in a tabular chart as under:

Sl.No.	Name	Date of appointment	Date of retirement
1	Ajay Kumar Das	18.11.1977	31.12.2013
2	Subal Chandra Sarkar	19.11.1977	31.12.2011
3	Partha Sarathi Ghosh	04.07.1973	30.06.2013
4	Tapash Kumar Banerjee	19.11.1977	30.09.2012
5	Smt. Malabika Das	17.10.1981	31.07.2013
6	Molay Chandra Bose	20.12.1977	31.07.2011

6. S/Shri Ajay Kumar Das, Subal Chandra Sakar and Smt. Malabika Das were extended the benefits of third MACP vide order dated 18.10.2012 and S/Shri Partha Sarathi Ghosh, Tapas Kumar Banerjee and Molay Chandra Bose were extended the said benefits vide order dated 05.12.2012.

7. The above orders granting the benefits of third MACP were withdrawn on 09.06.2015 i.e. after their date of retirement. They were earlier issued show cause notice in 2014 as to why excess monetary benefits under MACP shall not be recovered from their dearness relief as per extant rules. They have represented against the show cause notice but to no avail.

8. The moot question to decide is whether the movement from Junior Clerk to Senior Clerk was a direct recruitment or



promotion. Therefore, it is pertinent to consider the relevant provisions issued by the Railway Board. Such orders of the Railway Board are set out below for ready reference:

A. "Estt. Srl. No. 248/80.
No. P/3rdFC/55/Pt. IV. Dated: 20.11.1986

Restructuring of the cadre of Personnel Department.

A copy of the Railway Board's letter No. PCIII/80/UPG/21 dated 10.11.80 is published herewith for information, guidance and necessary action.

Expeditious action should be taken to implement the orders within the target date as stipulated in Para 4 of the Board's letter ibid, and a compliance report be sent to this office by 15th February 1981 so as to communicate a reply thereon to the Railway Board as desired.

This may kindly be given top priority.

Copy of Board's letter No. PCIII/80/UPG/21 dated 10.11.80 addressed to the General Managers, All Indian Railways and others.

Restructuring of the cadre of Personnel Department.

With a view to bring about a qualitative improvement in the functioning of the Personnel Department, the question of introduction direct recruitment of Graduates at the level of Senior Clerks, scale Rs. 330-360 has been engaging the attention of the Railway Ministry for sometime past. Accordingly it has now been decided in agreement with the Staff Side in the Departmental Council (JCM) to provide for direct recruitment of Graduates in this category to the extent of 20% of the total strength of the cadre of Senior Clerks. Such direct recruitment will be made through the Railway Service Commission. Consequent upon the introduction of aforesaid direct recruitment, the grade wise percentage distribution of posts in the Personnel Department, will now be as under :-

Category	Scale of Pay (Rs.)
Percentage Office Supdt.	700-900

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Chief Clerk	550-750	7.0%
Head Clerk	425-700	13.0%
Senior Clerk	330-560	37.5%
Clerk	260-400	20.0%

2. The existing employees in the Personnel Department working as Clerks in scale Rs. 260-400 who are graduates would also be permitted to compete for recruitment against the direct recruitment quota by availing of the age relaxation already in force.

3. The seniority of directly recruited Senior Clerks vis-à-vis those promoted to the grade shall be determined with reference to the date of entry into the grade.

4. These orders take effect from 1.10.1980 and have the sanction of the President. You are requested to ensure that these orders are implemented and necessary selections and promotions are ordered within three months from the date of issue and a report thereon sent to this office within 15 days thereafter."

B. "Estt.Srl.No.133/81
No. P/3rdPC/55/Pt.IV Dated: 25.6.1981

A copy of the Railway Board's letter No. PCIII/81/UPG/7 dated 18.6.81 is published for information, guidance and necessary action.

Board's letter dated 10.11.80 referred to therein was circulated under Estt.Srl.No. 248/80.

Copy of Board's letter No. PCIII/81/UPG/7 dated 18.6.81 addressed to the General Managers, All Indian Railways and others.

Restructuring of the Cadre of Ministerial staff of Departments other than Personnel.

The Ministry of Railways have had under consideration the question of restructuring of the Ministerial Cadre of Non-accounts Departments other than Personnel in the wake of upgradations done in the case of Personnel Department vide their letter No. PCIII/80/UPG/21 dated 10.11.80. As a result of agreement

reached with the staff side in the Departmental Council (JCM,) it has now been decided as under :-

(i) There shall be direct recruitment of graduates to posts of Senior Clerks in scale Rs. 330-560 to the extent of 20% of the total strength. The direct recruitment will be made through the Railway Service Commission.

(ii) 13.1/3% of the total posts of Senior Clerks in scale Rs. 330-560 will be filled from amongst the Graduate Clerks already serving in the lower Grades after allowing them age relaxation already in force. These vacancies will be filled up by a competitive examination to be held by the Railway Service Commission. In the event of Graduate Clerks not being available from amongst the serving employees to fill this quota, the residual vacancies will be filled up by direct recruitment through the Railway Service Commission over and above the 20% quota referred to in (i) above.

(iii) Consequent upon induction of direct recruitment of Graduates at the level of Senior Clerks, the gradewise percentage distribution of posts in the Ministerial Cadre will now be as under:

Category	Scale of pay (Rs.)	Percentage
Office Supdt.	700-900	2.5%
Chief Clerk	550-750	7.0%
Head Clerk	425-700	13.0%
Senior Clerk	330-560	57.5%
Clerk	260-400	20.0%

2. These orders will take effect from 1.10.80 but no arrears shall be payable on this account. The pay of an employee appointed to the upgraded post may be fixed proforma from 1.10.80 but the actual payment of emoluments in the higher post should be allowed only from the date he takes over charge of the upgraded post. This has the sanction of the President.

3. All vacancies of Senior Clerks (Rs. 330-560) existing as on 30.9.1980 should be filled up in accordance with the orders in force prior to the issue of this letter. All vacancies arising on or after 1.10.1980 shall be filled in accordance with the proportion prescribed herein.

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4. The staff of the Personnel Department will be governed by instructions contained in this Ministry's letter No. PCIII/80/UPG/21 dated 10.11.80 except that the level of direct recruitment in scale of Rs. 330-560. In personnel Department also will be 33.1/3%, and will be regulated in accordance with para 1(i) & (ii) above.

5. This has the sanction of the President."

9. An order promoting two applicants to the post of Senior Clerk is at Annexure-A/2 dated 24.05.1984 in which the name of Shri Ajay Kr Das is at Sl.No.9 and Shri Parth Sarathi Ghosh is at Sl.No.11, relevant portion of which is quoted herein below:

"SOUTH EASTERN RAILWAY

C.P.O.'s Office
GRC, Cal - 700043

OFFICE ORDER NO. PB/88/84

Dated: 24-5-84.

The following staff of CPO's Office who have been declared successful at the limited competitive Examination conducted by RSC/Cal, for posting as Graduate Sr. Clerks in scale Rs. 330-560 (RS) are **promoted** to officiate as Sr. Clerk (Rs. 330-560 RS) as regular measure against the direct recruitment quota reserved for serving Railway employee and posted in the offices as shown against each:-

Sl. No	Name & Desig.	RSC Merit Order	Empanelled against the post of	Attached to	Promoted to the Section	Remarks
1.	2.	3.	4.	5.	6.	7.
9.	Sri Ajay Kr. Das Clerk (Rs.260-400 RS)	140	1-10-80	CPO's Staff Sec.	CPO's Staff Sec.	Against an existing vacancy
11	Parth Sarathi Ghosh,	157	1-10-80	Hindi Sec.	Hindi Sec.	Against the post of recruitment

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	Clerk (Rs.26 0-400 RS)					nt Sec.
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The post of Jr. Clerk in scale Rs. 260-400 (RS) released by S/Sri/Smt. Gitasree Sarkar, (Srl. No.1), Ajit Kr. Dhar, Srl. No. 6), Utpal Kr. Ray (Sl. No. 8), Partha Sarathi Ghosh (Sl.No.11), P.J. Sinha (Sl. No. 13) should be kept in abeyance for a period upto 31-3-85. One vacant post of Jr. Clerk in scale Rs. 260-400 (RS) under Optg. Staff Sec., CPO's Office, GRC should also be kept in abeyance for a period upto 31-3-85.

The promotions of Sl.No. 1 to 13 of Para No.1 will take effect from the dates they take over the charge and their seniority as Sr. Clerk will also be counted from that date according to the Merit Order.

This issues with the approval of the Competent Authority.

Sd/-
ASSTT. PERSONNEL OFFICER (STAFF)"

10. In addition several clarifications in the matter have been issued relevant portion of which is appended below:

(a) The clarification issued by the Railway Board on MACP Scheme for Railway servants treatment of employees selected under LDCE/GDCE Scheme is quoted herein below:

"SOUTH EASTERN RAILWAY

Estt. Srl.No.123/2012
No. P/6th CP/32
Dated:01.10.2012
To: All concerned

CPO's Office/GRC
RBE No. 100/2012

Sub: MACP Scheme for Railway servants treatment of employees selected under LDCE/GDCE Scheme – clarification reg.

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Railway Board's letter No.PC-V/2009/ACP/2 dated 12.09.2012 (RBE No.100/2012) is forwarded for information, guidance and necessary action.

Enclo: As above

Sd/-
(D. Sutar)
Dy. Chief Personnel Officer (HQ)
For Chief Personnel Officer

Railway Board's letter No.PC-V/2009/ACP/2 dated 12.09.2012 (RBE No.100/2012) is as under:-

Sub: MACP Scheme for Railway servants treatment of employees selected under LDCE/GDCE Scheme - clarification reg.

Reference have been received from Zonal Railways 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 on MACPS and it has been decided as under:-

(i) If the relevant RRs provide 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.

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 MACPS and in such cases, post regular service shall also be counted for further benefits, if any, under the MACP Scheme.

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

(b) Further the letter issued by the Railway Board on

28.07.2014 is quoted herein below:

"Railway Board's letter No.PC-V/2009/ACP/21/SER dated 28.07.2014 is as under:

Sub: Grant of financial upgradation under MACPS in favour of serving graduate clerks promoted to the post of Sr. Clerk through LDCE

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The matter referred vide S.E. Railway's letter under reference has been considered in Board's office and in context thereof, it is advised as under:-

- (i) The clarifications communicated vide para-1 of Board's letter of even number dt. 27.02.2013 has been issued in the light of existing provisions for appointment/promotion to Sr. Clerk grade and relevant instructions of MACP Scheme. These instructions needs to be followed.
- (ii) The appreciation given at second para of S.E. Railway's letter under reference is wrong as it does not appreciate that with the issue of Board's restructuring instructions dt. 18.06.1981, the provisions for filling up the vacancies in Sr. Clerks grade stands amended and as per the amended/existing provisions, 13 1/3% quota is not direct recruitment quota but promotional quota to be filled through LDCE from amongst serving graduate clerks in the lower grade and, therefore, has to be treated as promotion for the purpose of MACP Scheme.

2. Thus, necessary action on the above lines may please be ensured."

(c) The Government of India, Ministry of Railway (Railway Board issued letter dealing with grant of grant of financial upgradation under MACPS in favour of serving graduate clerks promoted to the post of Sr. Clerk through LDCE whcih is quoted herein below:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(Railway Board)

No. PC-V/2009/ACP/21/SER New Delhi, dated 28.07.2014

The General Manager (P)
South Eastern Railway
Kolkata – 700 043.

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Sub:-Grant of financial upgradation under MACPS in favour of serving graduate clerks promoted to the post of Sr. Clerk through LDCE.

Ref:-SER's Letter No.SER/P-
HQ/EP/215/MACP/PERSONNEL/L, dt.04.04.2014 and dt.
02.06.2014.

The matter referred vide S.E. Railway's letter under reference has been considered in Board's office and in context thereof, it is advised as under:-

- (i) The clarifications communicated vide para-1 of Board's letter of even number dt. 27.02.2013 has been issued in the light of existing provisions for appointment/promotion to Sr. Clerk grade and relevant instructions of MACP Scheme. These instructions needs to be followed.
- (ii) The appreciation given at second last para of S.E. Railway's under reference is wrong as it does not appreciate that with the issue of Board's restructuring instructions dt. 18.06.1981 the provisions for filling up the vacancies in Sr. Clerks grade stands amended and as per the amended/existing provisions 13 1/3% quota is not direct recruitment quota but promotional quota to be filled through LDCE from amongst serving graduate clerks in the lower grade and, therefore, has to be treated as promotion for the purpose of MACP Scheme.

2. Thus, necessary action on the above lines may please be ensured.

Sd/-
(N.P. Singh)
Dy. Director, Pay Commission-V
Railway Board"

11. Going by the facts of the matter and the provisions made by the Railway Board, we do not find any infirmity in the order cancelling the order extending the third MACP to the applicants and

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thereby revising the pension and other pensionary benefits paid to the applicants.

12. However, on the question of recovery of the excess payment made from 18.10.2012 and 05.12.2012 as the case may be, we note that the orders of cancellation of MACP made on 09.06.2015 were made after their retirement. As they were Gr. C employees and have also retired it would cause financial hardship to them if recovery is carried out at this point of time.

13. Hence, the OA is disposed of with the following directions:

A. The pension and other retirement benefits shall be revised and recalculated as the applicants were not eligible to get the benefits of 3rd MACP;

B. No recovery of excess amount paid to them from the order granting 3rd MACP to them to the date of their retirement, shall be made.

14. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)