

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.

O.A.211/00119/2014

Dated this ~~Thursday~~ the 05th day of August, 2019.

Coram: Dr.Bhagwan Sahai, Member(A)
Ravinder Kaur, Member (J)

Mrs. Veera Seema Manish Naidu
Aged 42 years, Occupation - Service,
E-2, "Shree Ganga", Bhide Road,
Sitabuldi, Nagpur - 440 012. ... Applicant

(By Advocate Shri M.M. Sudame)

Versus

1. The General Manager,
Central Railway,
CM's Office,
Mumbai CST - 400 001.
2. The Divl. Railway Manager
Central Railway,
D.R.M.'s Office, Kingsway,
Nagpur - 440 001. ... Respondents

(By Advocate Shri Alok Upasani)

ORDER

Per: Ravinder Kaur, Member (J)

The present OA has been filed by the
applicant under Section 19 of the
Administrative Tribunals Act, 1985 seeking
the following reliefs:-

"(a) Quash and set aside the fixation made by the respondent vide their letter dt.27.12.2013 issued by respondent no.3.

(b) The pay protection withdrawn under the order dt.27/12/2013 at Ann.A1 be directed to be restored.

(c) Direct the respondents for implementation of the judgment of this Hon'ble Tribunal in OA No.2070/2010 dt.10/12/2010 at Ann.A-3 in true spirit on the basis of pay drawn by the applicant as on the date of judgment i.e. at the Basic pay of Rs.15790/-.

(d) Grant any other relief.

(e) Award the costs of the applicant from the respondent."

2. Vide present OA, the applicant has challenged the fixation of her pay vide letter dated 27.12.2013 issued by respondent No.3 and has sought directions to respondent No.3 to restore the pay protection withdrawn vide the above referred order.

3. The facts are that the applicant had joined the respondents' department w.e.f 05.10.1993 as per appointment order dated 28.09.1993 in the pay scale of Rs.1200-2040 (RPS). Initially she was posted at Bhusawal Division. She requested for inter-divisional transfer from Bhusawal to Nagpur on 10.02.1995. While this application was being

processed, she was granted promotion to the post of Senior Stenographer on regular basis in the pay scale of Rs.1400-2600 (RPS) w.e.f. 27.05.1996. It is stated that when the applicant was considered for transfer as per her request, she was already promoted to Senior Grade and as such when she joined at Nagpur she was placed at the bottom of the seniority list of the incumbents at Nagpur. Though she was required to join as Junior Steno, her pay which she was drawing as Senior Grade was required to be protected. However, immediately on her joining at Nagpur, her pay was not protected and only on her request the pay protection was granted in the year 2005 and she received a sum of Rs.1,55,000/- towards arrears of pay protection.

4. It is claimed that since the applicant completed 12 years of her service on 04.10.2005, she was entitled for 1st ACP and thus, made representations to the

respondents in this respect. However, when she did not get any relief, she filed OA No.2070/2010 wherein she prayed for grant of 1st ACP w.e.f. 04.10.2005. The OA was allowed vide judgment dated 10.12.2012. The respondents were directed to pass suitable orders regarding 1st financial upgradation and to work out pay and allowances admissible to the applicant.

5. The applicant has stated that for grant of 1st financial upgradation, the period of 12 years has to be counted right from the initial date of her employment and that the period she served as Senior Stenographer will be presumed to be the period she spent as Junior Stenographer only and in the transferred division, her case should be considered for 1st financial upgradation on the expiry of 12 years or from the date of her entry into a new division whichever is later. That her 2nd financial upgradation would be from the date she completes 24 years

in her service.

6. The applicant made representation dated 17.12.2012 to the respondents in terms of the judgment of this Tribunal in OA No.2070/2010. The respondents vide order dated 26.03.2013 granted 1st financial benefit under the ACP Scheme in the pay scale of Rs.5000-8000 (RSRP) w.e.f.04.12.2005 and her pay was fixed as under:-

"With P.C. FIXATION as under : Gr.Rs.9300-34800 + G.P. Rs.4200/-

Pay fixed to	Rs.11540/- + 4200/-	on 01.01.2006
Pay raised to	Rs.12020/- + 4200/-	on 01.07.2006
Pay raised to	Rs.12510/- + 4200/-	on 01.07.2007
Pay raised to	Rs.13020/- + 4200/-	on 01.07.2008
Pay raised to	Rs.13540/- + 4200/-	on 01.07.2009
Pay raised to	Rs.14080/- + 4200/-	on 01.07.2010
Pay raised to	Rs.14630/- + 4200/-	on 01.07.2011
Pay raised to	Rs.15200/- + 4200/-	on 01.07.2012
Pay raised to	Rs.15790/- + 4200/-	on 01.07.2013"

7. The pay of the applicant was fixed vide order No.L.No.A/NGP/EP/2K13/127 dated 27.12.2013 and the basic pay of the applicant was reduced by withdrawing the benefit of pay protection which was already given to her. The order dated 27.12.2013 is reproduced as under:-

"The proposal received under reference is examined under the

guidelines of Rly Bd's L.No.F(E)II/91/Misc./2 dt.20/08/1999 & Hon'ble CAT order quoted above and the proposed fixation is vetted as under:-

1. Pay Rs.4000/- as on 1/1/1996 in Gr. Rs.4000-6000
 2. Pay raised Rs.4100/- as on 01/10/1996
 3. Pay raised Rs.4200/- as on 01/10/1997
 4. Pay raised Rs.4300/- as on 01/10/1998
 5. Pay raised Rs.4400/- as on 01/10/1999
 6. Pay raised Rs.4500/- as on 01/10/2000
 7. Pay raised Rs.4600/- as on 01/10/2001
 8. Pay raised Rs.4700/- as on 01/10/2002
 9. Pay raised Rs.4800/- as on 01/10/2003
 10. Pay raised Rs.4900/- as on 01/10/2004
 11. Pay raised Rs.5000/- as on 01/10/2005
- She has granted ACP award in Gr.5000-8000 w.e.f. 4/12/2005 vide O.O. No.NGP/P.752/OG dt.26/03/2013
12. Pay fixed Rs.5150/- as on 5/12/2005
 13. Pay raised Rs.9580 +GP 4200/- w.e.f. 1/1/2006
 14. Pay raised Rs.10,000 + GP 4200/- as on 1/7/2006
 15. Pay raised Rs.10,430/- +GP 4200/- as on 1/7/2007
 16. Pay raised Rs.10,870/- + GP 4200/- as on 1/7/2008
 17. Pay raised Rs.11,330/- + GP 4200/- as on 1/7/2009

18. Pay raised Rs.11,800/- + GP 4200/- as on 1/7/2010

19. Pay raised Rs.12,280/- + GP 4200/- as on 1/7/2011

20. Pay raised Rs.12,780/- + GP 4200/- as on 1/7/2012

21. Pay raised Rs.13,290/- + GP 4200/- as on 1/7/2013

The due/drawn may be prepared to assess the actual due/overpayment."

8. It is stated that the pay of the applicant should have been more than what she was drawing before, whereas as per the aforesaid fixation, her basic pay was reduced to that of Rs.13,290/- + Grade Pay Rs.4200/- from Rs.15,790/- + Grade Pay of Rs.4200/- reducing the basic pay by Rs.2500/-. A chart has been prepared by the applicant annexed to para 4.10 in the OA showing as to how the basic pay was reduced as claimed by her. It is stated that the pay protection which she was drawing at Bhusawal and received while joining at Nagpur, has now been totally withdrawn. The case of the applicant is that according to service rules, she was entitled to pay protection at the time of joining at

Nagpur and it should have been continued and accordingly, the respondents should have calculated her 1st ACP.

9. The action on the part of the respondents withdrawing the pay protection is termed as bad in law and it is requested that the same be quashed. It is further stated that the applicant had submitted representations dated 22.01.2014 and 30.01.2014 for granting her arrears of ACP as per the order dated 26.03.2013 (Annex A-5) and the judgment dated 10.12.2012 of this Tribunal but without any result. The action of the respondents is termed as violative of principles of natural justice.

10. It is claimed that the case of the applicant was processed for pay protection under various guidelines, the details of which are given in para 5.4 of the OA. It is stated that pay protection was given to the applicant w.e.f. September 1997 and the arrears w.e.f. September 1997 till September 2005 on 02.03.2006 in terms of Annex A-9 in accordance with the FR 22(I) (a) (2) i.e. Rule 1313(1)(a)(ii) of R-II, Ministry

Circular of Railway Board, following letters and circulars.

11. It is further stated that Pay Protection was given to the applicant w.e.f. September 1997 and she received arrears towards such pay protection w.e.f. September 1997 till September 2005. To this effect she has placed on record the copy of service record as Annex A-9 wherein it is evident that as the case of the applicant was of transfer on request basis, the revised pay was fixed in accordance with FR-22(i)(a)(2) i.e. Rule 1313(1)(a)(2) of R-II. It is claimed that as per RBE No. 195/2002 L. No. F(E)II2002/FOP/8 dated 29/10/2002, when Govt. Servant holding a higher post substantively on regular basis seeks transfer from that higher post to lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of the pay of the lower scale then the pay drawn in such higher post will be protected vide

FR-22(1)(a)(2) i.e. Rule 1313(1)(a)(2) of R-II incorporated vide ACS 14.

12. The applicant has further stated that Railway Board had issued letter No. F(E)II/2003.FOP/I Misc dt. 17.04.2007(Annex A-21) circulating DOP&T's L. No. 16/06/2001-Estt. Pay-I dt. 14.02.2006(Annex A-21) & 04.01.2007(Annex A-23). The para 2 of letter dated 14.02.2006 states as under:

"It is clarified that on transfer to the lower post/scale under FR15(a), the pay of a Govt. Servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments."

13. It is further submitted that so far the Railway Board's letter dated 20.08.1999 is concerned, it was a clarification on Railway Board's letter dated 24.02.1995. Since the Railway Board has deleted its letter dated 24.02.1995, therefore, the clarification issued vide letter dated 24.02.1995 also stands deleted as mentioned in the letter dated 08.07.2003 issued by the CPO(M&T), Mumbai, CST. It is claimed that

the applicant was rightly given pay protection w.e.f. 25.09.1997 and she is eligible for pay protection vide each and every Railway Board's letter which were ignored by the respondents.

14. The applicant has tried to justify her claim for pay protection, claiming that when she requested for transfer, she had to forego promotion to the post of Sr. Stenographer grade and accept the posting at bottom place of Jr. Steno. She waited for nine years for pay protection of the pay which she was drawing at Bhusawal as Sr. Stenographer. By now the applicant has already put in 20 years of service when even her first ACP is still in dispute which she should have been granted w.e.f. 04.12.2005 ie after 12 years of her joining the service on 05.10.1993. It is stated that the respondents illegally, arbitrarily and wrongly fixed her pay vide letter dated 27.12.2013 and prays that the same be quashed and set aside. She

has further sought directions to the respondents to continue with the protection of her pay with increase of basic pay. As per the applicant, her basic pay should have been fixed at Rs. 15790 + GP 4200 instead of Rs. 12390 + GP 4200.

15. The respondents have filed detail Affidavit in their reply and have submitted that inadvertently the applicant was not granted pay protection at the time of fixing her pay on her transfer to Nagpur Division on her own request basis but now the arrears already stand paid to her. The applicant has admitted receipt of the arrears.

16. Regarding the earlier OA No. 2070/2010 filed by the applicant, it is submitted that vide order dated 10.12.2012, the Tribunal directed the respondents to issue suitable orders as to 1st Financial Upgradation to the applicant. The Tribunal neither observed nor directed that the applicant is entitled for financial

upgradation considering the benefit of pay protection which had been granted to her as a result of her own request transfer. It is further submitted that the Tribunal had directed the respondents to presume that the period which the applicant has served as Sr. Stenographer to be spent as Jr. Stenographer only. It is in these circumstances that the respondents have rightly not considered the element of pay protection at the time of pay fixation while granting the first financial upgradation.

17. It is further stated by the respondents that Railway Board's letter dated 28.12.2010 (Annex R-1) provides that in case of transfer including unilateral transfer on request where an official in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower post/grade from the promoted post/grade before being relieved for the new organization/office such past promotion in

the previous organization/office will be ignored for the purpose of MACP scheme in the new organization. However, in respect of those cases where benefit of pay protection has been allowed at the time of unilateral transfer to other organization/unit, the promotion earned in previous organization has to be reckoned for the purpose of MACP scheme.

18. Learned counsel for the respondents draws our notice to RBE No. 08/2012 dated 31.01.2013 (Annex. R-2), a clarification issued with reference to Railway Board's letter dated 10.06.2009 as well as RBE No. 188/2010 dated 28.12.2010 (Annex. R-1) regarding the MACP scheme to Railway Employees and submits that in view of both these documents, they have rightly done the pay fixation vide letter dated 27.12.2013.

19. We have heard arguments addressed by learned counsels for the parties and have carefully gone through the case record,

including the law points and the rival contentions in the case.

20. The relevant portion of Railway Board Letter RBE No. 188/2010 dated 28.12.2010 (Annex R-1) reads as under:

“MACPS for the Railway Employees Clarification regarding New organization

Railway Board Letter No: PC-V/2009/ACP/2 dated 2010-12-28

RBE No: 188/2010

Subject: Modified Assured Career Progression Scheme [MACPS] for the Railway employees – Clarifications regarding.

1. Subsequent to the issue of Board's instructions dated 10.06.2009 regarding MACP Scheme a Joint Committee is set up to examine the anomalies pertaining to the Modified Assured Career Progression Scheme [MACPS] vide Department of Personnel & Training O.M. No. 11/1/2010-JCA, dated 03.05.2010.

2. During the Joint Committee meeting it was pointed out by the Staff Side that the word 'New Organisation' of the last line of Para-24 of annexure of MACPS dated 10.6.2009 was not in consonance with the spirit of the Scheme. The issue has been examined and it is clarified that in case of transfer 'including unilateral transfer on request', regular service rendered in previous organization/ office shall be counted along with the regular service in the new organization /office for the purpose of getting financial upgradation under the MACPS. However, financial upgradation under the MACPS shall be allowed in the immediate next higher grade pay in the hierarchy of revised pay bands as given in Railway Services [Revised Pay] Rules, 2008. Para-24 of MACPS stands amended to this extent.”

The relevant portion of RBE letter no. 08/2012 dated 31.01.2013 (Annex R-2) reads as under:

“MACP in case of unilateral transfer and benchmark for MACP

Railway Board Letter No PC-V/2009/ACP/2 dated 31/01/2013 dated 31/01/2013

RBE No: 08/2012

Subject: Modified ACP Scheme (MACPS) for Railway Employees – Clarification – regarding.

1. Reference is invited to the Board's letter of even number dated 10-06-2009 regarding the Modified Assured Career Progression Scheme (MACPS) to Railway Employees. Pursuant to the discussions in the meeting of National Advisory Committee held on 17-07-2012 and subsequent meeting on 27-07-2012 held with the Staff side and in continuation to the clarifications issued vide Board's letter of even number dated 28-12-2010, it is further clarified as under:-

2(i). Financial upgradation under MACPS in case of staff who joined another unit/organization on request.

Railway Board's letter of even number dated 28-12-2010 provides that in case of transfer 'including unilateral transfer on request', regular service rendered in previous organization/office shall be counted along with the regular service in the new organization/office for the purpose of getting financial upgradations under the MACP Scheme. However, financial upgradation under the MACP Scheme shall be allowed in the immediate next higher Grade Pay in the hierarchy of revised Pay Bands as given in Railway Services (Revised Pay) Rules, 2008. It is now further clarified that wherever an official, in accordance with terms and conditions of transfer on own volition to a lower post, is reverted to the lower post/Grade from the promoted post/Grade before being relieved for the new organization/office, such past promotion in the previous organization/office will be ignored for the purpose of MACP Scheme in the new organization/office. In respect of those cases where benefit of pay protection have been allowed at the time of unilateral transfer to other organization/unit and thus the employee had carried the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of MACP Scheme.

2(ii). Benchmark for MACP Scheme:

Para 17 of Annexure-1 of Railway Board's letter dt. 10-06-2009 provide that financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of Grade Pay within the PB-1. Thereafter for upgradation under the MACPS, the benchmark of 'Good' would be applicable till the Grade Pay of Rs. 6600 in PB-3. The benchmark will be 'Very Good' for financial upgradation to the Grade Pay of Rs. 7600 and above. Railway Board's letter of even number dated 28-12-2010 provides that where the financial upgradation under the MACPS also happens to be in the promotional grade and benchmark for promotion is lower than the benchmark for granting the benefit under the MACPS as mentioned in Para 7 ibid, the benchmark for promotion shall apply to MACPS also. It is now further clarified that wherever promotions are given on non-selection basis (ie, on seniority-cum-fitness basis), the prescribed benchmark as mentioned in Para 17 of Annexure-1 to Board's letter dt. 10-06-2009 shall not apply for the purpose of grant of financial upgradation under MACP Scheme."

We have carefully perused both RBE NO. 188/2010 and RBE No. 08/2012 (Annex R-1 and R-2 respectively).

21. It is observed from the material available on record that the applicant was initially appointed to the post of Junior Stenographer on 5.10.1993 in the grade of Rs. 4000-6000 with initial pay of Rs. 4000. She made request vide application dated 10.02.1995 for inter-divisional transfer from Bhusawal to Nagpur. While such application

was under process, she was promoted to the post of Sr. Stenographer w.e.f. 27.05.1996 in the grade of 5000-8000 and her pay was fixed at Rs. 5000.

22. After one year, the pay was increased to Rs. 5150. Thereafter, in view of her own request made vide application dated 10.02.1995, she was transferred to Nagpur Division and was granted pay protection to the pay of Rs. 5100. For this Grade Pay of Rs. 5100 she was entitled only on account of her promotion as Sr. Stenographer. And consequently, she carried this financial benefit of promotion earned in Bhusawal Division to her new place of posting in Nagpur Division. It is admitted fact that when she was transferred to Nagpur Division, she worked as Jr. Stenographer. The question arises whether the applicant can claim double financial benefit i.e. in the form of pay protection of promotional post at new place of posting on request transfer and at the

same time benefit of ACP-I for the same period ie. from 1993 to 2005. Here we make reference to RBE No. 188/2010 (Annex R-1) dated 28.12.2010 and RBE No. 08/2012 (Annex R-2) dated 31.01.2013 which makes it clear that where an official seeks transfer on request to a lower post and consequently is reverted to the lower post from the promoted post, such past promotion in the previous organization is required to be ignored for the purposes of financial upgradation in the new organization.

23. However, where benefit of Pay protection has been allowed at the time of unilateral transfer to the other organization and the employee carries the financial benefit of promotion, the promotion earned in previous organization has to be reckoned for the purpose of financial upgradation.

24. In the present case, the applicant opted for request transfer from Bhusawal to Nagpur from Jr. Stenographer to Jr.

Stenographer. However, before her request was processed, she was promoted as Sr. Stenographer and worked for about an year at Bhusawal in the said promotional post when she was allowed to proceed on request transfer to Nagpur where she joined as Jr. Stenographer but claimed Pay protection of the post of promotion as Sr. Stenographer and she was granted this relief by the respondents.

25. So it is crystal clear that on her request transfer to Nagpur, she carried her promotional financial benefits along with her in the form of pay protection. However, the applicant approached this Tribunal vide OA no. 2070/2010 seeking declaration that she was entitled to first financial upgradation upon completion of 12 years of service counted from the date of regular appointment in the recruitment grade i.e. 05.10.1993 and also sought directions to the respondents to grant her the pay scale of Rs. 5000-

8000 (RSRP) of Sr. Stenographer w.e.f. 05.10.2005 along with the arrears of Pay Fixation. This OA was disposed off vide order dated 10.12.2012 and the relevant paragraphs 9 and 10 of the OA are reproduced as under:

- "9. In view the above the Tribunal is of the considered opinion that the applicant is entitled to Count the period of 12 years right from of initial date of employment and the period she served as senior stenographer will be presumed be to the period she spent as junior stenographer only and in the transferred Division her case should be considered for first financial upgradation on the expiry of 12 years or from the date of her entry into the new Division whichever is latter. Her second financial upgradation would be from the date she completes 24 years of service.
10. The OA is allowed on the above terms. The impugned order is quashed and aside. Respondents are directed to pass suitable orders regarding first financial upgradation and work out pay and allowances admissible to the applicant and the same be paid within a period of four months."

26. It is in terms of the directions of this Tribunal vide aforesaid order, the respondents presumed the period served by her as Sr. Stenographer to be the period spent as Jr. Stenographer and accordingly, considered her case for 1st financial upgradation counting the period of 12 years from the initial date of her joining the service i.e. 05.10.1993. The respondents had though

initially protected her pay drawn by the applicant as Sr. Stenographer on promotion when she was transferred on request to Nagpur as jr. Stenographer, however, in view of the directions of this Tribunal in OA NO. 2070/2010, while granting her 1st ACP, this pay protection was withdrawn and she was granted 1st ACP after 12 years of her joining the service on 05.10.1993. If the respondents had acted otherwise, they not only would have committed contempt of Court for not complying the directions issued by the Tribunal in the above noted case, the applicant too would have got the double financial benefit one of promotional grade and the other as of ACP-I which would have been against the spirit of the relevant policy and rules framed thereunder.

27. Learned counsel for the applicant has submitted that the fixation of pay in case of request transfer would continue to be regulated under the provisions of FR No.

22(1)(a)(2) adopted by the Railways in terms of ACS-14 as Rule 1313, of IREC Vol. II circulated vide Railway Board's letter no. 198/1991. Further that Railway Board also issued RBE No. 195/2002 which states that when a Govt. servant holding a higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected vide FR-22(1)(a)(2) i.e. Rule 1313(a)(2) of R-II.

We fully agree that FR-22 referred to above would have been applicable in the present case, if the applicant had not asked for 1st Financial Upgradation after being promoted to the post of Sr. Stenographer as on 27.05.1996 and had claimed 2nd ACP on completion of 24 years of service.

28. However, in the present case, the

applicant when applied for the request transfer, she was working as Jr. Stenographer at Bhusawal Division and as observed above, before she could be transferred to Nagpur Division on her request, she was promoted to Sr. Stenographer and availed of the benefit of promotion and also got pay protection on request transfer to Nagpur and at the same time without forgoing the promotion received by her during initial 12 years of her service, she claimed benefit of 1st ACP on completion of 12 years despite the fact she had been already promoted during this period.

It is in these circumstances and in view of the directions of this Tribunal in OA No. 2070/2010, the respondents presumed the period spent by her as Sr. Stenographer to be the period spent as Jr. Stenographer and consequently, they were left with no option except to grant her financial upgradation on expiry of 12 years from the date of her entry in the service after withdrawing the benefit

of promotion in the form of pay protection.

29. The applicant who herself had approached this Tribunal in 2070/2010 and had obtained the relief as referred to in the previous paragraphs which has been rightly implemented by the respondents in its true spirit. The applicant has not challenged the aforesaid order of the Tribunal which has attained finality. Therefore, now she cannot claim the benefit under FR-12 ignoring the RBE No. 188/2010, RBE No. 08/2012 (Annex R-1 and R-2 respectively). All these three documents are to be read together and have to be given harmonious interpretation as discussed above.

30. In view of the above discussion, we find no merits in the OA, hence the same is hereby dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Bhagwan Sahai)
Member (A)

ma/gm

