

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

**Original Application No.21/639/2018**

**Date of Order: 24.07.2019**

Between:

G. Sikhamani S/o Daniel  
Aged about 61 years,  
Occ: Retired Loco Pilot  
South Central Railway, Guntakal Division  
R/o H.No.6-2-271, Secretariat Hills  
Necknampur, Manikonda  
Hyderabad – 500 089

.... Applicant

AND

1. Union of India,  
Represented by the General Manager  
South Central Railways, Rail Nilayam  
Secunderabad – 110 001.
2. The Chief Operations Manager  
South Central Railways, Rail Nilayam  
Secunderabad – 110 001.
3. The Divisional Railway Manager  
South Central Railway  
Guntakal Division, Guntakal  
Ananthapur District, AP
4. The Senior Divisional Personal Officer  
South Central Railway  
Guntakal Division, Guntakal  
Ananthapur District, AP.

... Respondents

Counsel for the Applicant: Mr. M.C.Jacob.

Counsel for the Respondents: Mr. Bhim Singh for Mr.

V.V.Narasimhan, SC for Railways.

**CORAM:**

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

**ORAL ORDER**

2. The OA is filed challenging the proceedings dated 27.10.2016 issuing corrigendum proceeding dated 22.01.2014 by the 2<sup>nd</sup> Respondent and the proceedings dated 28.04.2016 issued by 4<sup>th</sup> Respondent, rejecting the representation and inaction of 3<sup>rd</sup> in not disposing of his appeal.

3. Brief facts of the case are that the applicant joined respondents organisation as Khalasi on 26.7.1978 and got promoted as ad hoc Goods Driver in the 5<sup>th</sup> CPC scale of Rs.5000-8000. Due to an accident on 29.9.2006, he was removed from service by the Disciplinary Authority but the appellate authority modified the penalty and reinstated the applicant on 25.10.2007 as ad hoc Goods Driver. However, the Respondent No.4 reverted the applicant as Shunter in the lower pay scale by Office Order dated 22.11.2010. Applicant represented to the respondents based on the letter dated 25.11.2011 of Railway Headquarters. Applicant thereafter was promoted as Loco Pilot (Goods) on 22.03.2012 in the pay scale of Rs.9300-34800 + GP of Rs.4200. However, applicant was utilised in Guntakal Yard by the Chief Crew Controller as Shunter in the very same pay scale. Unfortunately, due to one another accident which occurred in the Yard, applicant was imposed with the penalty of removal from service. However, appellate authority

modified the penalty to that of compulsory retirement. On approaching the revisional authority, it was further modified to that of withholding of increment and reinstating the applicant into service. Respondent No.4 by proceeding dated 20.11.2014 revised his pay from 03.11.2000 onwards and against such revision applicant submitted representations. However, the representation was rejected on 28.4.2016. In the meanwhile, a corrigendum dated 26.10.2016 was issued by 2<sup>nd</sup> Respondent revising the penalty order and it was communicated to him on 27.10.2016. Applicant retired from service on 31.10.2016 and the retirement benefits were released on 07.02.2017 deducting a major portion of the benefits towards recovery. Against the recovery, applicant submitted a representation on 22.2.2017 to Respondent No.3 requesting to refund the withheld amount and cancel re-fixation of his pay. There being no response from the respondents, they were reminded on 7.8.2017. Besides the applicant also sought details of the recovered amount through RTI on 9.10.2017. Till date, Respondent No.3 has not considered the representation. Hence, the OA is filed.

4. The contentions of the applicant are that respondents reducing his pay from Rs.9300-34800 + GP Rs.4200 to pay band Rs.5200-20200 with GP Rs.2400 and ordering recovery at the time of his retirement, is illegal. The authorities failed to consider that he continued as ad hoc

Goods Driver at Guntakal though the reversion order was issued on 22.11.2010 and, thereafter, he was regularly promoted as Loco Pilot (Goods) in pay band Rs.9300-34800 with GP Rs.4200 by proceeding dated 22.03.2012. Therefore, reducing his pay at later date and ordering recovery is unsustainable. Respondent No.4, while rejecting the representation filed against revising his pay vide proceeding dated 28.4.2016 has stated that the applicant was reverted to the post of Shunter in the pay band of Rs.5200-20200 with GP of Rs.2400 from ad hoc post of Loco Pilot Goods as ad hoc promotion to the post of Loco Pilot cannot be continued for years unless he qualifies through selection process for the promotion to the post of Loco Pilot (Goods). Respondents also failed to consider the applicant for utilising him as Loco Pilot (Shunting) in Guntakal Yard in GP Rs.4200. Even after regular promotion, vide letter 22.03.2012, the action of the authorities in denying him the pay scale to the said post is untenable. Respondents failed to consider that in the cadre of Loco Running Staff, Loco Pilot (Shunting) Grade-II is operated in the 5<sup>th</sup> CPC pay scale of Rs.4000-6000 and Grade I in the pay scale of Rs.5000-8000. Loco Pilot Goods Grade-II was also in the pay scale of Rs.5000-8000 and in the revised pay scales Loco Pilots (Goods) Gr.I & II and Loco Pilot (Shunting) Grade-I were given replacement pay scale in PB-II with GP of Rs.4200. The applicant having been promoted as Loco Pilot (Goods) in pay band-

II with Grade Pay Rs.4200 and after utilizing his services as Shunter by the authority, in the same pay scale reducing and ordering recovery, is unsustainable. Moreover, respondents have failed to consider that all the penalties were imposed and were done without giving any notice to the applicant violating Principles of Natural Justice. The action of the respondents in recovering Rs.6,86,373/- from the retirement benefit is against the observations of the Hon'ble Supreme Court in **State of Punjab & Others v. Rafiq Masih**, (2014) 8 SCC 883.

5. The respondents through their reply statement state that the applicant was promoted as Ad hoc Goods Driver in the 5<sup>th</sup> CPC pay scale of Rs.5000-8000 and due to an accident on 29.09.2006, he was removed from service by the disciplinary authority, which in turn was modified and applicant was reinstated in service on 25.10.2007 as Ad hoc Goods Driver. Thereafter, applicant was reverted as Shunter in the lower pay scale on 22.11.2010. Applicant retired from service on 31.10.2016, and his retirement benefits were released on 7.2.2017. Applicant's pay was re-fixed due to the above penalty and accordingly deducted the benefits towards recovery. Applicant did represent on 22.02.2017 to refund the withheld amount recovered but it was negated on 28.04.2016.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The carrier of the applicant is replete with multiple penalties. However, respondents considering aspects relevant, have been fair in taking him back on to the rolls. In the process, pay was subjected to reduction as per the penalties imposed. It needs to be adduced that the applicant while working as ad hoc Goods Driver was subjected for suitability in the selection for the post of Loco Pilot (Goods) and found unsuitable for promotion to the post of Loco Pilot (Goods) by the executive officer. Hence, he was reverted to erstwhile grade to the Shunter in the pay band of Rs.5200-20200 with GP of Rs.4200 vide letter 22.11.2010. Further, as the applicant was involved in SPAD case, due to his negligence and carelessness, he was reverted to the erstwhile post of Shunter keeping in view public safety. Over the period of time, the applicant was promoted as Loco Pilot (Goods) and posted at Raichur vide letter dated 22.3.2012 on regular basis. However, applicant did not join the post but continued as Shunter at Guntakal. Once again, he was subjected to penalty of removal and thereafter, modified to withholding of an annual increment in the pay band Rs.9300-34800 with grade pay of Rs.4200 for a period of 3 years with recurring effect by the revision authority vide order dated 22.01.2014. The Chief Operations Manager (Respondent No.2) issued a corrigendum dated 26.10.2016, by

modifying the revisional order dated 22.01.2014, stating that withholding of annual increment in the pay scale of Rs.5200-20200 with grade pay of Rs.2400 for a period of three years with recurring effect or till the date of superannuation whichever is earlier. The same was communicated to the applicant on 27.10.2016 (at Annexure A-XIV to the OA). As the applicant continued to work as Shunter at Guntakal and for not having joined the promotional post, at Raichur, the pay of the applicant was fixed at in the pay band of Rs.5200-20200 with grade pay of Rs.2400 from 3.11.2010 onwards. The applicant was also not promoted to the post of Loco Pilot (Shunting) - Grade I, since he was undergoing penalties till his superannuation. It is also noticed that the post of Loco Pilot (Shunting) Grade-I in pay band of Rs.9300-34800 with grade pay of Rs.4200 and Loco Pilot (Shunting) Grade-II in the pay band of Rs.5200-20200 with grade pay of Rs.4200 are not equal. However, the post of Loco Pilot (Shunting) in grade pay of Rs.4200 is on par with the Loco Pilot (Goods) with grade pay of Rs.4200. The applicant was neither promoted as Loco Pilot (Shunting) Grade-I nor Loco Pilot (Goods), therefore, respondents have placed him in Level 4 of 7<sup>th</sup> CPC matrix, which are relevant to Loco Pilot (Shunter) Grade-II post. The respondents have correctly paid the applicant on the date of his superannuation as per the relevant pay scale. The terminal benefits were accordingly arranged. The recovery was due to the penalties

imposed on the applicant and, therefore, his case does not come under the ambit of the **Rafiq Masih** case (supra).

(II) However, when the Tribunal was going through the case, which had many twists and turns, an interesting thing came to our notice and which has to be adjudicated, at this stage, so that injustice is not done to the applicant.

(III) As can be seen from the career details of the applicant, he was appointed as Khalasi on 26.7.1978 with grade pay of Rs.1800 and thereafter as Fireman II, with grade pay of Rs.1900 on 14.3.1988. Further, he was promoted as Fireman-I with grade pay of Rs.1900 on 14.10.1990. This was followed by promotion to the grade of Shunter on 30.6.2000 with grade pay of Rs.2400. Later, as ad hoc Goods Driver on 23.10.2000 with grade pay of Rs.4200 which was regularised on 22.03.2012. The applicant retired on 31.10.2016. Nevertheless, the applicant was reverted as Shunter on 22.11.2010. Considering the above details, it is seen that the applicant was due for financial upgradation under MACP from the grade pay of Rs.2400 to Rs.2800, as he has put in the required years of service under MACP. The applicant retired on 31.10.2016.



(IV) In view of the aforesaid, respondents may have to examine the scope to provide MACP to the applicant, as per the MACP Scheme, if otherwise eligible. Although, the applicant has not prayed for the same, learned counsel for the applicant, during the submission across the Bar, has fervently prayed for considering the same. Learned applicant counsel has admitted that it was an error in not praying so at the time of filing the OA. The learned respondents counsel objected that such a relief should not be granted since it has not been prayed for in the OA. However, the submission of the learned counsel for the applicant, across the Bar, to provide the eligible relief as it cannot be ignored. Further, justice has to be fair and it has to be based on truthful facts. A truth has been unearthed during the hearing and, therefore, has to be acted upon.

(V) Accordingly, applicant is directed to represent to the respondents stating the grounds on which he is eligible for MACP citing the relevant provision governing the Scheme, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, on receipt of the representation, respondents may examine the same and dispose of it, as per extant rules, within a period of 12 weeks from the date of receipt of a copy of representation from the applicant.

With the above directions, the OA is disposed of with no order as to costs.

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

Dated, the 24th day of July, 2019

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