

Eastern Railway
(Personnel Department)

Serial Circular No. 49/2015

No. E.368/0/ACP/CC/Misc.

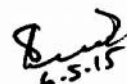
Kolkata, Dated: 06/05/2015

All Concerned

Sub: Sharing of information regarding favourable judgment.

Railway Board's instructions contained in letter No. PC-V/2014/CC/Misc dated 24.03.2015 on the above noted subject are reproduced below for information, guidance and necessary action. Board's earlier letter dated 11.02.2015 mentioned therein was circulated under this office letter No.E.308/Court Cell/RB/Policy/Pt.III dated 17.02.2015 (Copy enclosed together with Board's earlier letter dated 07.01.2015, duly forwarded vide this office letter No. E.308/Court Cell/RB/Policy/Pt.III dated 09.02.2015, for ready reference).

DA: As above.



(S. Ganguly)
Asstt. Personnel Officer/R&B
For Chief Personnel Officer
Phone No. 24118

Copy of Board's letter No. PC-V/2014/CC/Misc dated 24.03.2015 addressed to the GM (P)/All Zonal Railways & others.

Sub: Sharing of information regarding favourable judgment.

In continuation to Board's letter of even no. dt 11/2/2015 please find enclosed copy of an order dt. 17/03/2015 of Hon'ble Delhi High Court in W.P (C) No.5082/2013 (Swaran Pal Singh & Ors Vs. UOI & Ors) decided in favour of Railway Administration. In this case the petitioners had claimed as under:-

- a) Grant of financial upgradation under MACP Scheme in their promotional hierarchy instead of hierarchy of pay band and grade pay as stipulated in policy instructions on MACPS and,
- b) Fixation of pay in Pay Band at the minima prescribed for direct recruits in that Grade Pay.

2. Hon'ble Delhi High Court vide order dt. 17/03/2015 have dismissed the writ petition rejecting the claim of the petitioners.

3. It is advised that the aforementioned order of the Hon'ble Court may please be brought to the notice of all the concerned including the officials of the Divisions with instructions to effectively utilize them while contesting the cases involving any of the aforementioned issue.

Please acknowledge the receipt of this letter.

DA: As above.

Sd/-(N. P. Singh)
Dy. Director, PC-5
Railway Board

INDEX No.1060: Various favourable judgments in the matter relating to MACP Scheme.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved On : February 10, 2015

Judgment Delivered On : March 17, 2015

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W.P.(C) 5082/2013

SWARAN PAL SINGH & ORS.

.....Petitioners

Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Ms.Tinu Bajwa and
Mr.Sameer Sharma Advocates

versus

UOI & ORS.

.....Respondents

Represented by: Mr.Joydeep Mazumdar, Advocate
with Mr.Rohit Dutta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Directly recruited in the grade of Sub-Inspector in the Railway Protection Force ('RPF' for short) the petitioners have challenged the letter dated January 22, 2010 issued by the Railway Board, in which letter parameters for grant of financial upgradation to the employee of RPF under the Modified Assured Career Progression Scheme (MACPS) are prescribed. Petitioners have also prayed for a direction that the respondents should grant second financial upgradation under MACPS in the next Pay Band applicable to the post of Assistant Security Commissioner i.e. Pay Band-3 with Grade Pay of ₹5400/- and next, viz. 3rd financial upgradation with Grade Pay of ₹6600/-.

2. Prior to the implementation of the recommendations of the 6th Central Pay Commission, Sub-Inspectors in RPF were directly recruited in the then pay scale of ₹4500-7000. The 5th Central Pay Commission introduced the Assured Career Progression Scheme (ACP), which envisaged two financial upgradations as per DOP&T O.M. dated August 09, 1999 : (i) after completion of 12 years of service; and (ii) after completion of 24 years service, by way of fixation of the pay prescribed for the promotional post in the hierarchy. Petitioners plead that as per the ACP Scheme, Sub-Inspectors in RPF were placed in the next higher pay scale of ₹6500-10500 on completion of 12 years service and then in the scale of ₹8000-13500 on the completion of 24 years service.
3. The 6th Central Pay Commission replaced the ACP Scheme by the MACPS. The ACP Scheme thus remained in force till August 31, 2008 and as per DOP&T O.M. dated May 19, 2009, MACPS was introduced with effect from September 01, 2008, which envisages three financial upgradations after 10, 20 and 30 years of service. MACPS was made applicable to the employees of the Railways including RPF with effect from September 01, 2008 as per Railway Board's order dated June 10, 2009.
4. The Railway Board vide its order dated January 22, 2010 has prescribed the financial upgradations admissible for RPF/RPSF Personnel under MACPS in the following terms:

<i>"Post</i>	<i>Inspector (Prosecution)</i>	<i>Sub-Inspector (Executive/ Prosecution)</i>	<i>Constable</i>
<i>Recruitment Grade</i>	<i>9300-34,800-GP- 4600/PB-2</i>	<i>9300-34,800-GP- 4200/PB-2</i>	<i>5200-20,200- GP-2000/PB- 1</i>

<i>1st MACP</i>	<i>9300-34,800-GP-4800/PB-2</i>	<i>9300-34,800-GP-4600/PB-2</i>	<i>5200-20,200-GP-2400/PB-1</i>
<i>2nd MACP</i>	<i>9300-34,800-GP-5400/PB-2</i>	<i>9300-34,800-GP-4800/PB-2</i>	<i>5200-20,200-GP-2800/PB-1</i>
<i>3rd MACP</i>	<i>15,600-39,100-GP-5400/PB-3</i>	<i>9300-34,800-GP-5400/PB-2</i>	<i>9300-34,800-GP-4600/PB-2"</i>

5. It is this order of the Railway Board which has been challenged by the petitioners on the ground that second financial upgradation by giving the grade pay ₹4800/- granted to directly recruited of Sub-Inspector on completion of 20 years of service is fallacious and instead second financial upgradation should have been granted in the next higher Pay Band of Assistant Security Commissioner i.e. ₹15600-37100/- with Grade Pay of ₹5400/-. Petitioners have accordingly claimed that the next financial upgradation should be in the said Pay Bank with Grade Pay of ₹6600/-.

6. It is the case of the petitioners that by the application of the MACPS in the manner as above, directly recruited Sub-Inspectors have been discriminated vis-à-vis their counterparts who have got benefit under the ACP Scheme as also those direct recruits who have received two financial upgradations under ACP Scheme and the 3rd under the MACPS.

7. Petitioners also submit that the Railway Services (Revised Pay) Rules, 2008 issued vide notification dated September 04, 2009 for implementation of the recommendations of the 6th Central Pay Commission, under the Ist Schedule, Part-A, Section-II has specified the

entry pay, which is the minimum pay corresponding to each grade pay prescribed by the 6th Central Pay Commission and further that for any post, pay cannot be less than the minimum pay prescribed under Section-II. It is pleaded that for Pay Band-1 (₹5200-20200) and Pay Band-2 (₹9300-34300) the following are recommended as the applicable pay scales:

"Pay Band 1 (₹5,200-20,200)"

<i>Post</i>	<i>Grade Pay</i>	<i>Recommended pay scale as per to 6th Pay Commission</i>	<i>Pay in pay band</i>	<i>Total (Pay in pay band + Grade Pay)</i>
<i>Constable</i>	<i>2,000</i>	<i>3,200-4,900</i>	<i>6,460</i>	<i>8,460</i>
<i>Head Constable</i>	<i>2,400</i>	<i>4,000-6,000</i>	<i>7,510</i>	<i>9,910</i>
<i>Assistant Sub-Inspector</i>	<i>2,800</i>	<i>4,500-7,000</i>	<i>8,560</i>	<i>11,360</i>
<i>Sub-Inspector</i>	<i>4,200</i>	<i>6,500-10,500</i>	<i>9,300</i>	<i>13,500</i>
<i>Inspector</i>	<i>4,600</i>	<i>7,450-11,500</i>	<i>12,540</i>	<i>17,140"</i>

8. Petitioners have also relied upon Rule 7 of the Railway Rules, 2008 to plead that it prescribes a procedure for fixation of Pay Scales/Pay Band of the employees of RPF and under this Rule the salary of an employee has to be determined by multiplying the existing pay as on January 01, 2006 by a factor of 1.86 and rounding of the resultant to the next multiple of 10. It is the further case of the petitioners that if the minimum of the revised Pay Band/Pay Scales is more than the amount so

arrived, the pay shall be fixed at a minimum of revised Pay Band/Pay Scale and thereafter the facility of bunching would be applicable as per the proviso to the said Rule. According to the petitioners if in case the pay so determined under Rule 7 of the Railway Rules, 2008 is less than the minimum of the revised Pay Band/Pay Scales fixed as on January 01, 2006, it shall result in an anomaly because seniors would be getting lesser pay than the juniors after their pay is fixed at the minimum in terms of Section (2) of the revised Railway Rules, 2008.

9. Per contra, it is pleaded by the respondents that the Railway Services (Revised Pay) Rules, 2008 were supplemented by the Schedules issued vide letter September 11, 2008. The 'existing scales of pay' prescribed for the members of RPF/RPSF prior to the implementation of the recommendations of the 6th Central Pay Commission, and the corresponding revised pay structures as implemented by the Railway, is as follows:

<i>Post</i>	<i>Present Scale (Pre-revised/ existing scale in which pay was being drawn</i>	<i>Revised Pay Band and Grade Pay</i>	
		<i>Pay in pay band</i>	<i>Grade Pay</i>
<i>Inspector</i>	6500-10500	PB-2 (9300-34800)	4600
<i>Sub-Inspector</i>	5500-9000	PB-2 (9300-34800)	4200
<i>Assistant Sub-Inspector</i>	4000-6000	PB-1 (5200-20200)	2800
<i>Head Constable</i>	3200-4900	PB-1 (5200-20200)	2400
<i>Constable</i>	3050-4590	PB-1 (5200-20200)	2000

10. It is submitted by the respondents that as per Rule 7 of the Railway Services (Revised Pay) Rules, 2008 read with the definition clause under Rule 3 thereof, only the pay drawn in the '*prescribed existing scale of pay*' would form the basis for fixation of pay in the revised pay structure. Accordingly, for the post of Inspector in RPF, for the pre-revised scale of ₹6500-10500/- revised pay structure in PB-2 (₹9300-34800/-) with grade pay of ₹4600/- will be applicable. Neither the Rules of 2008 nor the Schedule circulated vide letter dated September 11, 2008 stipulate the pay scale of ₹7450-11500/- for the purpose of pay fixation for the post of Inspector in RPF. The financial upgradation under the ACP Scheme was in the cadre hierarchy whereas under MACPS the financial upgradation is in the hierarchy of Grade Pay and Pay Band of the pay structure introduced in implementation of the recommendations of the 6th Central Pay Commission. Since the case of the petitioners fall exclusively in the period covered by MACPS therefore, no parallel can be drawn with their seniors either those who have got benefit under the ACP Scheme or those who have received second upgradation under the ACP Scheme and the third upgradation under MACPS.

11. Questions that would essentially arise for determination in this case are whether the benefit under MACPS can be claimed to the pay band applicable to the next promotional post in the hierarchy on the ground of seniors getting lesser pay than their juniors who have availed such scale of the promotional post under the ACP Scheme; whether Section-II Part-A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 prescribe minimum pay and the petitioners by application thereof become entitled to stepping up of their pay in case their pay scales/Pay Band fixed in terms of Rule 7 is less than the minimum pay so prescribed.

12. Prior to the implementation of the Pay-Bands recommended by the 6th Central Pay Commission, the Sub-Inspectors in RPF were placed in the Pay-Scale ₹5,500-9,000/- and Inspectors were placed in the pay scale ₹6,500-10,500/-. Pursuant to the recommendations of the 6th Central Pay Commission, with effect from January 01, 2006, the Sub-Inspectors were placed in PB-2 (₹9300-34800/-) with Grade pay of ₹4200/- whereas Inspectors were placed in PB-2 with Grade Pay of ₹4600/-. It is apparent that the erstwhile concept of pay scale stands replaced by the concept of a Pay Band.

13. The earlier Assured Career Progression Scheme, which was in force till August 31, 2008 envisaged two financial upgradations as per DOPT OM dated August 09, 1999; the first up-gradation after completing 12 years' service and the second after completing 24 years' service.

14. Relevant would it be to note that under the Assured Career Progression Scheme the financial upgradation was by way of fixation of the pay prescribed for the promotional post in the hierarchy.

15. With the implementation of the Pay Bands after the 6th Central Pay Commission made recommendations, various erstwhile pay scales were merged in a common Pay Band and a higher grade pay was given to the posts with onerous and higher responsibilities. The Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme (MACPS) as per DOPT OM dated May 19, 2009 which envisaged 3 financial upgradations; the first after 10 years service, the second after 20 years service, and the third after 30 years service.

16. Para 2, 4 and 6 of the Modified Assured Career Progression Scheme (MACPS) are relevant. They read as under:-

"2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended

revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial up-gradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.

x x x

4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial up-gradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of ₹1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of ₹2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. ₹100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of ₹2400, on regular promotion, he will only be granted the difference of grade pay between ₹2000 and ₹2400. No additional increment will be granted at this stage.

x x x

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS."

17. As noted above the petitioners have pleaded that they have been discriminated vis-à-vis the other Sub-Inspectors in RPF who have got the benefit under the erstwhile ACP Scheme as also those who have received two financial upgradations under the ACP Scheme and the third under the MACPS.

18. The grievance of the petitioners rests on the premise that their counterparts who have got the benefit under the ACP Scheme have been placed in the pay scales of the next higher posts on completion of 12 and 24 years service. Whereas the petitioners by implementation of MACPS, have been granted second financial upgradation confined only to Grade Pay. Resultantly, the petitioners would be getting lesser pay than those whose pay is fixed with reference to the pay scales granted to them under the ACP Scheme.

19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word 'merely' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the

time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced.

20. This very issue had come up for consideration before this Court in W.P. (C) No.3420/2010 R.S.Sengor & Ors. Vs. Union of India & Ors. decided on April 04, 2011. In said case the petitioners were in Pay Band-1 and had a corresponding grade pay of ₹1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of ₹2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of ₹2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of ₹2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of ₹2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-

"10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of ₹4800/- and not ₹5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

21. This view has since been followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577 Union of India Vs. Delhi Nurses Union (Regd.) & Anr.
22. Therefore, merely because others who have been granted financial upgradation in the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/MACPS are different than regular promotions in the grade.
23. Even otherwise, as held in R.S.Sengor's case (supra) the MACPS requires the hierarchy of grade pay to be adhered to and not the grade pay in the hierarchy of posts. Both the schemes conferred benefit of financial upgradation to tide over the problems of stagnation and operate in their respective fields. Though, there is no challenge to the MACPS or any part thereof, yet it is beyond any cavil that the Courts by judicial review cannot interfere with a policy decision of a State unless it is shown to be patently arbitrary, discriminatory or mala-fide. In this case, there is no such claim made by the petitioners.
24. In the decision reported as 1998 (2) SCC 198 Govt. of Tamil Nadu Vs. S.Arumugham & Ors. the Supreme Court held that the Courts cannot substitute their own views for the views of the government or direct a new policy based on the Court's view.
25. In the decision reported as 2011 (10) SCC 121 Hardev Singh Vs. Union of India the issue before the Supreme Court was with regard to the change of promotion policy from based on 'value judgment' to 'quantification method'. Relying upon the decision reported as 1999 (3) W.P.(C) No.5082/2013

SCC 696 Virender S.Hooda Vs. State of Haryana, the Supreme Court held that it is always open to an employer to change its policy in relation to giving promotion to the employees and the Court would normally not interfere in such policy decisions.

26. In the decision reported as 2014 (13) SCC 296 Secretary, Govt. (NCT of Delhi) & Ors. Vs. Grade-I DASS Officers Association & Ors. the Supreme Court while considering ACP Scheme held that the scheme being a policy decision of the government, the Court will not interfere with the same.

27. It is also claimed by the petitioners that the minimum of the Revised Pay Band/Pay Scales as on January 01, 2006 has been fixed per Section-II Part-A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 and thus, the pay of the employees of RPF fixed under Rule 7 of the Rules cannot be less than the minimum pay so fixed.

28. Rule 8 of the Rules deal with fixation of pay in the Revised Pay Structure of the employees appointed as fresh recruits on or after January 01, 2006 and prescribes that the entry level pay in the Pay Band at which the pay of direct recruits to a particular post carrying a specific Grade Pay will be fixed on or after January 01, 2006. Section-II of Part-A of 1st Schedule to the Railway Services (Revised Pay) Rules, 2008, as the heading of the Section would make it clear, prescribes entry pay in the revised pay structure for direct recruits appointed on or after January 01, 2006. Therefore, the pay structure prescribed under Section-II cannot be invoked by an employee other than those who are appointed afresh by way of direct recruitment on or after January 01, 2006. Undeniably, the petitioners in this case, do not fall in this category. Therefore, the petitioners cannot claim their pay to be fixed in the scales/Pay Bands as prescribed in this Section.

29. The writ petition is accordingly dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 17, 2015
mamta

GOVERNMENT OF INDIA/भारत सरकार
MINISTRY OF RAILWAYS/रेल मंत्रालय
(RAILWAY BOARD) रेलवे बोर्ड

PC-V/2014/CC/Misc

New Delhi Dt. 11.2.2015

~~The~~ General Manager (P)
All Indian Railways /PU's

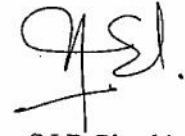
Sub: Sharing of information regarding favourable judgment.

In continuation to Boards letter of even no. dt 7/1/2015 placed find enclosed an order dt. 13/11/2014 of Hon'ble CAT Chandigarh in O.A No. 1673/PB/2013(Anil Pramar & Ors Vs. UOI & Ors) decided in favour of Railway Administration. In this case the applicants had claimed grant of financial upgradation under ACP/MACP Scheme ignoring their promotion from Junior Account Assistant (JAA) to Account Assistant (AA) post and grant of 3rd financial upgradation under MACPS on completion 20 years of service from the 1st promotion/upgradation (i.e ignoring their 2nd promotion/upgradation). Hon'ble Tribunal after deliberating upon all the relevant aspects have concluded that there is no merit in the OA and have rejected the claim all the applicants.

2. It is advised that the aforementioned orders of the Hon'ble Tribunal may please be brought to the notice of all the concerned including the officials of the Divisions with instructions to effectively utilise them while contesting the cases involving identical issue.

Please acknowledge the receipt of this letter.

DA: As above



(N.P Singh)

Dy. Director, Pay Commission-5
Railway Board

Copy to: FA&CAO's ; All Indian Railways/PU's

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA. No. 1673/FB/2013

(Reserved on 28.10.2014)

Chandigarh, this the 13th day of November, 2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

1. Anil Parmar son of Sh Shiv Rattan Singh Parmar
2. Madan Kumar son of Lt. Sh. Hardyal Sharma
3. Arun Upadhyay son of Lt. Sh. D.N. Upadhaya
4. Renu Bala daughter of Sh. Hem Raj Singla
5. Smt. Chandra Khullar daughter of Sh. H.S. Sethi
6. Neena Rehan daughter of Sh. Ramesh Chander Anand
7. Jagjit Singh son of Sh. Mohinder Singh
8. Mahesh Chand son of Sh. Durga Dass
9. Sewa Singh son of Sh. Darshan Singh
10. Smt. Gulshan Mansa daughter of Sh. Rawal Singh

(working as Accounts Assistant (AA) at Diesel Loco
Modernisation Works, Patiala)

U —

..... Applicants

Versus

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Financial Advisor & Chief Accounts Officer, Diesel Loco Modernisation Works, Patiala

..... Respondents

Present: Sh. K.B. Sharma proxy counsel for Sh. D.R. Sharma,
counsel for the applicant.
Sh. G.S. Sathi, counsel for the respdts.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-
 - (i). That impugned orders passed vide Annexure A-1/A-2 and A-6 be quashed and set-a-side, in the interest of justice;
 - (ii). That it be declared that the upgradation/ reclassification/ restructuring of the posts etc does not amount to promotion;
 - (iii). That respondents be directed to grant 1st ACP financial upgradation on completion of 12 years of service under ACP Scheme and thereafter 2nd MACP financial upgradation on completion of 20 years of service under MACP Scheme since the applicants completed 12 years of service much prior to effective date of implementation of MACP i.e. 01.09.2008, with effect from the dates mentioned against each of them in the chart annexed as Annexure A-9.
2. Interim relief was also sought seeking that respondents be restrained from making further recoveries in respect of applicants No. 3, 5, 6 and 8 and when the matter was taken up for

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hearing on admission on 02.01.2014, interim relief was allowed and this position continues till date.

3. Averment has been made in the OA that the applicants joined the services of Railways as Junior Accounts Assistant (JAA) during 1987 to 1990 and were confirmed as such pursuant to passing of requisite Appendix-II examination. Later on, in implementation of restructuring dated 03.07.1987, the applicants were upgraded/reclassified as Accounts Assistant (AA) with effect from different dates falling between 20.12.1989 to 11.08.1994. It is further stated that since applicants had completed 12 years of service much prior to effective date of implementation of MACP i.e. 01.09.2008, they became entitled for grant of 1st ACP financial upgradation with effect from the dates mentioned, for grant of 2nd MACP financial upgradation on completion of 20 years of service and for grant of 3rd MACP financial upgradation on completion of 30 years of service with effect from the dates mentioned against each of them in the chart annexed as Annexure A-9. Instead of granting the benefit of 1st ACP the respondents vide Office Order dated 19.11.2009 granted 2nd MACP financial upgradation w.e.f. 01.09.2008 to all the applicants. Copies of Office Order dated

As _____

19.11.2009 granting 2nd MACP are annexed as Annexure A-8/colly. The respondents granted benefit of 3rd MACP financial upgradation to applicants at serial No. 3, 5, 6 and 8 vide different Orders, copies of which are annexed as Annexure A-7/colly, but after the lapse of considerable period of time, the respondents ordered withdrawal of the same vide different orders, copies of which are annexed as Annexure A-6/colly.

4. Further averment has been made in the OA that the applicants filed O.A. No. 769/PB/2013 in this Tribunal which came to be disposed of vide Order dated 09.07.2013 with direction to applicants to furnish a response to the show cause notice within one month and to respondents to take a view in the matter within one month thereafter. Copy of Tribunal's Order dated 09.07.2013 is annexed as Annexure A-5. Pursuant to Tribunal's Order, the applicants submitted joint representation dated 27.08.2013 before the respondents and Applicants No. 3, 5, 6 and 8 further represented against withdrawal of 3rd MACP benefit granted to them. Copies of representation dated 08.08.2013 of applicant No. 3 and joint representation dated 27.08.2013 is annexed as Annexure A-4 and A-3. Vide two impugned orders of even date

/s/ _____

10.10.2013 the respondents have rejected the claim of applicants for grant of due 1st ACP and 2nd MACP financial upgradation benefit and ordered recoveries by withdrawing the benefit of already granted 3rd MACP financial upgradation in respect of applicants No. 3, 5, 6 and 8. Copies of Impugned Recovery Order in respect of applicant No. 1 dated 10.10.2013 and common Impugned Order dated 10.10.2013 are annexed as Annexure A-2 and A-1.

5. In the grounds for relief, it has been stated as follows:-

- (i) Because no regular promotion has been given to applicants till date. The upgradation/ reclassification of applicants from JAA to AA was on account of restructuring scheme dated 03.07.1987 and not on account of any regular promotion, therefore, such upgradations/ reclassification from JAA to AA can not be termed and treated as promotion. Thus, since the applicants had completed 12 years of service much prior to effective date of implementation of MACP i.e. 01.09.2008 they are entitled for grant of 1st ACP financial upgradation and thereafter for grant of 2nd MACP financial upgradation on completion of 20 years of service as such.
- (ii) Because the claim of applicants is covered with the Order dated 26.08.2007 passed in O.A. No. 335 of 2007 by the Madras Bench of Central Administrative Tribunal (Annexure A-12), upheld by the Hon'ble High Court of Madras in W.P. No. 21112/2009 vide Order dated 10.10.2010 and Hon'ble Supreme Court of India in SLP No. CC9422/2011 vide Order dated 04.01.2012 in the case of Shri V. Venkataraman, Accounts Assistant/FA&CAO/S&VV/

PER/SR holding that upgradation from Jr. Accounts Asstt. to Accounts Asstt. in terms of restructuring of the posts does not amount to promotion.

Pursuant to Supreme Court Order the office of the FA&CAO/S&W/PER/SR vide Memorandum P.535/S&W/PER/ ADMN/FIX/MACP dated 17.09.2012 accorded financial upgradation of Grade Pay of Rs.5400 to Shri V. Venkataraman (Annexure A-13).

(iii) Because the restructuring of Accounts Staff was done in 1987 in terms of Board's letter dated 18.06.1987. The ratio of number of posts in higher and lower scale was decided as under:-

(i) Section Officer(A/Cs)	Rs.2000-3200	80%
Inspector of Stores Accounts(ISA),		
Inspector of Station Accounts(TIA)	Rs.1640-2900	20%
(ii) Clerks Grade I	Rs.1400-2600	80%
(including existing Sub-Heads)	Rs.1200-2040	20%

To the extent of 80% posts of SO(A)/TIA/ISA have been upgraded to Rs.2000-3200, and the same has not been treated as promotion and offset against financial upgradation applicable under ACP Scheme. Whereas, upgradation of Clerk Grade I cadre restructuring done at the same time(01.04.1987) from JAA to AA is being treated as promotion and reckoned for the purpose of financial upgradation under MACPS in an arbitrary and illegal manner.

(iv). Because though the action of respondents in granting 3rd MACP financial upgradation to applicants No. 3, 5, 6 and 8 is not justified as till date none of the applicants have completed 30 years of service. Even if for the sake of arguments it is taken that the applicants at serial No. 3, 5, 6 and 8 are entitled to 3rd MACP financial upgradation as given by the respondents, withdrawing the same without there being any plausible reason is not sustainable.

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(v). Because the action of respondents in effecting recoveries from the applicants at Serial No. 3, 5, 6 and 8 is not sustainable in view of the Three Judges Judgement of the Supreme Court in case of P.H. Reddy vs. N.T.R.D., 2002 (2) SCT 987 and recent judgement dated 02.08.2013 in the case of State of Punjab and others versus Krishan Kumar Bansal and others in Special Leave to Appeal (Civil) No(s).24607/2010.

(vi) Because as per clarifications issued by DOPT vide OM No. 35034/3/2008-Estt.-(D) dated 09.09.2010, the upgradation under MACPS is to be granted in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules, 2008.

6. In the written statement filed on behalf of the respondents, it has been stated that applicants involved in this OA are seeking/claiming benefit of financial upgradation under ACP/MACP Schemes by ignoring their promotion from the post of Junior Accounts Assistant in scale of Rs. 1200-2040 (IVth CPC, now Grade Pay Rs. 2800 under 6th CPC) to Accounts Assistant post in pay scale of Rs. 1400-2600 (IVth CPC, now Grade Pay Rs. 4200 under 6th CPC). The applicants have pleaded that their promotion from the post of Jr. Accounts Assistant (Rs. 1200-2040) to the post of Accounts Assistant (Rs. 1400-2600) was not promotion but it was upgradation due to restructuring applicable as on 01.04.1987, which is factually incorrect as none of the applicants was

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member in Railway Service as on 01.04.1987, the applicants were recruited as Junior Accounts Assistants (Rs. 1200-2040) after 09.09.1987 and were promoted subsequently on having been found suitable & eligible for promotion as Accounts Assistant (Rs. 1400-2600) on seniority cum suitability in normal channel against normal vacancies during the period from 20.12.1989 to 11.03.1994. Hence, the claim of the applicants that they did not get any promotion is wrong and bereft of any merit.

7. It is further stated that the case of the applicants in the instant OA is not covered with the matter of V. Venkataraman (OA No. 335 of 2007) because the restructuring/revised ratio of Accounts Assistants & Junior Accounts Assistants was implemented from 01.04.1987. However, at the relevant time, none of the applicants were members of Railway Service as on 01.04.1987. They were recruited as Junior Accounts Assistants in pay scale of Rs. 1200-2040 between the period from 09.09.1987 to 14.09.1990. It was only after having been found suitable & eligible, the applicants were promoted to the post of Accounts Assistants on the basis of their seniority-cum-suitability under Para-171(5) of F.M., Volume I (Edition 1989) against the available vacancies from

time to time in the category of Accounts Assistants on different dates between 20.12.1989 to 14.08.1994. Like others, their promotion from Junior Accounts Assistant (Rs. 1200-2040) to Accounts Assistant (Rs. 1400-2600) as described above was in normal channel and not by virtue of restructuring as on 01.04.1987. Whereas Sh. V. Venkataraman, the applicant in the OA. No. 335/2007, was recruited as CG-I(JAA) on 04.08.1983. He was placed in higher grade of Accounts Assistant due to restructuring/revised ratio of JAA & AA as on 01.04.1987.

8. The matter of recovery pertaining to the applicants at Sr. Nos. 3, 5, 6 & 8 only is a separate issue. These applicants were granted 3rd financial upgradation under MACP Scheme in Grade Pay of Rs. 4800 in Pay Band of Rs. 9300-34800 on provisional basis. Consequent upon clarification issued by Railway Board, following the procedure, these applicants were issued a show cause notice. Based upon the reply of the applicants to the show cause notice, the matter was referred to Railway Board as requested by the applicants. On receipt of decision of Railway Board, the recovery is being made after following the procedure and approval of competent authority.

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9. It is further stated that as per para 171(3) of IREM, Volume I (Edition 1989) (Annexure R/1), Accounts Clerks are promoted as Junior Accounts Assistants against 20% promotional quota. Remaining 80% of the posts of Junior Accounts Assistant (JAA) are filled by direct recruitment through the agency of Railway Recruitment Board. The recruitment of such persons recruited as Jr. Accounts Assistants (JAA) is subject to the condition that they will have to pass Appendix-II (IREM) Examination within a period of three years of their appointment and in two chances failing which they are liable to be discharged from service. As per para 171(5) of IREM, Volume I (Edition 1989) (Annexure R/1), the posts in the grade of Accounts Assistant (AA) (Rs. 1400-2600) are filled by promotion from Junior Accounts Assistants (JAA) after they have completed three years service as JAA and have qualified App-II Examination provided that the condition of passing the Appendix-II examination will not be applicable to those JAAs who were promoted as such from the lower post of Accounts Clerk against non-qualified senior suitable quota. Further, passing of App-II Exam and completion of three years service as JAA does not confer any right to the employee for

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promotion as Accounts Assistant as the promotion as Accounts Assistant can be done only against the availability of vacancy in the category of Accounts Assistants and on seniority-cum-suitability basis. This is the statutory position regarding appointment to Accounts Assistants' grade which categorically stipulates that this is not only promotion but there is also prescribed eligibility criteria viz 3 years service in JAA grade. Thus, JAA's post constitutes as feeder for promotion to AA's post. Further, on appointment/promotion as Accounts Assistant from Junior Accounts Assistant, the employees are also allowed benefit of pay fixation under FR-22C as admissible in case of promotion to the post having higher duties and responsibilities.

10. It is further stated that Railway Board vide letter No. PCIV/86/Imp/30 dated 18.06.1987 (Annexure R/2) had issued instructions for revision of ratio of number of posts of CG-I and Sub-Heads (revised designations JAA & AA respectively as under:-

	IV CPC Pay Scale	Ratio
Clerks Grade - I including existing sub heads.	Rs. 1400-40-1600-50- 2300-EB-60-2600	80%
	Rs. 1200-30-1560-EB-40- 2040	20%

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Railway Board vide letter No. E(NG)I-86-PM9/4 dated 27.8.1987 (Annexure R/3) had issued further instructions that the staff in Grade Rs. 1200-2040 will be designated as Junior Accounts Assistant and those in Grade Rs. 1400-2600 will be designated as Accounts Assistants and the staff in Grade Rs. 1200-2040 will be eligible for promotion to the higher grade after rendering minimum three years non-fortuitous service in Grade Rs. 1200-2040 provided they have passed App-II Examination. During the project stage of D.M.W., the residency period for promotion from Junior Accounts Assistant to Accounts Assistant was relaxed from 03 years to 02 years vide Railway Board's letter No. E(NG) I 86 PM 9-8 dated 20.12.1988 (Annexure R/5). Accordingly, the applicants at Sr. No. 5, 6 & 8 were given the benefit of this relaxation.

11. Written arguments have been submitted on behalf of the applicant reiterating the content of the OA. Reliance has also been placed on order dated 26.8.2007 in OA No. 335/2007 of CAT Madras Bench in the Railways titled V. Venkataraman Vs. UOI (Annexure A/12) upheld by the Hon'ble High Court of Madras in Writ Petition No. 2112/2009 vide order dated 10.10.2010 and Apex

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Court vide order dated 04.01.2012 holding that upgradation from Junior Accounts Accounts Assistant to Accounts Assistant in terms of restructuring of posts does not amount to promotion. It is also stated that the claim of the applicants is covered by the Judgement dated 29.09.2009 passed in Writ Petition No. 559 of 2008 by the Hon'ble High Court of Bombay, Nagpur Bench in the case titled Union of India and another versus Shri Eknath Walgu Humne, upholding the Order dated 13.07.2007 of the Ld. Central Administrative Tribunal, Nagpur Bench in O.A. No. 2076/2006. In this case also the similar restructuring of Accounts Staff, Accounts Cadre had taken place in the year 1987 with restructuring scheme upgrading 80% post of Auditors/ Accountants as Senior Auditors/ Accountants while remaining 20% posts as Auditors/ Accountants. Reference has also been made to order of the CAT Chandigarh Bench dated 6.8.2014 in OA. No. 1122/PB/2013 titled Jarnail Singh Vs. UOI through which the impugned order was quashed to the extent that it denied the benefit of ACP/MACP in the guise of alleged promotion. It has also been stated that merely because the employer used the word "Promotion" in the letter annexed as Annexure A-8 collectively and Annexure A-7

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collectively, would not change the nature of the benefits accrued and to be given to the applicants.

12. Learned counsel for the respondents stated that recovery could not be held to be irregular in case of applicants No. 3, 5, 6 & 8 as show cause notice had been issued to them before withdrawal of benefit of the third MACP that had wrongly been allowed to them and the recovery had been ordered after taking into account the replies of the applicants in this regard. Learned counsel also stated that ~~the~~ process of promotion of the applicants from the level of JAAs to AAs ~~has~~ been followed. He also submitted the written arguments to ~~counsel~~ those submitted by the learned counsel for the applicants and stated that since none of the applicants was in the service of the Railways as on 1.4.1987, therefore, there was no question that they were placed in the higher post from Junior Accounts Assistant to Accounts Assistant during restructuring. In fact, they were promoted as AAs in the normal channel with due reference to seniority-cum-suitability. Since the applicants had earned one promotion from the normal channel from JAA to AA, they were not entitled to first ACP on completion of twelve years of service and hence there was no merit in this OA. Learned counsel has further submitted that the applicants in this OA are not covered in the matter of

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Sh. Eknath Walgu Humme because he was appointed as UDC/Auditor in the year 1973 and his service as Auditor was upgraded to the post of Senior Auditor since 01.04.1987 under restructuring. Even the case of Jarnail Singh (supra) was distinguishable as he was appointed as Junior Engineer w.e.f. 17.12.1990 and he was claiming that his next promotion was promotion to higher scale under cadre restructuring.

13. We have given our thoughtful consideration to the matter. From the material on record, it is evident that the claim of the applicant in the present OA is distinguishable from the cases of Sh. Venkataraman (supra) and Eknath Walgu Humme (supra) as these relate to persons who were in the service of the Railways prior to 1.4.1987 when restructuring took place and hence their upgradation to the higher level was not to be treated as promotion. However, in the present case, the applicants joined service after 1.4.1987 and they were promoted through the normal process from JAA to AA. Hence, their appointment as AAs clearly took place as a result of promotion and hence, they cannot claim eligibility for the first ACP. The case of Jarnail Singh (supra) is also distinguishable on facts as that matter relates to a different cadre of staff.

14. So far as the claim for non-recovery of amount wrongly released to applicants No. 3, 5 6 & 8, it is clear even by their own

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admission that they were wrongly allowed third MACP as they had not completed 30 years of service. A bonafide error can always be corrected and since over-payment has been made to the applicants, they are liable for recovery of such over payment. Besides, since the amount is being recovered in instalments, they cannot have any grievance in this regard. Hence, we conclude that there is no merit in this OA and the same is rejected. No costs.

(DR. BRAHIM A. AGRAWAL)
MEMBER(J)

Dated: November 13, 2014.
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19/11/14
 C. 19/11/14
 19/11/14

GOVERNMENT OF INDIA/भारत सरकार
MINISTRY OF RAILWAYS/रेल मंत्रालय
(RAILWAY BOARD) रेलवे बोर्ड

PC-V/2014/CC/Misc

New Delhi Dt. 07.01.2015

The General Manager (P)
All Indian Railways /PU's

Sub: Sharing of information regarding favourable judgment.

Please refer to Board's letter No. PC-V/2009/ACP/2 Dt. 10/06/2009 (RBE No. 101/2009) and other instructions/clarification issued in context thereof regarding grant of financial upgradation under MACP Scheme. A large numbers of court cases have been filed by the railway employees seeking grant of financial upgradation/stepping up of Grade Pay etc. under MACPS which are not found admissible under the provisions of the Scheme. Recently, two cases relating to the MACP issues have been decided in favour of the Railway Administration as stated below:

- A) On the issue of steeping up of pay/Grade Pay of the senior employee at par with the juniors drawing higher Grade Pay under MACP Scheme, an O.A No. 951/2011(Augustine Roy Rozaio & others Vs. UOI others) was filed before CAT Madras. Hon'ble Tribunal vide their order dt. 31/10/2014 have dismissed the OA rejecting the applicants' claim for grant of higher Grade Pay at par with their juniors who are drawing that higher Grade pay under MACP Scheme and upheld clause 20 of Board's policy instructions dt. 10/06/2009. While dismissing the O.A the Hon'ble Tribunal have relied on the order dt. 22/03/2013 of CAT full bench at Eranakulam in O.A No. 1103/2011 holding the previous order of CAT/Madras in O.A No. 966-967/2010 as passed *per-incuriam*.
- B) The staffing pattern of EDP Centres, comprising five grades of Rs. 4500-7000, 5000-8000, 5500-9000, 6500-10500, and 7450-11,500; was re-organised as IT Cadre, comprising four grades of Rs. 5000-8000, 5500-9000, 6500-10500, and 7450-11,500 in terms of Board's letters dt. 17/11/2004(RBA No. 42/2004) and Dt. 16/11/2006 (RBA No. 60/2006). The incumbents were adjusted in corresponding/equivalent grade in the new IT Cadre and the employees in grade 4500-7000(i.e. DEOs) were placed in the grade of Rs. 5000-8000(JE/IT-Grade-II) through modified selection procedure on completion of five year service in the lower grade. An O.A No. 50/2012 was filed by Shri. Tarani Kanta Sarma seeking grant of financial upgradation under MACPS ignoring promotion from the grade of Rs. 4500-7000(revised to GP-2800) to the grade of Rs. 5000-8000(revised to GP-4200). The Hon'ble Tribunal vide their order dt. 05/06/2014 have dismissed the O.A rejecting applicant's claim, for ignoring the promotion

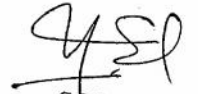
earned by him. While dismissing the said O.A, the Hon'ble Tribunal have observed as under:

"The court believes that the purpose of the MACP is not to wipe off the promotion/upgradation in carrier avail of by an incumbent prior to creation of a new cadre."

2. It is advised that the aforementioned orders of the Hon'ble Tribunal may please be brought to the notice of all the concerned including the officials of the Divisions with instructions to effectively utilise them while contesting the cases involving identical issue.

Please acknowledge the receipt of this letter.

DA: As above



(N.P Singh)
Dy. Director, Pay Commission-5
Railway Board

Copy to: FA&CAO's ; All Indian Railways/PU's

P/12 12

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 50 of 2012.

Date of Order: This, the 5th Day of June, 2014.

THE HON'BLE MRS MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MOHD. HALEEM KHAN, ADMINISTRATIVE MEMBER

Shri Tarani Kanta Sarma
Sr. Engineer (Information Technology Centre)
Office of the N.F.Railway, Maligaon,
Guwahati - 781011.

.....Applicant

By Advocate Mr M. Chanda.

-Versus-

1. The Union of India
Through the General Manager,
N.F.Railway, Maligaon, Guwahati-781011.
2. The Financial Advisor & Chief Accounts Officer,
N.F.Railway, Maligaon, Guwahati-11.
3. The Chairman,
Railway Board,
Indian Railways,
Rail Bhawan, New Delhi - 110 001.

.....Respondents

By Advocate Mr M.K.Majumdar, Railway counsel.

Date of Hearing : 03-01-2014.

Date of Order : 05.06.2014.

ORDER

 MOHD HALEEM KHAN, MEMBER (A)

Shri Tarani Kanta Sarma, Sr. Engineer, Information Technology Centre, Office of the N.F.Railway, Maligaon, Guwahati filed this O.A under Section 19 of the Administrative Tribunals Act 1985. He was granted 2nd and 3rd financial upgradation under the MACP Scheme in terms of Railway Board's letter dated 10.06.2009 along with 17 others. By order dated 21.10.2012 the 2nd and 3rd financial upgradation granted to the applicant was withdrawn. Hence the grievance and this Original Application.

2. In brief the applicant was appointed as Junior Punch Verifier Operator (Jr. PVO) on 27.01.1977. He was subsequently promoted to the post of Sr. PVO on 01.05.1981. By Railway Board's order dated 16/28.11.1984 Jr.PVO and Sr.PVO were merged and the same were re-designated as Data Entry Operator by order dated 24.09.1986.

3. The applicant was promoted to the post of Sr. Data Entry Operator on 31.05.1993 in the pay scale of Rs.1400-2300/- and to the post of General Supervisor in the scale of Rs.1600-2600/- on 31.05.1996.

4. By Railway Board's letter dated 17.11.2004 the staffing pattern of Electronic Data Processing Centres of Railway was again re-organised. The re-organisation came into force from 01.04.2005. Accordingly, following set of posts/designations emerged :

- i) Junior Engineer (IT) Grade II, Scale of Pay of Rs.5000-8000
- ii) Junior Engineer (IT), Grade I, Scale of pay of Rs.5500-9000
- iii) Senior Engineer (IT), Grade II, Scale of Pay of Rs.6500-10,500
- iv) Senior Engineer (IT), Grade I, Scale of pay of Rs.7450-11500

It was also stipulated that existing staff after suitable training will be adjusted in the corresponding equivalent Grade in the new IT cadre as emerged from the re-organisation and mentioned above.

5. On 30.03.2006 the applicant was further promoted to the post of Data Processing Superintendent in the pay scale of Rs.6500-10,500/-. It has also been stated in

his application that the post of Sr. Data Entry Operator and Data Entry Operator got merged into the cadre of Jr. Engineer (IT) Gr.II in the scale of pay of Rs.5000-8000/- which was declared as entry grade as per Railway Board's letter dated 17.11.2004 and CAO letter dated 09.11.2009. The Sr. EDPM, Maligaon vide letter dated 29.09.2010 conferred new designation to the applicant i.e. of Sr. Engineer Grade-II in the scale of Rs.6500-10,500 pursuant to the Railway Board letter dated 14.09.2010.



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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 50 of 2012.

Date of Order: This, the 5th Day of June, 2014.

THE HON'BLE MRS MANJULA DAS, JUDICIAL MEMBER

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Sr. Engineer (Information Technology Centre)
Office of the N.F. Railway, Maligaon,
Guwahati - 781011.

.....Applicant

By Advocate Mr M. Chanda.

-Versus-

1. The Union of India
Through the General Manager,
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3. The Chairman,
Railway Board,
Indian Railways,
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.....Respondents

By Advocate Mr M.K. Majumdar, Railway counsel.

Date of Hearing : 03-01-2014.

Date of Order : 05.06.2014.

ORDER



MOHD HALEEM KHAN, MEMBER (A)

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2. In brief the applicant was appointed as Junior Punch Verifier Operator (Jr. PVO) on 27.01.1977. He was subsequently promoted to the post of Sr. PVO on 01.05.1981. By Railway Board's order dated 16/28.11.1984 Jr.PVO and Sr.PVO were merged and the same were re-designated as Data Entry Operator by order dated 24.09.1986.

3. The applicant was promoted to the post of Sr. Data Entry Operator on 31.05.1993 in the pay scale of Rs.1400-2300/- and to the post of General Supervisor in the scale of Rs.1600-2600/- on 31.05.1996.

4. By Railway Board's letter dated 17.11.2004 the staffing pattern of Electronic Data Processing Centres of Railway was again re-organised. The re-organisation came into force from 01.04.2005. Accordingly, following set of posts/designations emerged :

- i) Junior Engineer (IT) Grade II, Scale of Pay of Rs.5000-8000
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- iv) Senior Engineer (IT), Grade I, Scale of pay of Rs.7450-11500

It was also stipulated that existing staff after suitable training will be adjusted in the corresponding equivalent Grade in the new IT cadre as emerged from the re-organisation and mentioned above.

5. On 30.03.2006 the applicant was further promoted to the post of Data Processing Superintendent in the pay scale of Rs.6500-10,500/-. It has also been stated in

the application that the post of Sr. Data Entry Operator and Data Entry Operator got merged into the cadre of Jr. Engineer (IT) Gr.II in the scale of pay of Rs.5000-8000/- which was declared as entry grade as per Railway Board's letter dated 17.11.2004 and F&S CAO letter dated 09.11.2009. The Sr. EDPM, Maligaon vide letter dated 29.09.2010 conferred new designation to the applicant i.e. of Sr. Engineer Grade-II in the scale of Rs.6500-10,500 pursuant to the Railway Board letter dated 14.09.2010.



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6. In pursuance of the recommendations of the 6th CPC, the Railway Board also provided for three financial upgradations under the MACPS at interval of 10, 20 and 30 years of service vide letter dated 10.06.2009. As per the recommendation of 6th CPC the cadre of Junior Engineer IT Grade-II and Junior Engineer Grade-I have been merged together and placed in pay band 2 with Grade pay of Rs.4200 and the cadre of Senior Engineer IT Grade-II and Senior Engineer IT Grade-I have been merged and placed in the Pay band 2 with grade pay of Rs.4600/-. Thus post 6th CPC implementation there exists only two posts the entry level known as Junior Engineer IT in the scale of Rs.9300-34800/- with grade pay of Rs.4200/- and Sr.Engineer, IT in pay band 2 with grade pay of Rs.4600/-. So far Junior Engineer IT is concerned 40% would be recruited through direct recruitment and 60% by way of promotion. The posts of Sr. Engineer IT shall be filled by 100% promotion following seniority cum suitability criteria. A direct recruit Junior Engineer IT can acquire eligibility for promotion as Sr. Engineer IT on completion of 2 years of service and shall be placed in the PB-2 with grade pay of Rs.4600/-. Thus a direct recruit Jr. Engineer IT shall reach the Grade Pay of Rs.4600/- in PB 2 within a period of 2 to 5 years. On the other hand a senior person like the applicant who is going to retire on 29.02.2012 has earned the Grade Pay of Rs.4600/- after serving for more than 30 years. Therefore, the applicant, according to him, was rightly extended the benefit of two financial upgradations under MACP along with others. But the same has been withdrawn in the case of applicant. Accordingly, the action of respondent No.2 is illegal, arbitrary and violative of Article 14 of the Constitution. The order dated 21.02.2012 and letter dated 30.04.2012 are liable to be set aside and quashed.



The order according to the applicant is not a speaking order. The reduction was made only in respect of the applicant but others were left untouched. The applicant also cited the Apex Court judgment in Bhagwan Shukla vs. Union of India & Ors., (1994) 6 SCC 154, wherein it was held that "order of reduction of pay on the ground of having been wrongly fixed it initially, cannot be passed without affording

opportunity to the affected party." In view of the above averments the applicant has sought following reliefs :

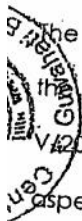
- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned office order bearing letter No.O.O G/96 (11-12) dated 21.02.2012 (Annexure-17).
- 8.1 A The Hon'ble Tribunal be pleased to set aside and quash the impugned clarificatory letter bearing No.PC-V/2009/ACP/17/NFR dated 30.04.2012.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to the benefit of Grade Pay of Rs.4800 and Rs.5400 in Pay Band of Rs.9300-34800/- in terms office order bearing No.IT/101/4(Cadre)/Loose dated 17.05.2010 (Annexure-12).
- 8.2 A That the Hon'ble Tribunal be pleased to direct the respondent for immediate release of all pensionary benefits including monthly pension of the applicant."

The applicant also prayed for the following interim relief during pendency of the O.A.

"That the Hon'ble Tribunal be pleased to stay operation of the impugned office order bearing letter No. No.O.O G/96 (11-12) dated 21.02.2012 (Annexure-17) till disposal of the Original Application."

At the admission stage the learned counsel for the applicant prayed for interim relief. In view of the fact that the applicant was retiring on 29.02.2012 the impugned order dated 21.02.2012 was stayed till the next date. This was extended on 13.3.2012 until further orders.

8. In the meanwhile the applicant retired and filed M.P.No.94/2012 on 12.06.2012 to make consequential changes in the O.A in view of his superannuation. The same was granted. The respondents also filed M.P.89/2012 on 05.06.12 to amend the written statement of O.A.50/2012 in view of the letter circular No.PC-V/2009/ACP/17/NFR dated 30.04.2012 by which the Railway Board has clarified certain aspects of MACP. Both the M.Ps of the applicant as well as the respondents were allowed. On 01.10.2012 another M.P No.155/12 was filed by the applicant seeking permission to file a fresh consolidated O.A. The same was allowed with the time for filing additional written statement if any.



9. The applicant filed another M.P. No.182/2012 whereby it was prayed that his pensionary benefits may be released as he has not received his pensionary benefits after his retirement because of the pendency of the O.A. After hearing the rival parties the Court decided to grant applicant's prayer for release of pensionary benefits as per undisputed claim of the applicant.

10. In the written statement the respondents denied all the averments made in the O.A/consolidated O.A which are not based on records. It was further pleaded that all the contentions of the O.A be treated as denied unless specifically admitted. The respondents, however, admitted that the Railway Board vide letter No.PC-V/2009/ACP/2 dated 10.06.2009 has extended the benefit of three financial upgradations under the MACP on completion of 10, 20 and 30 years of service from the date of appointment to all employees. It was further admitted that in the I.T cadre, assuming the entry at the pre-revised scale of Rs.5000-8000/- (that is, in the PB-2 with Grade Pay of Rs.4200 as per the 6th CPC), the three financial upgradations, if granted, will be in the PB-2 with Grade Pay of Rs. 4600/-, 4800/- and Rs.5400/-. The respondents, however, made out a case to distinguish the case of the applicant on the ground that the applicant was appointed as Junior PVO in the scale of Rs.260-400/- (3rd CPC) on 23.02.1977 and was promoted as Sr. PVO in the scale of Rs.330-560/- on 01.05.1981. The respondents contention is that they admit that Jr. PVO post was abolished in 1984. However, the applicant was promoted in 1981. According to respondents the scale in which the applicant was appointed, is equivalent to PB-1 with Grade Pay of Rs.1900/- as per 6th CPC and his promotion as Sr.PVO is equivalent to PB-1 with Grade Pay of Rs.2800/-. According to the respondents the applicant got four promotions during his service career. Further the scales Rs.425-700/- (3rd CPC) and Rs.5000-8000/- (5th CPC) got merged after 6th CPC and were assigned Grade Pay of Rs.4200/- in PB-2. Since they were merged as per the recommendation of the 6th CPC the promotion has not been taken into account for the purpose of MACP. According to the respondents the applicant got another promotion with Grade Pay of Rs.4600/- and later on awarded 3rd financial upgradation with the Grade Pay of Rs.4800/-.

Appointed in	1 st promotion to	2 nd promotion to	3 rd promotion to	4 th promotion to
Scale Rs.260-400	Scale Rs.330-560	Scale Rs.425-700	Scale Rs.5500-9000	Scale Rs.6500-10500
Equivalent GP Rs. 1900	Equivalent GP Rs. 2800	Equivalent GP Rs. 4200	Equivalent GP Rs. 4200	Equivalent GP Rs. 4600w

It is the case of the respondents that the main moto of MACP is to provide financial upgradation to those who could not get promotions in their service career. In the case of the applicant he got four promotions and all promotions cannot be ignored as elucidated in Railway Board's order dated 16.11.1984, 24.09.1986, 17.11.2004 and 16.11.2006. In these circulars it has been amply clarified that the new pay scales are not the case of merger or upgradation but to be treated as progression by way of promotion. It has been further admitted that in pursuance of understanding between recognised Railway Unions and management the issue has been further clarified by Railway Board's letter No.PNO/CPB/MACP/Pt-I (6th CPC) dated 13.03.2012. Since the pay scale of Rs.260-400 and pay scale of Rs.330-560 (3rd CPC) were merged in the 4th CPC, therefore the same should not be counted for MACP. It has also been clarified that in the 6th CPC the pay scale of Rs.4500-7000/- and Rs.5000-8000/- have not been merged and have been allotted separate Grade Pay of Rs.2800/- in PB-1 and Rs.4200/- in PB-2, therefore, promotion to these cannot be considered coming out of merger of pay scale by the CPC. It has been further contended by the respondents that since the applicant was absorbed in the I.T cadre, the entry grade of the I.T cadre cannot be treated as his entry grade.

In the rejoinder the applicant have reiterated the contention raised in the A and pleaded that the two financial upgradations of Grade Pay of Rs.4800 as well as Rs.5400/- he was entitled to and accordingly was given and it cannot be withdrawn by a clarificatory letter dated 30.04.2012. He further mentioned the names of M/s Pradip Kumar Das, Sri Samarendra Chakraborty and Prabal Kanti Dutta who are still enjoying the benefit of two financial upgradation as per the order dated 20.1.2010.

12. In this case following Misc. Petitions were filed :

i) M.P. 78/2012 was filed by the applicant for release of pensionary benefits, which was disposed of on 05.06.2012.

ii) M.P.94/2012 was filed by the applicant for amendment of O.A.50/2012 and the same was allowed on 12.06.2012.

iii) M.P.106/2012 was filed by the applicant for amendment of the O.A, which was allowed on 18.07.2012.

iv) M.P.182/2012 was filed by the applicant for release of pensionary benefits and the same was allowed on 19.12.2012.

13. Pleadings being complete on 05.11.2012, heard the rival parties on 03.01.2014. Learned counsel for the applicant also submitted written arguments. It was emphasised that the pay cannot be reduced without providing an opportunity of being heard. Learned counsel also pleaded that because of the re-organisation of the staffing pattern of EDP Centre and also creation of I.T cadre, defacto the applicant has got only one promotion i.e. from Grade Pay of Rs.4200/- to Rs.4600/- and therefore as per the MACP he is entitled to two financial upgradations. The learned counsel for the applicant relied on clause 5 of the MACP Scheme dated 10.06.2009 circulated vide Railway Board's letter bearing RBE No.101/2009.

14. From the pleadings and the arguments the applicant's case is found based on -

i) Wherever a scale has been upgraded/merged either because of the re-organisation affected by the Railway Board, keeping in view the changing nature of manpower in the IT cadre or merged under the pay commission recommendation, all should be ignored.

ii) Some of his colleagues who have been given the benefit of the 2nd & 3rd financial upgradations under MACP along with the applicant are still enjoying the same. The applicant, therefore, be also allowed both financial upgradations.

The applicant has admitted that he was appointed in the scale of pay of Rs.260-400/- and subsequently promoted to the scale of Rs.330-560/- and Rs.425-700, which have been merged because of reorganisation etc. Notwithstanding separate grade pay being assigned by 6th CPC these promotions should not be counted for the purpose of MACP Scheme according to the applicant. The respondents however relied on Railway Board's order dated 16.11.1984, 24.09.1986, 17.11.2004 and 16.11.2006 and clarified that these progressions are promotions and not the case of merger or up-gradations, which cannot be ignored for the purpose of grant of further financial upgradation under the MACP. The learned counsel for the respondents further emphasised that applicant got four promotions in his service period. Only the merger of the scales under the 6th CPC has to be ignored for the purpose of MACPs. The Clause 5 of the MACP Scheme needs closure scrutiny for the purpose of appreciating the contentions of the rival parties in the right perspective. The relevant portion is reproduced below :

"5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merger of pay scales/upgradation of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under the Modified ACPS."

15. It comes out clearly from the above that it only refers to promotion earned/upgradations granted under the ACP Scheme and now merged in the 6th CPC by categorising them under the same Grade Pay shall be ignored for the purpose of MACPs. Since the applicant has not been able to make out a case that he was given a particular scale under ACP which now carries the same Grade Pay as the one from which financial upgradation has been granted under the ACP, this clause does not give much support to the contention of the applicant. In any case the Railway Board has already ignored his promotion from the scale of Rs.425-700 to Rs.5500-9000/- for the

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purpose of award of MACP. The applicant's contention on the ground of merger of pay scales under the 6th CPC loses weight.

16. Further the applicant has made out his case for two financial upgradations on the contention that in the newly introduced IT cadre the entry Grade Pay is Rs.4200/- and therefore he should be deemed to be promoted only once that is in the Grade Pay of Rs.4600/- and therefore is entitled to two financial upgradations. If this plea is taken to logical conclusion it amounts to agreeing to a contention whereby the promotion from the scale of Rs.260-400/- to Rs.330-560/- and then from 330-560 to 425-700/- will be virtually wiped off from the career progression of the applicant. The court believes that the purpose of the MACP is not to wipe off the promotion/upgradation in career availed of by an incumbent prior to the creation of a new cadre. The contention of the applicant is also not logical as he has failed to bring out that his mode of recruitment and qualification when he was appointed in the scale of Rs.260-400/- are the same as has been prescribed to a new entrant now in the new IT cadre which begins at Rs.4200/- Grade Pay. Therefore, if a new incumbent after 5 years of service is promoted to Grade Pay of Rs.4600/- it cannot be considered an anomaly vis-a-vis the applicant who entered the service in the scale of Rs.260-400/- and thereafter because of promotion, merger, re-organisation reached the scale of Rs.4600/- after 30 years as he claims.



The other important pleadings taken by the applicant is with regard to M/s Pradip Kumar Das, Sri Samarendra Chakraborty and Prabal Kanti Dutta who have been given two financial upgradation but has not been impacted adversely by the clarificatory letter dated 30.04.2012. In this regard the Railway Board Circular No.PC-V/2009/ACP/2 dated 10.06.2009 is relevant and clause 10 of the same is reproduced :

"It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of October 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly." (emphasis supplied)

From the above it is very clear that upgradation under MACP is specific to the individual employee and the employee cannot project it as an anomaly if some other employee in the same cadre happens to get different pay scale on account of grant of financial upgradation. This Court does not find it necessary to go into this aspect beyond this point as the applicant has nowhere contended that the M/s Pradip Kumar Das, Sri Samarendra Chakraborty and Prabal Kanti Dutta joined service with him in the scale and on the date on which the applicant joined and their qualifications and mode of recruitment were same.

18. In view of the above observations Court is not able to find any force in the contention of the applicant, therefore the application is dismissed.

19. Because of the 2nd & 3rd financial upgradations given to the applicant and the interim order of this Court some extra payment might have been made. The extra payment made because of the mistake of the department, shall not be recovered in view of the fact that the employee has already retired and deserves protection under the judgment of the Hon'ble Apex Court rendered in Shyam Babu Verma & others vs. Union of India & Others, (1994) 2 SCC 521. However, if some extra payment has been made to applicant in pursuance of the intervention of this Court, the same may be recovered in not less than 30 instalments from his pension.

No order as to costs.



Sd/-
MANJULA DAS
HON'BLE MEMBER (J)
Sd/-
MD. HALEEM KHAN
HON'BLE MEMBER (A)

"Certified that this is a true copy of the document/order as in the case file (OA/RA/TA/CP/EP/MP/PT NO-120) 50/12 and that all the matter appearing therein have been verigibly and faithfully copied with no modifications."

Dy. Registrar / SO (J)
CAT, Guwahati Bench

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**CENTRAL ADMINISTRATIVE TRIBUNAL
Madras Bench, Madras.**

**Original Application Nos: 951/11, 1017/11, 1018/11,
1041/11, 1050/11, 1067/11, 1153/11, 1154/11,
1215/11, 1252/11, 1254/11, 1256/11, 1257/11, 1261/11
1262/11**

Dated the 31st day of October two thousand fourteen.

Hon'ble Mr. K.Elango, Judicial Member.

Hon'ble Dr.P. Prabakaran, Administrative Member.

Augustine Roy Rozario, Office Supdt, Office of the Chief Operations
Manager Southern Railway, Chennai 600 003

Applicant in O.A. No. 951/2011

B. Balakrishna Rao, Chief Controller, Office of the Chief Operations
Manager, Southern Railway, Chennai 600 003

Applicant in O.A. No. 1017/2011

R. Balasubramanian, Station Master Gr. I Villupuram Junction,
Southern Railway.

Applicant in O.A. No. 1018/2011

J. Kishore Instructor, Office of the principal Zonal Railway Training
Institute, Southern Railway, Tiruchchirappalli.

Applicant in O.A. No. 1041/2011

V.Vikraman, Instructor, Office of the Principal Zonal Railway Training
Institute, Southern Railway, Tiruchchirappalli.

Applicant in O.A. No. 1050/2011

P.Nallathambi, Instructor, Office of the Principal Zonal Railway Training
Institute, Southern Railway, Tiruchchirappalli.

Applicant in O.A. No. 1067/2011

G.Sivaraman, Station Master Gr. I, Sundaraperuamli Koll Railway
Station, Tiruchchirappalli Division, Southern Railway

Applicant in O.A. No. 1153/2011

R.Sakthivel Murugan, Station Master Gr. I, Melapattambakkam Railway
Station, Tiruchchirappalli Division Southern Railway.

Applicant in O.A. No. 1154/2011



T.R. Mohan, Station Master Gr.I, Anandatandavapuram Railway Station, Tiruchchirappalli Division, Southern Railway

Applicant in O.A. No. 1215/2011

R.Satyanarayanan, Station Master Gr. I Pullampadi Railway Station, Tiruchchirappalli Division, Southern Railway.

Applicant in O.A. No. 1252/2011

S.V.Senthil Kumar, Station Master Gr. I Tiruchchirappalli Goods Yard, Tiruchchirappalli Division, Southern Railway

Applicant in O.A. 1254/2011

C.Ganapathy, Station Master Gr.I, Tiruchchirappalli Railway Station, Tiruchchirappalli Division, Southern Railway.

Applicant in O.A. No. 1256/2011

R.Ganesan, Station Master Gr. I Tiruchchirappalli Railway Station, Tiruchchirappalli Division, Southern Railway.

Applicant in O.A. NO. 1257/2011

M.Samuel, Station Master Gr. I Kulikarai Railway Station, Tiruchchirappalli Division, Southern Railway.

Applicant in O.A. No. 1261/2011

P.Sundaram, Station Master Gr. I, Thanjavur Junction, Tiruchchirappalli Division, Southern Railway.

Applicant in O.A. No. 1262/2011

Rep. by M/s RATIO LEGIS
M.Chandran, T.Vijayakumar, &
M. Ramani

Counsel for the applicants.

Versus

Union of India rep. by the Secretary Ministry of Railways,
Railway Board, Government of India, New Delhi.

R.1 in all the O.As.

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The General Manager, Southern Railway, Part Town, Chennai
600 003

R.2 In all the O.As

The Chief Personnel Officer, Southern Railway, Park Town,
Chennai 600 003

R.3 In O.A. Nos.
951/2011, 1017/2011,
1041/2011, 1050/2011,
1067/2011

The Financial Advisor & Chief Accounts Officer, Southern
Railway, Park Town, Chennai 600 003.

R.4 In O.A. No. 951/2011,
1017/2011, 1041/2011
1050/2011, 1067/2011

R.3 In O.A. Nos. 1018/2011,
1153/2011, 1154/2011,
1215/2011, 1252/2011,
1254/2011, 1256/2011,
1257/2011, 1261/2011
1262/2011

The Divisional Railway Manager, Tiruchchirappalli Junction,
Southern Railway, Trichy

R.5 In O.A. No. 1041/2011
1050/2011, 1067/2011
R.4 In O.A. Nos. 1018/2011
1153/2011, 1154/2011,
1215/2011, 1252/2011
1254/2011, 1256/2011
1257/2011, 1261/2011
1262/2011

Respondents.

Rep. by Mr. D.Simon:

Counsel for respondents in O.A.
Nos 951/2011, 1041/2011
1050/2011, 1067/2011
1154/2011, 1215/2011
1254/2011, 1256/2011
1257/2011



Mr. G. Nanmaran: Counsel for respondents in O.A.
No. 1153/2011

Mr. R. Krishnamurthy: Counsel for respondents in
O.A. Nos. 1261/2011, 1262/2011
1017/2011

Mr. K.S. Duralpandi. Counsel for respondents in O.A
Nos. 1018/2011, 1252/2011

ORDER

(Pronounced by Hon'ble Dr.P.Prabakaran, Administrative Member.)

These applications have been filed under Sec. 19 of the Administrative Tribunals Act, 1985. As the issue involved in the cases is one and same, these O.As were heard together and are being disposed of by this common order.

2. The relief sought for in these O.As is to call for the records relating to RBE No. 101/2009 dated 10.06.2009 and to quash para 9 and consequently quash the impugned orders issued to the applicants denying them MACP benefits with further prayer to extend two MACPs with effect from the eligible dates on par with their juniors since the applicants are without promotion for more than two decades.
3. The grievance of the applicants is that their juniors were granted the grade pay of Rs.4800/- and Rs.5400/- whereas the applicants have been denied the said Grade pays.
4. The applicants contend that since the pay scales of Rs. 5000-8000, Rs.5500-9000 and Rs.6500-10500, (pre-revised) have been merged they are eligible to get Grade pay of Rs.4800 & Rs.5400 under MACP scheme as per the illustration given in Annexure 1 to the Railway Board circular No. RBE 101/2009.



dated 10.06.2009, as 2nd and 3rd Financial Upgradation. They also contend that juniors to the applicants have been granted the above two grade pay of Rs.4800/- and Rs.5400/- as 2nd and 3rd Financial Upgradations under MACP scheme whereas the applicants have been denied the same.

5. The respondents have filed separate reply to each O.A. The respondents have taken the same stand in all the O.As. The respondents submit that the applicants have earned two promotions earlier from the level of direct entry and as such they are entitled to 3rd Financial Upgradation to the Grade pay of Rs. 4600/- on completion of 30 years of service. It is submitted that some of the applicants have been granted the 3rd Financial Upgradation to the Grade pay of Rs. 4600/- and some of them would be granted the Grade pay of Rs. 4600/- on completing 30 years of service. It is also submitted that financial upgradation under MACP is purely personal and as such there shall be no additional financial upgradation for the senior employees on the ground that junior employee in the grade has got higher pay/Grade pay under the MACPs

6. Heard the counsel for the applicants and the respondents. The learned counsel for the applicants submitted that seniors cannot be allowed to draw lesser pay or lower grade pay than the junior. The learned counsel relied upon the orders of this

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Tribunal as well as the judgements of the Hon'ble High Court of Madras, Hon'ble High Court of Delhi and the Apex Court in the following cases:

(i) Commissioner and Secy to the Govt. of Haryana and ors. vs. Ram Sarup Ganda and ors. [CA No. 3250 of 2006].

Wherein the Apex Court had held as under:

" Appellants were to revise the pay scales of the respondents. In case of anomaly, if the employees who on fixation of ACP scales are in receipt of lesser salary than their juniors in the same cadre/post then their salary shall be stepped up accordingly."

(ii) S Prabhu II and 15 ors vs. UOI O.A. No. 966/2009 and batch decided on 29.12.2010

(iii) O.A. Nos. 1075/2010, 1008/2010, 1009/2010,

wherein this Bench had passed the following orders:

" There will be a direction to the respondents to grant the revised pay to the applicants by extending the benefit of MACP scheme in favour of the applicants by fixing their Grade Pay of Rs.5400/- from the date on which they said benefit was extended to their juniors and to disburse the accrued arrears, if any to the applicants within a period of four weeks from the date of receipt of a copy of this order."

The respondents have preferred W.P Nos. 1078, 10046 to 10049 and 18262 of 2012 before the Hon'ble High Court of Madras. The Hon'ble High Court of Madras by its judgement dated 03.04.2014 while dismissing the writ petitions upheld the orders of this Tribunal passed in O.A. Nos. 1075/2010, 1008, 1009/2010.

Central Adm.
TBT

(iv) **Sh Tejbir Singh Dagar and ors. vs. UOI and ors. - W.P. (C) 7840/2012 dated 03.01.2014** wherein the Hon'ble High Court of Delhi had an occasion to consider condition No. 8 of the ACP and Condition No. 20 of the MACP Scheme. The Hon'ble High Court of Delhi in the above case had directed the respondents UOI to upgrade the pay of the petitioners from the date their juniors were given higher pay in the same rank

7. On the other hand the learned counsel for the respondents relied on the order dated 22.03.2013 rendered by a Full Bench at Ernakulam on the issue of validity of clause 20 of the MACP scheme.

8. We have carefully considered the rival contentions and perused the available material on record. We have also carefully gone through the orders/judgements of the Tribunal/High Courts and Supreme Court. With respect we are of the considered view that the orders/judgements relied on by the learned counsel for the applicants were rendered in peculiar circumstances of each case. Further, neither the Hon'ble Supreme Court nor any of the Hon'ble High Courts rendered clause 8 of the ACP/ clause 20 of MACP as invalid and illegal. The Hon'ble High Court of Delhi in **Sh Tejbir Singh Dagar and ors. vs. UOI and ors. - W.P. (C) 7840/2012 dated 03.01.2014** even though had an occasion to consider clause 8

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of ACP/ Clause 20 of MACP, the same has not been held either as invalid or as illegal.

9. For proper adjudication of the issue involved in these cases para 9 of the RBE No. 101/2009 dated 10.06.2009 and clause 20 of the annexure to the above RBE are extracted below.

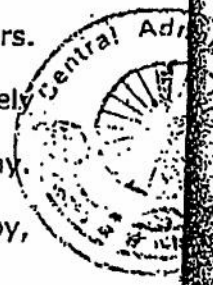
10. Para 9 of the RBE No. 101/2009 dated 10.06.2009 reads as under:

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.

Clause 20 the Annexure of the MACP scheme reads as under:

20. 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 MACPS.

11. A Full Bench of this Tribunal at Ernakulam, after consideration the cases cited by both sides, vide its order dated 22.03.2013 had held that clause 20 of MACP scheme is valid and legal. In view of the above decision, the applicants are not entitled to step up their pay on par with their juniors. Financial upgradation under the MACP scheme shall be purely personal to the employees and seniority has no role to play. The restriction cannot extend to any other arena, whereby,



under any other specific rules or Government of India decisions, a person not granted the financial upgradation under the MACP scheme claims parity in pay such as stepping up of pay under FR 22 or otherwise. Stepping up of pay on par with juniors could be granted to the senior only in cases of promotion and not in the case of financial upgradations granted under ACP/MACP schemes. The Full Bench at Ernakulam in O.A. No.1103/2011 dated 22.03.2013 had also observed in para 20 that the Madras Bench in O.A. Nos. 966/2010 and 967/2010 did not take into consideration the specific clause 20 of the MACP scheme and to that extent the same is to be held per incurium. It was further observed that the relief sought for by them is only with reference to financial upgradation which has been uniformly been declined by various Benches of the Tribunal as also the Apex Court (In Ram Saroop Ganda- supra). We are of the view that when there is no ambiguity in law a different interpretation cannot be given. Recently, in O.A. Nos.1111 of 2011 and batch, a Division Bench of this Tribunal vide its order dated 16.09.2014 had declared para 9 of RBE 101/2009 dated 10.06.2009 is valid and legal. It has been further held that the claim of the applicants therein for financial upgradation under MACP Scheme on the ground that their juniors were getting more pay is not tenable. The situations where FR 22 can be applied have been lucidly elaborated in the rule itself. Therefore, the relief sought for by the applicants

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cannot be granted in view of clause 20 of the MACP scheme. It is seen from the replies that the respondents themselves admitted that eligible applicants would be granted financial upgradation under 3rd MACP at the appropriate time as per the scheme. Applicants have not made out any case for grant of relief and the O.As are liable to be dismissed. Accordingly, the O.As are dismissed. No order as to costs.

"Free Copy U/R 22 of
CAT (Procedure) Rules"

/ TRUE COPY /
K. Kishore
SECTION OFFICER

5/11/14

