

Eastern Railway
(Personnel Department)

Serial Circular No. 64/2015

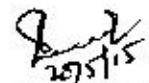
No. E.368/0/ACP/CC/Misc.

Kolkata, Dated: 20/05/2015

All Concerned

Sub: Sharing of information regarding favourable judgment.

Railway Board's instructions contained in letter No. PC-V/2014/CC/Misc dated 08.05.2015 on the above noted subject are reproduced below for information, guidance and necessary action. Board's earlier letters dated 21.04.2015 mentioned therein was circulated under this office Serial Nos. 50/2015.



(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 08.05.2015 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 21/04/2015 placed find enclosed copy of an order dt. 11/3/2015 (along with corrections effected therein vide order dt. 31/3/2015) of Hon'ble CAT Madras in O.A. No. 383/2013 (M.V.Devendran & Ors Vs. JOT & Ors) and OA No. 384/2013 (S. Vijayalakshmi & 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 on the basis of order CAT Madras in V. Venkataranam's case (OA No. 335/2007). The Hon'ble Tribunal after taking cognizance of the provision regarding recruitment and promotion of accounts staff in Railways and relevant provisions of ACP Schemes have upheld the submission made by the Railway Administration and dismissed these OA's rejecting the claim of 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.

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

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

CENTRAL ADMINISTRATIVE TRIBUNAL
Madras Bench; Madras.

Original Application Nos. 383/2013 & 384/2013

Dated the 11th day of March , two thousand fifteen.

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

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

O.A. No. 383/2013

1. M.V.Devendran, S/o M. Vasudevan..
2. R. Mangaleswarar S/o C Ramaiya Pillai
3. M. Jeyachandran, S/o T.S Muthiah.
4. Vasumathi Sampath Kumar, W/o Sampath Kumar.
5. L. Joseph, Es Dadasir, S/o S.A. Lincoln
6. Sandhya Ramani, S/o Venkataraman
7. Varalakshmi Sivakumar, W/o Sivakumar
8. S.Gunasekar, S/o M.K. Sivaprakasam.
9. N. Dheima, S/o V. Natarajan
10. Nirmala Joseph, W/o D.A. Joseph
11. Saraswathy Venkatarathinam W/o D. Venkatarathinam
12. Dalice Chandra S/o Rajapandian.
13. M.P. Pushpalatha W/o V. Mathurapandian.
14. V.Rangarajan, S/o Venkateswaran
15. R.Vijayakumar S/o K. Rajarathnam
16. Bathul Begum W/o Syed Hyder Raza
17. D. Amutha Srinivasan, W/o D Srinivasan
18. P.Selavanathan S/o M. Perumal
19. G.Ramesh, S/o T.K. Gopalakrishnan.

Sl. No. 1 -18 working as Accounts Assist. In 3rd respondent's office.

Sl. No. 19 retired as Accounts Assistant in 3rd respondent's office.

: applicants.

O.A. No. 384 /2013.

1. S.Vijayalakshmi W/o S.Subramania Pillai
2. Beulah Roy W/o C.M.Roy.
3. R. Baskaran, S/o K. Ranganathan
4. Anuradha Ramesh W/o S.Ramesh
5. Meharunnisa Salem W/o A.S. Saleem.
6. R.P. Selvam, S/o T.D. Ratnavelu
7. Saradha Sundararaman, W/o R. Sundararaman.



8. S.S.Vijayalakshmi, w/o S. Venugopal
9. S. Joshuva Antony Raj, S/o A. Samuel
10. S. Kanagaraj, S/o E. Subramani
11. Lakshmi R.R. Narayan, W/o R.R. Narayan.

Sl. Nos. 1 to 11 are working as Accountants Asst. In 3rd respondent office.

: Applicants.

Rep. by M/s L. Chandra Kumar :
K. Subramanian
N.R. Jasmine Padma

Counsel for the applicants
in both O.As.

Versus

Union of India, Rep. by The Deputy Director, Pay Commission V Railway Board, New Delhi.: R.1 in both OAs

The General Manager, Southern Railway, Park Town, Chennai-3. : R.2. in both OAs

The Financial Adviser & Chief Accounts Officer, (Stores & Work Shop) Southern Railway, Perambur, Chennai-23. : R.3 in O.A. 383/2013

The Financial Adviser & Chief Accounts Officer, S.Riy Park Town Chennai-3 : R.3 in O.A. 384/2013

The Chief Personnel officer, Southern Railway, Park Town, Chennai-3 : R.4 In both O.As :

Rep. By Mr. K.S. Duraipandi: Counsel for the respondents in Both O.As.



ORDER

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

Since the issue involved in both these applications is same and the relief sought for is also same, the OAs were heard together and are being disposed of by this common order.

2. The applicants herein are aggrieved by the act of the respondents in not extending them the financial upgradation under the Assured Career Progression Scheme, (ACP Scheme for short) which has been granted in favour of similarly placed persons.

3. The applicants submit that the defence of the department is to the effect that restructuring of scales amount to promotion and therefore they are not entitled to ACP benefit. However, the applicants have relied upon the orders of this Tribunal dated 26.08.2008 in O.A. No. 335/2007. The above order of this Tribunal was confirmed by the Hon'ble High Court of Madras vide its order dated 19.10.2010 passed in W.P. No. 21112 of 2009. SLP preferred by the respondents was also dismissed by the Hon'ble Apex Court. Representations given by the applicant have been rejected by the Respondents vide orders dated 29.02.2013 and 12/13.02.2013.



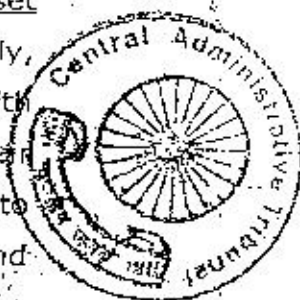
4. The respondents have filed a detailed reply in which they have submitted the salient features of ACP and MACP Schemes and also the relevant rules. It is further submitted that some of the vital statutory and factual position which were crucial for deciding the issue were not placed before this Tribunal while dealing with the O.A. No. 335/2007, relied upon by the applicants in the present O.A. The submissions of the respondents are as under:

- a) That provisions regarding recruitment and promotions of Accounts Staff are contained in para 171 of IREM Vol. 1. As per para 171 (5) the post in the grade of Account Assistant in scale of Rs. 1400-2600 will be filled by promotion of Junior Account Assistant in scale of Rs. 1200-2040, after they have completed 3 years service in the grade and passed Appendix II examination. This is statutory provision regarding appointment to Account Assistant's grade which categorically stipulates that this is not only promotion but also laid down the eligibility criterion viz. 3 years service in JAA grade for the said promotion. It also establishes that JAA's post constitutes as feeder grade for promotion to AA's post. Further on appointment to AA grade from JAA grade the employees are also allowed benefit of pay fixation under FR 22.C as admissible in case of promotion to the post having higher duties and responsibilities.
- b) The Board's instructions No. PC-IV/86-Imp/30 dated 18.06.1987 and E (NG)I-86/PM-9/4 dated 27.08.1987, while providing for introduction of higher functional scale of Rs.1400-2600 in Accounts Cadre to the extent of 80%



of the post of Clerk Gr.I/Rs.1200-2040(including existing sub-Heads) also laid down the Staff in Grade Rs. 1200-2040 will be eligible for promotion to a higher grade after minimum 3 years service in Rs.1200-2040 provided they have passed Appendix -II A examination. In this regard it is stated that Hon'ble Supreme Court in the matter of P.R. Subramaniam (SCC 1978 Vol. I page 158) have held that the order issued by the Railway Board for general application to Non-Gazetted Railway Servants are treated as rules, having force of provision to Article 309 of the Constitution of India. Evidently, the aforementioned orders dated 18.06.1987 and 27.08.1987 prescribing for introduction of higher functional grade and condition for promotion to that higher functional grade carries statutory force.

- c) That in terms of clarification issued against Sl. No. 31 of Board's letter dated 19.02.2002, when only part of the posts are placed in a higher scale and rest are retained in existing grade thereby involving re-distribution of posts, *then it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for the upgraded posts.* Placement of existing incumbents to the extent of upgradation involve in the upgraded posts will also be treated as promotion/upgradation and offset against entitlement under the ACP Scheme. Evidently, the case of Accounts staff stands squarely covered with aforementioned instructions and therefore, their promotion/upgradation to the post of AA from JAA is to be taken into account for the purpose of ACP scheme and offset against entitlement under the scheme. From the aforementioned instructions, it is also evident that not only promotions but upgradation as well are to be taken



into account for the purpose of ACP Scheme. The applicants' notion in the above O.A. that only promotions has to be reckoned for the purpose of ACP Scheme is incorrect.

d) That the ACP/MACP Schemes provide for grant of financial upgradation to the employee subject to the fulfillment of terms and conditions prescribed for the respective Scheme. Therefore, as per principle of equity any upgradation granted otherwise is required to be taken into account for the purpose of grant of financial upgradation under the ACP/MACP Scheme. In respect of many other categories, DOP&T, the nodal Department of Govt. on ACP/MACP Scheme, have clarified that every financial upgradation is to be counted as upgradation and offset against the financial upgradation under the MACPS.

e) From the factual position brought out in para (a) to (d) above it is evident that:—

- (i) In terms of statutory provisions, the appointment from Junior Account Assistant (JAA) post to Account Assistants (AA) post is promotion.
- (ii) That as per the extant instruction regarding ACP/MACP Scheme, it is not only promotion but upgradation as well are to be taken into account for the purpose of these Schemes.

As the aforementioned factual rule position and relevant instructions were not brought into the cognizance of Hon'ble Tribunal/Hon'ble High Court (in the case of Shri V. Venkataraman in O.A. No. 335/2007 and W.P. No. 21112/2009), the same cannot be relied upon as a precedent, being a decision given in per incuriam.



✓

(f) Further, as per the rulings of Hon'ble Supreme Court, the dismissal of the SLP filed under Article 136 of the Constitution does not amount to upholding of the order from which leave to appeal is sought. [**Kunhayammed & ors vs. State of Kerala & anr.** [(2000) 6 SCC 359] & **V.M. Salgaokar & Bros (p) Ltd. Vs. CIT** [(2000) 5 SCC 373]. Thus, the contention that the Hon'ble Supreme Court has upheld the orders of Madras High Court in V. Venkataraman's case (W.P. No. 21112/2009) is not correct.

From the position brought out herein above the claim of the applicants is bereft of any merit and therefore legally not tenable.

5. The respondents further submit that all the applicants were appointed as Clerk Grade I subsequently redesignated as Junior Account Assistant. It is further submitted that based on recommendation of 4th Central Pay Commission and broad parity in the pay scales of the staff in IA & AD and other Accounts Organizations, Railway Board vide its letter No. PC-IV /86-Imp/30 dated 18.06.1987 introduced a higher functional scale of Rs. 1400-2600 in the Accounts cadre to the extent of 80% of the posts of Clerk Grade I (including existing sub Heads). Para (4) of Board's letter dated 18.06.1987 categorically stipulates that orders regarding criteria for appointment to the higher functional grades requiring promotion to the grade of Rs. 1400-2600 would follow. Further vide para 2(i) of Board's subsequent letter No. E (NG)-1 /86PM-9/8 dated 27.08.1987 it was decided that the designation of staff in grade Rs. 1200-2040 will be Junior



Account Assistant and those in grade Rs. 1400-2600 will be Account Assistant. Board's said letter dated 27.08.1987 further prescribed the eligibility criteria for promotion to higher grade of Rs. 1400-2600 as 3 years service in Rs.1200-2040 provided the employee has passed Appendix II examination. Thus, from a reading of Board's instruction dated 18.06.1987 and 27.08.1987 it is evident that while providing for introduction of higher functional grade of Rs. 1400-2600, it also prescribed the eligibility criteria of 3 years service in scale Rs.1200-2040 for promotion to that higher grade. It is pertinent to submit that the order dated 18.06.1987 and 27.08.1987 prescribing for introduction of higher functional grade of Rs. 1400-2600 in Accounts cadre and condition for promotion to that higher functional grade are statutory in nature in terms of Hon'ble Supreme Court's ruling passed in the matter of **P.R. Subramaniam** (SCC 1978 Vol. I page 158) holding that orders issued by the Railway Board for general applications to Non -Gazetted Railway servants are treated as rules having force of provision to Article 309 of the Constitution of India.

6. It is further submitted that since the applicants were fulfilling the eligibility conditions of 3 years service in the lower grade of Rs. 1200-2040, they were promoted to higher functional grade of Rs.1400-2600 and they were also allowed benefit of pay fixation under FR 22-C along with option for pay



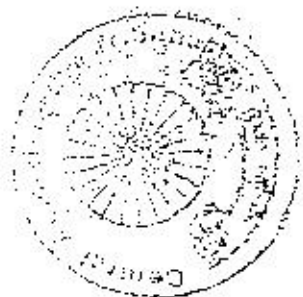
fixation admissible in cases of promotion. From the ...
aforementioned statutory positions and actual facts it is evident
that the applicants were promoted from Junior Account Assistant
post to Account Assistant post.

7. Heard the counsel for the applicants and the respondents.
The learned counsel for the applicants relied upon the orders of
this Tribunal dated 26.08.2008 passed in O.A. No. 335/2007 and
he pointed out that the respondents have implemented the
orders. He submitted that the applicants in the present OAs are
similarly placed as that of the applicant in O.A. No. 335/2007
and as such there is no justification for the respondents to reject
their representations. He also cited the orders of the Calcutta
Bench of this Tribunal dated 16.01.2014 passed in O.A. No.
172/2012 and the orders of the Principal Bench dated
15.10.2014 in O.A. No. 3606/2013.

8. The learned senior counsel Mr. V. Radhakrishnan,
appearing for the respondents elaborately highlighted the
various aspects of the ACP/MACP schemes and also the
instructions contained in the IREM, which are applicable to the
present cases. He pointed out that the applicants were placed in
the higher grade of Account Assistant as they have fulfilled the
conditions of 3 years of service in the lower grade and they were
promoted to higher functional grade and as such it could be
clearly seen that their placement in the higher grade is a



promotion and not a mere placement in the higher grade. He further submitted that the order dated 18.06.1987 and 27.08.1987 prescribing for introduction of higher functional grade of Rs. 1400-2600 in Accounts cadre and condition for promotion to that higher functional grade are statutory in nature in terms of Hon'ble Supreme Court's ruling passed in the matter of **P.R. Subramaniam** (SCC 1978 Vol. I page 158) holding that orders issued by the Railway Board for general application to Non -Gazetted Railway servants are treated as rules having force of provision to Article 309 of the Constitution of India. In this connection he also referred to the instructions of the Railway Board to the effect that such placement in the higher grade is to be treated as promotion for the purpose of ACP benefit. He also pointed out that the nodal department namely, the DOPT has also issued clarifications to that effect and the same is being followed in all the departments while implementing the ACP/MACP schemes. The learned senior counsel further submitted that the applicants have based their claim on the basis of decision in O.A. No. 335/2007. He further submitted that some of these vital statutory and factual positions which are crucial for deciding the case were not placed while deciding O.A. No. 335/2007 and as such orders in that case can only be considered as judgment in personam and cannot be relied upon as a precedent since the decision being per incuriam. The learned senior counsel further pointed out that as per the rulings of



Hon'ble Supreme Court, the dismissal of the SLP filed under Article 136 of the Constitution does not amount to upholding of the order from which leave to appeal is sought. The learned counsel further relied upon para 3 the judgment of the Hon'ble Supreme Court in **P.R. Subramaniam'** case (supra). The relevant portion reads as under:

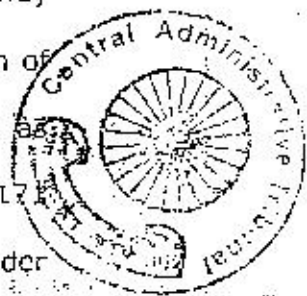
" Para 3

In the Indian Railway Establishment Code Vol. I are the Rules framed by the President of India under Art. 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorizes the Railway Board, as permissible under Art. 309 to have

"full powers to make rules of general application to non-gazetted railway servants under their control".

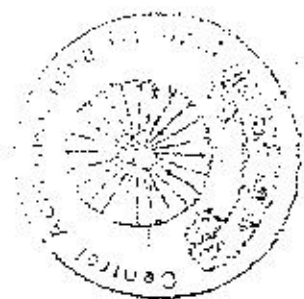
The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Art. 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them."

9. We have carefully considered the rival contentions and perused the material on record. The question for consideration before us is whether the re-designation of the applicants as Junior Account Assistant is to be treated as promotion or not for the purpose of granting ACP benefits. A combined reading of the ACP Scheme, the rules contained in IREM and the Railway Board's instructions brings out clearly that the re-designation of the applicants as Junior Account Assistant is to be treated as promotion in the light of para 171 (5) of IREM Vol. I. Para 171 (5) prescribes that employees with 3 years' service in the feeder



cadre and who have passed Appendix II examination would be eligible for promotion as Account Assistant. The records in this case would go to show that the applicants in the present OAs have fulfilled these conditions and accordingly they have been re-designated as Junior Account Assistant. Therefore, it is clear that this can only be treated as promotion which fact is further reinforced by the fact that these applicants have also been granted pay fixation under FR 22 (c) which applies in the case of employees on promotion. Further ACP/MACP schemes have been introduced to deal with problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenue. The ACP Scheme has been notified by the nodal department namely, the DOPT vide order dated 09.08.1999 and MACP on 01.09.2008. The DOPT has also issued clarifications to address the issues which have been cropped up in the course of implementation of ACP/MACP schemes and these instructions/clarifications are to be treated as part and parcel of the schemes itself.

10. In the present cases the Railway Board has also issued similar clarifications adopting the clarifications issued by the DOPT. As pointed out by the learned Senior Counsel for the respondents, the Railway Board instructions are to be treated as rules having the force of Rules framed under Art. 309 of the



Constitution of India pursuant to the powers delegated to the Railway Board as held by the Hon'ble Apex Court...

11. In the present OAs upon evaluation of facts submitted by either side and on perusal of the records it is clearly established that the placement of the applicants in the grade of JAA is to be treated as promotion. The re-designation of these employees as JAA was based on the applicants having fulfilling the conditions prescribed in IREM para 171 (5) cited supra. The applicants have also been granted pay fixation benefit under FR 22 (C) and as such we do not find that the claim of these applicants for ignoring the re-designation as JAA for the purpose of granting ACP/ MACP benefits is not maintainable.

12. The rules/instructions governing the re-designation of posts and also granting of financial upgradations under ACP/MACP Schemes are unambiguous and clear and as such there is no room for any other interpretation in the matter. We are in agreement with the submissions of the learned Senior Counsel for the respondents.

13. Recently a Full Bench of this Tribunal at Lucknow in O.A.Nos. 94/2006 and 391/2009 had an occasion to consider similar question. The Full Bench in its decision dated 04.12.2014 in the above O.As in para 18 observed as under:



* 18. Therefore, whether upgradation or grant of higher pay scale amounts to promotion or not depends upon the facts of each case. Where it is found that such upgradation or promotion has an element

of selection and involves creation of any new posts, certainly it would amount to promotion....."

14. In the light of the above discussion, the O.As are found to be devoid of merit and are liable to be dismissed. Accordingly the O.As are dismissed with no order as to costs.

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

/ TRUE COPY /

K. Krishnamurthy
SECTION OFFICER 13/2/15



**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Tuesday the 31st day of March Two Thousand Fifteen

PRESENT

Hon'ble Shri K. Elango : Judicial Member

AND

Hon'ble Shri P. Prabakaran : Administrative Member

ORIGINAL APPLICATION NO.310/00383/2013 & 310/00384/2013

-Vs-

1. Union of India,
Represented by
The Deputy Directorate
Pay Commission V
Railway Board, New Delhi
 2. The General Manager
Southern Railway,
Park Town, Chennai-3.
 3. The Financial Adviser & Chief
Accounts Officer
S.Rly., Park Town,
Chennai-3.
 4. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-3.
- M/s. L. Chandrakumar
- M/s. K.S. Durairamdi

- Respondents in all O.As
- Counsel for the Applicants
- Counsel for the Respondents



ORDER

Original Application Nos.310/00383/2013 & O.A. 310/00384/2013 was listed before the Hon'ble Bench on 31.03.2015 under the Caption "For Being Mentioned". The following Corrections have been ordered by the Hon'ble Bench:-

1. In the 4th and 8th lines of Para-9 in page-11,

May be read as

'Accounts Assistant'

Instead of

'Junior Accounts Assistant'

2. In the 5th line of page 12,

May be read as

'Promoted and re-designated as Accounts Assistant'

Instead of

'Junior Accounts Assistant'

3. In para-11 of page 13 in the 3rd line

May be read as

'placement of the applicants in the grade of AA'

Instead of

'placement of the applicants in the grade of JAA

&

In the 4th line

May be read as

'promotion and re-designation of these employees as AA'

Instead of

redesignation of these employees as JAA

&

In the 9th line

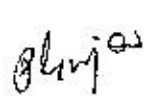
May be read as

'promotion and redesignation as AA'

Instead of

're-designation as JAA'

(By Order)


Deputy Registrar(J)

.....3/-



1. The Deputy Director
Pay Commission V
Railway Board, New Delhi
2. The General Manager
Southern Railway,
Park Town, Chennai-3.
3. The Financial Adviser & Chief
Accounts Officer (Stores & Workshop)
S.Rly., Park Town,
Chennai-3.
4. The Chief Personnel Officer, — — — — —
Southern Railway,
Park Town, Chennai-3.
5. M/s. L. Chandrakumar
Advocate,
Counsel for the Applicants
6. M/s. K.S. Duraipandi
Advocate,
Counsel for the Respondents
7. File Copies-3.

