

**Eastern Railway
(Personnel Department)**

Serial Circular No. 74/2015

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

Kolkata, Dated: 15/06/2015

All Concerned

Sub: Sharing of information regarding favourable judgment.

Railway Board's instructions contained in letter No. PC-V/2014/CC/Misc dated 28.05.2015 on the above noted subject are reproduced below for information, guidance and necessary action. Board's earlier letters dated 08.05.2015 and 20.04.2011 mentioned therein were circulated under this office Serial Nos. 64/2015 and 48/2011.


(K. K. Murnu)
Asstt. Personnel Officer/R&B
For Chief Personnel Officer
Phone No. 24118

Copy of Board's letter No. PC-V/2014/CC/Misc dated 28.05.2015 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 08/05/2015 please find enclosed an order dt. 10/07/2014 of Hon'ble CAT Chandigarh in O.A No. 1146-PB-2012 (Jagdamba Prashad & Ors Vs. UOI & Ors) decided in favour of Railway Administration. The applicant involved in this case belong to pharmacist cadre and had claimed grant of financial upgradation under ACP/MACP Scheme ignoring his promotion/placement in the Grade Pay of Rs. 4200. The Hon'ble Tribunal after deliberating upon all the relevant aspects and taking cognizance of Board's letter dt 20/04/2011 No. (PC-V/2009/ACP/2) have dismissed the OA in favour of Railway Administration.

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.

CHANDIGARH BENCH

O.A.No.1146-PB-12

Orders pronounced on: **10.07.2014**
(Orders reserved: 29.05.2014)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

Jagdamba Prashad S/o Jawala Prashad retired Chief
Pharmacist Ferozepur Divisional Head Quarters of Indian
Railways Ferozepur R/o 592 Railway Colony, Ferozepur.

Applicant

By : None.

Versus

1. Union of India through its General Manager, Northern
Railway, Baroda House, New Delhi.
2. Divisional Rail Manager, Northern Railways, Ferozepur
Division, Ferozepur.
3. Divisional Personal Officer/Chief Personal officer,
Northern Railways, Ferozepur Division, Ferozepur.
4. Railway Board, Ministry of Railways, Government of
India, Rail Mantralaya, New Delhi through its Chairman.



By: **Mr. Yogesh Putney, Advocate.**

Respondents

1. Whether the Reporters of local papers may be allowed to
see the Judgment? ✓
2. To be referred to the Reporter or not? +

3. Whether their Lordships wish to see the fair copy of the Judgment? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? +

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for quashing of the notice dated 3.11.2011 (A-1), order dated 7.12.2011 (A-2) and for issuance of direction to the respondents to grant the benefit of third MACP to the applicant which was earlier granted to him vide notice dated 14.9.2010 and to release of all consequential and incidental benefits accrued to him and the 3rd MACP earlier granted and subsequently withdrawn, be restored and amount recovered be also refunded to him.



2. Brief note of the facts would help the adjudication of the controversy. The applicant joined service as Pharmacist on 25.6.1976 and retired as Chief Pharmacist on 31.7.2012. The revised pay structure of the Pharmacist Cadre was provided vide order dated 30.3.2010 as per which the entry grade of Rs.4500-7000 was granted Grade pay of Rs.2800/- in PB-1 (Rs.5200-20200). Pharmacist Grade II, in pay scale of Rs.5000-8000 and Pharmacist Grade I in pay scale of

Rs.5500-9000 were given Grade Pay of Rs.9300-34800, after Merger of both posts and designation as Pharmacist (Non-Functional Grade) was given. This was to be given to a Pharmacist in Entry Grade, on completion of 2 years service in grade pay of Rs.2800/-. The posts of Chief Pharmacist in the pre-revised scale of Rs.6500-10500 were placed in Grade Pay of Rs.4600 and in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 were to be merged with the post in the scale of Rs.7450-11500. The word "promotion" was replaced with the word "placement" vide order dated 5.8.2010. Vide order dated 14.9.2010, the applicant along with others was granted 3rd MACP w.e.f. 1.9.2008 in the grade pay of Rs.5400/-. However, vide notice dated 3.11.2011 (A-1) the MACP granted to the applicant was withdrawn and he was granted 3rd MACP w.e.f. 1.9.2008, in grade pay of Rs.4800/-. Against this the applicant made a representation dated 9.11.2011 which was dismissed vide order, Annexure A 2. Hence, this Original Application.

3. The precise claim of the applicant is that withdrawal of 3rd MACP has taken place only in his cadre and other cadres have not been touched at all. Reliance is also placed on a decision of Ernakulam Bench of this Tribunal in



O.A.No.484/2011 and bunch of cases titled All India Loco Running Staff Association etc. V. Union of India & Others etc. decided on 22.2.2012 (A-7) in which it was held that placement in merged scales would not be taken as a promotion and it has to be ignored for the purpose of MACP. Thus, the applicant deserves to be restored the grade pay of Rs.5400 as 3rd MACP.

4. The respondents have resisted the claim of the applicant by filing a detailed reply. They submit that the Ernakulam Bench has decided the issue qua running staff only and not qua Pharmacist Staff. The Bench was considering interpretation of clause 5 & 8 of MACP which is not in issue in this case. It has also not considered the issue in the light of the clarification issued by the Nodal Ministry as circulated by the Railway Board dated 20.4.2011 where under it was clarified that the placement of pharmacist in Grade Pay Rs.4200/- in Pay Band-2 on completion of two years regular service in the grade pay of Rs.2800/- under Pay Band - I (Entry Grade) has to be counted / treated as one up-gradation under the MACP Scheme. Thus, the claim of applicant amounts to grant of 4th MACP which has rightly been withdrawn. Moreover, the clarification dated 20.4.2011 has not been challenged by the applicant. The upgradation on completion of



2 years of service in GP Rs.2800 is to be treated as one upgradation under the MACP Scheme and it cannot be ignored. For applicant, the entry grade pay is Rs.2800/-, 1st financial upgradation/MACP in GP Rs.4200/- on completion of 2 years' of service, 2nd MACP in Grade pay of Rs.4600 on completion of 12 years of service in grade pay of Rs.4200 and 3rd MACP in GP Rs.4800/- on completion of 22 years of regular service. Thus, the applicant has got three financial upgradation much prior to 10, 20 and 30 years of service as provided in MACP Scheme. The applicant was appointed on 25.6.1976 in pay scale of Rs.330-560, as revised to Rs.455-700 w.e.f. 1.1.1984 and Rs.1400-2600 w.e.f. 1.1.1986. He was promoted to grade of Rs.1640-2900 w.e.f. 15.11.1994, as revised to Rs.5500-9000 w.e.f. 1.1.1996. He was promoted w.e.f. 19.5.2005 to pay scale of Rs.6500-10500 (merged in the scale of Rs.7450-11500 w.e.f. 1.1.2006). He was allowed 1st financial upgradation w.e.f. 1.9.2008 in GP of Rs.4200, 2nd MACP w.e.f. 1.9.2008 in GPI Rs.4600 and 3rd MACP w.e.f. 1.9.2008, in GP Rs.4800/-. The 4th MACP in Grade Pay of Rs.5400 was withdrawn. Thus, the claim of the applicant merits dismissal.

5. We have heard learned counsel for the respondents and perused the material on the file.

6. A perusal of the conjunctive pleadings of the parties leaves us with no other option but to observe that the applicant was appointed w.e.f. 25.6.1976 in the pay scale of Rs.330-560 which was upgraded to Rs.550-700 w.e.f. 1.1.1984 and it was further revised to Rs.1400-2600 w.e.f. 1.1.1986. The applicant was promoted to pay scale of Rs.1640-2900 w.e.f. 15.11.1994 which was revised to Rs.5500-9000 w.e.f. 1.1.1996. He again came to be promoted to the pay scale of Rs.6500-10500 w.e.f. 19.5.2005 which grade along with pay scale of Rs.7450-11500 was merged in the pay band of Rs.9300-34800 + grade pay of Rs.4600/-. It also cannot be disputed that the MACP provides for three financial upgradation in whole service career, 1st and 2nd MACP was not due to the applicant as he had already been promoted twice firstly on 15.11.1994 and on 19.5.2005 i.e. in revised grade pay of Rs.4200 and Rs.4500 and he was only entitled to 3rd financial upgradation under MACP Scheme in next grade pay of Rs.4800 w.e.f. 1.9.2008, which has rightly been granted to him vide letter dated 3.11.2011. It also cannot be disputed that now in terms of the clarification on the issue the placement from GP R.2800 to GP Rs.4200 has been considered as first promotion. In that view of the matter, the applicant cannot be heard to say that he is entitled to third



financial upgradation in pay scale of Rs.5400/- which is apparently not due to him and was wrongly granted to him which mistake has now been corrected by the respondents. It is well settled law that the departmental authorities are well within their power and authority to correct a mistake. In 1998 (2) ATJ, P-286 (Jagdish Prajapat Vs. The State of Rajasthan & Others), it was held that a actual mistake can always be rectified by the departmental authorities. In 2005 (4) RSJ, 749 (Anand Prakash Vs. State of Punjab) and 1992 (1) SCT, 129, Raj Kumar Batra Vs. State of Haryana, it has been held that as and when a mistake is detected, the employer is within its right to rectify it. In (2005) 13 (G. Srinivas Vs. Govt. of A.P. & Ors.) it has been held that an order passed by mistake or ignorance of relevant fact can be reviewed by the authority. In (2008) 2 SCC 750 (Union of India Vs. Narendar Singh), it has been held that mistakes are mistakes and as such can always be corrected by the authorities. The decisions relied upon by the applicant do not help them at all in view of the peculiar facts of the case and the separate pay scales and structure of the Pharmacy cadre, either on facts or on legal proposition discussed therein.



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W.A.No. 1140-PB-1012

7. For the reasons discussed above, this Original Application is dismissed. Needless to mention that the interim order dated 8.10.2012 shall stand vacated. No costs.



(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh

Dated: 10.07.2014

HC*

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अनुमान अधिकारी (अध्यक्ष) / अनुमान अधिकारी (अध्यक्ष)

Central Administrative Tribunal

चण्डीगढ़ पीठा Chandigarh

चण्डीगढ़ / Chandigarh

9/17