

Eastern Railway
(Personnel Department)

Serial Circular No. 125/2015

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

Kolkata, Dated: 21/09/2015

All Concerned

Sub: Sharing of information regarding favourable judgment.

Railway Board's instructions contained in letter No. PC-V/2014/CC/Misc dated 28.08.2015 on the above noted subject are reproduced below for information, guidance and necessary action. A copy of Board's earlier letter dated 09/07/2015 along with its enclosures, as mentioned therein, is also enclosed for ready reference.

DA: As above.


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

Copy of Board's letter No. PC-V/2014/CC/Misc dated 28.08.2015 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 09/07/2015 please find enclosed a copy of order dt. 21.08.2014 of Hon'ble Madras High Court in WP No. 12808 of 2014 (M. V. Ramakrishnan V/s UOI & others) decided in favour of Union of India. In this case the petitioner had claimed for stepping up of his Pay/Grade Pay at par with his junior drawing that Grade Pay as a result of financial upgradation under ACP Scheme. The Hon'ble Court taking cognizance of the fact that entry grade (that direct recruitment grade) of the petitioner via a vis his junior are different, rejecting the claim of the petitioner.

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: Favourable judgments in the matter relating to ACP Scheme.

R-IV.C

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2014

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P. No. 12808 of 2014

...

M.V. Ramakrishnan

.. Petitioner

vs.

1. Union of India, rep. By
The Director General of
Quality Assurance,
Directorate General of
Quality Assurance (DGQSA/ADM-10),
Department of Defence Production,
'G' Block, DHO PO, New Delhi - 110 011.

2. The Controller,
Controllerate of Quality Assurance,
(Heavy Vehicles) Post Box No.20,
Avadi, Chennai.54.

3. The Registrar General,
Central Administrative Tribunal,
Madras Bench,
City Civil Court Campus,
Chennai.104.

.. Respondents

Writ Petitions filed under Article 226 of the Constitution of India
to issue a Writ of Certiorari/Mandamus calling for the records

pertaining to the order in O.A. No.1175 of 2011 dated 22.10.2013 on the file of the Central Administrative Tribunal Madras Bench and to quash the same and to direct the respondents 1 and 2 to step up the pay of the petitioner on par with his juniors in the pay scale of Rs.5000-150-8000 in the grade pay of Rs.4200/- with effect from 01.01.2006 with all consequential benefits.

For Petitioner : Ms. S. Jhothi Vani

For Respondents : Mr.A.P. Peter Gunasekaran
Addl. Govt. Pleader - R1 & R2

ORDER

The petitioner herein filed an application before the Central Administrative Tribunal seeking to quash the order passed by the second respondent dated 19.4.2011 with consequential direction to step up his pay on par with his juniors.

2. It is the specific case of the petitioner that even though he is a senior to one. Sri K.P. Radhakrishnan and E. Sathyanathan, he was not given the higher grade of pay as received by them. Considering the submissions made, the Tribunal was pleased to pass the following order:-

" From the perusal of the facts submitted by both

sides, it is seen that the applicant was initially appointed as Messenger as direct recruit in the year 1968 and he was promoted as LDC through Departmental Examination in the year 1982. When the ACP Scheme was introduced with effect from 9.8.1999, he was granted the 2nd financial upgradation with effect from the said date in the scale of Rs.4000-6000 after completion of 24 years service from the entry grade. It is also seen that the directly recruited two LDCs in the year 1984 after getting promotions as UDCs in the year 2002 in the pay scale of Rs.4000-6000 were granted the second financial upgradation in the year 2008 under the MACP Scheme in the pay scale of Rs.5000-8000. As such, the applicant cannot compare himself with the said persons. Further, as rightly pointed out by the respondents, the benefits under ACP are purely personal to an individual and have no relevance to this seniority position in the cadre. It is clear from the ACP Scheme that stepping of pay is not permissible to senior employee on account of junior getting more pay due to pay fixation under ACP Scheme. The respondents have also stated that he has been granted the third financial upgradation under the MACP Scheme with effect from 1.9.2008 in the pay Band I Rs.5200-20200 plus Grade Pay of Rs.2800/-.

(6) In view of above, we are of the view that no case has

been made out by the applicant for the grant of relief sought for by him. The OA is devoid of merits and it is dismissed accordingly. No order as to costs."

Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that admittedly, two persons referred to by the petitioner in the application before the Tribunal were juniors to him. In view of the said factual position, the petitioner will have to be paid the very same scale of pay as given to them. The respondents are adopting discrimination, which is in violation to Article 14 of the Constitution of India. In support of his contention, the learned counsel relied upon the decision rendered by the Hon'ble Supreme Court in **Commissioner and Secretary to Government of Haryana and Others - Vs. - Ram Sarup Ganda & Ors. (SLP(C) 20264 of 2004)**.

4. Per contra, the learned counsel appearing for the respondents submitted that the petitioner is a promotee whereas the two persons mentioned by him are direct recruits. The initial pay scale of messenger and LDC at the time of appointment are different and the hierarchy of both posts is also different. The scheme applicable to both posts are also different. The financial upgradations granted to the petitioner are admissible as per his post/pay scale in the entry grade. There is no bearing with his seniority positions in LDC grade. The request of the petitioner is

contrary to the official memorandum dated 9.8.1999. The tribunal has considered the entire issues in-extenso while denying the relief. The decision relied upon by the petitioner does not have any application to the case on hand.

5. The facts involved in the case on hand are not in dispute. The petitioner was initially appointed in the cadre of messenger in Grade-D staff as directly recruited. Sri. K.P. Radhakrishnan and E. Sathyanathan, were appointed as LDCs by way of direct recruitment. Admittedly, in the initial scale of messenger and LDC at the time of appointment are different and the hierarchy of both posts is also different. Therefore, the pay scales of two initial upgradation admissible under the ACP Scheme to the post of messenger and LDC is also different. The financial upgradations granted to the petitioner are admissible as per his post/scale of pay in the entry grade alone. In other words, there was no bearing in the seniority position in the LDC grade. For the purpose of privity, the APC scheme issued on 9.8.99 is extracted hereunder:-

"The financial upgradation under the ACP Scheme 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 employee on the ground that the junior employee in the grade has got higher pay-scale under

the ACP Scheme".

6. The said office memorandum makes the position very clear. The Tribunal has correctly examined all the above said factual position while declining the relief sought for. The decision of the Hon'ble Supreme Court cited above does not have any application whatsoever to the case on hand, which is governed by its own regulations and instructions.

7. In the case on hand, the scheme governing the direct recruits does not cover the petitioner. Therefore, the petitioner cannot claim the same benefits as a matter of right. Accordingly, this writ petition is dismissed. No costs.

(S.K.A.J.,) (M.M.S.J.,)

21.08.2014

ra
Index: Yes/No

To

1. The Director General of
Quality Assurance,
Union of India,
Directorate General of
Quality Assurance (DGQSA/ADM-10),
Department of Defence Production,
'G' Block, DHO PO, New Delhi - 110 011.
2. The Controller,
Controllerate of Quality Assurance,
(Heavy Vehicles) Post Box No.20,

Avadi, Chennai.54.

3. The Registrar General,
Central Administrative Tribunal,
Madras Bench,
City Civil Court Campus,
Chennai.104.

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SATISH K.AGNIHOTRI,J.,
and
M.M.SUNDRESH,J.,

ra

W.P.No. 12808 of 2014

Date: 21.08.2014

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

PC-V/2014/CC/Misc

New Delhi Dt. 09-07-2015

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 28/5/2015 please find enclosed a copy of order Dt 29.06.2015 of Hon'ble CAT/Madras in O.A No. 310/00514-2015 (V.Subhashani & Ors Vs. UOI & Ors) decided in favour of Railway Administration. In this case the applicants had sought for grant of Grade Pay of Rs 6600/ as third MACP to Chief Matrons ignoring the fact that the next promotional post for Chief Matron i.e Assistant Nursing Officer is in same Grade Pay of Rs. 5400/ PB-3. The Hon'ble Tribunal have dismissed the OA vide their order dt. 29.06.2015 with observations, inter-alia, as under:

"...we are agreement with the contention of the respondents that for Chief Matrons with GP 5400/-in PB-3(Non-Gazetted) the next promotional post is Assistant Nursing Office in same Grade Pay of Rs 5400/PB-3 (Gazetted) and hence the concerned employees have to be considered for 3rd Financial Upgradation to the same Grade Pay Rs. 5400 in PB-3 in terms of Board's letter Dt 13/12/2012 and increase in pay by 3 percent as is applicable in the normal promotions."

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 this order 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
Madras Bench

OA/310/00514/2014 & MA/310/00445/2014 & MA/310/00315/2014

Dated 29th June Two Thousand Fifteen

PRESENT

Hon'ble Mr.K.Elango, Member(J)
&

Hon'ble Dr.P.Prabakaran, Member(A)

1. V.Subhashini
2. V.Padmavathy
3. B.Sebiah Joseph
4. Lilly Peter Albert
5. M.Anjanamma
6. V.Sasikala
7. S.Ezhilarasi
8. Geetha Balakrishnan
9. Usha Mohan
10. Mary Anitha
11. S.Kalavathy
12. C.Jayalakshmi
13. D.Poongothai
14. T.Malathy Selvaraj
15. Pushpalathapaul Sundar Daniel
16. T.Baby Manohar
17. V.Navis Devaki
18. Lizy Babu
19. S.Ushabai
20. Elsy Varghese
21. Chandramathy P.Basil
22. Mary Kutty Mathew
23. Aleyamma Kurian
24. Cecil Joseph
25. Leelamma Zacharias
26. Achamma George
27. Thulasamma Venkatesan
28. D.Anjana Vijayakumari



29.Premavathy Govindaraj
30.N.S.Elavazhagi Madhavamani
31.Usha Ravindranath
32.Indira Umapathy
33.D.Maniammal
34.D.Emareetaleela
35.Freeda Daniel .. Applicants
By Advocate M/s.A.Abdul Ajees

Vs.

1. Union of India rep by
The Secretary,
M/o Railways, Railway Board,
Rail Bhavan, New Delhi 110 001.
2. The General Manager,
Southern Railway, Park Town,
Chennai 600 003.
3. The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai 600 003. .. Respondents

By Advocate Mr.V.Radhakrishnan, Senior Counsel for Mr.P.S.Eathiraj



ORDER

(Pronounced by Hon'ble Mr.K.Elango, Member(J))

The applicants have filed this OA under section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"to set aside the impugned Order No.P(S)535/VIII/NS/VI-PC/Fixation/GP Revision dated 12.07.2013 (Annexure A-1, pages-11-12) of the Chief Personnel Officer, Chennai, the 3rd respondent and to direct the respondents to grant 3rd financial upgradation under MACPS to the applicants in the Grade Pay of Rs.6600/- in Pay Band-3 in the scale of 15600-39100 from 01.09.2008."

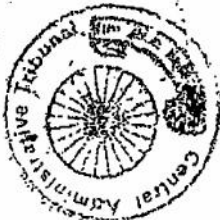
2. The brief facts leading to filing of this case is as under:-

The applicants are working as Assistant Nursing Officers and Chief Matrons at Railway Hospital, Perambur of Southern Railway. It is submitted that the applicants were granted 3rd Financial Upgradation in Pay Band Rs.15600-39100(PB-3) with Grade Pay of Rs.6600/- under MACP Scheme w.e.f. 01.09.2008 vide Office Orders dated 15.09.2009, 15.09.2009, 15.07.2010, 09.03.2011 and 12.10.2012, respectively, of the 3rd respondent. But, vide Impugned Order dated 12.07.2013 of the 3rd respondent, the above said MACP granted to the applicants was withdrawn stating that the over payment made will be recovered and the Grade Pay will be revised to Rs.5400/-. The contention of the applicants are that they are entitled for 3rd Financial Upgradation under MACP Scheme with Grade Pay of Rs.6600/- w.e.f. 01.09.2008 in terms of paragraphs 5,22,28-A of Annexure to RBE No.101/2009 dated 18.06.2009. Further, in a similar matter, the Principal Bench of this Tribunal in OA 141/2012 filed by Delhi



Nurses Union, allowed the OA by directing the respondents to grant the Grade Pay of Rs.6600/- in PB-3 in the scale of Rs.15600-39100.

3. The grounds taken by the applicants are that after introduction of the 6th CPC, two different scales of pay of Rs.6500-10500 and Rs.7500-12000 for Chief Matron and Assistant Nursing Officer were merged and a unified scale of pay band came into existence for both the posts of Rs.15600-39100 with Grade Pay of Rs.5400/-, according to which an Assistant Nursing Officer (ANO) who is in the Grade Pay of Rs.5400/- would be entitled for the next higher Grade Pay of Rs.6600/-, while granting the benefit of 3rd MACP. The applicants were drawing Grade Pay of Rs.5400/- in PB-3 consequent to their pay revision w.e.f. 01.01.2006 and they were entitled to the 3rd financial upgradation in the next higher Grade Pay of Rs.6600/- in PB-3 w.e.f. 01.09.2008 and accordingly their pay was re-fixed in PB-3 Rs.15600-39100 + Grade Pay of Rs.6600/- in place of Rs.15600-39100 + Grade Pay of Rs.5400/-, while granting the benefit of 3rd MACPS, but the same was withdrawn by the 3rd respondent. While granting the 3rd financial upgradation under MACPS, as per the provision thereof, the next higher Grade Pay is Rs.6600/- and not Rs.5400/- and therefore, the action of the respondents in downward revision of Grade Pay and recovery of overpayment is arbitrary, illegal and against the Railway Board's orders/circulars and judicial decisions and hence they have filed this OA seeking the above mentioned relief.



4. The applicant also places reliance on the order passed by this Tribunal in OA No. 280/2012 dated 22.7.2013 and confirmed by the Hon'ble High Court of Madras in WP No.11535/2014 and MP No.1/2014.

5. Upon notice, the respondents have entered appearance and filed the reply statement denying all the allegations averred in the application, except those that are specifically admitted herein.

6. The reply proceeds to the effect that the applicants in OA No.141/2012 filed before the Principal Bench of this Tribunal were not Railway Servants and their service conditions differ from that of the service conditions of the applicants in the present OA and hence it is not correct to apply the decision of the Principal Bench in this case. In the instant case, for Chief Matrons with GP-5400/- in PB-3 (Non-Gazetted) the next promotional post is Assistant Nursing Officer in same Grade Pay of Rs.5400/PB-3(Gazetted) and hence the concerned employees have to be considered for 3rd Financial Upgradation to the same Grade Pay Rs.5400 in PB-3 in terms of Board's letter dated 13/12/2012 and increase in pay by 3 percent as is applicable in the normal promotions. Hence the decision in the OA No.141/2012 of the Principal Bench is not applicable in the present case, apart from that the Hon'ble Supreme Court has also not gone into the merits of the case and at the admission stage itself rejected the SLP filed by the concerned department and the same cannot be cited as precedence. Further, it is



submitted that as per the policy framed by the Ministry of Railways through letter No.PC-VI/2008/1/RSRP/1 dated 22.09.2008 (RBE No.124/2008) and subsequent clarifications, the Chief Matrons are placed in PB-3 with Grade Pay Rs.5400 and their next promotional post, as per Annexure R-2 documents, is to the post of Assistant Nursing Officers in PB-3 with Grade Pay Rs.5400. The MACP Scheme has been introduced in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues and therefore Financial Upgradations under this Scheme is to be given either in the next Grade Pay in the hierarchy of Grade Pays or to the next promotional post and in no case it can be given beyond the next promotional post. Granting of benefit higher than their promotional post amounts to grant of double benefit. Therefore, granting of MACPS benefit to the applicants Chief Matrons in PB-3 with Grade Pay Rs.5400 to PB-3 with Grade Pay Rs.5400 is in order and needs no revision and accordingly they prayed for dismissal. The respondents also places reliance on the order of the Apex Court in (2015) 1 SCC (L&S) 384, (2014) 13 SCC 296 Secretary, Government (NCT of Delhi) & Others vs. Grade-I Dass Officers' Association & Others.

7. Heard the learned counsels for both sides and perused the material available on record, the reply statement, rejoinder and the judgements relied upon by the applicants.



8. Learned counsel for the applicants submitted that under the MACPS it is only the next higher grade pay that has to be reckoned and not the grade pay of the next hierarchical post.

9. On the other hand, Mr.V.Radhakrishnan, Senior counsel appeared for the respondents, contended that it would be the grade pay of the next hierarchical post which would be allowable to the applicants and not the next higher grade pay.

10. On perusal of the records, it is seen that the applicants were at the first instance granted the 3rd Financial Upgradation in Pay Band Rs.15600-39100(PB-3) with Grade Pay of Rs.6600/- under MACP Scheme w.e.f. 01.09.2008 by the 3rd respondent and under a wrong notion, the same has been withdrawn by order dated 12.07.2013 which is impugned in this OA and the applicants' Grade Pay has been revised downward and recovery of overpayment ordered. We are in agreement with the contention of the respondents that for Chief Matrons with GP-5400/- in PB-3 (Non-Gazetted) the next promotional post is Assistant Nursing Officer in same Grade Pay of Rs.5400/PB-3(Gazetted) and hence the concerned employees have to be considered for 3rd Financial Upgradation to the same Grade Pay Rs.5400 in PB-3 in terms of Board's letter dated 13/12/2012 and increase in pay by 3 percent as is applicable in the normal promotions. Hence the decision in the OA No.141/2012 of the Principal Bench is not applicable in the present case, apart from that the Hon'ble Supreme Court has also not



gone into the merits of the case and at the admission stage itself rejected the SLP filed by the concerned department and the same cannot be cited as precedence. Further, it is submitted that as per the policy framed by the Ministry of Railways through letter No.PC-VI/2008/1/RSRP/1 dated 22.09.2008 (RBE No.124/2008), and subsequent clarifications, the Chief Matrons are placed in PB-3 with Grade Pay Rs.5400 and their next promotional post, as per Annexure R-2 documents, is to the post of Assistant Nursing Officers in PB-3 with Grade Pay Rs.5400. The MACP Scheme has been introduced in order to mitigate the problems of genuine stagnation faced by employees due to lack of promotional avenues and therefore Financial Upgradations under this Scheme is to be given either in the next Grade Pay in the hierarchy of Grade Pays or to the next promotional post and in no case it can be given beyond the next promotional post. Granting of benefit higher than their promotional post amounts to grant of double benefit. Therefore, granting of MACPS benefit to the applicants Chief Matrons in PB-3 with Grade Pay Rs.5400 to PB-3 with Grade Pay Rs.5400 is in order and needs no revision. The respondents relied on the citation in (2015) 1 SCC (L&S) 384 (2014) 13 SCC 296 Secretary, Government (NCT of Delhi) & Others vs. Grade-I Class Officers' Association & Others, wherein para 14 reads as follows:-

"14. In view of the stipulations and conditions in the ACPS noticed above, it can be safely concluded that the financial upgradation under the ACPS is not only in lieu of but also in anticipation of regular promotion. In such a situation, the contention advanced on behalf of the appellants that



financial upgradation claimed by the respondents cannot be granted because the same would be much in excess of what the officer would gain on actual promotion in the hierarchy, is found to have substance. As a corollary, such claim of the respondents must be rejected on the ground that persons having better claims on actual promotion could be fitted only in the promotional post of Grade II (Group B) of DANICS i.e. Rs.6500-200-10,500 whereas the respondents, on their claims being accepted, would get much higher pay scale of Rs.10,000-325-15200 available only to Grade I (Group A) in DANICS. Such a situation would be violative of rules of fairness and Articles 14 and 16 of the Constitution of India. The claim of the respondents had to be rejected as was done by the Tribunal in view of Clause 7 of the ACPS read with other relevant clauses as well as on the basis of the aforementioned ground. Fairness, on the part of the State is a constitutional obligation and hence a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre. In case the respondents' claim was to be allowed on the ground accepted by the High Court that financial upgradation must be real and substantial, in case of regular promotion in future, employees like the respondents would have to be reduced in their pay scale because actual or functional promotion as per established hierarchy can be only on a post in Grade II (Group B) in DANICS."

The above citation relied on by the respondents squarely applies to the case on hand.

Hence, in view of the above, we are of the opinion that the OA is liable to be dismissed.

11. Accordingly the OA is dismissed. Both the MAs are closed. No order as to

costs.

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

/ TRUE COPY /
Sh. Bm
SECTION OFFICER

