

Eastern Railway
(Personnel Department)

17 N. S. Road
Kolkata - 700 001

Serial Circular No. 65/2017

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

Kolkata, Dated: 14/07/2017

ALL CONCERNED

(As per the standard List)

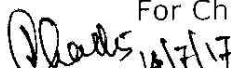
Sub: Sharing of information regarding favourable judgments.

Following copy of Railway Board's letter No. **PC-V/2014/CC/Misc.** dated 14/06/2017, along with its enclosure, on the above noted subject is forwarded herewith for information and guidance. Board's earlier letter dated 18/04/2017 mentioned therein was circulated vide this office letter no.E.308/Court Cell/Digest/Pt.III dated 24/04/2017.


(U. Lahiri)

Dy. Chief Personnel Officer/R

For Chief Personnel Officer

 14/7/17 Phone no.: 24103

Copy of Board's letter No. **PC-V/2014/CC/Misc.** dated 14/06/2017 addressed to the GM (P)/All Zonal Railways & PUs.

Sub: Sharing of information regarding favourable judgments.

In continuation to Board's letter of even number dated 18/04/2017 placed find enclosed copy of an order dt.27/10/2016 of Hon'ble CAT/Lucknow in O.A. No. 332/00046/2015 (G.R. Bhugra Vs UOI & Ors) decided in favour of Railway Administration. In this case the applicant had claimed for implementation of MACP Scheme from 01/01/2006 instead of 01/09/2008 but the same has been dismissed by the Hon'ble Tribunal vide its order dated 27/10/2016 rejecting the claim of the applicant.

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 ensure its effective utilization while contesting the case involving identical issue.

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

DA: As above.

INDEX No.1060: The claim for implementation of MACP Scheme from 01/01/2006 instead of 01/09/2008. has been rejected by CAT/Lucknow vide its order dt.27/10/2016.

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

ORDER RESERVED ON 26.10.2016

ORDER PRONOUNCED ON 27.10.2016

PRESENT

HON'BLE MS. JAYATI CHANDRA, MEMBER - A

HON'BLE DR. MURTAZA ALI, MEMBER - J

Original Application No332/00046/2015

Govind R. Bhugra, aged about 67 years, Son of Sri N. D. Bhugra,
resident of F 431 Rajajipuram, Lucknow.

.....Applicant

By Adv: Applicant in Person

VERSUS

1. Union of India, through its General Manager, Ministry of Railways,
Government of India New Delhi.

2. Director General, Research Designs & Standards Organization
(R.D.S.O.) Lucknow.

3. Secretary, Ministry of Railways, Government of India New Delhi.

..... Respondents

By Adv: Shri B. B. Tripathi

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER - J

Through this OA filed under Section 19 of the Administrative
Tribunals Act, 1985, the applicant seeks following reliefs -

"(a) Quash the impugned order of dated 20.5.2014 passed
by opposite party No. 3, contained as Annexure No. 1 to this
Original application and further be pleased to direct the
opposite parties to consider and grant the 3rd financial up-
gradation under the provision of MACPs Scheme to the
applicant, by implementing the said Scheme w.e.f 1.1.2006
instead of 1.9.2008 and pay the all pensionary benefits on said
basis.

(b) Pass any other suitable order or direction which this Hon'ble May deem, fit, just and proper under the circumstances of the case in favours of petitioner.

(c) Allow the present claim petition of the petitioner with Costs."

2. The brief facts of the case are that the applicant was initially appointed on the post of Stenographer Grade II in the Ministry of Railways on 5.1.1971. It is stated that as per recommendation of 5th Central Pay Commission, financial up gradation in the next higher grade pay was available to those employees who had completed 12 years continuous service in the same grade and not more than two financial upgradation were available in the entire career. On the recommendation of 6th CPC, the Government of India had modified the up gradation scheme and introduced MACP Scheme by which three financial upgradations at the intervals of 10,20 and 30 years of continuous regular service have been made admissible. The said MACP scheme has been made operational w.e.f 1.9.2008. The applicant was allowed two financial up-gradation as per earlier ACP Scheme and he retired on 30.9.2007 after completing 36 years and 9 months service. As the MACP scheme was made effective w.e.f. 1.9.2008, he could not avail the benefit of 3rd financial up-gradation admissible under MACP scheme. He made several representations and requested the respondents to implement the MACP scheme w.e.f. 1.1.2006 instead of 1.9.2008, but his representation has been rejected vide impugned order dated 20.5.2004 (Annexure-1).

3. In the counter reply, filed on behalf of the respondents No. 1, 3 and 4, the service record of applicant has not been disputed. It has further been stated that the Railway Board had decided to grant two financial upgradation under ACP scheme to Group 'B', Group 'C' and Group 'D' employees on completion of 12 years and 24 years of regular service and ACP scheme was made effective w.e.f 1.10.1999. The applicant was granted second financial upgradation payable after 24 years of service under ACP scheme in the pay scale of Rs. 10000-15200/- w.e.f. 1.10.1999 and since he has already retired on 30.9.2007, the benefit of MACP scheme could not be extended to him as the MACP scheme was implemented w.e.f. 1.9.2008. It was also provided that the MACP scheme shall be applicable w.e.f. 1.9.2008 and the financial upgradations as per earlier ACP scheme could be granted till 31.8.2008. It is also stated that the MACP scheme is in the domain of public decision of Government for the purpose of providing relief to the employees who are genuinely stagnating and facing hardship due to lack of adequate avenue and the sanctity of cut off date prescribed by Government for the purpose of implementation of the said policy decisions have been held valid by the Hon'ble Supreme Court in the case of D. S. Nakara and Ors. Vs. UOI and Ors reported in 1983 (1) SCC 305 and Krishana Kumar Vs. U.O.I and Ors reported in JT 1993 (3) SC 173.

4. In the rejoinder, the applicant reiterated the averments made in the O.A. and further stated that as most of the recommendations of 6th Central Pay Commission have been

implemented w.e.f 1.1.2006 and therefore, MACP scheme should also be implemented w.e.f. 1.1.2006 instead of 1.9.2008.

5. Heard the applicant in person and learned counsel for the respondents and perused the record.

6. The applicant argued that all the recommendations of 6th Pay Commission were implemented w.e.f. 1.1.2006, but the MACP scheme has wrongly been implemented w.e.f 1.9.2008 and the respondents had no right to change the date of implementation of recommendation of MACP scheme.

7. The learned counsel for respondents argued that the fixing of cut off date for enforcement of MACP scheme is a policy decision of Government and it has been held by the Hon'ble Supreme Court in the case of D. S. Nakara (Supra) and Krishana Kumar (Supra) that the cut off date prescribed by Government for the purpose of implementation of policy decisions is valid. It has also been contended that the issue regarding implementation of MACP scheme w.e.f. 1.1.2006 was discussed and considered in the Joint Committee on MACP and it was observed that while changing the date of implementation of MACP scheme from 1.9.2008 to 1.1.2006 may be beneficial for certain employees, but other employees could be at disadvantage thereby entailing huge recoveries from them.

8. It is pertinent to mention here that the benefit of financial up-gradation provided under earlier ACP scheme was granted till 31.8.2008 and thereafter, the benefit of MACP scheme was

extended w.e.f. 1.9.2008. As the benefit of earlier ACP scheme was available to the employees till 31.8.2008, the benefit of MACP scheme could not be implemented w.e.f. 1.1.2006. Thus we are of the view that it is a policy decision of Government to fix the date of implementation of MACP scheme which is inconsonance with the ratio laid down by the Hon'ble Supreme Court in the case of D. S. Nakara (supra) and Krishana Kumar (Supra). We do not find any reason or justification to interfere with the date of implementation of MACP scheme which was determined on the recommendation of expert joint committee on MACP.

9. Accordingly, the O.A. is dismissed. No order as to costs.

(Dr. Murtaza Ali)

Member (J)

(Ms. Jayati Chandra)

Member (A)

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Section Officer
Central Administrative Tribunal
Lucknow Bench
Lucknow
21-11-2016

27-10-2016
(1) By order
(2) By order of preparation
(3) By order of receipt