

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6398 of 2016

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1. The Union of India through the Secretary, Railway Board, Rai Bhawan, New Delhi.
 2. The General Manager, E.C. Railway, Hajipur.
 3. The Chief Personnel Officer, E.C. Railway, Hajipur.
 4. The Divisional Personnel Officer, E.C. Railway, Samastipur

.... Applicants / Petitioners

Versus

Sri Surendra Kumar, Son of Satya Narayan Prasad, Near Parcel Gate, Darbhanga, Guard (Passenger) posted at Darbhanga.

.... Applicant / Respondent

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Appearance:

For the Petitioner/s : Mr. Devendra Kumar Sinha, Sr. Advocate,
Mr. Bindhyachal Singh and
Mr. Manish Prakash, Advocates.

For the Respondent/s : Mr. Niraj Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-02-2017

Railways are before the High Court challenging the order dated 20th of May, 2015. This is an order passed in O.A. No. 663 of 2013 by the Central Administrative Tribunal (CAT), Patna Bench which has allowed the O.A. and set aside the order of the railways dated 10th of December, 2010, which is Annexure 5 series in the present Writ Application. By virtue of this decision, the so-called grant of the benefit of MACP was sought to be taken away which became subject matter of challenge before the CAT.



2. For factual background and for better appreciation, the Court reproduces Para 2.2 to 2.6 of the order of the CAT, which crystallizes the core issue and the reason for the present dispute.

“2.2. Prior to 01.01.2006 [i.e. before 6th Pay Commission] the pay and post of the applicant was as under :-

[i] For Mail Guard	-	Rs. 5500-9000
[ii] For Sr. Passenger Guard	-	Rs. 5500-9000
[iii] For Passenger Guard	-	Rs. 5000-8000
[iv] For Sr. Goods Guard	-	Rs. 5000-8000
[v] For Goods Guard	-	Rs. 4500-7000

2.3 After implementation of the 6th CPC w.e.f. 01.01.2006, the pay scales of the above posts held by the applicant were revised as under :-

[i] For Mail/Express Guard	Rs. 9300-34800 + Gr. Pay Rs. 4200
[ii] For Sr. Passenger Guard	Rs. 9300-34800 + Gr. Pay Rs. 4200
[iii] For Passenger Guard	Rs. 9300-34800 + Gr. Pay Rs. 4200
[iv] For Sr. Goods Guard	Rs. 9300-34800 + Gr. Pay Rs. 4200
[v] For Goods Guard	Rs. 5200-20200 + Gr. Pay Rs. 2800

with an allowance of Rs. 500/- for Mail/Express Guard not forming part of pay.

2.4 Due to revision of pay, pay scale of Mail Guard, Sr. Passenger Guard, Passenger Guard and Sr. Goods Guard stood merged in one single Pay Band of Rs. 9300-34800 + GP of Rs. 4200 known as PB 2, while pay scale of Goods Guard was fixed at Rs. 5200-20200 + GP of Rs. 2800 falling under PB 1. As per the applicant, the Govt. has introduced Modified Assured Career Progression [MACP] Scheme by replacing existing ACP Scheme for financial upgradation after completion of 10, 20 & 30 years of continuous service w.e.f. 01.09.2008 as per the recommendation of the 6th Pay Commission.

2.5 Clause 5 of the said MACP Scheme has stipulated that if promotion / upgradation has been already granted under the ACP scheme to those grades, which now carry the same grade pay due to merger of pay scales



recommended by Sixth CPC, shall be ignored for the purpose of granting upgradation under MACPS.

2.6. Keeping in view all the guidelines and instructions, the Screening Committee constituted as per provisions of the Scheme considered the illegibility for upgradation of 'Guard Cadre' of Samastipur Division and having found as many as 53 Guards of different categories fit for upgradation, the result was published on 22.03.2010 [Annexure-2] by the Divisional Railway Manager [Personnel], Samastipur. Thereafter, those 53 guards were granted upgradation by an order dated 17.05.2010 [Annexure-2/1]. Hence, the pay of the applicant was fixed on the basis of financial upgradation and payment was made vide notification dated 29.03.2010 [Annexure-3].

2.6 Thereafter, up-to-date arrear from 01.09.2008 was also paid to the applicant and he continued to receive payment of salary on the basis of such fixation of pay on upgradation."

3. The Tribunal thereafter, after having heard extensively the submissions of the parties, concludes as under:-

"5. We have heard both the parties and perused the record. It is noted that according to the applicant, he was rightly granted financial upgradation as per clause 5 of the MACP Scheme vide order dated 17.05.2010, whereas according to the respondents, as per the interpretation / direction of the Railway Board vide order dated 10.02.2011, the applicant is not entitled for financial upgradation and thus, the said benefit was rightly withdrawn by the respondents. From perusal of the MACP Scheme, it is observed that Clause 5 of the said Scheme has stipulated with illustration as follows :-

"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 6th Pay Commission shall be ignored for the purpose of granting upgradations under the modified ACPs."



Illustrations:

The pre-revised hierarchy [in ascending order] in a particular organization was as follows :-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

[a] A Railway servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 01.01.2006, in his case as on 01.01.2006, he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

[b] Another Railway servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both [a] & [b] above, the promotions/financial upgradations under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 01.01.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per the RS [RP] Rules, both of them will be granted Grade Pay of Rs. 4200 in the Pay Band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of [a] and [b] above to the next higher Grade Pays of Rs. 4600 and Rs. 4800 in the Pay Band PB-2.”

6. From the perusal of the said illustration, we are of the opinion that the case of the applicant is similar and identical to the said illustration and as per the said stipulation of the MACP Scheme itself, the applicant is entitled for financial upgradation, which was granted to him on 17.05.2010 and there is no scope for interpretation of the said Scheme by the Railway Board. Moreover, the same issue was considered by the CAT, Allahabad Bench vide order dated 20.12.2011 in OA 1241 of 2011 and also by this Tribunal vide order dated 25.02.2014 in OA No.



721 of 2012, wherein the said order of the Railway Board was considered by this Bench and it was observed that the applicants were entitled for the said financial upgradation as per the MACP Scheme. Thus, we are of the view that this issue has already been settled by this Tribunal, which has also been affirmed by the Hon'ble High Court, Allahabad and we do not find any reason to deviate from the same."

4. From perusal of the facts as well as the circular relating to Clause 5 of the MACP Scheme, there does not seem to be any kind of confusion with regard to the entitlement. Such disputes were considered and sorted out by other forums, which is the CAT Bench of Allahabad as well as the CAT Bench of Ernakulum. The Court has also perused the decision dated 10th of December, 2010 and if Clause 5 of the MACP Scheme is applied to the said decision then it cannot be said that a wrongful decision was taken by the respondent authorities in the very first place. The benefit of MACP was extended to the private respondent, who was the applicant before the CAT. The CAT, therefore, has passed the order which is in conformity with the decision of other co-ordinate benches and, on true and correct interpretation, as to the applicability of the MACP Scheme.

5. In view of the same, the Court would not like to interfere with the order of the CAT.

6. Learned senior counsel, however, submits that the entitlement of the private respondent has to be within the time frame



which has been fixed even in the MACP, which is 10 years, 20 years and 30 years now. The private respondent will only derive benefit of the said stagnation scheme on completion of the time frame laid down.

7. There cannot be any quarrel with regard to the same but the interpretation which was sought to be given by the railways for taking the decision dated 10th of December, 2010 is erroneous, therefore, has been rightly quashed.

8. Writ Application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Dilip/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28.02.2017
Transmission Date	

