

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2017

Delivered on : 06.04.2017

Coram

The Honourable Mr. JUSTICE K.K.SASIDHARAN,

and

The Honourable Mr. JUSTICE V.PARTHIBAN

W.P.No.38326 to 38328 of 2015 and 40842 of 2016

R.Gangadara Perumal	... Petitioner in
	W.P.38326 of 2015
K.R.Mani	... Petitioner in
	W.P.38327 of 2015
K.Ganesan	... Petitioner in
	W.P.38328 of 2015
V. Subbarayalu	... Petitioner in
	W.P.40842 of 2016

versus

1. Union of India, Rep. by
The Deputy Director,
Pay Commission-IV,
Railway Board, New Delhi.
2. General Manager (A),
Integral Coach Factory,
Chennai - 600 038.
3. The Senior Personnel Officer/ WS,
Integral Coach Factory,
Office of the Chief Personnel Officer,
Personnel Branch,
Chennai - 600 038.
4. Secretary to Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
(Department of Personnel & Training),
New Delhi.

5. The Registrar,
Central Administrative Tribunal,
Chennai Bench. ... Respondents 1 to 5 in
WP.38326 of 2015
... Respondents 1,2,4 &5 in
WP.38327 of 2015
... Respondents 1 to 3&5 in
WP.38328 of 2015
... Respondents 1,2 &4&5 in
WP.40842 of 2016
6. Senior Assistant Financial Advisor
Furnishing Administration,
O/o financial Advisor and chief Accounts officer,
Integral coach factory,
Chennai 600 038. ...3rd Respondent in
WP.38327 of 2015
7. The Deputy Secretary to Government of India
Ministry of Personnel,
Public Grievances and Pensions,
(Department of Personnel and Training),
New Delhi. ...4th Respondent in
WP.38328 of 2015
8. The Senior Personnel Officer (WS)
Integral Coach Factory,
Office of the chief personnel officer,
Personnel Branch,
Chennai-600 038. ...3rd Respondent in
WP.40842 of 2016

Prayer in W.P.Nos.38326 to 38328 of 2015: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to O.A.Nos.26 of 2012, 17 of 2012, 25 of 2012 and O.A.No.1341 of 2014 and quash the orders passed therein dated 8.1.2015.

W.P.No.40842 of 2016: Certiorarified Mandamus Calling for the records relating to OA.No.1341 of 2014 dated 15/07/2016 passed by the 5th Respondent Tribunal, quash the same and to allow OA as prayed for

For Petitioners : Mr.Giridhar

For Respondents : Mr.V.Haribabu, for R1 to R3
Mr.Su.Srinivasan for R4

COMMON ORDER

V.PARTHIBAN, J.

These Writ Petitions have been filed against the order

passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.Nos.26 of 2012, 17 of 2012, 25 of 2012 and O.A.No.1341 of 2014 dated 8.1.2015 and dated 16.7.2016 dismissing the Original Applications filed by the petitioners herein.

2. For the sake of clarity, the parties are referred to as 'the applicants' and 'the respondents' as arrayed before the learned Tribunal.

3. The applicants have approached the Tribunal, seeking the following relief:

"i) To call for the records pertaining to Order PCV/2009/ACP/13/ICF, dated 03.02.2011, passed by the 1st respondent and Order No.AAD/MACPs, dated 19.2.2011 passed by the 3rd respondent, quash the same;

"ii) To direct the respondents to grant III Financial Upgradation to the applicant under the MACP Scheme to pay the band of Rs.9300-34800 with Grade Pay of Rs.4600 w.e.f.01.09.2008 with all other consequential benefits including arrears of pay and allowances arising therefrom."

4. It is worthwhile first to deal with the Writ Petitions in W.P.Nos.38326 to 38328 of 2015. The details of service particulars of each of the applicants, are extracted herein below:

W.P.No.38326 of 2015

Post	Date of promotion	III-Pc	IV-Pc	V-PC	VI-PC	Grade Pay	Remarks Direct Entry Grade
Constable (initial appointment direct entry)	03.09.1975	200-240	825-1200	3050-4590	5200-20200	2000	Direct Entry Grade
Peon	28.11.1981	196-232	750-940	2550-3200	5200-20200	1800	
Technician Grade - III	08.04.1987	260-400	950-1500	3050-4590	5200-20200	1900	
Technician Grade - II	17.11.1990		1200-1800	4000-6000	5200-20200	2400	

Technician Grade - I	29.07.1995		1320 - 2040	4500- 2040	5200- 20200	2800	
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W.P.No.38327 of 2015

Post	Date of promotion	III-Pc	IV-Pc	V-PC	VI-PC	Grade Pay	Remarks Direct Entry Grade
Constable (initial appointment)	25.06.1977	200-240	825-1200	3050-4590	5200-20200	2000	Direct entry grade
Peon	26.04.1984	196-232	750-940	2550-3200	5200-20200	1800	
Typist	11.08.1986	260-400	950-1500	3050-4590	5200-20200	1900	
Junior Cashier	28.06.1989		1200-2040	5000-8000	5200-20200	2400	
Senior Cashier Grade - I cum Asst.Div l.Cashier	13.08.1991		1400-2300	5500-9000	9300-34800	4200	

W.P.No.38328 of 2015

Post	Date of appointment	III-Pc	IV-Pc	V-PC	VI-PC	Grade Pay	Remarks Direct Entry Grade
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Constable (initial appointment & direct entry grade)	25.06.1977	200-240	825-1200	3050-4090	5200-20200	2000	Direct entry grade
Lab	07.06.1982	200-	775-	2610-		---	--
Attendant Grade - II (Ex-cadre)		250	1025	3540			
Khalasi (cadre)	07.06.1985	196-232	750-940	2550-3200	5200-20200	1800	
Technician, Grade-III	08.11.1989	260-400	950-1500	3050-4590	5200-20200	1900	
Technician, Grade-II	05.08.1992	---	1200-1800	4000-6000	5200-20200	2400	
Technician, Grade-I	17.03.1997	---	1320-2040	4500-7000	5200-20200	2800	

5. The case of the applicants was that they were not granted III Financial upgradation under the Modified Assured Career Progression Scheme (in short, 'MACP Scheme'). According to the applicants, after recommendation of the VI Pay Commission, their grade pay in their original appointment as Constable, was made applicable was Rs.2000 in the Pay Band Rs.5200-20200 on being medically decategorised. Two applicants i.e. Writ Petitioners, viz., in W.P.Nos.30826 and 30827 of 2016 were placed in lower Pay Band, i.e. Rs.1800 and therefore, they got one promotion in Grade Pay of Rs.1900. Therefore, technically their appointment in the lower Grade Pay of Rs.1200-2040 and promoted to Technician Grade III in Pay Band Rs.1900 for the purpose of grant of financial upgradation under MACP Scheme cannot be construed as promotion for the purpose of grant of financial benefits under MACP Scheme. However, the claim of the applicants was rejected on the ground that they had already earned three promotions and therefore, they are not entitled to any further financial upgradation under MACP Scheme.

6. According to the official respondents, since the applicants had been granted three promotions in their career, their claim for III Financial upgradation cannot be granted and any comparison of their case with other employees cannot support their claim for the grant of financial upgradation, since the case of other employees was different.

7. However, the case of the applicants, viz., the petitioners in W.P.Nos.30826 and 30827 of 2016, as could be seen from the tabular statement extracted supra, after being medically decategorized, they were posted to a lower pay scale than that of initially appointed grade. As far as the applicant, i.e. petitioner in W.PNo.30328 of 2015 is concerned, he was not medically decategorized. However, he was also similarly placed to lower post as that of above said two applicants. In such circumstances, any promotion earned below the Grade Pay, i.e. Rs.2000 attached to the original appointment, has to be ignored and cannot be considered as that of promotion for the purpose of grant of financial benefits under MACP Scheme. If such promotions earned below the Grade Pay granted to the original post and was ignored, then it is admitted position that the applicants have earned only two promotions in their entire career and therefore, they are entitled to III Financial upgradation under MACP Scheme. Moreover, the applicants have also relied upon Railway Board's instructions dated 5.7.2006 that the employees who were appointed alternatively subsequent to medically decategorization, should be given benefit of MACP Scheme in the existing hierarchy with reference to their initial appointment.

8. After taking note of the rival submissions, the learned Tribunal dismissed the Original Applications on the ground that the claim of the applicants was not maintainable as they had enjoyed pay fixation following their promotion from one level to another in the present cadre. The Tribunal, further held that the instructions of the Railway Board were unambiguous and made it clear that financial upgradation has to be related to the initial appointment in the existing hierarchy only and as such the contention of the applicants going backward relating to earlier appointment in the previous cadre, was not maintainable. The Tribunal also held that the promotions earned with the lessor grade pay than what they were getting in their initial pay need not be counted, the applicants have earned two promotions in the existing hierarchy higher than to their initial pay and therefore, their claim for III financial upgradation under MACP Scheme was found to be not tenable. As against the order passed by the Tribunal as justified, the present Writ Petitions have been filed.

9. Shri P.V.S.Giridhar, learned counsel appearing for the applicants strenuously contended that the learned Tribunal has completely misdirected itself in holding that the applicants had the benefit of three promotions without appreciating the entire issues in a proper perspective. He would also draw our attention to the provisions of MACP Scheme. As per para 9 of the Scheme, it envisages that the regular service for the purpose of MACP Scheme shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Moreover, para 1 of the Scheme clearly stipulates that there shall be three financial upgradations under MACP Scheme, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Moreover, as could be seen from the service details of the applicants, with reference to the position of MACP Scheme that promotions earned below to Grade Pay attached to original post, in which the applicants were appointed, cannot be counted for the purpose of grant of financial benefits under MACP Scheme since that would defeat the very purpose of the Scheme which is no doubt a beneficial scheme framed for welfare of the employees.

10. We find considerable force in the contention of the learned counsel appearing for the applicants that the Tribunal has erred in overlooking the crucial fact that so far promotions earned by the applicants below their grade pay, which was applicable to the original post to which, all the applicants were appointed can never be counted as for the purpose of denial of benefit under MACP Scheme. Such a position if it is held to be valid, would be per se unreasonable, irrational and contrary to the scheme itself and would take away the substratum of the beneficial scheme promoted by the Government. Needless to mention that the denial of financial upgradation to the applicants in this case, resulted in financial hardship to them and the Railway Administration under no circumstances, can justify such action of denying the applicants their due under MACP Scheme.

11. Be that as it may, the learned Tribunal has lost sight of the fact while concluding the case against the applicants that the initial promotions earned by the applicants below their grade pay as that of original posts in which the applicants were appointed, can never be construed as promotion for the purpose of MACP Scheme and unfortunately, the learned Tribunal failed to address the said issue without critically examining and approaching the issue in proper perspective. The Tribunal merely guided by the fact that there were three promotions granted to the applicants and therefore, they were not eligible

for the grant of financial upgradation under MACP Scheme. Such a simplistic view has resulted in negation of the fundamental rights of the applicants as the right to claim proper pay and to be treated equally is enshrined in the Articles 14 and 16 of the Constitution of India and no stale action can result in arbitrary exercise of the power. In the present case, the denial of financial upgradation under MACP Scheme is therefore, violative of Article 14 of the Constitution besides other instructions of the Railway Board and also contrary to the MACP Scheme. In the above circumstances, the orders passed by the Tribunal cannot be upheld and it requires interference by this Court.

12. Likewise, as regards claim of the applicant, i.e. petitioner in W.P.No.40482 of 2016 is concerned, the details of his service are extracted herein below.

W.P.No.40482 of 2016

Post	Date of promotion	V-PC	VI-PC	Grade Pay
Constable	5.12.1982	3050-4590	5200-20200	2000
Mali	19.06.1996	2550-3200	5200-20200	1800
Helper Gr.I	22.03.1999	2550-3200	5200-20200	1800
Technician Grade III	18.08.2005	2650-4000	5200-20200	1900
Technician Grade II	09.02.2010	4000-6000	5200-20200	2400

13. A perusal of the above tabular statement would reveal that after being medically decategorized, the applicant was posted to a lower pay scale than that of initially appointed grade. In such circumstances, any promotion earned below the Grade Pay, i.e. Rs.2000 attached to the original appointment, has to be ignored and cannot be considered as that of promotion for the purpose of grant of financial benefits under MACP Scheme. If such promotions earned below the Grade Pay granted to the original post and was ignored, then it is admitted position that the applicant has earned only two promotions in his entire career and therefore, he is also entitled to III Financial upgradation under MACP Scheme.

14. In view of the above discussion, we are of the view that the orders passed by the learned Tribunal in the subject Original Applications are liable to be set aside and

accordingly, the same are set aside. Consequently, the Original Applications are allowed. The official respondents are directed to pass appropriate orders, granting the relief as sought for by the applicants, within a period of three months from the date of receipt of a copy of this order.

In the result, all the Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Director
Union of India, ,
Pay Commission-IV,
Railway Board, New Delhi.
2. General Manager (A),
Integral Coach Factory,
Chennai - 600 038.
3. The Senior Personnel Officer/ WS,
Integral Coach Factory,
Office of the Chief Personnel Officer,
Personnel Branch,
Chennai - 600 038.
4. Secretary to Government of India,
Ministry of Personnel,
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(Department of Personnel & Training),
New Delhi.
5. The Registrar,
Central Administrative Tribunal,
Chennai Bench.
6. Senior Assistant Financial Advisor
Furnishing Administration,
O/o financial Advisor and chief Accounts officer,
Integral coach factory,
Chennai 600 038.

7. The Deputy Secretary to Government of India
Ministry of Personnel,
Public Grievances and Pensions,
(Department of Personnel and Training),
New Delhi.

8. The Senior Personnel Officer (WS)
Integral Coach Factory,
Office of the chief personnel officer,
Personnel Branch,
Chennai-600 038.

+4ccs to Mr.Giridhar & Sai, Advocate, Sr.21194 to 21197
+4ccs to Mr.V.Haribabu, Advocate, Sr.20626 to 20629.

W.P.Nos.38326 to 38328 of 2015
and 40842 of 2016

nm(co)
rmp(03/05/17)



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