

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No.5237 of 2015

P.Sundaram .. Petitioner

-vs-

- 1.Union of India rep.by the Secretary
Ministry of Railways, Railway Board,
Government of India, New Delhi.
- 2.The General Manager,
Southern Railway, Park Town, Chennai-3.
- 3.The Financial Advisor & Chief Accounts Officer,
Southern Railway, Park Town, Chennai-3.
- 4.The Divisional Railway Manager,
Tiruchchirappalli Junction,
Southern Railway, Tiruchy.
- 5.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the fifth respondent made in O.A.No.1262 of 2011 dated 31.10.2014, quash the same and consequently direct the respondents 1 to 4 to step up the pay of the petitioner on par with the juniors who were extended with MACP to higher Grade Pay of Rs.4,800/- with effect from 01.09.2008 and to extend all the consequential service and pecuniary benefits.

For Petitioner	: Mr.L.Chandrakumar
For Respondents	: Mr.S.R.Sundaram for R1, R2 and R4

Mr.P.T.Ramkumar for R3

ORDER
(Made by THE HON'BLE ACTING CHIEF JUSTICE)

The petitioner herein, has filed an application before the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.1262 of 2011 seeking to quash the Circular issued by the Government of India, Ministry of Railways (Railway Board), New Delhi, in RBE No.101/2009 dated 10.06.2009, relating to Modified Assured Career Progression Scheme (MACPS) for Railway Employees and the order issued to the petitioner denying him MACP benefits, and also for a direction to extend two MACPs to the petitioner with effect from the eligible dates on par with his junior, on the ground that the petitioner is without promotion for more than two decades.

2.The application of the petitioner was taken up by the Tribunal, with some other applications having the similar prayer.

3.It was put forth before the Tribunal on behalf of the petitioner herein that his juniors were granted the grade pay of Rs.4,800/- and Rs.5,400/- whereas the petitioner has been denied the said grade pays. It was contended that since the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 (pre-revised) have been merged, the petitioner is entitled to get the grade pay of Rs.4800/- and Rs.5400/- respectively, as second and third financial upgradations under the MACP scheme, as per the illustration given in the Railway Board Circular in RBE No.101/2009 dated 10.06.2009.

4.It was argued on behalf of the Department before the Tribunal that the petitioner has earned two promotions earlier from the level of direct entry and as such, he is entitled to the third financial upgradation to the grade pay of Rs.4,600/- only on completion of 30 years of service. It was also submitted that financial upgradation under MACP scheme is purely personal and as such there shall be no additional financial upgradation for the senior employees on the ground that junior employee in the grade has got higher pay / grade pay under the MACPs.

5.On consideration of the facts and circumstances of the case, the Tribunal dismissed the original application on the ground that the petitioner has not made out any case for grant of relief, by order dated 31.10.2014.

6.Challenging the order passed by the Tribunal, the present writ petition has been filed.

7.The learned counsel for the petitioner has submitted that as per the VI Pay Commission Recommendations, the grades viz.Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and

replaced with a common pay band of Rs.9300-34800 with the grade pay of Rs.4200/-; likewise, the grades Rs.6500-10500 and Rs.7450-11500 were merged and replaced with a pay band of Rs.9300-34800 with the grade pay of Rs.4600/-. Similarly, there were merger and upgradation of the posts in the successive Pay Commissions, due to which, the promotions earned by the petitioner have been nullified. He further submitted that after joining service in the year 1979, the petitioner has availed only one promotion in the year 1983 and the rest of the promotions extended in 1993 and 2003 have been nullified by the VI Central Pay Commission's recommendations, whereas the juniors of the petitioner were upgraded to the pay band of Rs.9300-34800 with a grade pay of Rs.4800/- through MACP from 01.09.2008. Stating so, the learned counsel for the petitioner has submitted that the Tribunal has erred in dismissing the application, without setting right this anomaly.

8.The learned counsel for the respondents 1 to 4 / Railways have submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order, rejecting the case of the petitioner, and hence the same does not require any interference in the hands of this Court.

9.Heard the learned counsel on either side and perused the materials available on record.

10.Paragraph-9 of the Circular issued by the Railways in RBE No.101/2009 dated 10.06.2009, states that no stepping up of pay in the pay band or Grade Pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under the MACP Scheme. Further, Clause-20 of the Annexure to the MACP Scheme states that financial upgradation under the MACPs shall be purely personal to the employee and shall have no relevance to his seniority position and as such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay / Grade Pay under the MACPs. It also appears that as per the recommendations of VII Pay Commission, which has been accepted by the Government, seniority of the posts within a cadre will be determined on the basis of the grade pay allowed for the said post whereas the higher grade pay to an employee under MACP scheme is purely on personal basis. Further, the Tribunal has relied upon a Full Bench decision of the Central Administrative Tribunal at Ernakulam, in O.A.No.1103 of 2011 dated 22.03.2013, in which it has been held that the relief sought by the incumbents therein is only with reference to financial upgradation which has been uniformly declined by various Benches of the Tribunal and also the Apex Court. The Full Bench of the Tribunal has discussed the matter in proper perspective and held that Clause-20 of the MACP Scheme is valid and legal and in view of the same, the incumbent is not entitled

to step up his pay on par with his juniors, as financial upgradation under the MACP scheme is purely personal to the employees and the seniority has no role to play.

11.Relying upon Paragraph-9 of the Circular issued by the Railways in RBE No.101/2009 dated 10.06.2009, Clause-20 of the Annexure to the MACP Scheme and the Full Bench decision of the Tribunal (stated supra), the Tribunal has come to the conclusion that the petitioner herein is not entitled to the relief prayed for, which we are not inclined to interfere.

12.It is the contention of the petitioner that his juniors were extended with the benefit of MACP to the grade pay of Rs.4800/- and hence denying the said benefit to the petitioner is against the principles laid down under Fundamental Rules 22. In this respect, we are of the view that the rule provision of FR-22 will come into play only when promotions are involved and not in respect of financial upgradations under the MACP, which is personal to the employees and distinctly different from 'promotion'. In the case of cadre promotions, relative seniority of employees will come into play and the consequent anomaly of juniors drawing more pay may arise, but in the upgradation granted under the MACP Scheme, seniority has no role and therefore the fundamental rules providing for stepping up of pay, have no application. Hence, it cannot be stated that denial of the benefit of MACP to the grade pay of Rs.4800/- to the petitioner, is against the principles laid down under Fundamental Rules 22.

13.It also appears that the Department has admitted that eligible applicants would be granted financial upgradation under the 3rd MACP at the appropriate time as per the Scheme. Hence, the petitioner herein also would get financial upgradation at the appropriate time as per law.

14.With the above observations, the writ petition stands dismissed. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of India,
Ministry of Railways, Railway Board,
Government of India, New Delhi.

2.The General Manager,
Southern Railway, Park Town, Chennai-3.

3.The Financial Advisor & Chief Accounts Officer,
Southern Railway, Park Town, Chennai-3.

4.The Divisional Railway Manager,
Tiruchchirappalli Junction,
Southern Railway, Tiruchy.

5.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Dr.S.R.Sundaram Advocate, S.R.No.54664

+1cc to Mr.L.Chandra kumar, Advocate, S.R.No.54638

W.P.No.5237 of 2015

RJ(CO)
GN(10/09/2018)



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