

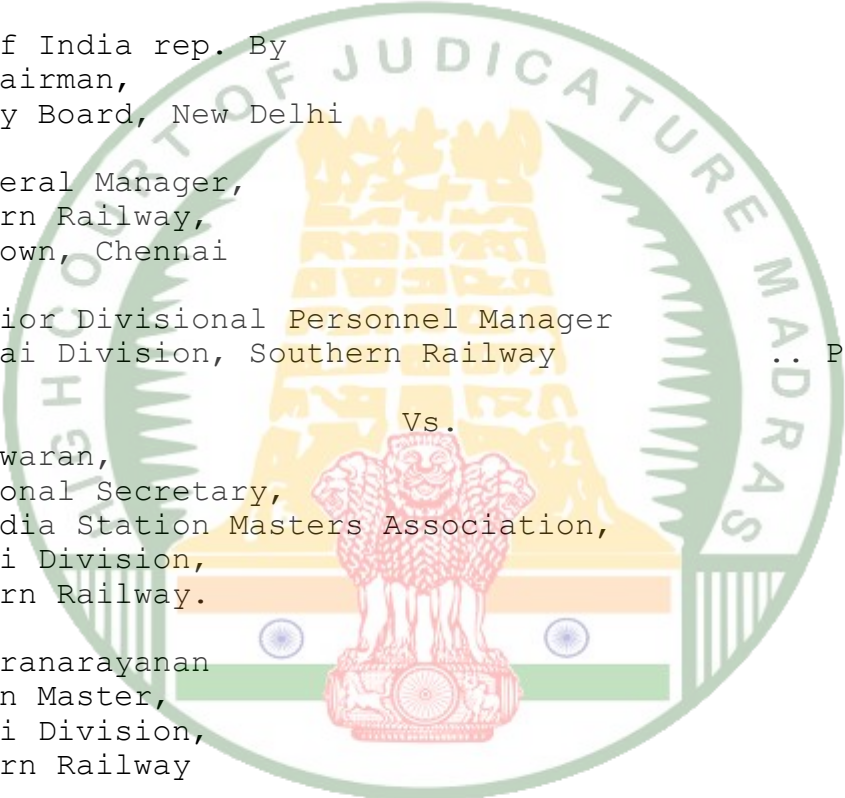
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2019

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THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.RAJAMANICKAM

W.P.No.14269 of 2018 and
W.M.P.No.16862 of 2018

- 
1. Union of India rep. By
The Chairman,
Railway Board, New Delhi
2. The General Manager,
Southern Railway,
Park Town, Chennai
3. The Senior Divisional Personnel Manager
Madurai Division, Southern Railway ... Petitioners
- Vs.
1. P.Rajeswaran,
Divisional Secretary,
All India Station Masters Association,
Madurai Division,
Southern Railway.
2. M.Sankaranarayanan
Station Master,
Madurai Division,
Southern Railway
3. N.Venkatesan,
Station Master,
Madurai division,
Southern Railway.
4. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai ..Respondents
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Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the 4th Respondent / Tribunal relating to the Impugned Order of the 4th Respondent / Tribunal in O.A.No.1764 of 2013 dated 01.02.2017 and quash the same.

For Petitioners : Ms.A.Sri Jayanthi

For Respondents : Mr.K.C.Vinodh for
Mr.L.Chandrakumar for R1 to R3
R4 Tribunal

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2. The Petitioners have focused the instant Writ Petition praying for seeking to call for the records of the 4th Respondent / Central Administrative Tribunal, Madras Bench pertaining to the Impugned Order dated 01.02.2017 made in O.A.No.1764 of 2013.

3. According to the Petitioners, the 4th Respondent / Tribunal had passed the impugned order dated 01.02.2017 in O.A.No.310/001764/2013 whereby and whereunder the present Writ Petitioners [Respondents therein] were directed to review their decision in granting of Modified Assured Career Progressive Scheme in respect of the Respondents 2 and 3 [Applicants 2 and 3 therein] and grant upgradations from the dates from which they became eligible and refix the pay accordingly within a period of two months.

4. The Petitioners take a plea that MACP Scheme is a policy decision of the Government, which provides for three financial upgradations to the employees, who are genuinely stagnated and that the Respondent Nos.2 and 3 except the 1st Respondent were granted financial upgradations under MACP Scheme [Modified Assured Career Progression] and when it was noticed that the MACP was granted to him erroneously, it was decided to postpone, withdraw the MACP granted to them and to recover the over payment involved in the erroneous upgradation. Furthermore, the show cause notices were issued to the Respondents 2 and 3 as well as the other employees, who were also granted the financial upgradations together with the Respondents 2 and 3 herein. Indeed, the representations furnished by the employees [including the Respondents 2 and 3] were considered and the same were disposed of by rejecting the 'Revision of Pay' and 'Recovery of Over payment'. Assailing the order passed by the 3rd Petitioner, the Respondents 2 and 3 had projected O.A.No.1764 of 2013 before the Tribunal.

5. The Petitioners assail the validity, illegality and the correctness of the order dated 01.02.2017 in O.A.No.1764 of 2013 passed by the 4th Respondent / Tribunal on the basis that the

said order is ex facie an illegal, contrary unjustifiable one, besides the same suffers from an 'Error Apparent on the Face of Record' and as such, the same is liable to be set aside. The contention of the Petitioners is that the 4th Respondent / Tribunal had failed to appreciate MACP Scheme and the Railway Board's Rules in full, which had resulted in passing of the Impugned Order in O.A.No.1764 of 2013.

6. In the Writ Affidavit, the Petitioners had averred that the 5th Central Pay Commission in its report had made certain recommendations relating to the Assured Career Progression [ACP] Scheme for the Central Government Civilian employees in all Ministries / Departments. As a matter of fact, the Petitioners come out with a plea that 'ACP Scheme' needs to be viewed as 'Safety net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Furthermore, after consideration, it was decided by the Ministry of Railways to introduce the ACP Scheme recommended by the V Central Pay Commission with certain modifications.

7. It comes to be known that the Railway Board had issued a Letter bearing No.PC-V/99/I/I/1 dated 10.10.1999 and wherein at Paragraph No.3 reads as under:

'3 Group 'B' 'C' and 'D' Services / Posts and isolated posts in Group 'A' 'B' 'C' and 'D' Categories

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt also the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated 11.09.1997 in relation to Group 'C' and 'D' employees) entered into with the Staff side of the National Council [JCM] under the ACP Scheme to Group 'B', 'C' and 'D' employees, on completion of 12 years and 24 years of regular service respectively [subject to condition no.4] Isolated posts in Group 'A' 'B' 'C' and 'D' Categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees [including those with temporary status], substitutes, ad-hoc and contract employees shall not qualify for benefits under the ACP Scheme shall, however, be subject to the conditions No.4 mentioned in the Railway Board Circular dated 10.06.2009'.

8. Apart from the above, the Condition No.4 in respect of First Financial upgradation under ACP Scheme says that :

'it shall be followed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of employees not found fit or due to departmental proceedings etc., this would have consequential effect on the second upgradation which would also get deferred accordingly.'

9. It is the case of the Petitioners that the VI Central Pay Commission in Paragraph No.61.5 of its report had recommended 'Modified Assured Career Progression Scheme' and in terms of the recommendations, financial upgradation will be available for the next higher grade whenever an employee had completed 12 years of continuous service in same grade. But not more than two financial upgradations shall be given for the entire career, as was provided in the previous scheme and the scheme will also be available to all posts belonging to Group 'A' whether isolated or not. However, organised Group 'A' Service will not be covered under the Scheme.

10. The Learned Counsel for the Petitioners refers to relevant portion of the Railway Board's Circular dated 10.06.2009 in implementing the recommendations, which runs as under:

'The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPs and has accepted the same with further modification to grant three financial upgradations under the MACPs at intervals of 10,20 and 30 years of continuous regular service. The details of the MACP Scheme and conditions for grant of financial upgradations under the scheme are given below;

Modified Assured Career Progression Scheme (MACPs)
There shall be three financial upgradations under the MAPs, counted from the direct entry grade on completion of 10,20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay'.

11. The substance of the Petitioners stand is that the Respondent Nos.2 and 3 had not completed 10 years of service from the last promotion / financial upgradation or 20/30 years of total service from the date of their appointment to entitle

them for 2nd and 3rd Financial upgradations. In short, the financial upgradations given to the Respondents 2 and 3 were treated as an erroneous one in terms of the Railway Board's Letter No.PC-V/2009/ACP/2 dated 29.12.2011 and it was determined to cancel / postpone financial upgradations made under MACPS to the Respondents 3 and 4.

12. Resting on the orders in O.A.No.519 of 2010 filed by one N.Subramanian and others and in compliance of the order of the Tribunal, the Railway Board had issued a Letter No.PC-V/2010/CC/10SR dated 17.06.2010, which clearly explained the provisions of MACPS.

13. A strenuous plea is taken on behalf of the Petitioners that when the Petitioners found that the respondents 2 and 3 were granted MACPs erroneously, they were issued with a show cause notice in adherence to the Principles of Natural Justice and after considering their representations, the Petitioners had issued the revised pay treating MACPS as an erroneous one and commenced the proceedings for the recovery of over payment.

14. The Learned Counsel for the Petitioners proceeds to point out that the 2nd Respondent's 3rd Financial upgradation granted from 01.09.2008 was postponed to 20.04.2011. In respect of 3rd Respondent / N.Venkatesan, III Financial upgradation granted from 01.09.2008 was cancelled. In short, the financial upgradation granted erroneously was postponed in terms of the letters of the Railway Board and in respect of the Respondents 2 and 3, the same was cancelled for the reason that without being not completed ten years of service from their last promotion or 30 years of total service from the date of their appointment as on 01.09.2008.

15. The Learned Counsel for the Petitioners brings it to the notice of this Court that the 2nd Respondent [M.Sankaranarayanan] was promoted as Station Master Grade I from 18.10.2005 with Grade Pay of Rs.4600/- and he was granted III Financial upgradation from 01.09.2008, which was found erroneous because of the reason that he had computed 10 years of service from his last promotion on 18.10.2005 / financial upgradation of 30 years of service from the date of his appointment as on 15.03.1981.

16. In regard to 3rd Respondent [M.Venkatesan] he was promoted as Station Master Grade II from 20.04.2007 with grade Pay of Rs.4,200/- and then he was granted II^I Financial upgradation from 01.09.2008, which was found erroneous because of the reason that he had not completed ten years of service from last promotion i.e., 20.04.2007 or 30 years of qualifying service from the date of his appointment as on 01.09.2008 and

the same was annulled by the 3rd Petitioner. Thereafter, the 3rd Respondent was given III Financial upgradation from 16.09.2008 with grade pay of Rs.4,800/- in view of interim orders passed by the 4th Respondent / Tribunal in later, O.A.No.1671 of 2016 though the same was cancelled earlier, since he had not completed ten years from the date of his last promotion (or) financial upgradation of 30 years from the date of his appointment, i.e., 26.06.1986. In fact, in respect of Respondents 2 and 3, recoveries were ordered and the same runs as under:

Name of the 3 rd and 4 th Respondents	Gross Salary Payable	Total amount OP	No. of Installments allowed	Amount of Recovery from salary
M.Sankaranarayanan	Rs.54076	Rs.65634	27	Rs.2,500
N.Venkatesan	Rs.51797	Rs.89556	36	Rs.2,500

17. Per contra, it is the submission of the Learned Counsel for the Respondents 1 to 3 that the 4th Respondent / Tribunal had failed to appreciate and take note of the ingredients of Paragraph No.28 of MACP Scheme, which clearly enjoins that MACP benefits shall be granted on completion of 10 years from the date of previous upgradation / promotion. In effect, it is the emphatic plea of the Respondents that based on wrong appreciation of tenor and spirit of 'MACP Scheme', the Petitioners had committed an error and accordingly, the Respondents filed O.A.No.310/001764/2013 on the file of the 4th Respondent / Tribunal seeking to call for the records pertaining to the impugned order dated 15.11.2013 and to direct the Respondents therein [Petitioners in the present Writ Petition] to uphold the upgradations to the grade pay of Rs.4,600/- and to the grade pay of Rs.4,800/- both effective from 01.09.2008. In this connection, the Learned Counsel for the Respondents cites the Division Bench order of this Court dated 06.09.2018 in W.P.31570 of 2017 and W.M.P.No.34693 of 2017 between Union of India rep. by the General Manager, Southern Railway, Park Town, Chennai - 3 and Three others V. Vimala Ramadoss and another wherein at Paragraph Nos.3 and 4, it is observed as under:

'3. On going through the order of the Central Administrative Tribunal, Madras Bench, it is noticed that the learned counsel for the petitioners-Southern Railway has stated before the Tribunal that there was no objection for passing orders to the effect that recovery shall not be effected with regard to the excess amount paid to the first respondent. In view of the categorical statement made before the Tribunal, the O.A. came to be disposed of in terms of the statement.

4. In view of the categorical statement before the

Central Administrative Tribunal in relation to the above prayer by the learned counsel for the petitioners-Southern Railway, we are of the opinion that no case is made out to interfere with the order of the Central Administrative Tribunal'.

and ultimately the Writ Petition and Writ Miscellaneous Petition were dismissed without costs. Also, the Division Bench of this Court on 06.09.2018 in W.P.No.31573 of 2017 between Union of India Rep. By The General Manager, Southern Railway, Park Town, Chennai - 600 003 and two others V. P.Vijayabaskaran and another, had passed similar orders.

18. Be that as it may, this Court considering the entire gamut of the facts and circumstances of the present case in an encircling manner and also after meticulous scrutiny of the Impugned Order dated 01.02.2017 in O.A.No.310/001764/2013 passed by the 4th Respondent / Tribunal comes to an consequent conclusion that the view taken by the 4th Respondent / Tribunal in directing the Petitioners / Respondents to review their decision in regard to the grant of MACP in respect of Applicants 2 and 3 and grant upgradations from the dates on which they are eligible to refix the pay accordingly within a period of two months, does not suffer from any legal infirmities in the eye of Law. Looking at from any angle, the present Writ Petition fails. In fine, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Before parting with the case, the concerned authority shall also look into the order dated 06.09.2018 in W.P.No.31570 of 2017 passed by this Court and to pass a reasoned speaking order on merits in qualitative and quantitative terms, of course, after providing necessary opportunity of hearing to the Respondents 2 and 3, after adhering to the principles of natural justice. It cannot be gainsaid that the said order would be passed by the authority concerned in a fair, just, unbiased, dispassionate manner and also uninfluenced and untrammelled with any of the observations made by this Court.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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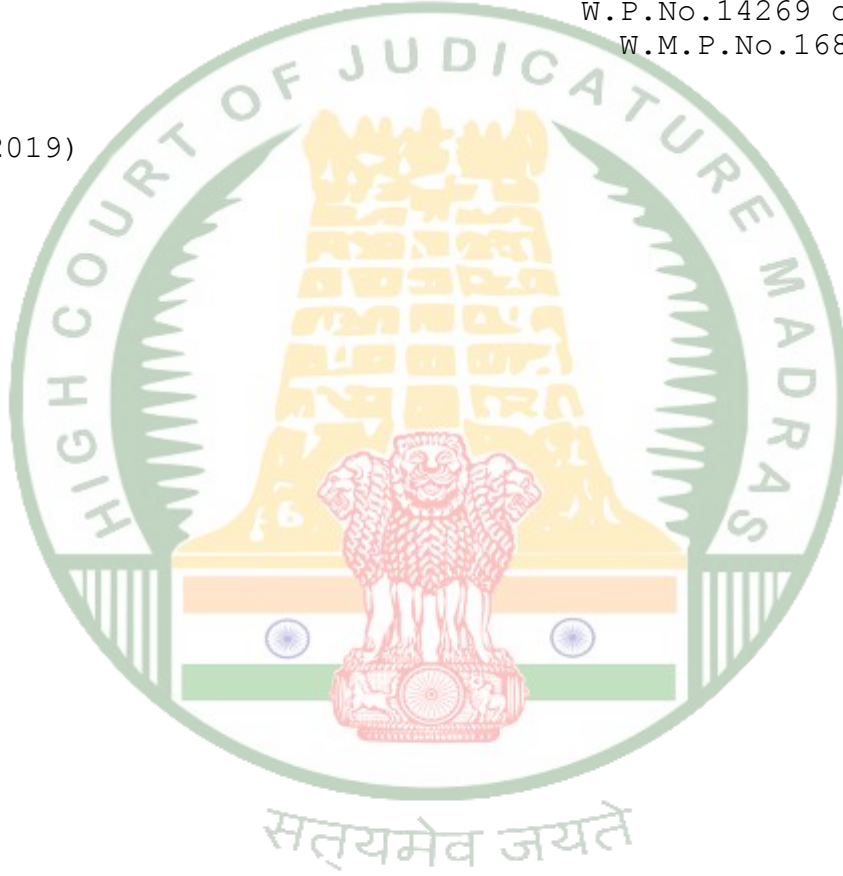
To

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

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No. 12992
+1cc to Mr.A.Sri Jayanthi, Advocate, S.R.No. 13570

W.P.No.14269 of 2018 and
W.M.P.No.16862 of 2018

BR(CO)
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