

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4398 of 2020

Sanjay Kumar Son of Late Shri Shambhu Prasad Sinha Resident of Flat No.406, Ramdutt Ashram Apartment, Sadhnapuri, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The General Manager (Personnel), East Central Railway, Hajipur.
3. The Divisional Railway Manager, Danapur Division, Danapur.
4. The Senior Divisional Personnel Officer, Danapur Division, Danapur.
5. The Senior Divisional Finance Officer, Danapur Division, Danapur.
6. The Senior Divisional Operating Manager, Danapur Division, Danapur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22432 of 2019

1. The Union of India, though General Manager, E.C. Railway, Hajipur, Patna.
2. The General Manager, (Personel), East Central Railway, Hajipur.
3. The Divisional Railway Manager, Danapur Division, Danapur.
4. The Senior Divisional Personnel Officer, Danapur Division, Danapur.
5. The Senior Divisional Financial Manager, Danapur Division, Danapur.
6. The Senior Divisional Operating Manager, Danapur Division, Danapur.

... .. Petitioner/s

Versus

Sanjay Kumar, Son of Shri Shambhu Prasad Sinha, Resident of Flat No. 406, Ramdutt Ashram Apartment Sadhnapuri, Gardanibagh, Patna. Employed at Patna Jn. Danapur Division, E.C. Railway, Hajipur, Bihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 4398 of 2020)

For the Petitioner/s : Mr.Sanchay Srivastava
Mr.Sushant Srivastava &
Mr.Ashish Kumar Palti, Advocates
For the Respondent/s : Mr.Subodh Kumar Jha, Sr. CGSC
Mr.Pranav Kumar Jha, Adv. &
Mr.RamTujabh Singh, Adv.

(In Civil Writ Jurisdiction Case No. 22432 of 2019)

For the Petitioner/s : Mr.K.N. Singh, ASG
Mr.Subodh Kumar Jha, Sr. CGC
For the Respondent/s : Mr.Sanchay Srivastava



Mr.Sushant Srivastava &
Mr.Ashish Kumar Palti, Advocates

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 31-08-2024

Re : C.W.J.C. No. 4398 of 2020

In the instant petition, petitioner has assailed the order dated 29.01.2019 passed by Central Administrative Tribunal in O.A. No. 637 of 2015.

2. The matter was heard from time to time. On 10.04.2024 and 01.05.2024 we have passed the following orders :

10.04.2024

“Respondents-Union of India are hereby directed to clarify with reference to Official Memorandum dated 05.04.2021 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, with reference to decision. It is necessary to reproduce extract of the issue and decision in the Official Memorandum dated 05.04.2021 and it reads as under:

“Item No.9:Employees who got one promotion or 1st ACP prior to 01.09.2008 and have completed over two decades of service without benefit of promotion may be granted third upgradation



under the MACPS on 01.09.2008 (Para 12 of Minutes of the meeting of Joint Committee held on 27.07.2012).

Decision: As per the MACPS guidelines, there shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively, or after 10 years of continuous service in the same Grade Pay or Pay Level in Pay Matrix, whichever is earlier. Thus, those employees who got either one promotion or 1st ACP before 01.01.2006 and who did not earn any promotion or 2nd ACP during 1.1.2006 to 31.08.2008, are eligible for 2nd MACP on or after 1.9.2008 (i.e. due on completion of 20 years) and 3rd MACP after 30 years of service or 10 years in the same Grade Pay/Pay Level, as the case may be, if found otherwise eligible. Hence, there is no ground for grant of 3rd MACP straight away on 1.9.2008, without the employee earning 2nd MACP, as per provisions of the MACPS. Therefore, the request of the Staff Side cannot be acceded to and the item is treated as closed.”



2. In the aforementioned decision, for entitlement of MACP with reference to MACP Scheme read with reference to completion of 10, 20 and 30 years of service respectively, or after 10 years of continuous service in the same Grade Pay or Pay Level in Pay Matrix, whichever is earlier. In this regard for the purpose of extending MACP Grade Pay or Pay Level in Pay Matrix is required to be taken or not? be apprised with reference to the fact that petitioner has earned ACP on 28.09.2000.

Thereafter, he has earned promotion to the post of Senior Passenger Guard on 08.06.2009. Thereafter, he has earned promotion to the post of Mail Express Guard on 10.08.2011. Prima facie reading of the cited “Decision” for the purpose of earning 2nd MACP one should not have earned promotion or 1st ACP before 1.1.2006 and who did not earn any promotion or 2nd ACP during the period from 01.01.2006 to 31.08.2008. Whereas the petitioner has earned promotion on 08.06.2009, i.e., after 31.08.2008. Therefore, respondents-Union of India have to apprise in the present matter to the extent of whether the petitioner is entitled to 2nd MACP and 3rd MACP or not?

3. Re-list these matters on 01.05.2024.”

01.05.2024

“Respondents could not apprise with reference to the query made by this Court in the order dated 10.04.2024 in particularly, how to examine Pay Level in Pay Matrix in the light of



Official Memorandum dated 05.04.2021 in which it has been cited 'Grade Pay or Pay Level in Pay Matrix'. In other words, for the purpose of extending MACP either Grade pay or Pay Level in Pay Matrix is required to be taken note of. The petitioner has entered into Grade Pay of Rs. 4,200/- at one point of time whether that would be the criteria or Pay Level in Pay Matrix in respect of petitioner's case is concerned how to take the relevant date with reference to Pay Level in Pay Matrix be made known by the official respondent on the next date of hearing, failing which adverse orders would be passed against Respondents. The concerned official who is well conversant with the matter shall be present in the Court and assist the Respondent's counsel on the next date of hearing.

2. Re-list this matter on 15.05.2024.”

3. Thereafter, we have noticed that identical matter was pending consideration before the Hon'ble Supreme Court in curative petition vide Diary No. 14648 of 2024 (Union of India & Ors. Vs. Surendra Kumar). Resultantly, we adjourned the matter till disposal of the aforementioned Diary No. 14648 of 2024 (Union of India & Ors. Vs. Surendra Kumar). On 16.07.2024, Hon'ble Supreme Court dismissed the Review Petition (c) _____ of 2024 {Diary No. 14648 of 2024 (Union of India & Ors. Vs. Surendra Kumar)} in Special Leave Petition (Civil) No. 6570 of 2018.



4. In light of the aforementioned development, petitioners are entitled to have the benefit of their claim of M.A.C.P. read with Grade-Pay and financial up-gradation in the light of co-ordinate Bench decision dated 28.02.2017 passed in CWJC No. 6398 of 2016 read with Petition(s) for Special Leave to Appeal (c) No (s). 6570 of 2018, arising out of CWJC No. 6398 of 2016 decided on 28.02.2017, which was dismissed along with connected petition on 07.11.2023.

5. Accordingly, petitioners have made out a case to interfere with the order passed by Central Administrative Tribunal and the order dated 29.01.2019 passed by Central Administrative Tribunal in O.A. No. 637 of 2015 is set aside. The concerned respondents are hereby directed to extend service and monetary benefits to the petitioner in the light of co-ordinate Bench decision dated 07.11.2023 and Judgment in Spl. Leave Petition (Civil) No. 6570 of 2018 and order dated 16.07.2024 passed in Review Petition (c) _____ of 2024 {Diary No. 14648 of 2024 (Union of India & Ors. Vs. Surendra Kumar)} in Special Leave Petition (Civil) No. 6570 of 2018. The concerned respondents are directed to extend the aforementioned benefits to the petitioner within a period of three months from the date of receipt of this order.



6. The writ petition stands allowed.

7. At this stage, learned counsel for the petitioner submits that petitioner has attained the age of superannuation and retired from service. It is made clear that retirement would not be a hurdle insofar as extending the aforementioned benefit claimed by the petitioner. It is ultimately service and monetary benefits which are required to be extended to the petitioner from the date he was due for it.

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8. In the light of the order passed in C.W.J.C. No. 4398 of 2020, the present C.W.J.C. No. 22432 of 2019 (Union of India Vs. Surendra Kumar) stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2024
Transmission Date	N/A

