

Madras High Court**The Government Of India vs The Registrar on 3 April, 2014**

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 3-4-2014
CORAM
THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR

AND
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
WRIT PETITION Nos.1078, 10046 to 10049 and 18262 of 2012
and

M.P.Nos.1, 1, 1, 1, 1 and 1 of 2012

- 1.The Government of India
Ministry of Personnel
Public Grievances and Pensions
Represented by its Secretary
Department of Personnel and
Training
North Block, New Delhi.
- 2.The Financial Adviser and
Chief Accounts Officer
Southern Railway Headquarters
Park Town, Chennai.

.. Petitioners in
WP 1078/2012

- 3.The Union of India
Represented by the Secretary
Ministry of Railways
Railway Board, New Delhi.
- 4.The General Manager
Southern Railway
Park Town, Chennai 3.
- 5.The Financial Adviser &
Chief Administrative Officer
Southern Railway
Park Town, Chennai 600 003.

.. Petitioners in
WP 10046, 10047,
10048, 10049 and
18262/2012

vs

- 1.The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.

.. 1st Respondent in

WP 1078, 10046, 10047, 10048, 10049 and 18262/

2.N.Subramanian

3.V.Rangarajan

4.V.Palanichamy

5.S.Mahalingam

6.I.Francis Joseph

7.R.Prakash

8.Grace Nelson

9.C.Selvin Jeyapandi

10.R.Kannian

11.P.Valarmathi

12.A.Anandaraj

13.M.Balasundaram

14.V.Kumaravelu

15.D.Raju

16.R.Ganesah

17.M.Sethuandiappan

18.K.Sridhar

19.K.Jothivel

20.D.Arulvani

21.B.Raghavan

22.K.C.K.Sampathkumar

23.Mumtaz Mohamed Nazim

24.S.Raman

25.Jebakumari Gunasekaran

26.R.Sridhar

27.P.Balakannan

28.S.Ganesan

29.Mariaa Seelan .. Respondents 2 to 29 in WP 1078/2012

30.R.Elankovan .. 2nd Respondent in WP 10046/2012

31.Esther Chelladurai

32.K.Poongothai

33.Umadevi Elangovan

34.S.Amal Raj

35.L.Lalitha

36.R.Selvarani

37.J.Revathi

38.Rose Mary Miranda

39.V.Sekar

40.A.Viswanathan

41.K.Venkatramani

42.P.Subramanian .. Respondents 2 to 13 in WP 10047/2012

43.R.Venkataramanan

44.M.K.Loganathan

45.Alphonse Michael

46.Lalitha Sundar

47.Jeshintha Joseph

48.J.Nagarajan

49.Nalini Padmanabhan

50.R.Rangarajan

51.P.Jayanthi

52.R.Bhaskaran

53.Shyamala Mahadevan .. Respondents 2 to 12 in WP 10048/2012

54.G.Sivakumar

55.G.Balaji

56.V.Kannan

57.K.V.Krishnan

58.S.R.Gopinath

59.P.Ramanathan

60.J.Mary Mallika

61.S.Radhakrishnan

62.S.Shanthi

63.R.Kalyanasundaram

64.P.Malathimani

65.T.G.Thayalan .. Respondents 2 to 13 in WP 10049/2012

66.R.K.V.Ravindran

67.R.Sridhar

68.Mohanraj Ebenezar

69.N.K.Joseph Gnanaolivo

70.V.Gunasekaran

71.R.Mohankumar

72.V.Padmanabhan

73.P.Murali

74.K.Vijayalakshmi

75.V.S.Muralidhar

76.Hemalatha Unnikrishnan

77.J.Umesh Ravi Devaram .. Respondents 2 to 13 in WP 18262/2012 Writ petitions filed under [Article 226](#) of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records of the first respondent in O.A.No.1075, 993, 1009, 1008, 1007 and 1063 of 2010 including the orders dated 5.8.2011, 7.10.2011 and 21.11.2011, respectively and quashing the same. For Petitioners : Mr.V.Radhakrishnan Senior Counsel for Mr.V.G.Suresh Kumar For Respondents : R1 Tribunal Mr.V.Prakash Senior Counsel for Mrs.S.Kala for RR2 to 29 in WP 1078/12, for R2 in WP 10046/12, for RR3, 4 and 6 to 13 in WP 10047/12, for RR2 to 10 and 12 in WP 10048/12, for RR3 to 5 and 7 to 13 in WP 10049/12 and for RR2 to 13 in WP 18262/12 COMMON ORDER (Order of the Court was made by M.SATHYANARAYANAN, J.) The official respondents in O.A.Nos.1075, 993, 1009, 1008, 1007 and 1063 of 2010 respectively, had filed these writ petitions challenging the final orders passed by the Central Administrative Tribunal, Madras Bench, in the above said Original Applications.

2.O.A.Nos.1063 and 1075 of 2010 were filed by the respective private respondents in W.P.Nos.1078 and 18262/2012 seeking to declare Clause 10 and para 20 of Annexure I of Office Memorandum No.35034/3/2008 Estt (D) dated 19.5.2009, as ultra vires and to quash the order dated 17.6.2010, passed by the Railway Board Service, New Delhi, with a consequential prayer for re-fixation of the pay by granting financial upgradation on the basis of length of service in the post of SO/Sr.SSO/Sr.ISA with consequential benefits. O.A.Nos.993, 1007, 1008 and 1009 of 2010 were filed by the respective private respondents in W.P.Nos.10046 to 10049/2012 seeking to quash the Office Memorandum dated 5.11.2009, issued by the third respondent/third petitioner herein viz. The Financial Adviser and Chief Administrative Officer, Southern Railway, Chennai, and to direct the respondents therein to extend the Grade Pay of Rs.5400/- with effect from the date, on which, their juniors were upgraded or with effect from 1.1.2006, with reference to their date of entry in the post of Senior Section Officers on the principle placing the Section Officers in the next higher grade carrying Grade Pay of Rs.4800/- in pay band PB-2 of Rs.9300-34800 that corresponds to the pre-revised pay scale of Rs.7450-11500, which places the posts of Section Officer and Assistant Accounts/Audit Officer in an identical pay scale, thus necessitating the upgradation of the latter category which were merged in the pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.5400/-, whichever is earlier.

3.The facts necessary for the disposal of these writ petitions, are as follows:

3(i) The original applicants in the above said Original Applications, who are arrayed as private respondents in these writ petitions respectively, had joined in the cadre of Accounts Clerks/Clerks Grade II and got three promotions to the cadre of Junior Accounts Assistants and Accounts Assistants and at the time of filing the Original Applications, were working as Senior Section Officers (Accounts)/Senior Inspector of Stores Accounts and were placed in the Pay Band II Rs.9300-34800/- with Grade Pay of Rs.4800/- as per V Central Pay Commission Recommendations. The private respondents had availed three promotions and therefore, they were not considered for financial upgradation under Modified Assured Career Progression (MACP) Scheme.

3(ii) The private respondents expressed views that persons, who were appointed as Junior Accounts Officer (Direct Recruits) and working as Senior Section Officer (Accounts), Senior Inspector of Stores Accounts and Senior Travelling Inspector of Accounts, and who were juniors to them, were considered for financial upgradation and they have been granted Grade Pay of Rs.5400/- and challenging the correctness of Clauses 10 and 11 and Paras 8 and 20 of Annexure I of MACP Scheme, O.A.No.519/2010 was filed before the Central Administrative Tribunal, Chennai Bench, and the Tribunal vide final order dated 26.4.2010, directed the respondents therein to consider and dispose of the representations and in compliance of the order, the Railway Board had considered the claim made

by the private respondents/original applicants, and rejected the same and therefore, they filed the above said Original Applications.

3(iii) The official respondents in their reply statement, took a stand that MACP Scheme came to be formulated as a "safety net" to deal with the problem of genuine stagnation and hardship faced by employees due to lack of adequate promotion and was introduced based on the recommendations made by the VI Central Pay Commission, and was also accepted by the Government of India.

3(iv) MACP Scheme envisages financial upgradation counted with reference to the direct entry grade of employees on completion of 10, 20 and 30 years of service and the original applicants, who had joined the service in the cadre of Accounts Clerks/Clerk Grade II, had earned three promotions and were placed in the Pay Band II of Rs.9300-34800/- with Grade Pay of Rs.4800/- as per VI Central Pay Commission Recommendations.

3(v) Insofar as the stand taken by the original applicants/private respondents herein that their juniors were considered for third upgradation and granted Grade Pay of Rs.5400/- as against the Grade Pay of Rs.4800/- given to them, it is the stand of the official respondents that the MACP Scheme contemplates merely placement on personal basis in the immediate higher Grade Pay/grant of financial benefits only and shall not amount to actual/functional promotion to the employee concerned and it is purely personal to the concerned employee and shall have no relevance to the seniority position and therefore, it is not open to the original applicants to make a complaint in that regard.

3(vi) The sum and substance of the stand taken by the official respondents, is that the original applicants had earned three promotions, whereas the persons, who have been conferred with a Grade Pay of Rs.5400/-, got stagnated and the conferment of such benefits is purely personal to them and has no relevance to the seniority position and hence stepping up of pay in the Pay Band or Grade Pay would be inadmissible to them.

3(vii) The Central Administrative Tribunal has considered the said issue and by placing reliance upon its earlier orders dated 29.12.20010, made in O.A.Nos.966 and 967/2009 respectively, found that the applicants in the above said original applications/private respondents herein, are similarly placed like that of the applicants in O.A.Nos.966 and 967/2009. The Tribunal also found that one T.V.Krishnan, Assistant Accountant, has been granted Grade Pay of Rs.5400/- with effect from 2.2.2010, by virtue of MACP Scheme and he is in the feeder category of Assistant Accountant, whereas the original applicants are in the promotional category of Section Officer, Inspector of Stores Accounts and Senior Section Officers and therefore, they are entitled to financial upgradation by fixing Grade Pay of Rs.5400/-. The Tribunal citing the said reasons, had allowed the original applications directing the official respondents/petitioners herein to grant revised pay to the applicants by extending the benefit of MACP Scheme in their favour by fixing their Grade Pay of Rs.5400/- from the date, on which, the said benefit was extended to their juniors and to disburse the accrued arrears if any, to the applicants within a period of four weeks from the date of receipt of copy of the respective order and aggrieved by the same, the present writ petitions are filed.

4.Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioners/official respondents, has drawn the attention of this Court to the Office Note dated 11.11.2013, written by the Department of Personnel and Training, Establishment (D), Government of India, wherein, the anomaly faced by the incumbents of the Accounts Department of Ministry of Railways, consequent to implementation of the MACP Scheme, was considered and it was opined that the instant anomaly brought forward by the referring Department (Ministry of Railways) cannot be attributed to the ACP/MACP policy, but due to faulty cadre structure and therefore, the referring Department may be advised to restructure the Accounts cadre to rectify the anomaly, and would contend that appropriate steps will be taken in that regard.

5.The fact remains that consequent to the implementation of the MACP Scheme, senior employees, who got promotion, are deprived of third MACP, whereas their juniors are availing the benefit of the same by getting Grade Pay of Rs.5400/-, but their seniors are getting Grade Pay of Rs.4800/- only. The Tribunal in the impugned orders passed in the Original Applications, has referred to its earlier orders

passed in O.A.Nos.966 and 967 of 2009, and following the same, has allowed the Original Applications.

6.The official respondents in the said Original Applications, aggrieved by the orders passed in O.A.Nos.966 and 967/2009, filed W.P.Nos.18611 and 18612 of 2011 and the Division Bench of this Court (N.P.V.,J. & M.S.N.,J.) has considered the issue in extenso and by placing reliance upon the judgment rendered by the Apex Court reported in (1989) 2 SCC 290 ([STATE OF ANDHRA PRADESH V. G.SREENIVASA RAO](#)), held as follows: "11. The appellants herein, under the guise of MACP scheme dated 19.05.2009 coupled with the clarification dated 09.11.2009, seeks to deprive the benefit of FR-22(1)(a)(i) to the private respondents and in the considered opinion of the Court, it is unsustainable as it violates equality and it also offends [Article 14](#) of the Constitution of India and the MACP scheme dated 19.05.2009 as well as the impugned order dated 03.08.2009 do not spell out any reason the applicability of FR-22(1)(a)(i), has excluded for the persons like private respondents who are ultimately aggrieved/affected.

12. The Government of India passed series of orders issuing clarification in respect of FR-22(I)(a)(i) and as per Clarification No.23(d), the pay anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation of such promotion in the revised scale. (emphasis supplied)

13. In the case on hand, the private respondents 4 to 26 in the original applications are admittedly juniors to the private respondents in these writ petitions and they did not qualify on time for getting their promotion and consequently got stagnated and on account of the same, they are not conferred with higher grade pay of Rs.5,400/-. The Tribunal has taken into consideration of the fact that admittedly the private respondents 4 to 26 did not pass the departmental tests on time and got stagnated at the level of Senior Accountants and since they have been conferred with higher grade pay of Rs.5,400/-, has rightly granted the said relief in their favour. It is to be pointed out at this juncture that the private respondents 4 to 26 in the original applications have not been put to any prejudice and what the Tribunal done was, merely stepped up the pay scale of the original applicants to that of the private respondents 4 to 26 and it is in tune with the principle of parity and equity enshrined in [Article 14](#) of the Constitution of India."

7.The point involved in these writ petitions, is similar to one raised in W.P.Nos.18611 and 18612/2011 filed by the Union of India, Represented by Secretary to Government, Ministry of Personnel, Public Grievances & Pension, (Department of Personnel & Training), North Block, New Delhi, and two others, wherein, this Court has upheld the orders passed by the Tribunal in O.A.Nos.966 and 967/2009, and dismissed both the writ petitions filed by the official respondents therein. The Tribunal has also placed reliance upon its earlier orders passed in the above said Original Applications, and granted the relief.

8.In the light of the reasons assigned above, this Court finds that there are no merits in these writ petitions.

9.In the result, these writ petitions are dismissed confirming the orders passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1075, 993, 1009, 1008, 1007 and 1063 of 2010, dated 5.8.2011, 7.10.2011 and 21.11.2011. No costs. Consequently, connected MPs are also dismissed.

(N.P.V., J.) (M.S.N., J.)
3-4-2014

Index: yes

Internet: yes

nsv

To:

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Central Administrative Tribunal

Madras Bench, Chennai 600 104.

2.The Secretary to Government of India

Ministry of Personnel
Public Grievances and Pensions
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Training
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N.PAUL VASANTHAKUMAR, J.

AND

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Dt: 3-4-2014