

INDIAN RAILWAYS TECHNICAL SUPERVISORS ASSOCIATION

(Estd. 1965, Regd. No.1329, Website <http://www.irtsa.net>)

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No:IRTSA/CHQ/ Memo RB/ 2019-8

Date:06.12.2019

1. Secretary Department of Personnel & Training, North Block, New Delhi - 110 001
2. Member Staff, Room No.214, Railway Board, New Delhi - 110001

Respected Sir,

Sub: Counting of training period of Junior Engineers (JEs), Senior Section Engineers (SSEs) and other Technical non-gazetted staff for financial upgradation under MACPS

- Ref:**
1. Railway Board's letter No.E(NG)/90/IC1/1, Dated 04.02.1991.
 2. Railway Board's letter No.E(NG)1-93/PM1/4 dated 18.01.93.
 3. Ministry of Communication & IT Directorate Lr. No. 4-7/(MACPS)2009-PCC dated 23.06.2016.
 4. Superintendent RMS Z Division Hyderabad Lr.No.B1/MACPS/Rlgs/2016 dated 26.07.2016.
 5. Asst. Director (Staff & Vig) O/o PMG Hyderabad Region No.PMG(H)/ST/MACPS/Rlgs/09 dated 05/08/2016
 6. Final judgment and order dated 03-01-2019 in WP(C) No. 6963/2018 passed by the Hon'ble High Court of Orissa
 7. Hon'ble Supreme Court Order on Special leave petition (Civil) Diary No(s). 28896/2019

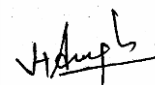
We once again draw your kind attention to an injustice being done with the Technical Supervisors on the Railways and we request you for your kind intervention for early redressal for counting of Training period for financial upgradation under MACPS especially because the Technical Supervisors on the Railways are discriminated against vis-à-vis their counterparts in other Central Government Departments where the training period is counted for MACPS,

1. Persons selected for regular appointment in Technical departments for the posts like Junior Engineers (JEs), Senior Section Engineers (SSEs), CMA, CMS and other Technical posts are required to undergo training for a period of one year before formally taking the charge.
2. Non-technical employees who are not required to undergo any training even though recruited on the same date along with the Technical employees in the same Scale of Pay / Grade Pay earn their financial upgradation through MACPS well before the Technical Staff. This put the technical employees in a disadvantageous position vis-a-vis the non-technical employees, since the period spent in the training by the technical employees are not counted for the purpose of financial upgradation, under MACPS.
3. Railway Board's letter No.E(NG)/90/IC1/1, Dated 04.02.1991 (Annexure-I) on the subject of Counting of training period for the purpose of drawing increments, states that, in case where a Railway servant has been selected for regular appointment and before formally taking charge of the post for which selected, the Government servant is required to undergo training, the training period undergone by such Railway servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments.
4. These orders had been implemented for the purpose of drawing increments as otherwise the concerned employee, would be put to perpetual disadvantage vis-a-vis the staff in non-technical cadres who are recruited along with technical staff in the same scale of pay.
5. Moreover, Training imparted to those recruited through the Railway Recruitment Boards and later absorbed as Junior Engineers (JEs), Senior Section Engineers (SSEs) on Railways is not pre-appointment training in nature (as that of the Apprentices recruited under the Apprentices Act).
6. Railway Board in its letter No.E(NG)1-93/PM1/4 dated 18.01.93 (Annexure-II) stated that time spent by a Railway Servant under training immediately before appointment to service is to be

counted as service for the purpose of appearing for departmental examination for promotion to Lower Gazetted Service (LGS) / Group-B.

7. Non-inclusion of training period for the purpose of financial up-gradation under MACPS, discriminates the Technical employees compared to the non-technical employees recruited in the same Scale of Pay/Grade Pay in the same period, defeats the basic spirit of Railway Board's letter No.E(NG)/90/IC1/1, Dated 04.02.1991 in removing the disadvantageous position of Technical employees in getting their training period counted for annual increment, pensionary benefits, pass eligibility etc.
8. Ministry of Communication & IT Directorate letter No. 4-7/(MACPS)2009-PCC dated 23.06.2016 and Superintendent RMS Z Division Hyderabad vide letter No.B1/MACPS/RIGs/2016 dated 26.07.2016 vide Para 4 has clarified that training periods shall be counted for the purpose of MACPS, copy of letters attached as Annexure-III.
9. Asst. Director (Staff & Vig) Hyderabad Region letter No.PMG(H)/ST/MACPS/RIGs/09 dated 05/08/2016 on the subject Counting of pre-appointment training for direct recruit PA/SA for MACPS has clarified that "pre-appointment training is to be taken into account for MACP" copy of which is placed at Annexure-IV.
10. MACP scheme is uniformly applied for all central Government employees. As such, the counting of training period for the purpose of Financial upgradation under MACPS for Railway employees is quite genuine and just.
11. In its Final judgment & order dated 03-01-2019 in WP(C) No. 6963/2018 passed by the Hon'ble High Court of Orissa said that, since the Training period has to be treated as regular service for the purpose of ACP as has already been observed in earlier judicial pronouncement, the Respondents (Railways) are duty bound to honour such verdict and to grant such financial upgradation treating induction of the applicant as in-service Trainee. Copy of part of the Judgement is placed at Annexure-V.
12. Arising out of impugned final judgment and order dated 03-01-2019 in WP(C) No. 6963/2018 passed by the High Court of Orissa, Hon'ble Supreme Court in its order said that, "***We find no ground to interfere with the impugned order(s) passed by the High Court on the ground that the petitioners were given the regular pay-scale and the increments were also given to them right from day one. Even during the training period, increments were given to them. We have considered the policy pertaining to ACP. On perusal of the same, we find no ground to deny the benefit of training period, which was after appointment***". Copy of part of the Judgement is placed at Annexure-VI.
13. It is, therefore requested, that the training period of Junior Engineers (JEs), Senior Section Engineers (SSEs), Chemical & Metallurgical Assistants (CMA) and Chemical & Metallurgical Superintendents (CMS) on Railways be counted as regular service for the purpose of ACPS / MACPS.

Yours' faithfully,



Harchandan Singh,
General Secretary, IRTSA

Copy for information & favourable consideration to:

1. Secretary Railway Board, Room No 227, Railway Board, Rail Bhavan, New Delhi – 110001

Copy of Railway Board's letter No.E(NG)I/90/IC1/1, Dated 04.02.1991

Subject: - Counting of training period for the purpose of drawing increments

Please find enclosed a copy of Department of Personnel & Training's O.M. No. 16/16/89-Estt (Pay-I) dated 22.10.90 on the above subject for information and necessary action. The instructions contained in this O.M. will be applicable to non-gazetted railway employees mutatis – mutandis w.e.f. 1.10.1990.

2. This issue with the concurrence of the Finance directorate of Ministry of Railways.
3. Please acknowledge the receipt.

Director, Establishment (N)
Railway Board

No.16/16/89-Estt (Pay-I)
Government of India

**Ministry of Personnel, Public Grievances and Training
(Department of Personnel & Training)**

New Delhi-110001, Dated the 22nd October-1990

Office Memorandum

Subject: - Counting of training period for the purpose of drawing increments – Clarification regarding.

The undersigned is directed to say that under FR 26 only duty in a post on time scale counts for increments in that time scale. As per FR 9 (6) (a) (i) the service as probationer or apprentice is treated as duty provided that service as such is followed by confirmation. As such, the training period during which a Government servant is not remunerated in the scale of pay attached to this post can not be treated as duty.

2. The staff side in the National Council (JCM) have raised a demand that the training period should be counted for the purpose of drawing increments as otherwise the concerned staff, particularly the non-gazetted in technical departments, where the training period is a long one is put to perpetual disadvantage vis-avis the staff in non-technical jobs who are recruited along with technical staff in the same scale of pay.
3. The matter has been considered in the National Council (JCM) and it has been decided that in case where a person has been selected for regular appointment and before formally taking over charge of the post for which selected, the person is required to undergo training, training period undergone by such Government servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments.
4. These orders take effect from the 1st of the month in which this O.M.is issued.
5. Ministry of Finance etc, are requested to bring the above decision to the notice of all concerned.
6. In so far as the persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue with the concurrence of Comptroller & Auditor General of India.

---Sd---
(T.O.Thomas)
Under Secretary to Govt. of India.

Copy of Railway Board's letter No.E(NG)1-93/PM1/4 dated 18.01.93.

Sub: Initial Training Period – counting towards eligibility for appearing in departmental examination.

In terms of instructions contained in the Ministry's letter No.E(NG)I-81/ PM1/76 dated 25.4.81, the time spent by a Railway Servant under training immediately before appointment to service is to be counted as service for the purpose of appearing in departmental examination.

2. It is clarified that the 'departmental examination' includes Limited Departmental Competitive Examination for promotion to Group 'B'.

Continued – Please see Annexure III & IV

**File No. 4-7/(MACPS)2009-PCC
Government of India
Ministry of Communication & IT
Department of Posts
(Establishment Division)**

Dak Bhavan, Sansad Marg,
New Delhi – 110001
Dated 23.06.2016

CORRIGENDUM

To

All HODs of Circles

Sub: Modified Assured Career Progression to central government civil Employees with effect from 1.9.2006.

I am directed to refer this directorate Office Memorandum of even number dated 18 Sep 2009 on the subject mentioned above.

2. In the salient features of MACPS circulated vide aforesaid OM in top 3rd & 4th lines of para-9 at page No 6, the sentence “service rendered on adhoc / contract basis before regular appointment or pre-appointment training shall not be taken in to reckoning” be replaced by “service rendered on adhoc / contract basis before regular appointment on pre-appointment training shall not be taken in to reckoning.”
3. The same may be brought to the notice of all concerned. All other entries hold good.

- Sd –

R.L.Patel
Assistant Director General (GOS/PCC)



DEPARTMENT OF POSTS - INDIA
Office of the Superintendent, RMS 'Z' Division Hyderabad-500 001.

Lr.No.B1/MACP/Dlgs/2016 dated at Hyderabad-1 the 26.07.2016.

28

To
The Post Master General,
Hyderabad Region,
Hyderabad-1

Sub: Counting of pre-appointment training for direct recruit PA/SA for MACPs-reg--

Ref: 1) Directorate Lr.No.4-7/(MACPs)/2009-PCC dated 23.06.2016 communicated vide CO
Lr.No.Est/6th CPC/08/IV dated 30.06.2016 and
2) R.O Lr.No.PMG (H)/AC/MACP/Dlgs dtd 11.07.2016.

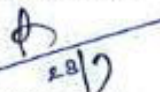
Kindly refer to the communication cited above regarding circulation of corrigendum dated 23.06.2016 to the Directorate OM No. 4-7/(MACPs)/2009-PCC dated 18.09.2009.

1. In view of the original MACP orders dated 18.09.2009 where in the sentence "Service rendered on adhoc/contract basis before regular appointment OR pre-appointment training shall not be taken into reckoning", the pre-appointment training of direct recruit PA/SAs was not taken into account for counting service of 10/20/30 for MACPs.


Accordingly, MACP orders were issued not taking in to account the training period of three months.


2. The corrigendum now issued by the Directorate removes the explicit directions not to count pre-appointment training for MACPs for direct recruit PA/SAs.
3. In effect adhoc/contract service only is not to be taken into account and pre-appointment training comes under regular service.
4. It is felt that pre-appointment training of direct recruit PA/SAs is to be taken into account for MACPs also just like TBOP/BCR financial up gradations where the same is taken into account in r/o all officials trained before and after 1986.

Kindly arrange to confirm the position so that the action that could be taken on receipt of above Directorate corrigendum dated 23.06.2016 is given effect to.


28/7
Superintendent,
RMS Z Division, Hyderabad-1

SRM Sir,
Draft approved & hence
fair copies put up.

OA

28/7/2016


28/7/16

Agreed
Jno
28/7/16

Department of Posts: INDIA
%the Postmaster-General, Hyderabad Region, Hyderabad-1

No.PMG(HVST/MACP/Rlgs/09 dated at Hyderabad-01, the 05/08/2016

To
The SRM,
RMS "Z" Dn,
Hyderabad-01.



Sub: Counting of pre-appointment training for direct recruit PA/SA for MACPs- reg.

Ref: No. BI/MACP/Rlgs/2016 dated at Hyderabad-1, the 28/07/2016.

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With reference to your letter cited above, this is to inform you that your contention that pre appointment training is to be taken into account for MACP also in line with TBOP/BCR preponement is correct.

I am directed by DPS (HR) to advise you to take action on CO/ Directorate's letters without raising unnecessary clarifications hereafter.

Communicate to HRO for further action.
[Signature]
11/8/16

[Signature]
Asst. Director(Staff & Vig.),
O/o the Postmaster General,
Hyderabad Region, Hyd-01.

Endt NO: BI/macr/Rlgs/2016 Dtd at Hyderabad-1 the 11/8/2016

- TO,
- ① The HRO RMS 'Z' DN Hyderabad-1 for information & Necessary action
- ② All SROs for information.
- ③ As RM, Kazipet RMS / (RM Z 1st sub Dn) IRM Z 2nd sub Dn for information.

[Signature]
SUPERINTENDENT
RMS 'Z' DVN, HYDERABAD-500 001.

HIGH COURT OF ORISSA
W.P. (C) No. 6963 of 2018

03.01.2019

Heard Mr. A.K. Mishra, learned counsel for the petitioner-East Coast Railway and Mr. N.R. Routray, learned counsel for the opposite party.

2. By way of this writ petition, the petitioner has challenged the judgment and order dated 14.11.2017 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.260/00763 of 2014 whereby the learned Tribunal has allowed the original application.

3. Having heard learned counsel for the parties, we are in complete agreement with the view taken by the Tribunal at paragraphs-7 and 8 of its order dated 14.11.2017, which reads as under:

“7. Before delving into the merit of this case, some factual/legal matrix needs to be stated to make the dispute straight and transparent.

(a) Under Annexure-R/2 appointment letter was issued to the applicant stating that he has been selected to undergo training in Painting for a period of six months. Admittedly, the Railways did not extend the training period at any point of time though the Skilled Artisans continued under the training.

(b) As per the Railway Board Estt. Sl. No. 109/1992 (Annexure-R/4) there was direction for counting of training period before regular appointment for the purpose of drawing increments and, accordingly, Skilled Artisans were granted annual increments.

(c) Since the applicant and other similarly situated Artisans were not regularized, they approached this Tribunal in various O.As. for regularization of their service in 1989 wherein there was order for regularization of their services and, accordingly, subsequently the Respondents have regularized different employees undergoing Artisan Training.

(d) Since the department did not consider the period of training as regular service, the affected employees moved before this Tribunal in various O.As. in connection with grant of ACP. This Tribunal in O.A.No. 192/2010 vide order dated 22.03.2012 directed the Respondents to count the period of service of the applicant from 29.03.1988 for the purpose of grant of ACP and to allow the applicant financial benefit under ACP thereby recognizing the period spent by the applicant as a Trainee Artisan on notional basis from 01.01.1986 and on actual basis from 01.10.1990.

(e) Being aggrieved by the said order passed in O.A. No. 192/2010, the Respondents filed W.P.(C) No. 12425/2012 before the Hon'ble High Court of Orissa. The Hon'ble High Court vide judgment dated 06.02.2013 not only dismissed the Writ Petition but also observed that the employees on being appointed as Direct Recruits were sent for training. Therefore, the period for which the opposite party was under training has to be calculated for the purpose of grant of ACP. The Railways instead of complying with the said order of the Tribunal, affirmed by the Hon'ble High Court, approached the Hon'ble Supreme Court in Special Leave to Appeal (Civil) 11010/2013. Their Lordships of the Hon'ble Apex Court after hearing both the parties, vide order dated 02.08.2013 categorically observed that they did not find any reason to interfere with the impugned order and, accordingly, dismissed the SLP. Thereafter, the Department complied with the order.

(f) Subsequently, the other similarly situated persons, who were not granted the benefit of ACP counting from training period, approached this Tribunal and as the Tribunal passed favourable order against them, Railways preferred a bunch of Writ Petitions (W.P.(C)Nos. 16565, 7958, 7961, 16965, 17482, 17484, 18035 of 2016 and 18879 and 6749 of 2015) challenging the order of this Tribunal. The Hon'ble High Court disposed of all the bunch of Writ Petitions vide judgment dated 01.05.2017 categorically observing that the said training period is in-service training and since the applicants have been absorbed under regular establishment the said period of training has to be counted for the purpose of ACP. Hon'ble High Court have also taken into consideration earlier judgment of the Hon'ble High Court of Orissa so also the Hon'ble Apex Court.

8. The moot question that comes for consideration is when by way of catena of judicial pronouncements, similarly placed persons undergoing Artisan Training have been treated as

in-service training, this Bench is not competent or empowered to take a different view and is rather bound by the aforesaid authoritative pronouncements of the Hon'ble High Court and Hon'ble Supreme Court. There is nothing left to be adjudicated in the present O.A. as the Respondents intentionally delayed the training period and there was inordinate delay in regularizing the service of the Artisan Training Holders. If there was no necessity of continuance of the training period, the Railways could have dispensed with their services but once the Railways utilized their services regularly, denying them service benefit amounts to unfair trade practice. That apart, had they been only granted stipend, the matter would have been different. Since regular increments were granted to the Trainees, it cannot be treated as a stipend as they were getting the same pay scale, which were available to regular appointees. In any view of the matter, since the Training period has to be treated as regular service for the purpose of ACP as has already been observed in earlier judicial pronouncement, the Respondents are duty bound to honour such verdict and to grant such financial upgradation treating induction of the applicant as in service Trainee.

4. In that view of the matter, the order of the Tribunal dated 14.11.2017 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.260/00763 of 2014 is required to be affirmed and the same is affirmed. Even otherwise, we do not find any good ground to entertain the writ petition. The writ petition being devoid of merit deserves to be dismissed and the same is accordingly dismissed. All the connected Misc. Cases/I.A. stand disposed of.

.....
(K.S. Jhaveri)
Chief Justice

.....
(K.R. Mohapatra)
Judge

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 28896/2019

(Arising out of impugned final judgment and order dated 03-01-2019 in WP(C) No. 6963/2018 passed by the High Court of Orissa At Cuttack)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

ASHOK KUMAR BARIK

Respondent(s)

O R D E R

SLP (C) D. No. 28896/2019, SLP(C) No. 32999/2014, SLP(C) No.33184/2016, SLP(C) No. 851/2017, SLP(C) No. 10820/2017, SLP(C) No.34915-34923/2017, SLP(C) No. 824/2018, SLP(C) No. 8102/2018, SLP(C) No. 22186-22188/2018

Delay condoned.

We find no ground to interfere with the impugned order(s) passed by the High Court on the ground that the petitioners were given the regular pay-scale and the increments were also given to them right from day one. Even during the training period, increments were given to them. We have considered the policy pertaining to ACP. On perusal of the same, we find no ground to deny the benefit of training period, which was after appointment.