

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.480/2014
M.A. No.336/2017
M.A. No.665/2020
M.A. No.710/2018**

Reserved on :08.02.2021
Pronounced on:

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

1. Dinesh Chandra Sharma son of Late Shri Kailash Chandra Sharma, aged about 51 years, Resident of A-15, Ravi Vihar, Mala Road, Kota Junction, Kota and presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
2. Prakash Bhaskar Chaudhari son of Shri Bhaskar Dongar Chaudhari, aged about 50 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
3. Dharmendra Kumar Sharma son of Shri Ram Kishor Sharma, aged about 49 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.

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4. Bhuvnesh Kumar Pandey son of Late Shri Hanuman Prasad Pandey, aged about 57 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
5. Satish Kumar Dewani son of Late Shri Bhagwan Das, aged about 57 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
6. Jag Mohan Sharma son of Late Shri Budha Ram, aged about 53 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
7. Jai Kumar C Pathrey son of Shri Chandra Pal Pathrey, aged about 58 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
8. Ved Prakash son of Late Shri Roop Ram, aged about 58 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
9. Ashok Kumar son of Shri Bal Kishan, aged about 58 years, presently working as Accounts Assistant, Office of Dy. FA & CAO(C), West Central Railway, Kota Division, Kota.
10. Chail Bihari Mudgal son of Late Shri Raghu Nandan Sharma, aged about 52 years, presently working as Accounts Assistant, Office of Senior

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Divisional Finance Manager, West Central Railway, Kota Division, Kota.

11. Kalpana Mishra wife of Shri S.P.Mishra, aged about 50 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
12. Dharmendra Chaturvedi son of Shri Durga Prasad Chaturvedi, aged about 54 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
13. Joseph Kidder son of Shri Franklin Kidder, aged about 53 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
14. Ram Swaroop Meena son of Shri Ram Narayan Meena, aged about 51 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
15. Kailash Mahamana Wife of Shri Rajendra Singh, aged about 54 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
16. Mahram Meena son of Shri Shophool Meena, aged about 57 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.

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17. Ratan Lal Meena son of Shri Hari Pal Meena, aged about 57 years, presently working as Accounts Assistant, Office of Dy. FA & CAO (C), West Central Railway, Kota Division, Kota.
18. Ravi Shankar Mudgal son of Late Shri Raghu Nandan Sharma, aged about 51 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
19. Jasveer Singh Batra son of Late Shri Sajan Das Batra, aged about 48 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
20. Rasal Singh Meena son of Shri Chhote Ram Meena, aged about 52 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
21. Ramkesh Meena son of Shri Parsadi Lal, aged about 52 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
22. Mamta Dubey Wife of Shri Rajeev Dubey, aged about 46 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.
23. Ghanshyam Lal Meena son of Shri Dhanna Lal Meena, aged about 51 years, presently working as Accounts Assistant, Office of Senior Divisional

Finance Manager, West Central Railway, Kota Division, Kota.

24. Suresh B Meena son of Shri Badri Prasad Meena, aged about 51 years, Voluntary retired from the post of Accounts Assistant, Office of Senior AFA (W&S), West Central Railway, Kota Division, Kota.
25. Smt. Poonam Ratnani W/o Shri Kishan Ratnani, aged about 54 years, presently working as Accounts Assistant, Office of Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota.

Postal Address:

C/o Dinesh Chandra Sharma, A-15, Ravi Vihar, Mala Road, Kota Junction, Kota. ...Applicants.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Railway Board, through its Chairman, Rail Bhawan, Ministry of Railways, New Delhi.
3. Financial Commissioner, Railway Board, Rail Bhawan, New Delhi.
4. Financial Advisor and Chief Accounts Officer, West Central Zone, West Central Railway, Jabalpur.
5. Deputy Financial Advisor and Chief Accounts Officer (C), West Central Railway, Kota Division, Kota.

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6. Senior Divisional Finance Manager, West Central Railway, Kota Division, Kota. ...Respondents (By Advocate: Shri M.K.Meena)

ORDER

Per: Dinesh Sharma, Member (A):

MA No.665/2020 for taking legal heir on record is allowed for the reasons stated therein.

2. In this OA the applicants (25 of them) have prayed for the following reliefs:

- "(i) That the respondents may be directed to extend benefits of ACP without counting upgraded scale towards promotion and further benefits of MACP time to time in promotional hierarchy and to extend benefits of Hon'ble CAT Madras Bench vide order dated 26/08/2008 (Annexure A/9) upheld by Hon'ble High Court Madras (Annexure A/11) and Hon'ble Supreme Court (Annexure A/12) by quashing any decision which has not been communicated to the applicants with all consequential benefits with due fixation and arrears of pay & allowances from the date of entitlement.
- (ii) That respondents be directed to honour the order of Hon'ble CAT Madras Bench and upheld by Hon'ble High Court Madras and thereafter Hon'ble Supreme Court and to extend the benefits of the same with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.

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(iv) That the costs of this application may be awarded."

3. The respondents have replied stating that appointment from Junior Accounts Assistant (JAA) post to Accounts Assistant (AA) post is promotion. According to the existing instructions regarding ACP/MACP, it is not only promotion but financial upgradation given under any other provision are also to be taken into account for the purpose of these schemes. These rules were not brought to the cognizance of the Hon'ble Tribunal/High Court in the matter of V. Venkataraman and, therefore, the same cannot be relied upon being a decision given *per incuriam*. The Hon'ble Supreme Court's decision to dismiss the SLP does not amount to upholding the order from which leave to appeal is sought. In recent cases(OA No. 383/2013 and 384/2013), the Madras Bench of the CAT have themselves upheld the submission of the respondent Railways rejecting the applicants' claims for grant of ACP/MACP ignoring

their promotion from JAA to AA's post. It is also claimed that the OA is barred by limitation.

4. The applicants have filed a rejoinder reiterating their claims made in the OA. They have stated that the Supreme Court's rejection of the SLP was on merits as it was mentioned that they did not find any merit in the SLP. Regarding the later judgments of the Madras Bench on the same issue, it is stated that the facts might have been different and the earlier judgment should be followed. The respondents have quoted more cases where Hon'ble High Court/Principal Bench of CAT have allowed the reliefs claimed in this OA. These are: Union of India & Another vs. Shri Eknath Walgu Humne of the Hon'ble Bombay High Court at Nagpur in Writ Petition No.559/2008 and Subhash Kumar Ghosh & Others vs. Union of India & Others of the Principal Bench of this Tribunal in OA No.3606/2013(annexed as Annexures A/17 and A/18). On the period of limitation, it is stated that there being continuous loss of salary/pension, this is a matter of recurring

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cause of action as held by the Hon'ble Supreme Court in the case of **M.R.Gupta vs. Union of India and Others** 1995 SCC (5)628.

5. In a reply to rejoinder, the respondents have restated the arguments mentioned earlier. They have further informed that though the Hon'ble High Court of Madras, by their order dated 13.03.2017, have set aside the order of CAT, Madras in OAs 383-384/2013, the Railways' SLP against this judgment is still pending before the Hon'ble Supreme Court, where all the issues relevant to this OA shall be resolved.

6. During the course of these proceedings, the applicants informed (by MA No.232/2015) that the respondents have passed orders dated 01.07.2015 in respect of Applicant Nos.1,2,10,11,12,13,14,15,16 and 18 (10 applicants) to lower them down in the Grade Pay of Rs. 4600/- (from Grade Pay of Rs.4800/-) and also for recovery of excess payment on this account. This has been done following the

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clarification issued on 27.06.2014 to carry out Railway Boards direction contained in letter dated 29.12.2011 (Annexure MA/2). This is not justified since the matter is sub-judice before this Tribunal. The Tribunal stayed the recovery by its interim order dated 23.07.2015 on this MA. The respondents have replied to this MA stating that the benefit of MACP was granted to these employees with condition that any clarification amendment issued from the Railway Board will be applicable. Since it was found that the benefit of the 3rd MACP was wrongly given to these 10 employees, it has been withdrawn and recovery will be effected.

7. The matter was finally heard, through video conferencing on 08.02.2021. The learned counsel for the applicants produced a bunch of decisions of various Benches of this Tribunal/Hon'ble High Court to support his contention that the matter in issue has already been finally decided by various Benches of this Tribunal. These decisions are: **Sunil Kumar vs. Union of India & Others** (Patna Bench of this

Tribunal in OA/050/00352/2016), **Union of India & Others vs. Binit Kumar Verma** (Hon.Patna High Court in Civil Writ Jurisdiction Case No.2261 of 2017), **Union of India & Others vs. Madan Mohan Purohit & Others** (Rajasthan High Court at Jodhpur in D.B.Civil Writ No.7068/2018), **Madan Mohan Purohit & Others vs. Union of India & Others** (Jodhpur Bench of this Tribunal in OA/290/00182/2016 with MA No.290/00058/2016), **Parameswar Biswal vs. Union of India & Others** (Cuttack Bench of this Tribunal decided on 25.07.2016), **Subhash Kumar Ghosh & Others vs. Union of India & Others** (Principal Bench of this Tribunal in OA No.3606/2013). The learned counsel of the respondents referred to another recent decision by this Bench of the Tribunal (**P.D.Mathur vs. Union of India & Others** with connected cases decided on 15.12.2020 in OA No.291/412/2015) which, he stated, applied on the facts of this case and therefore should be followed.

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8. After going through the pleadings, hearing the learned counsels of both the parties and after perusing the case law cited by both the parties, we have no doubt in our mind that the issue regarding not counting the financial upgradation on restructuring from JAA to AA is already settled by various rulings of this Tribunal. Since these rulings squarely apply to the facts of this case, we have no hesitation in granting the relief prayed by the applicants- that the benefits of upgradation due to restructuring (of the cadre amongst JAA and AA) should not be counted while considering eligibility for grant of ACP/MACP. The respondents are, therefore, directed to take action accordingly, if not already done, if the applicants fulfil all other conditions for the grant of ACP/MACP. This should be done within 6 months from the date of receipt of a copy of this order. In all those cases, where a revision of salary/pension becomes due in order to implement this order, the salary/pension will be revised prospectively. Any claim that relates to a period more than one year before the filing of this OA, is

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clearly barred by period of limitation, and hence no amount will be paid for such past period. In all such cases, there shall be a notional calculation to arrive at the benefits due on that date (one year before the date of filing of this OA, i.e 01.09.2013. Arrears, if any, (for the period one year before the filing of this OA till the date of prospective revision) shall also be paid within 6 months from the date of receipt of a copy of this order. No interest will be paid on the amount of arrears, if these are paid within the period stated above.

9. Regarding the interim stay (issued against recovery of amounts sought to be recovered from 10 amongst the applicants) we find that their case is entirely on a different footing. The benefit granted is apparently sought to be recovered not because of any wrong counting of benefits, but on the ground that the **MACP** rules prohibit grant of **3rd MACP** before 10 years from the last MACP or before completion of 30 years, whichever is earlier. The decision of this Tribunal cited by the learned counsel

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for the respondents (PD Mathur case) is precisely on this issue and is applicable to the facts of this case (w.r.t. 10 applicants where the excess amount is sought to be recovered, apparently, **on this ground**). We, therefore, vacate the interim order passed by this Tribunal on 23.07.2015 date staying the recovery of any excess amount on this ground. For removal of all doubts, we clarify that thevacation of interim stay would not amount to authorising recovery, if it were found not necessary to do so after implementation of our orders in the previous paragraph.

10. The OA is disposed of accordingly. No costs.

11. MA No.336/2017 for further interim direction and MA No.710/2018 for deletion of name of Respondent No.3 from the array of respondents are disposed of accordingly.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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