

OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with  
MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in  
OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 336/2019,

ORIGINAL APPLICATION NO. 337/2019  
WITH  
MISC. APPLICATION NO. 274/2020,

ORIGINAL APPLICATION NO. 338/2019  
WITH  
MISC. APPLICATION NO. 247/2020,

ORIGINAL APPLICATION NO. 339/2019  
WITH  
MISC. APPLICATION NO. 246/2020,  
AND  
CONTEMPT PETITION NO. 35/2020  
IN  
ORIGINAL APPLICATION NO. 336/2019  
&  
CONTEMPT PETITION NO. 34/2020  
IN  
ORIGINAL APPLICATION NO. 337/2019

Order reserved on 27.09.2021

**DATE OF ORDER:** 12.10.2021

**CORAM**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER  
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

**OA No. 336/2019**

Ramesh Chand son of Shri Gheesu Lal, aged about 59 years Resident of Gali No. 14, Sita Kamal Kutt, Tanaji Nagar, Ajmer – 305001 and presently working as Chief Office Superintendent, Carriage Work Shop, Budget Section, North Western Railway, Ajmer Division, Ajmer – 305001.

....Applicant  
(Group-C, Mob: 98292-79192)

Shri C.B. Sharma, counsel for applicant.

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## **VERSUS**

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer-305001.
3. Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents.

### **OA No. 337/2019 with MA No. 274/2020**

Ramesh Kumar Lalwani son of Shri Keshav Das Lalwani, aged about 59 years, Resident of House No. 04, Hari Om Colony, Gali No. 5-C, Chandbardai Nagar, Ajmer and presently working as Chief Office Superintendent, Office of Deputy Chief Material Manager, North Western Railway, Ajmer Division, Ajmer – 305001.

....Applicant  
(Group-C, Mob: 94140-05962)

Shri C.B. Sharma, counsel for applicant.

## **VERSUS**

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Deputy Chief Material Manager, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents.

OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019

### **OA No. 338/2019 with MA No. 247/2020**

Madhu Kumar son of Shri Brij Mohan Machiwal, aged about 58 years, Resident of House No. 326, in-front Mirdang Cinema, Shri Nagar Road, Ajmer and presently working as Chief Office Superintendent / Loco General, under Chief Works Manager, North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant  
(Group-C, Mob: 90011-94622)

Shri C.B. Sharma, counsel for applicant.

### **VERSUS**

1. Union of India through General Manager, North Western Zone, North Western Railway Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer-305001.
3. Chief Works Manager (Establishment), North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents.

### **OA No. 339/2019 with MA No. 246/2020**

Radhey Shyam Sharma son of Shri Damodar Prasad Sharma, aged about 58 years, Resident of House No. 377/42, Behind Navin Garden, Pooja Marg, Dholi Bhata, Ajmer - 305001 and presently working as Chief Office Superintendent, under Deputy Chief Engineer Electrical (Works), North Western Railway, Ajmer Division, Ajmer - 305001.

....Applicant  
(Group-C, Mob: 90011-94525)

Shri C.B. Sharma, counsel for applicant.

### **VERSUS**

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1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer-305001.
3. Deputy Chief Engineer Electrical (Works), North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents.

### **CP No. 35/2020 in OA No. 336/2019**

Ramesh Chand son of Shri Gheesu Lal, aged about 59 years, Resident of Gali No. 14, Sita Kamal Jutti, Tanaji Nagar, Ajmer - 305001 and presently working as Chief Office Superintendent, Carriage Work Shop, Budget Section, North Western Railway, Ajmer Division, Ajmer-305001 (now retired on 31/03/2020).

...Applicant / petitioner

Shri C.B. Sharma, counsel for petitioner.

### **VERSUS**

1. Shri Anand Prakash, General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Shri R.K. Mundra, Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer - 305001.
3. Shri Ram Avatar Yadav, Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer-305001.

...Respondents / Non-petitioners

Shri Anupam Agarwal, counsel for respondents.

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### **CP No. 34/2020 in OA No. 337/2019**

Ramesh Kumar Lalwani son of Shri Keshav Das Lalwani aged about 59 years, Resident of House No. 04, Hari Om Colony, Gali No. 5-C, Chandbardai Nagar, Ajmer and presently working as Chief Office Superintendent, Office of Deputy Chief Material Manager, North Western Railway, Ajmer Division, Ajmer - 305001 (now retired on 30/05/2020 being Sunday on 31/05/2020).

Applicant / petitioner

Shri C.B. Sharma, counsel for petitioner.

### **VERSUS**

1. Shri Anand Prakash, General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Shri Girish Kumar Gupta, Deputy Chief Material Manager, North Western Railway, Ajmer Division Ajmer-305001.

Respondents / Non-petitioners

Shri Anupam Agarwal, counsel for respondents.

### **ORDER**

**Per: Hina P. Shah, Judicial Member**

With the consent of learned counsels for the parties, OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019 are taken up together

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for disposal as common question of law and facts is involved in the aforesaid cases.

2. For the sake of convenience, the brief facts of OA No. 336/2019 (Ramesh Chand vs. UOI & Ors.) are taken up. The OA No. 336/2019 has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"(i). That the respondents may be directed to hold good benefits of financial upgradation allowed in grade pay Rs. 4800 (Level-8) w.e.f. 12/08/2016 (Annexure-A/12) with due fixation in the grade pay Rs. 4800 (Level-8) by quashing order dated 01/06/2019 (Annexure-A/1) with the letters dated 30/05/2019, 03.05.2019, 13.03.2019 (Annexure- A/2, A/3 & A/4) and any other letter / order which not served upon the applicant which deprived benefits of grade pay Rs. 4800 (Level-8) with all consequential benefit.

(ii) That respondents be further directed to act as per provisions of MACP Scheme at Annexure-A/8 and hold good the benefits and further no recovery be made from the applicant and applicant be allowed to draw pay & allowances as drawn in the month of May 2019 with all consequential benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

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

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3. (a) The brief facts of the case, as stated by the applicant is that he was appointed as a Clerk on 26.02.1980 and thereafter he was allowed to work as Senior Clerk on 11.06.1986. Prior to that, Railway Service Commission, Ajmer issued Employment Notice No. 01/1984 for recruitment to the cadre of Senior Clerk and Applicant also applied for the said post being graduate. Railway Board thereafter took a decision vide order dated 26.07.1985 (RBE No. 217) that vacancies against 13 1/3% service graduate quota will be filled through Departmental Competitive Examination held by respective Railway Administration. In pursuance thereof Respondents conducted selection division wise to the cadre of Senior Clerk by way of written test and viva voce from eligible serving graduate clerks who were in service as on 05.08.1985. Applicant appeared in the said test and was placed at merit No. 18 in the result dated 10.07.1986. He was thereafter posted as Senior Clerk vide order dated 13.08.1986. He was then promoted as Head Clerk on 11.01.1991 and then allowed to hold the post of Office Superintendent on adhoc basis w.e.f. 13.03.2004 and was regularized w.e.f. 19.10.2005.

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b) After 6<sup>th</sup> Pay Commission post of Head Clerk and Office Superintendent were merged in one scale. After recommendations of 6<sup>th</sup> Pay Commission, Govt. of India promulgated Modified Assured Career Progression Scheme (MACPS) for Central Govt. Civilian Employees for placement in higher scale after completion of 10, 20 & 30 years of service and Respondents also adopted the same vide order dated 10.06.2009. Thereafter, Applicant was regularly promoted as Chief Office Superintendent in pay band Rs. 9200-34800 with Grade Pay Rs. 4600 vide order dated 04.10.2011. As he was recruited as direct appointee against 13 1/3% percent quota, he was allowed two higher scales, which are as follow:-

Senior Clerk	
Head Clerk	Merged in One Scale as per sixth pay commission
Office Superintendent	
Chief Office Superintendent	

c) Railway Board further issued order dated 12.09.2012 (RBE No. 100/2012) and clarified that if the relevant Recruitment Rules provide for filling up of vacancies in a grade by Direct Recruitment, induction

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of an employee in a grade through LDCE may be treated as direct recruitee for the purpose of grant of financial upgradation under MACPs and past services rendered in lower scale/ grade pay shall not be counted for the purpose of MACP Scheme. Accordingly, as per letter dated 23.11.2016, it was held that serving Graduate employees those selected against direct recruitment their earlier service should not be counted towards MACP benefits. After considering provisions of MACP Scheme and Railway Board orders dated 12.09.2012 and letter dated 23.01.2011, benefits of 3<sup>rd</sup> financial up-gradation from pay matrix level 7 to 8 w.e.f. 12.08.2016 were allowed fixing pay from 68000 to 70000 vide order dated 11.04.2017.

d) Thereafter, respondent No. 1 vide letter dated 13.03.2019 directed the respondent No. 2 that earlier service of service graduate employees who were appointed as Senior Clerk against direct recruitment be counted towards MACP benefits and accordingly vide letter dated 03.05.2019, respondent No. 2 directed the respondent No. 3 to take suitable action. Accordingly, Respondent No. 3 vide letter dated

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30.05.2019 cancelled the benefits of third financial upgradation allowed to the Applicant from pay matrix level-7 to level-8 taking into consideration letter of Respondent No. 1 and ignored Railway Board orders which were clear that services of serving graduate employees be counted towards MACP Scheme from the cadre of Senior Clerk. As such, the Applicant who was due to retire on 31.03.2020 was put to financial loss and, thus, as per judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer)**, reported in 2015 (2) SCC (L&S) 33 and as per DOPT OM dated 02.03.2016, it was clear that no recovery be made in case of excess payment, which was also adopted by Railway Board vide letter dated 22.06.2016. Thus, being aggrieved by the action of the respondents, applicant has filed the present O.A. for redressal of his grievance.

4. This Tribunal issued notices to respondents and vide its order dated 19.06.2019 as an interim measure granted stay towards recovery from the applicant till the next date of hearing and the said interim relief continued till date.

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5. a) The respondents, after issue of notices, have filed their reply. Respondents besides denying the contention of the Applicant further stated that they do not deny the fact that the pay of the Applicant has been re-fixed in pursuance of letters dated 03.05.2019 and 30.05.2019. Admittedly, Applicant has been appointed as Sr. Clerk against 13 1/3% serving graduate quota which was initially directed to be filled by Railway Recruitment Board, however, the same was subsequently modified and filled by departmental examination by respective railway administration. As per Railway Board letters dated 12.09.2012 (RBE No. 100/2012) and 25.08.2015, direct recruitment under LDCE/GCDE has been directed to be treated as direct recruitment and grant MACP accordingly but 13 1/3% quota had been treated to be promotion. Thus, counting it as promotion for the purpose of grant of benefit of MACP cannot be said to be illegal or unwarranted. Respondents have not counted the merged post/scale as different promotions while granting the benefit of MACP.

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b) Respondents further state that order dated 26.07.1985 clearly proves that the quota so notified to be filled by Railway Recruitment Board was decided to be filled through Departmental Competitive examination if the Railway Recruitment Board has not already conducted the examination. Admittedly, the selection so initiated was conducted subsequent to it. Thus, Applicant taking the plea that same was direct recruitment is devoid of any substance and deserves to be rejected.

c) Applicant was promoted against 13 1/3% promotion quota filled through LDCE. Thus, as per para (ii) of RBE No. 100/2012, the promotion of the applicant against 13 1/3% quota was to be treated as promotion for the purpose of benefit under MACP Scheme. Therefore, counting of past regular service cannot be said to be illegal or against any order. Applicant has erroneously presumed himself to be covered by para (i) of the order of RBE No. 100/2012. Also, as far as benefit of MACP being granted to Shri Ashok Kumar Sharma is concerned, it is to state that Shri Ashok Kumar Sharma working in Western Railway was granted the benefit of MACP and as per service

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record, he was granted proforma promotion in the scale of Rs. 330-550 w.e.f. 01.10.1980 in accordance with the directions in the case No. 374/1998, Civil Appeal No. 4265/1996 vide GM(E) Churchgate Mumbai letter dated 07.05.1999. Thus, the case of Shri Ashok Kumar Sharma cannot be compared with the present case of the Applicant.

d) Respondents further state that taking erroneous interpretation of the orders, benefits of MACP Scheme were taken by the Applicant. However, as soon as the discrepancy came into the knowledge, they have corrected the mistake and passed the orders. They have also sought clarification from the Headquarter Office which was replied vide letter dated 13.03.2019 and accordingly order dated 03.05.2019 was passed. As far as reliance being placed by the Applicant towards judgment of the Hon'ble Apex Court as well as OM of the DOPT on the subject of recovery, it is to state that Applicant is still in service and drawing hefty salary. Thus, acting on the orders dated 01.06.2019 along with letters dated 30.05.2019 and 03.05.2019 as well as 13.03.2019, directing re-fixation and

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recovery thereof cannot be said to be illegal and unwarranted.

6. It is brought to our knowledge that the applicant has filed C.P No. 35/2020 in the above matter and the respondents have also filed an M.A. for vacation of Interim order dated 19.06.2019 in the said group of cases heard together though not in present matter.

7. Heard learned counsels for the parties and examined the material available on record and also the judgments produced by the parties.

8. The learned counsel for the applicant submitted that the action of the respondents in connection with review of orders by which benefits of higher grade pay has been allowed as per service is to be counted from the cadre of Senior Clerk as he was appointed against direct recruitment vacancies and as per examination conducted by respondents at the relevant time against vacancies notified after allowing one time relaxation to the respective administrative authority, so service earlier to the cadre of Senior Clerk was not counted towards the benefit under MACP Scheme and then

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cancelling the same is not only arbitrary but also unjustified and the same is in violation of Articles 14 and 16 of the Constitution of India. Applicant has neither misrepresented in getting benefits nor in pay and allowances then, subsequently, withdrawing the benefits without any opportunity of hearing is liable to be quashed and set aside. As the said benefits were given to him after due procedure and after recommendations of screening committee, therefore, these recommendations cannot be withdrawn. Thus, the action of the respondents to withdraw the benefits of third financial upgradation at the verge of his retirement and reducing his pay and allowances is not justified and as such the action of the respondents is liable to be quashed and set aside. The applicant relied on the following judgments/orders:-

- i) Union of India & Ors. vs. Donald Anil Kumar in DBCWP No. 14050/2020 decided by the Hon'ble High Court of Rajasthan at Jaipur on 14.07.2021.
- ii) Mahindra Singh vs. Union of India & Ors. (OA No. 157/2021) decided by this Bench of the Tribunal.
- iii) State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors., 2015 (2) SCC(L&S) 33.
- iv) Norat Mal vs. Union of India & Ors. decided by this Bench of the Tribunal on 16.12.2019 and confirmed by the Hon'ble High Court of Rajasthan.

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9. On the other hand, the learned counsel for the respondents argued that merely because the quota so prescribed was to be initially treated as direct recruitment and filled through RRB did not make it direct recruitment especially when the same was subsequently modified and filled through LDCE and the applicant was promoted against the quota as Railway Board after consideration held it to be promotion. Thus, counting of past service on the basis to revise the benefit of MACP is just and legal. Respondents further state that when it came to their knowledge about the same, the mistake was rectified. Therefore, correcting a mistake and passing orders is just and legal. Respondents further state that the quota so prescribed was not a promotion quota as per the relevant recruitment rules. Merely because the Railway Board issued RBE No. 100/2012 and alleged impugned action has been taken in 2019 cannot hold the Applicant justified to allege that the same has been done due to clarification or at a belated stage. Also actually placing the matter before the screening committee or taking recommendation of the committee is not required to correct the mistake and the amount for which the Applicant is not entitled,

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recovery of excess payments is justified and, therefore, the discrepancies are required to be corrected. Thus, Respondents state that there is no illegality in their orders and the present O.A. deserves to be dismissed.

10. Factual matrix of the case is that the applicant was appointed as a Clerk on 26.02.1980. On issuance of Employment Notice No. 01/1984 for recruitment to the post of Senior Clerk and later as per RBE No. 217 dated 26.07.1985 towards vacancies against 13 1/3% quota, Applicant applied for the said post. In fact, as per Railway Board letter dated 26.07.1985, it was clear that the said vacancies will be allowed to be filled as one time exemption through a departmental competitive examination held by respective railway administration provided a Railway Recruitment Board concerned have not already conducted the examination. Admittedly, the present selection concerned was held subsequent to it which makes it clear that the said appointment was not a direct recruitment. As the Applicant fulfilled the said qualification being a serving graduate eligible in pursuance to the notification participated in the said

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selection and was declared successful and his name appeared in the select list. Accordingly, he was posted as Senior Clerk vide order dated 13.08.1986. Thereafter, he was promoted as Head Clerk (HC) and then as Office Superintendent (OS) firstly on adhoc basis and the subsequently the same was regularized w.e.f. 19.10.2005. But subsequent to the implementation of 6<sup>th</sup> CPC due to merger of pay scales, pay scale of Head Clerk and Office Superintendent was merged in one pay scale. On introduction of MACP Scheme, Applicant was granted the benefits of MACP as per the Scheme. As seen, the respondents while granting the benefits of MACP did not consider the merged grades as two.

11. It is seen that the applicant was not recruited as Senior Clerk as a direct recruit but he was in fact appointed against 13 1/3% serving graduate quota which was filled through LDCE. Thus, as per RBE No. 100/2012 dated 12.09.2012 which was a Clarification issued for treating employees selected under LDCE/GDCE Scheme. The said RBE No. 100/2012 dated 12.09.2012 reads as under:

"(i) If the relevant RRs provide for filling up of vacancies, in a grade by Direct Recruitment,

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induction of an employee to that grade through LDCE/GDCE may be treated as Directed Recruitment for the purpose of grant of financial upgradation under MACPS. In such cases past service rendered in a lower pay scale/Grade Pay shall NOT be counted for the purpose of MACP scheme.

- (ii) If the relevant RRs prescribed a **Promotion Quota** to be filled on the basis of LDCE /GDCE, such appointment would be treated as promotion for the purpose of benefit under the MACPS and in such cases, past regular service shall also be counted for further benefits, if any under the MACP Scheme.”

Also as per Railway Board letter dated 25.08.2015 (Annexure R/1) which was issued with regard to regulation of MACPS in respect of serving Graduate Clerks selected through LDCE/GDCE, the appointment against 13 1/3% quota from amongst Serving Graduate Clerks has to be treated as promotion in terms of point No. (ii) of Board's letter dated 12.09.2012 (RRB No. 100/2012) for the purpose of MACP Scheme.

Thus, it was clear that the same had to be counted as a promotion for the purpose of grant of benefit of MACPS as per para (ii) of RBE No. 100/2012 as applicant was promoted against 13 1/3% promotion quota filled through LDCE and the respondents had not counted the past regular service of merged

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post/scale as different promotions. But on the other hand, applicant has presumed that he is covered under sub para (i) of RBE No. 100/2012 which is not correct.

12. As observed, the respondents had erroneously granted the benefits of MACPS to the applicant and when the said discrepancy came to their knowledge, they have sought clarification from the Headquarters vide letter dated 15.01.2019 and the same was replied vide letter dated 13.03.2019, (Annexure A/4), which reads as under:-

“उक्त संबंध में लेख है कि रेलवे बोर्ड के पत्र दिनांक 24.11.2010 के तहत वरिष्ठ लिपिक सेवारत स्नातकों कोटा 13⅓ % को पदोन्नति कोटा माना गया है।

अतः सेवारत स्नातकों कोटे में पदोन्नत हुए कर्मचारियों को एमएसीपी के लाभ हेतु पिछली पद की सेवा को गिना जाएगा। ”

Accordingly, order dated 30.05.2019, Annexure A/2, was passed, which reads as under:-

“उपरोक्त सन्दर्भित पत्र क्रमांक 03 दिनांक 11.04.2017 द्वारा श्री रमेश चन्द, मुख्य कार्यालय अधीक्षक/ कैरिज बजट भ.नि.संख्या 18928997 को तृतीय एमएसीपी लेवल 08 में दिनांक 12.08.2016 से एमएसीपी लाभ दिया गया था परन्तु सन्दर्भित पत्र क्रमांक 01 के द्वारा महाप्रबंधक (कार्मिक) प्रधान कार्यालय जयपुर द्वारा सेवारत स्नातक 13.1/3% कोटा में पदोन्नत हुए कर्मचारियों को सीधी भर्ती

नहीं मानते हुए पदोन्नति मानी गई है। अतः इनको दिनांक 12.08.2016 को दी गई तृतीय एमएसीपी लाभ देय नहीं है।

अतः इनको पत्र क्रमांक 03 दिनांक 11.04.2017 द्वारा दिनांक 12.08.2016 से दी गई एमएसीपी लाभ को रद्द किया जाता है।"

13. We have gone through the grounds raised by the applicant in detail and do not find the same convincing in view of the discussions made above. Also with respect to the benefits granted in the case of Shri Ashok Kumar Sharma, it is seen that the respondents have clarified the said issue by stating that the said Shri Ashok Kumar Sharma was granted benefit of proforma promotion in the pay scale of Rs. 330-550 w.e.f. 01.10.1980 and the same was given in accordance with the directions issued in case No. 374/1998, Civil Appeal No. 4265/1996 vide GM(E) Churchgate Mumbai letter dated 07.05.199. It is also seen that the applicant neither has contradicted the explanation to the said issue nor has filed any rejoinder to deny the contentions of the respondents made in their reply.

14. We find that merely because the quota so prescribed was to be initially treated as direct

OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019

recruitment and subsequently as per RRB does not make the said selection a direct recruitment especially when the same was subsequently modified and filled through LDCE and applicant was promoted against the said quota which was clarified from Railway Board, therefore, we do not find any illegality committed by the respondents in counting past services to revise the benefits of MACPS. Thus, respondents have rectified their mistake and passed necessary orders dated 30.05.2019 as well as 01.06.2019 whereby the pay of the applicant has been re-fixed and recovery was effected. But, it is clear that the applicant neither was at any fault nor he has misrepresented in getting higher pay/benefits. As far as recovery part is concerned, the case of the applicant is squarely covered by the judgment of the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)**, [supra], and it is clear that no recovery shall be made from either retired employees, or employees who are due to retire within one year, of the order of recovery. When the said impugned orders were passed, the applicant was due to retire on 31.03.2020 and, thus, it is clear that no retrospective recovery can be effected from the applicant. On the other hand, respondents

OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019

have every right to re-fix the pay of the applicant on account of discrepancy noted in the said pay-fixation and they can correct the same, but no retrospective recovery to be carried out. The respondents may pass a fresh order of re-fixation with prospective effect after giving a notice to the applicant and till the time a fresh order is passed, as discussed above, no recovery will be effected from the applicant.

15. In view of the observations made herein-above, the present Original Application No. 336/2019 is allowed and the impugned orders dated 01.06.2019, (Annexure A/1), and letter dated 30.05.2019, (Annexure A-2), are quashed and set aside. The respondents are directed to pass fresh order of re-fixation of pay of the applicant after giving him due notice and the said re-fixation will have a prospective effect from the date of passing fresh order. Also no recovery to be effected from the applicant till the fresh order, as discussed above, is passed. No order as to costs.

OA No. 336/2019, OA No. 337/2019 with MA No. 274/2020, OA No. 338/2019 with MA No. 247/2020, OA No. 339/2019 with MA No. 246/2020 and CP No. 35/2020 in OA No. 336/2019 & CP No. 34/2020 in OA No. 337/2019

16. With the aforesaid observations and directions, OA No. 337/2019, OA No. 338/2019 and OA No. 339/2019 are also allowed.

17. In view of the Original Applications being allowed, CP No. 35/2020 in OA No. 336/2019 and CP No. 34/2020 in OA No. 337/2019 filed by the petitioners are disposed of as infructuous. Also Misc. Applications filed by the respondents in OAs for vacation of interim relief are disposed of accordingly.

**(HINA P. SHAH)**  
**JUDICIAL MEMBER**

**(DINESH SHARMA)**  
**ADMINISTRATIVE MEMBER**

/nlk/