

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(ALLAHABAD THIS THE 9th DAY OF October 2015)

PRESENT:

HON'BLE MR. MURTAZA ALI, MEMBER -J
HON'BLE MR. O.P.S. MALIK, MEMBER -A

ORIGINAL APPLICATION NO. 1401 OF 2006

ALONG WITH

ORIGINAL APPLICATION NO. 1221 OF 2006

ALONG WITH

ORIGINAL APPLICATION NO. 602 OF 2006

ORIGINAL APPLICATION NO. 1401 OF 2006

Uma Devi aged about 51 years, D/o Nanhoo Lal, presently working as Storeman in Engg. Department in D.R.M's Office, N.C. Railway, Allahabad R/o 1/6, Karelabagh Colony Allahabad.

.....Applicant

By Advocate: Shri S. Ram/A. Kumar

Versus

1. Union of India through General Manager, N.C. Railway, Head Quarters office, Allahabad.
2. General Manager, N.C.Railway, Headquarters office, Allahabad.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Sr. DEN (C) North Central Railway, Allahabad.
5. Secretary (Estt.), Railway Board, Rail Bhavan, New Delhi.

..... Respondents

By Advocate : Shri P. Mathur/Anil Dwivedi

ORIGINAL APPLICATION NO. 1221 OF 2006

1. Mithai Lal S/o Shri Ram Kumar, aged about 51 years, working under S.E./W/Juhi/CNB.
2. Mahendra Pratap Mishra S/o Amar Nath Mishra aged about 50 years, working under SEE/W/Station/CNB.
3. Shiv Prasad S/o Shir Salik Ram, aged about 49 years, working under SSE/PW/HQ/E/CNB.

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4. Siddha Nath S/o Gokul Prasad, aged about 50 years, working under S.E./W/CPC/CNB.
5. Shri Prakash Singh S/o Chandra Balil Singh, aged about 48 years, working under ADEN/HQ/CNB.
6. Raj Bahadur S/o Shri Gokul Prasad, aged about 54 years, working under SSE/PW/HQ/E/CNB.
7. Dheerendra Singh S/o Shir Amal Dar Singh, aged about 48 years, working under S.E./W/Line/CNB.
8. Suresh Chandra S/o Shri Ram Khelawan, aged about 53 years, working under SE/W/Line/CNB.
9. Sunder Lal S/o Sri Bhaggan, aged about 55 years, working under ADEN/Line/CNB.
10. Balram Singh S/o Ram Pyare, aged about 53 years, working under ADEN/Line/CNB.
11. Ram Kishore S/o Shri Suraj Bali, aged about 49 years, working under SSE/W/HQ/CNB.
12. A.P. Pandey S/o Shri Mahesh Chandra Pandey aged about 52 years, working under SSE/PW/II/CNB.
13. Alha Singh S/o Sri Khuman Singh, aged about 56 years working under SSE/W/Station/CNB.
14. Pati Raj S/o Shri Dwarika Prasad, aged about 56 years, working under S.E./W/Juhi/CNB
15. Ram Kishan S/o Shri Manmohan, aged about 52 years, working under SSE/W/HQ/CNB.
16. Ravi Kant Chaturvedi, working under Principal CETA/CNB.
17. Rama Kant Tiwari, working under Principal CETA/CNB.
18. Ram Singh Yadav S/o Shri Ram Deen, aged about 48 years, working under SSE/PW/II/CNB.
19. Prakash Chandra Srivastava S/o Shri Ayodhya Prasad, aged about 55 years, working under SSE/PW/II/CNB.
20. Bachi Lal S/o Shri Ram Raj, aged about 35 years, working under under SSE/PW/HQ/CNB

All above applicants are working as Storeman (Engineering Department) working at Kanpur in Grade Rs.2650-4000 of N.C. Railway.

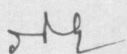
.....Applicants

By Advocate: Shri S. Ram

Versus.

1. Union of India through General Manager, N.C. Railway, Headquarters Office, Allahabad.
2. General Manager, N.C. Railway, Headquarters Office, Allahabad.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Sr. DEN (C), North Central Railway, Allahabad.
5. Secretary (Estt.) Railway Board, Rail Bhavan, New Delhi.

..... Respondents



By Advocate: Shri A.K. Pandey

ORIGINAL APPLICATION NO. 602 OF 2006

1. P.K. Mittal S/o Late Shri B.K. Gupta, aged about 56 years, R/o 976 Rajrooppur, Allahabad.
 2. Vinod Kumar, S/o Late Shri Chandrika Prasad, aged about 56 years, R/o 134/C, Railway Colony No.3, SFG, Allahabad.
 3. Shyam Lal Gupta S/o Late Shri Auodhya Prasad Gupta, aged about 57 years, R/o 319/A, Old Katra, Allahabad.
 4. Sambhu Dayal S/o late Shri Hari Prasad, aged about 48 years, R/o 84/225, Bhusoli Tola, Allahabad.
 5. Krishna Lal S/o Late Shri Hari Prasad, aged about 48 years, R/o 65/3 6th Avnue Railway Colony, Allahabad
 6. Smt. Gayatri Devi W/o Late Shri D.R. Tripathi, aged about 45 years, R/o Yojna No.3, Sector 9 House no. 9/2004, Jhunsi, Allahabad.
 7. Jagdish Chandra Sharma S/o Late Shri Yad Ram Sharma, aged about 53 years, R/o 793/D, Lalit Nagar, Allahabad.
 8. Jagdishwar S/o late Shri Ganpat yadav aged about 49 yers, R/o 112, Rest House Compound Prayag, Allahabad.
 9. Kalloo Prasad S/o Late Shri Gabul Prasad, aged about 54 years, R/o 158/K Railway S.F.G. Allahabad.
 10. Vikramjeet Singh S/o Late Shri Awadh Behari Singh, aged about 49 years, R/o S/B G.M. Out House Leader Road, Allahabad.
 11. Ram Subagh S/o Late Shri Gudai aged about 56 years, R/o 940, H.C. Railway Colony, Leader Road, Allahabad.
- All above applicants are working as Storeman in Grade Rs.2650-4000/- under Sr. DEN(C), N.C. Railway, Allahabad.

.....Applicants

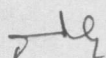
By Advocate: Shri Sudama Ram

Versus

1. Union of India through General Manager, N.C. Railway, Headquarters Office, Allahabad.
2. General Manager, N.C. Railway, Headquarters Office, Allahabad.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Sr. DEN (C), North Central Railway, Allahabad.
5. Secretary (Estt.) Railway Board, Rail Bhavan, New Delhi.

..... Respondents

By Advocate: Shri Anil Kumar.



ORDER**DELIVERED BY HON'BLE MR, O.P.S. MALIK, MEMBER -A**

All these OAs have been filed in connection with same controversy and relief/s involved. O.A. NO. 1401/06 -Uma Devi Vs. U.O.I and ors. is being taken as a leading case. However, inputs from other O.As have also been taken into account wherever necessary.

2. The lead O.A has been filed under section 19 of Administrative Tribunal Act, 1985 seeking the following reliefs:-

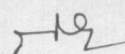
- "(i) The Hon'ble Tribunal may graciously be pleased to direct the respondent to give similar benefits to the applicant also which have been given to the applicants in case of Sukhdev Singh Vs. UOI and Ors. (O.A No. 648/1999) (Annexure A-5) i.e. regularizing the services of the applicants as Material Checkers Grade Rs.2750-4400 (RSRP) from the date from which the applicant was initially promoted as Storeman i.e. 9.4.1992 and thereafter upgrading her from the post of Material Checkers Grade Rs.2750-4400 (RSRP) to the post of Material Checking Clerks Grade Rs.3050-4590 (RSRP) as per existing policy of Railway Board.***
- (ii) The Hon'ble Tribunal may further be pleased to give all consequential benefits of seniority, promotion, arrears of difference of pay etc. which is admissible of her after granting the aforesaid relief (8-1) above.***
- (iii) Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the***



circumstances of the case may also kindly be issued to the interest of justice.

(iv) Cost of the application may also be awarded".

3. The factual matrix of the case is that applicant Uma Devi, originally a Casual Khalasi, was regularized in Group 'D' category in the Engineering Department of the N.C Railway vide order dated 31.8.1989. She was promoted as Storeman on 9.4.1992 and since then she is working in the grade of Rs.800-1150 (S-3). The applicant submits that in 1978-79, the post of Storemen was abolished and was redesignated/upgraded as Material Checker (hereinafter called M.C) in the grade of Rs.825-1200. This decision was implemented in all Zonal Railways except Allahabad Division. The applicant should have been posted in the grade of Rs.825-1200/225-308. Vide Railway Board letter dated 16.1.1978, the post of Material Checker in grade of Rs.225-308 was upgraded to the post of Material Checking Clerk (hereinafter called M.C.C) placing it in the grade Rs.260-400/Rs.950-1500. The Railway Board also directed all the Railway Zones to place the Material Checker in the grade of Rs.260-400 (Annexure A-3) vide Railway Board Circular dated 6.8.1978. The Allahabad Division did not comply with these instructions and continued to operate the posts as Storemen and arbitrarily allotted lower grade of Rs.210-270. 5Th Pay Commission also did not mention category of Storemen as there were no such designation and no hierarchical Career Chart for further promotions was provided in this category. Thus, the applicants have been deprived of further upgradations as extended to all other categories and the discrimination continued. As a result of cadre restructuring in 1993-2003, the benefit of upgradation has been extended to all



the categories except Storemen of Allahabad Division, resulting in the lower pay in the self designated pay scale of Rs.210-270 rather than the standard scales at par with Material Checkers/Material Checking Clerks. Subsequently, similarly situated employee of Bridge Department, which is also a wing of the Engineering Department of N.R/N.C.R. filed an O.A. No.648/99 Shri Sukhdeo Singh Vs. Union of India and Ors. before the Principal Bench of C.A.T. The Tribunal vide order dated 3.4.2003 allowed the O.A. On non-compliance, a C.P. was filed which was finally disposed of on 21.01.2004 by granting further time of two months to implement the judgment. The order of the Tribunal has been implemented by the Northern Railway and the benefits of regularizing the Storemen as Material Checkers have been extended to them in the grade of Rs. 825-1200 (S-4) (Annexure A-7). The aggrieved Storemen made representations to the Authorities to accord them the higher pay scale and promote the Storemen as Material Checking Clerks but nothing was done. It is further stated by the applicant that Storemen/Material Checkers working in Bridge Branch of Northern Railway filed an O.A. NO. 133/91 wherein vide order dated 28.8.1992, the respondents were directed to upgrade all the posts of Material Checkers grade held by the applicants therein to higher grade of Material Checking Clerks without requiring them to undergo written test or viva voce. Civil Appeal No. 3156/05 filed by the respondents against the order of Lucknow Bench was dismissed by the Hon'ble Supreme Court on 6.5.2005 (Annexure A-8). Thereafter, the respondents implemented the judgment and posts were upgraded from Material Checkers to Material Checking Clerks in grade of Rs.950-1500 (S-5) from the date from which they were

working as Material Checkers. In Lucknow Division of Northern Railway, all the Storemen working in Engineering Department were given the designation of Material Checkers in the pay scale of Rs.825-1200/- but Storemen in Allahabad Division working in the same capacity were denied the similar benefits. The respondents vide their letter dated 25.3.2004 issued order regularizing the Storemen working in the Bridge Department to Material Checkers in the grade of Rs.825-1200/- (S-4). One Storeman Shri Ram Kailash was also allowed the upper scale of Rs.825-1200 in pursuance of aforesaid Hon'ble Supreme Court judgment (supra). It is further alleged that respondents are implementing the Court order only in those cases, who were party to the court cases, which is evident from letter of D.R.M. N. C Railway dated 10.4.2006 (Annexure Nos 9 and 10) whereas the ratio of the aforesaid judgment should have been implemented in all the similarly situated cases of Storemen in the Railways including Allahabad Division.

4. In nutshell, the prayer of the applicant is to be given the scale of Rs.825-1200 in place of Rs.800-1150 initially and, thereafter, by upgradation as Material Checking Clerk in the grade of Rs.950-1500 (3050-4590).

5. In contra, the respondents have filed their counter affidavit wherein they have stated the history of various posts and scales beginning 30.5.1954 and 26.10.2012 under which there remained no regular post of Material Checker in the grade of Rs.825-1200 to consider the regular promotion of the applicant in the grade and applicant was allowed local promotion. In terms of Railway Board

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letter dated 20.7.1979, the post of Storemen has been abolished. It has been contended that the direction given by the Hon'ble Supreme Court is very specific and only applicable to the appellants therein and the present applicants can not seek the benefit of said judgment. All actions taken by the respondents are in conformity with the various Rules and instructions.

6. Rejoinder affidavit as well as Supplementary counter affidavit have also been filed in which same things have been reiterated as have been pleaded in the O.A. and C.A. itself.
7. Heard Shri S. Ram counsel for the applicant and Shri Anil Dwivedi, Shri P. Mathur and Shri P.N Rai counsel for the respondents and perused the records. Learned counsel for the applicant has also filed a written submission.
8. Learned counsel for the applicant submits that a similarly situated case O.A. No. 06 of 2007, Chhangoo Lal Vs. Union of India and Ors. was decided on 17.12.2008 by this Tribunal but the respondents did not consider the directions of the Tribunal "to consider" the case in the light of orders/judgments delivered in similar cases by C.A.T. Principal Bench/Lucknow Bench and Full Bench of C.A.T, New Delhi in **Kulwant Singh and Ors. Vs. Union of India and Ors. reported in 1997 -2001 AT FB 329** but only followed the direction of Railway Board's letter dated 10.3.2004 (Annexure A-7 filed in O.A No. 1221/06) and did not allow the similar benefits to the applicants. The Hon'ble Supreme Court in the case of **A.P.S.R.T.C and Ors. Vs. G. Srinivas Reddy and others**

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reported in 2006 SCC (L&S) 577 has explained the difference between direction to "consider" simpliciter and "direction to consider in the light of findings or observation of court" at para 17 as under:-

"17. Where the High Court finds the decision – making process erroneous and records its finding as in the matter in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But when the High Court without recording any findings or without expressing any view, merely directing the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by observations or findings of the Court".

9. It has further been argued that Railway Board letter dated 10.3.2004 has no jurisdiction to negate the orders passed by the Principal Bench of C.A.T, New Delhi in Sukhdeo Singh case and other Courts in identical matters by making executive order as not to treat the aforesaid judgment in rem as precedence. Such stand by the Railway Board is beyond its jurisdiction and competence. To support this argument, the learned counsel has relied on Full Bench Judgments in **Sukkubai and N.J. Ramulu Vs. The Secretary, Ministry of Communications ETc. & four others** reported in **Full Bench Judgment (CAT) Vol. III page 209.**

10. It has been contended that some similarly situated employees of Bridge Department filed O.A. No. 648 of 1999 being Shri

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Sukhdeo Singh and Ors. Vs. Union of India and Ors. before the Principal Bench of the Tribunal, which was allowed vide order dated 3.4.2003 (Annexure A-5). This order was complied with after filing the CCP. The case of Ram Kishore has also been cited who was promoted from Storeman to Material Checking Clerk (M.C.C) Group 'C' directly vide order dated 22.05.2001. The contention of the counsel for the applicant is that similar benefits as in the case of Shri Sukhdevo (supra) should have been extended to the applicants following the law settled by the Apex Court in the case **of K.C. Sharma Vs. Union of India and Ors** reported in **1998 SCC (L&S) 226**, **Phurnendu Mukhopadhyay and Ors. Vs. V.K. Kapoor** reported in **(2009) 2 SCC (L&S) 506** and **Badri Prasad and Ors. Vs. Union of India and Ors.** reported in **2006 (1) ATJ 543**.

11. The learned counsel for the applicant sums up his argument by stating that the grievance of the applicant is that as a result of cadre restructuring of 1993-2003, the benefits of upgradations/promotions have been extended to all other categories including Material Checkers and Material Checking Clerks (Group 'C' scale) except the applicants in these O.As resulting in non-standard pay scale of Rs.800-1150 since their appointments. The benefit should accrue to them as it was done in the case of Ram Kishore of Allahabad Division who was promoted directly from the post of Storeman to Material Checking Clerk by the same D.R.M Northern Railway, Allahabad. But in other cases, the authorities adopted discrimination in allowing similar benefits, which is not sustainable in law. The applicants being similarly situated are

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entitled for the benefits as similar matter cannot be treated differently. The applicants have further placed reliance on following judgments:-

- (i) ***Savita Ram and Ors. Vs. Union Territory Chandigarh and others – 2003 (2) SLJ 124.***
- (ii) ***Sunilendu Chaudhary and Ors. Vs. UOI and Ors. 1993 (23) ATC 461.***
- (iii) ***Sujit Kumar Ghosh & Ors. Vs. UOI and Ors. 1996 (32) ATC 347.***
- (iv) ***Shri Ram Prashad Bhattacharya Vs. Union of India and Ors. 2000 (1) SLJ (CAT) 499.***
- (v) ***R.K. Agarwal Dr. Vs. Union of India and Ors. 1993 (23) ATC 266.***
- (vi) ***Inder Pal Yadav and Ors. Vs. Union of India and Ors. 1985 SSC (L&S) 526.***

12. In order to appreciate the controversy involved better, it would be proper to peruse the relevant pay scales under debate. The comparative chart of these scales, according to Pay Commissions, is as under:-

Sl. No.	4 th CPC Pay scale w.e.f. 1.1.1986	5 th CPC Post/Grade and Pay scale w.e.f. 1.1.1996		6 th CPC Post/Grade and Pay scale w.e.f. 1.1.2006 corresponding		
		Grade	Scale	Name of pay Band/scale	Pay Bands/ Scale	Grade Pay
1.	800-1150	S-3	2650-4000	-1S	4440-7440	1650
2.	825-1200	S-4	2750-4400	PB-1	5200-20200	1800
3.	950-1500	S-5	3050-4590	PB-1	5200-20200	1900
4.	975-1660	S-6	2300-4900	PB-1	5200-20200	2000
5	1200-2040	S-7	4000-6000	PB-1	5200-20200	2400
6	1350-2300	S-8	4500-7000	PB-1	5200-20200	2800

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13. Here, it would be necessary to analyse the Railway Board letter dated 10.3.2004 wherein the Railway Board, pursuant to direction dated 22.1.2004 of C.A.T, Principal Bench, New Delhi, examined the matter and made following observations:-

"1 (iv) The standard designation of staff dealing with stores matters in Department other than Stores is Material Checker in Grade of Rs.225-308 (RS)/Rs 825-1200 (RPS) and, as such, the action of Bridge Deptt. of Northern Railway in according designation of Storeman and the scale of Rs.110-270 (Rs)/Rs.800-1150 (RPS) is absolutely in contravention of Board's instructions on designation as well as standard scale and hence incorrect"

It further goes on to state as under:-

"2. However, in view of the fact and circumstances of the case and observations/directions dated 22.1.2004 of the Hon'ble CAT's in CP No. 413/03, the Competent Authority, under legal obligations, has decided to implement Hon'ble CAT's order in respect of applicants only by regularizing them as Material Checker in grade of Rs.825/1200 (RPS)/Rs.2750-4400 (RSRP). The Competent Authority has further decided that this should not be treated as a precedence to any other similar case and in case identical cases are filed seeking similar relief's, the same should be contested effectively on the basis of factual position as brought out above and in the speaking order dated 17.10.03".

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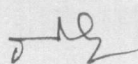
14. It is seen that the letter dated 20.7.1979 mentions in attached Schedule, the redesignation of the post of Storeman. Further, in view of instructions issued in the year 1978-79, the post of Storeman was abolished and all the Storeman of all other departments in Northern Railways were re-designated and replaced as Material Checkers (M.Cs) in the scale of Rs.825-1200 except in open line of Engineering Department of Allahabad Division. The Authorities did not re-designate and replace the working Storeman of Engineering Department as M.Cs. In terms of Railway Board letters, the posts of Material Checkers were further upgraded to Material Checking Clerks in the scale of Rs. 260-400 (RS)/950-1500 (RPS)/3050-4590 (RSRP). However, this decision of Railway Board was not implemented in Allahabad Division. It is also seen that the Competent Authority under legal obligations had decided to implement CAT's order in respect of applicants (therein) only by regularizing them as Material Checker in grade of Rs.825-1200. The Competent Authority further decided that **this should not be treated as a precedent** to any other similar case and in case identical cases are filed seeking similar relief's, the same should be contested effectively on the basis of factual position.

15. The notice relating to Ram Kishore dated 22.5.2001 reveals that Shri Ram Kishore, who was working as Storeman in Kanpur in grade Rs. 800-1150 was allowed payment of his salary Rs.950-1500 w.e.f. 29.11.88 to 30.7.94 for shouldering responsibilities of MCC/Clerk. Utilization of this Storeman in the higher grade of M.C.C was a local temporary/adhoc arrangement, confined to Kanpur Unit only and this will not confer any rights upon him to claim

seniority/promotion over his seniors in future. It seems that this particular grade was given to him in 2001 for shouldering responsibilities of MCC/Clerk with a proviso that such payment to him would not entitle him for seniority. Vide order dated 10.4.2006, in compliance of Hon'ble Supreme Court order pay of Shri Ram Kishore was protected in Group 'C' and, if required, giving one time relaxation.

16. From the above analysis, it emerges that the applicants herein were initially given the lower equivalent scale of Rs.800-1150/- whereas their claim is for higher scale of Rs.825-1200. Further, vide letter dated 20.7.1979, the re-designation of the post of Storeman was done as Material Checker. As a result of cadre structuring, the benefit of upgradation should have been extended to the applicants but only the Storemen working in the Engineering Department of Allahabad Division were not given this benefit. In view of the cases cited by the applicants wherein the similarly situated employees were given this benefit of upgradation, it should have accrued to them. As similarly situated persons were given these benefits in pursuance of order in O.A. No. 648 of 1999, the applicants seem to have been at a disadvantage as initially they were placed in a lower grade against the scheme of re-designation in compliance of order dated 20.7.1979.

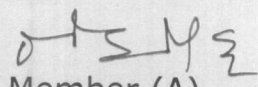
17. In view of facts and circumstances of these O.As and legal position, we are of the considered view that the applicant/s have been discriminated against as the similarly situated employees were given these benefits. They also deserve to be given the similar

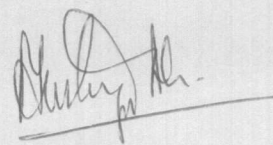


benefits. Similar employees cannot be treated in a dissimilar manner. Therefore, it will be just and proper to grant similar benefits to the applicants in terms of designation and pay. The O.As. deserve to be allowed.

18. Accordingly, the O.A. Nos. 1401/06, 1221/06 and 602/06 are allowed. The respondents are directed to re-consider the grant of scales and designation to the applicants in accordance with rules and in the light of observations made by us hereinabove within a period of four months from the date of receipt of certified copy of this order.

There is no order as to costs


Member (A)


Member (J)

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