

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

OA No. 428/2012Jodhpur this the 21st day of March, 2014.**CORAM**

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and

Hon'ble Ms. Meenakshi Hooja, Member (A)

1. Jai Karan Chaudhary S/o Shri Mali Ram aged about 64 years last employed on the post of Mail / Ex / A Special Guard in the Office of Station Superintendent, Bikaner, NWR.
- 2.. Dharma Chand S/o Shri Nanka Ram aged about 64 years, last employed on the post of Mail / Ex / A Spl. Guard in the office of Station Superintendent, Rewari, NWR.
3. Smt. Dhansi Wife of Late Shri Shiv Ram Meena aged about 46 years her late husband was last employed on the post of Mail / Ex / A Spl. Guard in the office of Station Superintendent, Bikaner, NWR.
4. Radha Kishan S/o Shri Teja Ram aged about 61 years last employed on the post of Mail / Ex / A Spl. Guard in the office of Station Superintendent, Churu, NWR.
5. R.K. Mudgal S/o Shri Hukam Chand aged about 62 years last employed on the post of Pass Guard in the office of Station Superintendent, Bikaner, NWR.

Address for correspondence : C/o Shri Ashok Kumar Sharma R/o A-60, Karni Nagar, Near Bikaner Nursing Home, Bikaner 334001.

.....Applicants

(Through Adv. Mr J.K. Mishra)

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17.
2. Railway Board through its Chairman, Railway Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, North-West Railway, Bikaner Division, Bikaner.
4. The Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-110 001.

..... Respondents

(Through Adv. Mr. R.K.Soni, for Respondents 1 to 3.)

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant Shri Jai Karan Chaudhary and 4 others have filed this OA under Section 19 of the Central Administrative Tribunal Act, 1985 challenging the legality of the impugned circular dated 10.02.2011 (Annex.A/1) and order dated 23.08.2012 (Annex.A/2) passed by the respondent – department and they have also prayed to direct the respondents to pay the due benefit of the Modified Assured Career Progression (MACP) scheme already granted to them applying the ratio of judgment in case of All India Loco Running Staff Association and others. They have also prayed to permit pursue this application jointly on behalf of all the applicants under Rule 4 (5) of CAT (Procedure) Rules, 1987.

2. So far as prayer to pursue the OA jointly is concerned, since the cause of action has arisen from same/identical orders, therefore, the applicants are permitted to pursue this OA jointly.

3. The brief facts of the case as averred by the applicant that the applicants No. 1 and 2 were employed as Guard (Mail) Bikaner/Rewari Stations and have since retired on attaining the age of superannuation on 30.11.2008 and 31.02.2009. Applicant No. 3 is the widow of Shiv Ram Meena, who died while working as Mail / Ex.Guard at Bikaner on 04.11.2011. Applicant No. 4 was last employed as Mail/Ex./A Special Guard in the office of Station Superintendent, Churu and has since retired. The applicant No. 5 has also been retired as Pass Guard, Bikaner on 31.07.2009. It has been contended that there was a restructuring of Grade 'C' Staff of Traffic Transportation Department vide RBE No. 19/93 dated 27.01.1993

and accordingly, the posts of Goods/Passenger Guards were upgraded to the extent of 20% and the persons falling in seniority were to be given the pay in the pay scale meant for the next higher post on the basis of seniority-cum-suitability as per bifurcation done as per Annex. A(iii) to the said scheme. In the beginning no designation was given and subsequently, the word 'senior' was directed to be affixed with the normal designation of the post for such persons vide RBE No. 106/1993 and the percentage of said upgradation was subsequently enhanced. All the applicants were allowed due fixation of revised pay & allowances including the benefits of 2nd/3rd financial upgradation in the scale Rs 9300-34800 + Grade Pay Rs 4200 to the Grade Pay of Rs 4600 and Rs 4800 as per their entitlements, under MACP Scheme. The 3rd respondent issued an order dated 23.08.2012 whereby the benefits of MACP granted to the applicants and other Guards have been ordered to be withdrawn with consequential recoveries and the same said to have been issued in pursuance with and in implementation of a Railway Board Circular dated 10.02.2011. Thus, the applicants while challenging the legality of the order Annex. A/1 & A/2 have sought following relief (s):

- "(i) That the applicants may be permitted to pursue this joint application on behalf of 5 applicants under rule 4 (5) of CAT Procedure Rules, 1985.
- (ii) That impugned circular dated 10.2.2011 (Annex. A/1) and order dated 23.08. (Annex. A/2), and all subsequent orders thereof, if any passed on pending representations, may be declared illegal, against the provisions of MACP Scheme and the same may be quashed.
- (iii) That the respondents may be directed to restore the due benefits of MACP granted to the applicants by applying the ration of judgment (rather in implementation of) in the case of All India Loco Running Staff Association and Others, supra, and applicants be allowed with all consequential benefits including keeping pension/family pension granted to them intacked.
- (iv) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (v) That the costs of this application may be awarded."

4. It has been averred by the applicants that similarly situated Guards of Bikaner Division of NWR submitted a brief and to the point representation to the competent authority on 31.08.2012 annexing copy of the judgment dated 22.02.2012, passed by Ernakulum Bench of CAT in the case of All India Loco Running Staff Association and Ors v. UOI & Ors etc. in OA No. 484/2011, 507/2011, 561/2011, 610/2011, 647/2011 and 650/2011 and this Tribunal held that earlier granted MACP to the applicants therein ignoring the promotions granted earlier as such promotions, fell under the provision of para 5 of the scheme. It has also been averred that a review in the said case i.e. All India Loco Running Staff Association and Ors. was filed and the above judgment was substituted after incorporating correct para 5 and 8 of the scheme. Therefore, the issue involved in the instant case stands settled and does not remain res integra. In the above order, it was also directed that the identical matter should also be dealt with by the respondents accordingly without forcing the employees to rush to the Tribunal for an identical relief. Despite the above direction, the applicants have been forced to invoke the jurisdiction of this Tribunal treated as a separate class as non-litigating without there being no intelligible differentia for the same and there is no nexus with the object sought to be achieved. It has further been averred by the applicants that respondents have decided to give effect to the Railway Board order and issued the impugned order which is in clear disregard to the judgment of Coordinate Bench which is a judgment in rem with stipulation that it should be applied to all similarly situated persons. Therefore, aggrieved with the action inaction on the part of the respondents, the applicant have filed this OA praying for the relief, as extracted above.

5. By way of reply the respondents have denied the right of the applicants to get the MACP as prayed by them and further averred that the

instructions relating to regulations of MACP Scheme have to be interpreted in consonance with the policy perspective and scope of the Scheme and any interpretation beyond policy perspective and scope would neither be reasoned nor judicious. The Railway Board by letter RB No. 142/2012 clarified that what grade pay would be admissible under MACP Scheme to an employee holding feeder post in a cadre where promotional post is in the same grade pay. It has been further submitted in the reply that the financial upgradation under ACP/MACP Scheme cannot be granted to higher Grade Pay than what can be allowed to an employee on his normal promotion. In such cases, financial upgradation under MACP Scheme would be granted to the same Grade Pay. Thus, the employees having enjoyed the benefit of 3 promotions already including due fixation of revised pay benefits of 2nd/3rd financial upgradation in the scale of Rs 9300-34800 to the Grade Pay of Rs 4600 and 4800 to which they are not entitled under the MACPs under the law. Therefore, the financial benefits are liable to be withdrawn. It has been further submitted that as maximum grade pay in Guard hierarchy is Rs 4200, therefore, the applicants cannot be granted grade pay of Rs 4600 and 4800 as it exceeds the maximum grade pay and not only this, under the normal promotion also applicants will get maximum grade pay of Rs 4200 only. It has also been averred in the reply that order dated 22.02.2012 passed by Ernakulam Bench of CAT is based on an isolated interpretation of para 5 of the Annex. A/4, Board's Policy instructions dated 10.06.2009 without taking into cognizance the instruction contained in para-8. This has resulted into passing of an order in contravention of para-8 of the Annexure and that too without appreciating, deliberating and discussing its relevance. In fact the instructions embodied in para-5 of Annexure to policy instructions dated 10.06.2009 are also not applicable in the instant matter. Thus the order dated 22.02.2012 passed by Ernakulam Bench of CAT being based on an isolated interpretation and incorrect application of one instruction without

taking cognizance of the other instruction(s) of the same letter render it per-in-curiam and has no force in law and therefore, Annex. A/5 dated 11.04.2012 is not applicable in the present controversy and this Bench is not bound by the order of Ernakulam Bench for it having persuasive force only.

6. The applicants have filed a rejoinder reiterating the points raised in the O.A.

7. Heard both the parties. Counsel for the applicants contended that the order Ann.A/2 is not a show cause notice but it is an order of execution of Railway Board's circular dated 23.08.2012 which itself has been challenged and the same has been issued without providing opportunity to show-cause or hearing to the applicants. The counsel for the applicants further contended that the judgment in the case of All India Loco Running Staff Association (supra) fully covers the controversy and the issue involved in the present case stand settled and therefore, it does not remain res-ingetra. This Bench of the Tribunal in OA No.464/2012 vide order dated 4.9.2013 which was filed by similarly situated Guards of Jodhpur Division has also directed the respondents to take into consideration the order passed by the Ernakulam Bench of this Tribunal and further the Division Bench of the Allahabad High Court vide order dated 19.7.2013 in Writ -A No.18244 of 2013 has also decided the similar matter. Therefore, the applicants are entitled to the reliefs as claimed for.

8. Per contra, counsel for the respondents contended that the judgment delivered in the case of All India Loco Running Staff Association is not applicable in the case of Guards' cadre. As the benefit of up-gradation has been granted, therefore, this period will be counted as upgradation for the purpose of MACP. Counsel for the respondents further contended that the respondents have issued withdrawal notice as per the clarification dated

10.2.2011 as the upgradation so given was subject to any amendment/clarification received from the competent authority.

9. We have considered the rival contentions of the parties. It is settled principal of law that one must be heard before passing any adverse order against him. The order dated 23.08.2012 (Ann. A/2) cannot be said to be a show-cause notice and before passing any adverse order the respondents are required to give opportunity to show-cause or hearing to the applicants. Therefore, keeping in view our earlier decisions dated 4.9.2013 in OA No.464/2012 and 10th March, 2014 in OA No. 240/2013, we propose to dispose of this OA with certain directions.

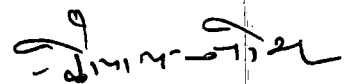
10. Therefore, the OA is disposed of with directions to the applicants to file their representations to order Ann. A/2 within 15 days from the date of receipt of this order and the respondent-department shall decide the representations of the applicants within 2 months from the date of receipt of such representations. While deciding the representations of the applicants, the respondent department is directed to take into consideration the order passed by the CAT-Ernakulam Bench in RA No.16/12 in OA No.561/2011 dated 10.4.2012 and order dated 22.2.2012 in OA no.561/2011 as well as the judgment dated 19.7.2013 of the Division Bench of the Allahabad High Court passed in Writ –A No.18244 of 2013 and no recovery in pursuance to Ann.A/2 shall be affected on the applicants upto 15 days from the date of disposal of their representations by way of an order, to allow the applicants to pursue their grievances, if advised.

11. There shall be no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

jrm



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

R/c
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