

CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 429/2012 and OA No. 430/2012
Jodhpur, this the 28th October, 2013.

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)
Hon'ble Ms. Meenakshi Hooja, Member (A)

1. Bhagwan Singh Meena S/o Shri Mangya Ram Meena aged about 59 years at present employed on the post of Mail/Ex.Gluard, in the office of Station Superintendent, Rewari, NWR.
2. K.K.Saxena S/o Shri K.L.Verma aged about 57 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
3. Tilak Raj S/o Shri Tara Chand, aged about 58 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
4. Ishwar Singh S/o Shri Umrao Singh aged about 55 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
5. Brij Kishore Sharma S/o Shri Ramjilal aged about 52 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
6. Ajit Singh Rao S/o Shri Deshraj aged about 57 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
7. Rajveer Singh S/o Shri Raghbir Singh aged about 58 years, at present employed on the post of Mail/Ex Guard, in the office of Station Superintendent, Rewari, NWR.
8. Pradeep Kumar Sharma S/o Shri Kedar Nath aged about 60 years, at present employed on the post of Pass Guard, in the office of Station Superintendent, Rewari, NWR.
9. Vishnu Bhagwan S/o Shri Mangal Ram Sharma, aged about 56 years, at present employed on the post of Pass Guard in the office of Station Superintendent, Rewari, NWR.
10. Anil Kumar Verun S/o Shri Ram Chander, aged about 48 years, at present employed on the post of Pass Guard, in the office of Station Superintendent, Rewari, NWR.
11. Vijay Kumar Ladwal S/o Shri K.S. Lodwal, aged about 45 years, at present employed on the post of Pass Guard in the office of Station Superintendent, Rewari, NWR.

12. Atar Singh S/o Shri Bahadur Singh aged about 56 years, at present employed on the post of Pass Guard, in the office of Station Superintendent, Rewari, NWR.

..Applicants in OA No. 429/2012

1. Ashok Kumar Sharma S/o Shri J.N. Sharma, aged about 57 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
2. Ganga Sahai Meena S/o Shri B.S. Meena aged about 52 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
3. Jagjeet Singh Meena S/o Shri B.R. Meena, aged about 57 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
4. Ved Prakash S/o Shri Bharatji aged about 58 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
5. Pawan Kumar Behal S/o Shri Ranjit Rai aged about 57 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
6. Surender Singh S/o Shri Mohan Singh aged about 56 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
7. Mahendra Kumar Sharma S/o Shri Pokar Mal aged about 56 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
8. K.K. Vashishta S/o Shri R.K. Vashishta, aged about 59 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
9. Dharashan Singh S/o Shri Kuldeep Singh aged about 54 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
10. Om Prakash Narang S/o Shri Jhandu Ram aged about 59 years, at present employed on the post of Mail/Ex Guard, Bikaner NWR.
11. Ashok Kumar Sharma S/o Shri Shiv Kumar aged about 52 years, at present employed on the post of Pass Guard, Bikaner NWR.
12. Kailash Narayan Chaudhary S/o Shri Arjun, aged about 48 years, at present employed on the post of Pass Guard, Bikaner NWR.
13. Razab Ali S/o Shri Gulam Nabi aged about 50 years, at present employed on the post of Pass Guard, Bikaner NWR.
14. Sartaj Ali S/o Shri Hassain Ali aged about 52 years, at present employed on the post of Pass Guard, Bikaner NWR.
15. Rajesh Kukreja S/o Shri B.N. Kukreja aged about 46 years, at present employed on the post of Pass Guard, Bikaner NWR.
16. Amar Singh S/o Shri Man Singh aged about 58 years at present employed on the post of Pass Guard, Churu NWR.

17. Satish Kumar S/o Shri Ved Prakash, aged about 58 years at present employed on the post of Pass Guard, Churu NWR.

18. Vipin Kumar Sharma S/o Shri Ramesh Lal aged about 46 years at present employed on the post of Pass Guard, Hanumangarh Jn. NWR.

19. Naresh Rai Joshi S/o Shri Rai Kuldeep Joshi aged about 50 years, at present employed on the post of Pass Guard, Hanumangarh Jn. NWR.

20. Om Prakash S/o Shri Sita Ram aged about 58 years at present employed on the post of Pass Guard, Hanumangarh Jn. NWR.

Address for correspondence : C/o Shri Ashok Kumar Sharma R/o A-60, Karni Nagar, Near Bikaner Nursing Home, Bikaner-01.

..Applicants in OA No. 430/2012

(Through Adv.Mr. J.K.Misha)

Versus

1. Union of India through the General Manager, H.Q. Office, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur.
2. Railway Board through its Chairman, Railway Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, North Western Railway, Bikaner Division, Bikaner.
4. The Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.

...Respondents.

(Through Adv.Mr. Vinay Jain)

ORDER

Per K.C.Joshi, Member (J) :

These OAs No. 429/2012 and 430/2012 have been filed jointly by 12 and 20 applicants respectively under Sec. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"(i)That the applicants may be permitted to pursue this joint application on behalf of 12/20 applicants under Rule 4 (5) of CAT Procedure Rule, 1987.

(ii)That impugned circular dt. 10.2.2011 (Annexure A-1) and order dated 23.8.2012 (Annexure 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 vide letter dated 3.6.2011 (Annex.A/5) by applying the ratio of judgment (rather in implementation of) in case of All India Loco Running Staff Association and Others, supra, and applicants be allowed with all consequential benefits including the refund of amount recovered in pursuance of the impugned orders.

(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."

2. It has been averred in the OAs application that a joint application has been filed as the cause of action has arisen from the same/identical orders and the relief claimed is the same. The applicants are presently holding the post of Goods Mail / Passenger Guard and posted at various offices of the Railways as mentioned in the cause title. It has been averred that as per re-structuring of Group 'C' staff of Traffic Transportation Department vide RBE No. 19/93 dated 27.01.1993 the posts of Goods Guards and Passenger Guards were upgraded to the extent of 20% and the persons falling in the seniority up to the said percentage were to be given the pay in the pay scale meant for the next higher post on the basis of seniority cum suitability. In the beginning no designation was given but subsequently, the word 'Senior' was directed to be affixed to the normal designation vide RBE No. 106/1993. The percentage of said upgradation was subsequently enhanced. After actual promotion from Sr. Goods Guard to Passenger Guards and Senior Passenger Guards, it was lateral induction in the same grade and not a vertical movement, meaning thereby, posting was from one post to another in the same pay scale and obviously did not have any element of promotion. It has been further averred that with effect from 01.01.2006, the pay scales of all the posts of Guards except Goods Guards were revised to Rs. 9300-34800+GP Rs. 4200/. The Railway Board vide Circular dated 10.06.2009 adopted the MACP Scheme issued by the Government of India in pursuance with the recommendations of the 6th Central Pay Commission (CPC) which envisages for allowing three

financial upgradations after completion of 10, 20 and 30 years of service. The same became applicable to the Guard category also. All the applicants were allowed due fixation of revised pay and allowances including the benefit of 2nd and 3rd financial upgradations in the pay scale of Rs. 9300-34800 plus grade pay of Rs. 4200/- to the grade pay of Rs. 4600/- and 4800/- as per their entitlements, under the MACP Scheme vide letter dated 3.6.2010 (Annex.A/5). The 3rd respondent has now issued an order dated 23.08.2012 (Annex.A/2) purported to be a show cause notice, whereby the benefits of MACP granted to the applicants and other Guards have been sought to be withdrawn and the same is said to be in pursuance of the Railway Board's Circular dated 10.02.2011 (Annex.A/1).

3. It has been further averred that the applicants and other similarly situated Guards submitted representations in the light of the judgment dated 22nd February, 2012 of the Ernakulam Bench of the Tribunal in the case of All India Loco Running Staff Association and Ors. Vs. Union of India and Ors. etc. in OA No. 484/2011, 507/2011, 561/2011, 610/2011, 647/2011 and 650/2011. In the said judgment the Tribunal held that the earlier MACP granted to the applicants their in, ignoring the promotions granted earlier as such promotions, fell under the provisions of para 5 of the scheme. The Ernakulam Bench judgment was reviewed vide order dated 11.4.2012 and the above judgment was substituted with the same after incorporating paras 5 and 8 of the Scheme. It has been averred that the action of the respondents in connection with withdrawing the benefits of Grade Pay vide Annex.A/2 is illegal and arbitrary and is against the ratio of the judgment in the case

of All India Loco Running Staff Association and Ors. The impugned orders have been issued in clear breach of principles of natural justice and hence the OAs.

4. In reply, the respondents have stated that the OA cannot be submitted jointly because all the applicants have different cause of action. It has also been stated that no designation as Senior in the restructuring was given under the RBE No. 19/1993. Actually designation Senior was introduced vide RBE No. 106/1993 and vide RBE No. 106/1993 posting from Senior Goods guard to Passenger Guard was a status posting and from Passenger Guard to Senior Passenger Guard was promotion where pay of the staff is fixed as per normal rules. It has been submitted that the respondent department has implemented the recommendations of the 6th CPC in respect of merger of the grades and revised classification vide RB/Estt. No. 161/2009 dated 03.09.2009 which has been submitted as Annex.R/1. From the Circular dated 03.09.2009 it is clear that Pay Band (Grade Pay) of Senior Goods Guard, Passenger Guard, Senior Passenger Guard and Mail/Express Guard was kept in PB-2 (Rs.4200/-). This Circular dated 3.9.2009 has not been challenged by the applicants. As per the MACP Scheme an employee earning promotion as per their cadre hierarchy even if the promotional post is in the same grade pay, is not entitled for financial upgradation as their case is not a case of genuine stagnation. Thus basic purpose of MACP scheme is to give next promotion grade pay to the employee who has completed 10, 20 and 30 years of service. The applicants were wrongly granted the grade pay of Rs. 4600/- and 4800/- under the MACP Scheme vide 2nd and 3rd Financial

upgradation vide letter dated 03.06.2010. They were not entitled for the same as per order dated 03.09.2009 by which the grades were merged and in which grade pay of Senior Goods Guard, Passenger Guard, Senior Passenger Guard and Mail / Express Guards were kept in Pay Band – 2 Rs. 4200/- Therefore applicants cannot be granted pay grade of Rs. 4600/- and 4800/- because under Guard hierarchy maximum grade pay is Rs. 4200/- therefore, beyond this applicants cannot claim because under the normal promotions also, applicants will get maximum grade pay of Rs. 4200/- only. It has also been submitted that there was a confusion in respect of granting benefit under the MACP Scheme to Guards category, therefore, in this respect the Railway Board issued a clarification vide their letter dated 10.02.2011 which has been annexed along with the reply as Annex.R/2. This letter was issued after consultation with the Department of Personnel & Training and thereafter clarification was given that every financial upgradation is to be counted as upgradation and offset against the financial upgradation under MACPS No. 101/2009. Thus placement / grant of higher grade pay from Goods Guard to Senior Goods Guard on nonfunctional basis was reckoned as upgradation for the purpose of MACPS Scheme. Thus, an employee appointed as Goods Guard has earned three promotions financial upgradation till he reached Mail/Express Guard as under :

- (i) From Goods Guard to Senior Goods Guard.
- (ii) From Senior Goods Guard to Passenger Guard
- (iii) From Senior Passenger Guard to Mail / Express Guard
(Passenger Guard to Sr. Passenger Guard to be ignored)

These employees are not entitled to any further financial upgradation under the MACPS. It has also been submitted in the reply

that at the time of granting the benefit of MACPs to the employees vide letter dated 07.06.2010, it was clearly stated that this benefit has been granted subject to any amendment or clarification received from the Railway Board or the Headquarters. Before passing any adverse order, due notice dated 23.08.2012 (Annex.A/2) was given to the employees to submit their representation and applicants also submitted their representations but before the same could have been decided applicants filed this OA, therefore these OAs are premature and on this ground also, the OAs deserve to be dismissed.

5. During the course of the arguments, the counsel for the respondents contended that the applicants have approached against the show cause notice issued as Annex.A/2 dated 23.08.2012 and not against any final order.

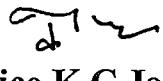
6. Per contra, counsel for the applicants contended that this show cause notice Annex.A/2 was issued while relying upon the order of the Railway Board instructions, and by way of this order, the respondent-department refixed the salary of the applicants and thus it cannot be termed as a show cause notice but it is the order of refixation of salary of the applicants. The learned counsel for the applicants further contended that the Allahabad High Court while deciding the Writ Petition No. 18233/2003 Union of India through the General Manager, East Central Railway and Ors. Vs. CAT and Ors, set aside the order of the Railway Board in pursuance to which the notice Annex. A/2 was issued to the applicants.

7. We have heard the learned counsel for the parties and perused the relevant Annexures and the judgment cited by the counsel for the

applicant. The Allahabad High Court in the aforesaid judgment while maintaining the order of the CAT, held that since it has already been held by judicial pronouncement that the post of Senior Goods Guard and Passenger Guard have the same grade of pay and movement of a Senior Goods Guard to the post of Passenger Guard, is only a lateral induction and not a promotion, all the private respondents would be taken to have got only one financial upgradation and as per MACPS, they were entitled to two more financial upgradations. This is also what has been held by the Ernakulam Bench of the Central Administrative Tribunal in a batch of original applications, which was relied upon by the Tribunal in the impugned judgment. Therefore in view of the above, we are intending to dispose of these applications with certain directions.

8. The applicants shall file the reply to the show cause notice (Annex.A/2) within two weeks from the date of receipt of a copy of this order and the respondents shall decide the reply to the show cause notice in terms of the judgment of the Allahabad High Court delivered on 19.07.2013 (supra) within a month from the date of receipt of the representations. Till then, the respondents shall not act upon or recover any amount in pursuance to Annex.A/2. Further the respondents are also directed that if any order is passed against the applicants the recovery shall be made after giving a notice of atleast one month to the applicant. With these directions the OAs are disposed of with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C.Joshi]
Judicial Member

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