CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 465/2012 & MA 68/2013
Jodhpur this the 04th day of September, 2013.

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

1. Radhey Shyam Meena s/o Sh. Sampat Ram Meena, aged about 53 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
2. Bhabhoot Nath S/o Sh. Jawan Nath, aged about 59-1/2 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
3. Shanti Lal Dave S/o Sh. Narayan Dutt, aged about 54 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
4. Pradeep Bhargava S/o Sh. Trilok Nath, aged about 50 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
5. Sadhu Ram Meena S/o Sh. Ram Dayal Meena, aged 58 about years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
6. Jokhan Prasad S/o Sh. Ram Sunder, aged about 59 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
7. Saleem Khan S/o Sh. Moley Khan, aged about 49 years, at present employed on the post of Pass Guard, Jodhpur, NWR.
8. Haribhajan Meena S/o Sh. Nanak Ram, aged about 54 years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
9. Chokha Ram Chaudhary S/o Sh. Ugra Ram, aged 51 about years, at present employed on the post of Mail/Ex Guard, Jodhpur, NWR.
10. Omkar S/o Sh. Munshi Lal, aged about 50 years, at present employed on the post of Pass Guard, Jodhpur, NWR.
11. Ram Pratap Meena S/o Sh. Punia Ram Meena, aged about years, at present employed on the post of Pass Guard, Jodhpur, NWR.

.....Applicants

(Through Advocate Mr J.K. Mishra)

Versus

1. The 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. Assistant Personnel Officer, North-West Railway, Jodhpur Division, Jodhpur.

4. The Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi – 110 001

....Respondents

(Respondents No. 1 to 3 through Advocate Mr Kamal Dave)
(Respondent No. 4 through Advocate Ms K. Parveen)

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicants, Shri Radhey Shyam Meena & Ors total 11 applicants, have filed this OA against the respondents under Section 21 of the Central Administrative Tribunal Act, 1985 challenging the legality of the impugned circular dated 10.02.2011 (Annex. A/1) and order dated 10.10.2012 (Annex. A/2) and all subsequent orders, if any passed, by the respondent-department and further they prayed to direct the respondents to pay the due benefits of the MACP already granted to them applying the ratio of judgment in case of All India Loco Running Staff Association and others, supra. They have also prayed to permit pursuance of joint application on behalf of all the applicants under Rule 4 (5) of CAT (Procedure Rules), 1987.

2. Looking into the entire facts and circumstances of the case that all the applicants have challenged the common order of the

Railway Board, therefore, we are allowing all the applicants to pursue the joint application.

3. The short facts of the case are that applicants are presently holding the post of Guard Mail/Pass/Goods and posted at various offices mentioned in the cause title. 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, vide letters dated 15.02.2009 and 17.03.2010. The 2nd respondent issued a circular that Guard are not entitled for MACP benefits. The 3rd respondent has also issued an order dated 10.10.2012, 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. The objections were also invited from the concerned individuals' upto 10.11.2012. The applicants while challenging the legality of the show cause notice Annex. A/2 and circular issued by the respondent No. 2 and 3 have sought following relief (s):

(ii) **"That impugned circular dated 10.02.2011 (Annex. A/1) and order dated 10.10.2012 (Annex. A/2), and all subsequent orders thereof, if any passed, may be declared illegal, against the provisions of MACP Scheme and the same may be quashed.**

(iii) **That the respondents may be directed to continue to pay the due benefits of MACP already granted to the applicants by applying the ratio 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 the**

refund of any amount, if 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."

4. By way of reply the respondents have denied the right of the applicant to get the MACP as prayed by them and further averred that statutory rules under para 1313 of the Indian Railway Board Establishment Code (IREC) volume II, analogous to Fundamental Rule 22, applicable for all the central Govt. employees, provide for pay fixation and the pay of the applicants have been fixed as per the relevant rules and the orders of the Railway Board. It has been further averred that applicants been failed to make any grievance for the redressal to the administration as it is mandatory under Section 20 of the CAT Act, 1985 to first avail all the remedies available to the aggrieved Central Govt. employee. In the present case admittedly if any grievance arose to the applicants from the notice Annex. A/2, they were under obligation to first reply to show cause notice and there is no reason to assail the legality of the show cause notice directly by the applicants in the Tribunal. The applicants are under obligation to approach administration for redressal of their grievance first and on failure to redress the same before the administration they could have approached for remedies under the CAT Act of 1985. Thus, the applicants without exhausting alternate remedy have approached this Tribunal. It has

been averred that the pay of the applicants were fixed as per Railway Board's circular and the clarification RBE No. 142/2012 dated 13.12.2012 and in view of the clarification, the applicants cannot be allowed more than what an employee can be granted on his regular promotion. It has been specifically averred in the reply that pay fixation and grant of MACPs are the policy matters essentially determined in view of the policy guiding the same and the circulars of the Railway Board were issued in adherence to the policy decision. It has been averred that courts/tribunals in exercise of their jurisdiction should not transgress into the policy decisions of the Union or State and policy decision cannot be challenged in a judicial forum. The respondents by way of reply have prayed to dismiss the OA.

5. The applicants have filed rejoinder while reiterating the same facts and averring the illegality in the Railway Board's circular.

6. In this case, a Miscellaneous Application bearing No. 68/2013 has been filed by the respondents for deletion of the Railway Board as a party. It has been averred in the application that the General Managers are the competent authority to be impleaded as party as per Civil Procedure Code. Per Contra counsel for the applicant contended that circular issued by the

Railway Board is under challenge, therefore, the Railway Board has been impleaded as party-respondent.

7. We have considered the rival contentions raised by the parties, while keeping this point open as agreed by both the counsels, we are not inclined to decide this point today as we are deciding the OA itself.

8. Counsel for the applicants contended that Annex. A/2 is not a show cause notice to the applicant but it is an order of the execution of the Railway Board's circular which itself has been challenged and therefore, the applicants have approached this Tribunal without filing any reply to the concerned authority and he further contended that in the same matters the respondent-department have started the recovery from pay without giving sufficient opportunity of reply or considering the replies filed by the persons concerned. Counsel for the applicants contended that the respondent-department is not ready to consider the judgment passed by the CAT Ernakulam Bench in RA No. 16/12 in OA No. 561/2011 dated 11.04.2012.

9. Per contra counsel for the respondents vehemently contended that the respondent-department has served notice Annex. A/2 upon the applicants on the basis of principle of natural justice and after receiving reply of each of the applicant, the matter

would have been considered by the respondents but the applicants without filing any representation to the competent authority directly approached this Tribunal, therefore, it cannot be said that the applicants have exhausted all the remedies available to them because they had an opportunity to represent the matter to the administrative authorities before filing the OA.

10. Considered rival contentions of both the parties. It is settled principle of law that one must be heard before passing any adverse order against him. In our view Annex. A/2 is a show cause notice and the applicants could submit their representations before the competent authority against the refixation in pursuance to Annex. A/2 but applicants instead of filing the representation directly approached this Tribunal. Therefore, we are proposing to dispose off this OA with certain direction to both the parties.

11. Accordingly, OA is disposed off with the directions that the applicants shall file their representation to the show cause notice (Annex. A/2) within 15 days from the date of receipt of this order. Thereafter, respondent-department shall decide the representations of the applicants within 2 months from the date of receipt of such representation and while deciding the representations of the applicants, respondent-department is directed to take into consideration the order passed by CAT Ernakulam Bench in RA No. 16/12 in OA No. 561/2011 dated 11.04.2012 and no recovery,

in pursuance to Annex. 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 grievance, if advised.

12. There shall be no order as to costs.

(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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