

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 10/2013 & MA 63/2013
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)**

Pane Soren S/o late Shri Jibu Soren, aged about 62 years,
resident of C-502, Saraswati Nagar, Basni First Phase, Jodhpur,
last employed on the post of Mail/Ex Guard, in the office of
Station Superintendent, Jodhpur, NWR

.....Applicant

(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
5. Financial Advisor & Chief Accounts Officer, General
Manager Office, HQ. North-Western Railway, Malviya
Nagar near Jawahar Circle, Jaipur-17

**(Respondents No. 1 to 3 & 5 through Advocate Mr Kamal Dave)
(Respondent No. 4 through Advocate Ms K. Parveen)**

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant, Shri Pane Soren has 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 he has prayed to direct the respondents to restore the due benefits of the MACP already granted to him applying the ratio of judgment in case of All India Loco Running Staff Association and others, supra, and allow the benefits of 3rd MACP sanctioned vide order dated 30.05.2012 (Annex. A/6).

2. The short facts of the case are that applicant was holding the post of Guard Mail/Pass/Goods in NWR, Jodhpur and posted in the office of Station Superintendent, Jodhpur. The applicant was allowed due fixation of revised pay & allowances including the benefits of 2nd financial upgradation in the scale Rs 9300-34800 + Grade Pay Rs 4200 to the Grade Pay of Rs 4600 under MACP Scheme. The 2nd respondent issued a circular that Guards are not entitled for MACP benefits. The applicant retired w.e.f. 30.09.2010 on attaining the age of superannuation and he was granted the pension and other retiral benefits as per the last pay drawn by him i.e. in the grade pay of Rs 4600 and PPO was issued on dated 28.09.2010 (Annex. A/3). The applicant had completed the 30 years of service and was entitled for grant of 3rd MACP which was sanctioned vide order dated 30.05.2011 (Annex. A/6) but 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 applicant and other Guards have been sought to be withdrawn. The objections were also invited from the concerned individuals' upto 10.11.2012. The applicant 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 restore the due benefits of MACP already granted to the applicant 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 release of benefits of 3rd MACP sanctioned vide order dated 30.05.2012 (A/6) and revision of the pension and retiral benefits thereof. The amount of due arrears may be directed to be paid alongwith interest at market rate.
- (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."

3. By way of reply the respondents have denied the right of the applicant to get the MACP as prayed by him and further averred that statutory rules under para 1313 of the Indian Railway Board Establishment Code (IREC) volume II, analogous to Fundamental Rule 22 which are applicable for all the central Govt. employees,

provide for pay fixation and the pay of the applicant has been fixed as per the aforesaid relevant rules and the orders of the Railway Board. It has been further averred that applicant has failed to make any grievance for the redressal to the administration as 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 applicant from the notice Annex. A/2, he was 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 applicant in the Tribunal. The applicant is under obligation to approach administration for redressal of their grievance first and on failure to redress the same before the administration he could have approached for remedies under the CAT Act of 1985. Thus, the applicant without exhausting alternate remedy has approached this Tribunal. It has been averred that the pay of the applicant was 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 applicant 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.

4. In this case, a Miscellaneous Application bearing No. 63/2013 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.

5. 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.

6. Counsel for the applicant 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 applicant has approached this Tribunal without filing any reply to the concerned authority and he further contended that in the same matters the respondent-

department has started the recovery from pay without giving sufficient opportunity of reply or considering the replies filed by the persons concerned. Counsel for the applicant 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.

7. Per contra counsel for the respondents vehemently contended that the respondent-department has served notice Annex. A/2 upon the applicant on the basis of principle of natural justice and after receiving reply of the applicant, the matter would have been considered by the respondents but the applicant without filing any representation to the competent authority directly approached this Tribunal, therefore, it cannot be said that the applicant have exhausted all the remedies available to him because he had an opportunity to represent the matter to the administrative authorities before filing the OA.

8. 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 re-fixation in pursuance to Annex. A/2 but applicant instead of filing the representation directly

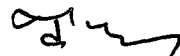
approached this Tribunal. Therefore, we are proposing to dispose off this OA with certain direction to both the parties.

9. Accordingly, OA is disposed off with the directions that the applicant shall file his representation to the show cause notice (Annex. A/2) within 30 days from the date of receipt of this order. Thereafter, respondent-department shall decide the representation of the applicant within 1½ months from the date of receipt of such representation and while deciding the representation of the applicant, 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 applicant, upto 15 days from the date of disposal of his representations by way of an order, to allow the applicants to pursue their grievance, if advised.

10. There shall be no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER