

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>06.11.2009</u></p> <p><u>OA No. 365/2009</u> <u>OA No. 366/2009</u> <u>OA No. 367/2009</u> <u>OA NO. 372/2009</u></p> <p>Mr. Shiv Kumar, Counsel for applicant. Mr. R.G. Gupta, Counsel for respondents.</p> <p>Heard learned counsel for the parties.</p> <p>For the reasons dictated separately, all these OA are disposed of.</p> <p> (B.L. KHATRI) MEMBER(A)</p> <p> (M.L. CHAUHAN) MEMBER (J)</p> <p>AHQ</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 06th day of November, 2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 365/2009

Birdshi Lal son of Shri Panchu aged about 50 years, resident of Plot No. 131, Ashok Nagar, Tonk Road, Kherda, Sawaimadhopur, Rajasthan at present employed on the post of Permanent Way Supervisor (PWS), Sawaimadhopur, under Senior Section Engineer (PW) Sawaimadhopur in Western Central Railway, Kota Division, Rajasthan.

.....APPLICANT

(By Advocate: Mr. Shiv Kumar)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (MP).
2. Divisional Railway Manager (Estt.), Western Central Railway, Kota Division, Kota (Rajasthan).

.....RESPONDENTS

(By Advocate : Mr. R.G. Gupta)

2. ORIGINAL APPLICATION NO. 366/2009

Hariom son of Shri Jaggan Nath aged about 29 years, resident of Village Motipura 2nd Post Ghori, District Bara, Rajasthan at present employed on the post of Permanent Way Supervisor (PWS), Chabra, under Senior Section Engineer (P Way) Chabra, Western Central Railway, Kota Division, Rajasthan.

.....APPLICANT

(By Advocate: Mr. Shiv Kumar)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (MP).
2. Divisional Railway Manager (Estt.), Western Central Railway, Kota Division, Kota (Rajasthan).

.....RESPONDENTS

(By Advocate : Mr. R.G. Gupta)

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3. ORIGINAL APPLICATION NO. 367/2009

Pramod Kumar Sharma son of Shri Prasadi aged about 44 years, resident of 31, Matra Kripa, Behind Railway TA Campus, Durga Nagar, Poonam Colony, Kota Junction, at present employed on the post of Permanent Way Supervisor, Jhalawar Road, under Section Engineer (P Way) Bhawanimandi, Kota Division, Western Central Railway, Kota (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Shiv Kumar)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (MP).
2. Divisional Railway Manager (Estt.), Western Central Railway, Kota Division, Kota (Rajasthan).

.....RESPONDENTS

(By Advocate: Mr. R.G. Gupta)

4. ORIGINAL APPLICATION NO. 372/2009

Adyakash Kumar son of Shri Mool Chand aged about 46 years, resident of Near Rajasthan Bank, Mahu Kalla, Gangapur City, at present employed on the post of Permanent Way Supervisor, Gangapur City under Section Engineer (P Way) Gangapur City, Kota Division, Western Central Railway, Kota Division, Rajasthan.

.....APPLICANT

(By Advocate: Mr. Shiv Kumar)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (MP).
2. Divisional Railway Manager (Estt.), Western Central Railway, Kota Division, Kota (Rajasthan).

.....RESPONDENTS

(By Advocate: Mr. R.G. Gupta)

ORDER (ORAL)

By this common order, we propose to dispose of these OA as identical question of facts and law is involved.

2. In these cases, the applicants are aggrieved by the impugned order (Annexure A/1) whereby their pay in the revised pay scale has been fixed under pre-revised scale of Rs.2750-4400 as on 01.01.2006 whereas the case of the applicants is that their pay as on 01.01.2006 should have been fixed in the un-revised pay scale of Rs.4500-7000. Further grievance of the applicants is that the respondents have also made recovery on account of revised fixation, which course was not permissible for them.

3. Notice of these applications was given to the respondents. The respondents have filed their reply. The stand taken by the respondents in the reply is that the applicants cannot claim fixation in the un-revised pay scale of Rs.4500-7000 meant for P. Way Supervisor revised scale of pay Rs.5200-20200 plus 2800 grade pay as on 01.01.2006 the applicants were working in the scale of Rs.2750-4400. Therefore in terms of Railway Board letter dated 04.09.2008 (Annexure R/3), the pay fixation of the applicants was done according to the corresponding pay scale as per rules. The respondents have further stated that name of the applicants were placed on the panel vide letter dated 02.02.2006 (Annexure A/2) for the post of (P. Way) Supervisor scale Rs.4500-7000/ 5200-20200+2800 grade pay. Subsequently the applicants remained under training for 12 months. It is further stated that during the training period, the applicants were paid stipend and other relative allowances whereas they had to be paid pay & allowances of the substantive post of Rs.5200-20200 + 1800 Grade Pay as they had not exercised the option of getting Stipend with DA DP. It is further stated that on successful completion

of training, fixation of pay of the applicants in the pay scale of Rs.5200-20200 + 2800 grade pay has correctly been done on promotion in terms of Rule 13 of Railway Board RBE No. 103/2008 dated 04.09.2008 (Annexure R/3).

4. In view of this categorical stand taken by the respondents and the applicants as on 01.01.2006 were working in the pre-revised scale of Rs.2750-4400/2650-4000, as such they were not entitled to revision of pay in the un-revised scale of Rs.4500-7000. As such we see no infirmity in the action of the respondents. The pay of the applicants as on 01.01.2006 was fixed in terms of Annexure A/1. Further we see no infirmity in the action of the respondents whereby the applicants were not entitled for stipend when they have not opted for the same and they were entitled for pay while undergoing the training period. As such respondents were entitled to make recovery on account of excess payment of stipend during training period. However, as can be seen from the Railway Board revised pay rule as circulated vide RBE No. 103/2008 dated 04.09.2008 (Annexure R/3) where a person is placed in higher pay scale between 01.01.2006 and the date of notification of these rules, which is September, 2008 on account of promotion/upgradation etc., Government employee may elect to switch over to higher pay scale from the date of such promotion. Learned counsel for the applicant submits that in terms of Rule (Annexure R/3), the applicants have exercised their option for switching over to higher pay scale from the date of their retrospective promotion but the respondents have not acted in accordance with the rules.

5. We have given due consideration to the submission made by the learned counsel for the applicant. In case the applicants have exercised their option in terms of Railway Services (Pay Rule) 2008 as issued vide Railway Board's RBE No. 103/2008 dated 04.09.2008 (Annexure R/3), in that eventuality, the competent authority is bound to consider the case of the applicants in terms of those rules. Accordingly, the competent authority is directed to consider the case of the applicants in the light of the option exercised by them and take appropriate decision within a period of two months from the date of receipt of a copy of this order.

6. With these observations, these OAs are disposed of with no order as to costs.

B.L. KHATRI
(B.L. KHATRI)
MEMBER (A)

M.L. CHAUHAN
(M.L. CHAUHAN)
MEMBER (J)

AHQ