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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/00721/2014**

**Order Reserved on 15.07.2015**  
**Pronounced on 23.7.2015**

...  
**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**  
**HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

- ...  
1. Krishan Gopal Gupta son of Sh. R.S. Gupta, AC Tech. Grade I.  
2. Rajiv Kumar son of Sh. Ramesh Kumar, AC Tech. Grade I.

... Applicants

**Versus**

1. Union of India through Chairman, Railway Board, Ministry of Railway, New Delhi.  
2. The Director (Pay Commission-VI), Railway Board, New Delhi.  
3. The General Manager, Northern Railway HQ, Baroda House, New Delhi.  
4. The Chief Works Manager, Railway Workshop, Jagadhari Distt. Yamuna Nagar Haryana.

... Respondents

**Present:** Sh. Shailendra Sharma, counsel for the applicants.  
Sh. Yogesh Putney, counsel for the respondents.

**ORDER**

**BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

- 1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, for quashing of the letter dated 16.05.2014 (Annexure A-4) written on behalf of respondent no.3, whereby the representation cum legal notice served by the applicants for

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grant of Grade Pay on account of 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> MACP in the promotional scale, which is given to their counterparts working on clerical side, has been declined by passing a non-speaking order. It is stated that this stand of the respondents is contrary to the settled law in Raj Pal's case, which has been upheld by the Hon'ble Punjab and Haryana High Court in CWP NO.19387 of 2011 titled as Union of India & Others Vs. Raj Pal & another as well as Hon'ble Supreme Court of India, whereby the writ petition as well as SLP filed by Union of India has been dismissed and further as per judgment passed by this Tribunal in O.A. No.842/PB/2012 titled as Tilak Raj Sharma & Ors. Vs. UOI decided on 19.12.2013. Issuance of a direction to the respondents has been sought to equate the pay scale of the applicants who are on Industrial Cadre with non Industrial Cadre (Clerical Staff) working with the respondents as the pay scale of the Industrial and non Industrial Staff of the respondents remained the same at the time of implementation of the recommendation of 4<sup>th</sup> and 5<sup>th</sup> Pay Commission w.e.f. 1.1.1986 and 1.1.1996 and further the minimum qualification for appointment to the posts on Technical side is higher than Non-Technical side (Clerical). Thus the respondents be directed to grant 1<sup>st</sup> MACP of Grade Pay of Rs.2800/- to the applicants and the benefit of scale of Rs.9300-34800+Grade Pay of Rs.4200/- on account of 2<sup>nd</sup> MACP and further Grade Pay of Rs.4600/- on account of 3<sup>rd</sup> MACP.

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2. In the grounds for relief has been stated as follows:

- i. The respondents did not appreciate the fact that right from 1986 onwards, the Clerks and Technicians were getting the same scale and even after the implementation of the recommendation of 5<sup>th</sup> Pay Commission w.e.f. 1.1.1996, the Clerks and Technicians were both graded as Class C post with equal pay at initial stage as well as on promotional stage on each side. Even with effect from 1996, the minimum educational qualification for recruitment to the post of Technician was higher than the post of Clerk. The position regarding the qualification remained the same after the implementation of recommendation of 6<sup>th</sup> Pay Commission report w.e.f. 1.1.2006. But so far as grant of Scales and Grade Pay was concerned, the Clerks and Technicians were placed in the Scales of Rs.5200-20200+Grade Pay of Rs.1900/- w.e.f. 1.1.2006. However, the difference was created by the respondents while granting the 1<sup>st</sup> MACP on completion of 10 years of service. The clerks were placed in the Grade Pay of Rs.2800/- whereas the Technicians who were otherwise better qualified as compared to the clerks were placed in the Grade Pay of Rs.2400/-. This difference was further increased on grant of 2<sup>nd</sup> MACP on completion of 20 years of service. The clerks were placed in the scale of Rs.9300-34800+Grade Pay of Rs.4200/- whereas the Technicians were placed in the Scale of Rs.5200-20200+Grade Pay of Rs.2800/-. The Third MACP on completion of 30 years of service was granted to the Clerks by granting them the Grade Pay of Rs.4600/- whereas the Technicians were placed in the scale of Rs.9300-34800+Grade Pay of Rs.4200/-.
- ii. The only justification given by the respondents for not granting the Grade Pay of Rs.2800 on completion of 10 years of service and Scale of Rs.9300-34800+Grade Pay of Rs.4200/- on completion of 20 years of service is that the Grades and MACP have been given as per instructions Annexure A-1 and A-2, which nowhere suggest the fixation of Grade Pay.
- iii. The object of ACP and MACP Scheme was to give relief to the employees from stagnation in service on account of

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non-availability/inability of the employer to create promotional avenues. Thus, in case if the MACP Scheme was introduced, the MACP ought to have been granted in the scales applicable to promotional post and not in the next Grade Pay as given by the respondents.

- iv. The question whether the MACP should be granted in the next Grade Pay or in the Scales applicable to promotional post came up for hearing before this Tribunal in OA No.842/PB/2012 titled as Tilak Raj Sharma & Ors. Vs. UOI and this Tribunal after relying upon the case of Raj Pal as upheld by the Hon'ble High Court while dismissing writ petition No.19387 of 2011 Union of India & Others vs. Raj Pal & Others, which was further upheld by the Hon'ble Supreme Court of India whereby the writ petition as well as SLP filed by Union of India was dismissed, disposed of the OA on 19.12.2013 by directing the respondents to consider the case (Annexure A-5). Copy of the judgment passed by Hon'ble Punjab and Haryana High Court as well as Hon'ble Supreme Court of India are collectively appended as Annexure A-6.
- v. The action of the respondents in denying the benefit of 1<sup>st</sup> MAGP of Grade Pay of Rs.2800/- to the applicants and further the benefit of Scales of Rs.9300-34800+Grade Pay of Rs.4200/- on account of 2<sup>nd</sup> MACP and further Grade Pay of Rs.4600/- on account of 3<sup>rd</sup> MACP is violative of Article 14 of the Constitution of India, if the same is tested as compared to the benefits given to the Clerks who were similarly situated like the applicants right from the beginning and have lesser qualification at the time of initial recruitment.

3. In the written statement filed on behalf of the respondents preliminary objection has been taken that that the applicants have claimed 1<sup>st</sup> MACP in the Grade Pay of Rs. 2800/- with further benefit of scale of Rs. 9300-34800 + G.P. Rs. 4200/- on account of 2<sup>nd</sup> MACP and further Grade Pay of Rs. 4600/- on account of 3<sup>rd</sup> MACP along-with

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interest which is misconceived in as much as the applicants under the guise of MACP Scheme are claiming pay scale at par with Ministerial cadre i.e. clerk whereas they are in the Industrial cadre i.e. Fitter (Tech.) w.e.f. 01.01.2006. The parity vis-a-vis pay scale is the function of the Expert Body like Pay Commission and undisputedly the Pay Commission has not made any parity between (Industrial cadre) Fitter (Tech) vis-a-vis the clerk (Ministerial cadre) in the VIth Pay Commission with effect from 01.01.2006 and there is no challenge either to the recommendations of 6<sup>th</sup> Pay Commission or to the Railway Services (Revised Pay) Rules, 2008 implementing the revised pay structure with effect from 01.01.2006.

4. It is further stated that the applicants have relied upon the order passed by this Tribunal in O.A. No. 1038-CH-2010 in the matter of Raj Pal Versus Union of India and others, further up-held by the Hon'ble Punjab and Haryana High Court in CWP No. 19387/2011 and further dismissal of SLP there against, which has no application in as much as Sh. Raj Pal was working on an isolated post and there was no channel of promotion, whereas the applicants have promotional avenues. Besides this, the Nodal Ministry i.e. DOPT vide letter dated 19.08.2013 in the matter of Raj Pal (supra) has notified that the judgment in his case is personal to him and will not be treated as a precedent. The applicants

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have also placed reliance on Annexure A-5, order passed by this Tribunal in a bunch of cases in the matter of Tilak Raj Sharma in O.A. No. 842-PB-2012 decided on 19.12.2013 in which also the reliance was placed on the judgment of Sh. Raj Pal (supra) which too has no application as the order in that case was entirely different. This judgment has been impugned by the Union of India before the Jurisdictional High Court which is the subject matter of CWP No. 14475 of 2014 and vide order dated 25.07.2014, the Hon'ble High Court has been pleased to stay the operation of the judgment dated 19.12.2013 (supra) (Annexure R-1).

5. Besides, the Railway Services (Revised Pay) Rules, 2008 notified by the Ministry of Railways vide notification dated 11.09.2008 on the basis of recommendations of the VIth Central Pay Commission with effect from 01.01.2006 have recommended different scales for different cadres as per the schedule/Annexure to the Rules 2008 (supra). The applicants have not assailed but rather have accepted the recommendations of the VIth Central Pay Commission as adopted by the Ministry of Railways vide notification dated 11.09.2008 (Annexure R-2).

The grievance primarily, as projected by the applicants is that in matters of pay scales, the applicants who are working as Fitter have been discriminated vis-a-vis the Clerks and further that they are entitled to the same pay scales and other benefits as available to the clerical cadre.

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The grievance thus is in regard to revision of pay scales, which is the function of the expert bodies like the Pay Commission. It is well settled that the courts have no jurisdiction in such matters. Besides, when there are two separate cadres, with different recruitment Rules and different hierarchy the pay cannot be directed to be identical when separate qualifications are prescribed and there is a separate selection procedure for the two cadres. Likewise it is settled that Govt. servants cannot get higher scale of pay than prescribed for the post. Hence the O.A. deserves to be dismissed.

6. On merits, it has been stated that in terms of Railway Board letter No. PC-V/2009/ ACP/02 dated 10.06.2009 (Annexure A-2), the ACP scheme was replaced by MACP scheme envisaging grant of three financial up gradations at intervals of 10, 20 and 30 years of regular service and as per recommendations, financial up gradation will be available to an employee in the next higher Grade Pay whenever, he completes 10, 20 and 30 years continuous service in the same grade subject to other conditions. The chart of promotion of the applicants is

given below:

1. Krishan Gopal Gupta, AC Fitter I. No. 300/IL (Applicant No.1)

Date of appointment = 30.08.1995 in the scale 950-1500

As Tech Gr.III

Promoted as = 28.12.2007 in the scale 4000-6000

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Tech. Gr. II  
Promoted as  
Tech. Gr.I = 01.11.2013 in the scale 5200-20200 +  
GP 2800

Sh. Krishan Gopal Gupta is not entitled to MACP in terms of Railway Board letter No. PCVI/2008/I/RSRP/1 dated 11.09.2008 (Annexure A-1) and No. PC. V/2009/ACP/2 dated 10.06.2009, (Annexure-2) which have been further clarified by Railway Board vide letter no. PC.V/2009/ACP/2 dated 27.06.2014 (Copy enclosed as Annexure R-3) as he has neither completed 10 year service in the lower grade nor completed 30 years of service.

2. Rajeev Kumar, AC Fitter I. No. 559/1L (Applicant No.2)

- (1) Date of appointment = 21.03.1990 in the scale 950-1500  
As Tech. Gr III
- (2) Promoted as = 30.05.1997 in the scale 4000-6000  
Tech. Gr.II
- (3) Promoted as = 31.05.1999 in the scale 4500-7000  
Tech Gr. I
- (4) MACP given after = 31.05.2009 in the scale PB Rs.9300-  
Completion of 10 years 34800+GP Rs.4200/-  
Service in lower grade

The applicants are not entitled for III<sup>rd</sup> financial up gradation under MACP scheme in P.B. 9300-34800 + 4200 GP in terms of instruction of Railway Board letter No. PC-VI/2008/I/SRP/1 dated 11.09.2008 (Annexure A-1)

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7. Arguments advanced by learned counsel for the parties have been heard when they reiterated the content of the O.A., rejoinder and written statement respectively.

8. We have given our careful consideration to the matter. From the material on record it is evident that the applicants who are Industrial Workers and are working as AC Tech. Gr.I are seeking the pay scales and grade pay applicable to the Ministerial Cadre. The Technical Cadres are completely separate from Ministerial Cadre hence parity of pay scales/grade pay cannot be claimed by the applicants. Moreover, the Railway Board letters No.PC-VI/2008/I/RSRP/1 dated 11.09.2008 (Annexure A-1) and No. PC-V/2009/ACP/02 dated 10.06.2009 (Annexure A-2) have not been impugned by the applicants nor is it their claim that their pay has not been correctly fixed in terms of these circulars. Fixation of pay scales and grade pay for different categories of employees is the task of expert bodies and in this case it is the Sixth Pay Commission that has recommended the pay scales and grade pays for the different categories of staff. These recommendations have been adopted and implemented by the Govt. of India and Ministry of Railways. This Tribunal cannot consider issues such as parity of pay scales of different categories of staff and alleged anomalies in the same. While taking this view we are guided by the Apex Court in Indian Drugs &

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Pharmaceuticals Ltd. vs. Workmen, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408, wherein it has been held that granting pay scale is a purely executive function and the Courts should not interfere in the same.

9. Hence this O.A. being without merit is rejected.

*B. A. Agrawal*  
**(DR. BRAHM A. AGRAWAL)**  
**MEMBER (J)**

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**(RAJWANT SANDHU)**  
**MEMBER (A)**

**Place: Chandigarh.**

**Dated: 23.7.2015 .**

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