

RESERVED ON 28.3.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

This the 1st day of May, 2018.

ORIGINAL APPLICATION NO. 330/01361/2014

**HON'BLE MR. JUSTICE DINESH GUPTA, CHAIRMAN
HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)**

1. S.G. Moinuddin son of Late S.S. Ahmad, Resident of 3-A, Muir Road, Katra, Allahabad.
2. Umesh Chand son of Late Bhola Nath, Resident of 244/B, Sulem Sarain, Allahabad,
3. S.A. Safdar son of S. Ali Jafar, Resident of Village Old Jhunsi, Haweliya, Allahabad.
4. S.K. Mishra son of Sri Durga Prasad Mishra, Resident of 75-A, Saket Nagar, Allahabad.
5. Akhilesh Kumar son of Late Sangam Lal, Resident of 41-F/12/1B, Naini, Allahabad.
6. Pyare Lal son of Late Mahangoo Ram, Resident of 280/6, Chhota Baghara, Allahabad.
7. Kamla Shankar Son of Shrinath, Resident of 923/114, Old Sohbatiya Bagh, Allahabad.
8. Sunil Kumar son of Sri A.B. Lal Srivastava Resident of L.I.G. – 52, Kalindipuram, Allahabad.
9. Sajit Kumar son of Late R.N. Prasad, Resident of 62/P/5, Bhola Ka purva, Allahabad.
10. J.N. Shukla son of Late K.P. Shukla, Resident of Village Mangata, Allahabad.
11. Ganga Prasad son of Late Tej Bahadur Dubey, C/o Shri S.B. Tiwari, Resident of 1496, Kidwai Nagar, Allahpur, Allahabad.
12. Swadesh Kumar Srivastava Son of Late D.D. Srivastava, Resident of 74/99-B/7, Pura Dalil, Allahpur, Allahabad.
13. Om Prakash Singh son of Late Jai N. Singh, Resident of 277/3C/A, Neem Sarain, Allahabad.
14. Nafees Ahmad son of Late Ibnul Hasan, Resident of 531-B, Attarsuiya, Allahabad.
15. Kallu Prasad son of Late Jagmohan, Resdient of 327/278-A/G/1A, Jayantipur, Sulem Sarain, Allahabad.
16. Pradeep Kumar Malviya Son of Late M.P. Malviya, Resident of 500-B, Smith Road, Railway Colony, Civil Lines, Allahabad.
17. Vijay Shankar Pandey son of K.C. Pandey, Resident of Gaon Belwar, Post Dubawal, Allahabad.
18. Debasish Banerjee son of Late N.C. Banerjee, Resident of 1/12-A/1, Jai Rampur (Pat-Par), Post Office Dhoomanganj, Subedarganj, Allahabad.
19. Aejas Ahmad son of Late Iqbal Ahmad Resident of 172/155, Sabzi Mandi, Allahbad.

20. Pradeep Kumar Sharma son of Late B.S. Sharma, Resident of A, D-8,Ekanki Kunj, Muir Road, Allahabad.
21. Akhilesh Kumar Jaiswal, son of Late Sri B.I. Jaiswal, Resident of 185-A/239, Panch Koshi Road, Mutthiganj, Allahabad.
22. Shyam Lal son of Late Pyare Lal, Resident of Mohalla Ghurahupatti, Post Office Sadar, Mirzapur.
23. Shri Amarnath-I, son of Ram Baran, Resident of Village and Post Gohari Tehsil Soraon, Allahabad.
24. Sardar Ahmad son of Aftab Ahmad,Resident of 167/191, Minhajpur, Allahabad.
25. Hasan Abbas son Late Sayed Mohd. Sibtain, Resident of K-M/94, J.K. Aishiana, Kareili, Allahabad.
26. Vindhesh Kumar Dubey son of Late Baij Nath Dubey, Resident of 18-Dec Prayagam, Phase-II, Jhalwa, Allahabad.
27. Rajesh Kr. Tiwari son of Late Devi Dayal Tiwari, Resident of 278-A/6, Neem Sarain, Allahabad.
28. Bhore Lal son of Late Shri Mani Ram, Resident of 892/H, Maglodam Colony, Leader Road, Allahabad.
29. Mohd. Naseem son of Late S.M. Nawab, Resident of 18 Z/28-P, Chauki Karamat, Kareily, Allahabad.
30. Hemraj Giri son of B.R.Giri, Resident of 2813/2 B, Sarvoday Nagar, Allahpur, Allahabad.
31. Rajendra Pd. Shivahare Son of Late Chunni Lal Shivhare, Resident of 825/951 H, Satti Chaura, Malviya Nagar, Allahabad.
32. Mustkin Hoshmi son of Siddique Hoshmi, Resident of 311-A, Railgaon, Subedarganj, Allahabad.
33. Mahmoodul Haque Siddiqui, Son of Late Shri Ziaul Haque Siddiqui, Resident of 37/40/J-2, Gaus Nagar, Kareli, Allahabad.
34. Khurshid Akhatar son of Late Hafiz Abdul Razzaq, Resident of 18-E/12-K/1-K, Karamat Ki Chauki, Kareli, Allahabad.
35. Ashraf Ai Ansari son of Late Rahat Ali Ansari, Resident of E-11, EWS Gaus Nagar, Kareli, Allahabad.
36. Irshad Ahmad son of Late Ali Sher, Resident of 282, Muirabad, Allahabad.
37. Mahatab Alam son of Late Ramjani, Resident of LIG 196 ADA Colony, Kalindipuram, Allahabad.
38. Anil Kumar Son of Ram Dular, Resident of 20,Dhoomanganj, Allahabad.
39. Krishna Kant son of Late Ram Sumer, Resident of Jayantipur Sulem Sarain, Allahabad.
40. Pancham Lal son of Late Bihari Lal, Resident of 311-D, Rail Gaon, Subedarganj, Allahabad.
41. Brij Kishor Mishra son of Parashuram Mishra, Resident of 217-A/1 Kasari Masari, Anandpuram Allahabad.

..... Applicants

By Advocate: Sri Satya Prakash

Versus

1. Union of India through Deputy Director Pay Commission-5, Railway Board, Ministry of Railways, New Delhi.
2. Financial Advisor and Chief Accounts Officer, Head Quarter, Northern Central Railway, Subedarganj, District Allahabad.

3. Financial Advisor and Chief Accounts Officer (Construction), Head Quarter, Northern Central Railway, Subedarganj, District Allahabad.
4. Deputy Financial Advisor and Chief Accounts Officer (Traffic Account), 10th Avenue, Nawab Yusuf Road, District Allahabad.
5. Chief Personal Officer, Head Quarter, Northern Central Railway, Subedarganj, District Allahabad.

..... Respondents.

Advocate: Sri P. Mathur

By Hon'ble Mr.Justice Dinesh Gupta, Chairman
O R D E R

The applicants have filed the present O.A. u/s 19 of the AT Act with the following reliefs:-

- i) Issue an order or direction, setting aside the order dated 27.6.2014 passed by the Deputy Director of 5th Pay Commission, Railway Board ,Govt. of India, Ministry of Railways, New Delhi and the order dated 19.8.2014 passed by the Financial Advisor/ Chief Accounts Officer, North Central Railway, Head quarter, Subedarganj, District- Allahabad so far as, it relates to the applicants (contained as Annexure No. A-1 to this compilation No. 1 to this original Application).
- ii) Issue any other suitable order or direction, which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.
- iii) Award the costs of the application in favour of the applicants.

By way of amendment, applicants also prayed for the following reliefs:-

a) Issue an order or direction setting aside the order dated 29.4.2015 passed by the opposite party No. 4 Deputy Financial Advisor and Chief Accounts Officer (Traffic Account) 10th Avenue, Nawab Yusuf Road, District Allahabad so far as, it relates to the applicants.

b) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

c) Award the cost of the application in favour of the applicants.

2. The brief facts emerging from the O.A. are that the applicants are aggrieved by the order of Deputy Director of 5th Pay Commission, Railway Board, Ministry of Railways, Govt. of India, New Delhi dated 27.6.2014 which was sent by the Finance Controller and Chief Finance Officer, North Central Railway, Subedarganj, Allahabad on 19.8.2014.

2.1 Initially the applicants have filed the O.A. for setting aside the order dated 27.6.2014 passed by the Deputy Director of 5th Pay Commission, Railway Board, Govt. of India, New Delhi and the order dated 19.8.2014 passed by the Financial Advisor/Chief Accounts Officer, North Central Railway, Head Quarter, Subedarganj, Allahabad so far as it relates to the applicants and applicants also sought interim relief for staying the operation of the order dated 27.6.2014. It was prayed that the recovery of

amount already paid to the applicants in pursuance of 3rd upgradation may not be recovered. This Tribunal vide order dated 27.11.2014 stayed the recovery of the amount.

2.2 Counter and Rejoinder reply has also been filed in the O.A.

2.3 On 29.4.2015, Opposite party No. 4 has passed an order and directed the applicants No. 1 to 16 who are posted in the office of opposite party No. 4 and directed that they are placed in the grade pay of Rs. 4600/- when the applicants have already been up-graded in the grade of Rs. 4800/- therefore, the order dated 29.4.2015 passed by the opposite party No. 4 is in defiance of interim order passed by this Tribunal dated 27.11.2014. As such applicant moved amendment application which challenging the order dated 29.4.2015 which was allowed by this Tribunal.

2.4 The applicants were appointed as Junior Accounts Assistants and initially this cadre was known as "Clerk Grade I" in the grade of Rs. 1200-2040/-. All the applicants have submitted their joining between the year 1985 to 1989 and granted three promotional grade pay in the grade pay of Rs. 4200/-, Rs. 4600/- and Rs. 4800/- respectively in pursuance of Railway Board letter dated 10.6.2009.

2.5 Applicants were given initial appointment and they have to pass the departmental examination within three years from the date of his initial appointment and after passing the departmental exam, the applicants are placed in the first promotion /upgradation grade Rs. 4200/- whereas the initial grade of Rs. 2800/- at the time of joining. After completing 10 years, the applicants were placed on the grade pay of Rs. 4600/- and thereafter, after completing 10 years, they are entitled to get third up-gradation in the grade pay of Rs. 4800/-. So far as employees working in the Account Section , they are to get second up-gradation grade of Rs.4800/- instead of Rs. 4600/- but however, the applicants were given the second up-gradation in the grade pay of Rs. 4600/- and ultimately, all the applicants have been given third upgradation in the grade pay of Rs. 4800/- under MACP scheme.

2.6 On 29.12.2011, the Deputy Director, 5th Pay Commission, Railway Board issued a circular to the General Manager regarding grant of financial up-gradation under MACP scheme which has already been regulated vide Railway Board letter dated 10.6.2009 and recovery order was issued on 10.7.2013 by the Chief Personal Officer, North East Railway, Gorakhpur in pursuance of the circular dated 29.12.2011 issued by the Deputy Director.

2.7 Applicants have earlier filed O.A. No. 1116 of 2013 and this Tribunal was pleased to stay the order of recovery dated 10.7.2013.

2.8 Once the applicants passed the departmental exam within 3 years from the date of their initial appointment and after passing the departmental exam, the applicants were given first promotion/ upgradation in the pay scale of Rs. 4200/- when initially they were in the grade of Rs. 2800/- at the time of joining in the Indian Railway. Therefore, admittedly, the first promotion/upgradation was given when they were placed in the grade pay of Rs. 4200/- and thereafter all the applicants have completed their 10 years continuous service and were eligible for MACP for second promotion and were placed in the grade pay of Rs. 4600/- (although the applicants were entitled for grade pay of Rs. 4800) . Thereafter, applicants have again completed 10 years and were given third promotion/upgradation in the grade pay of Rs. 4800/- according to MACP scheme. When the circular issued by the respondent No. 1 on 10.6.2009, all the applicants were given the grade pay of Rs. 4800/- but now, in pursuance of another circular dated 29.12.2011, the deduction and recovery is being made by the opposite parties without any rhyme and reasons.

2.9 It is further submitted that there is no fault of the applicants in fixation of their grade pay and thus

recovery from the applicants is in violation of principles of natural justice, as no show cause notices were given to them before passing the orders of recovery vide impugned orders.

3. Notices were issued to the respondents who in turn filed the Counter reply through which it is stated that respondents have prepared a comparative chart on the basis of service profile of the individuals giving a complete details of their initial appointment to them from time to time and the mistake which has been crypt in extending the 3rd financial upgradation on due date i.e. either on completion of 30 years of service from the date of joining of the post in direct entry grade or 10 years continuous service from the 2nd promotion/upgradation. It is submitted that respondents have erroneously granted the benefit under the orders dated 9.4.2010 from retrospective effect which in fact was not at all due to the individuals. Immediately on coming to such discrepancy in the order and receiving clarification, there was no other option but to take a remedial step to rectify the mistake committed by the department

4. Rejoinder reply is filed by the applicants' counsel through which he has reiterated the facts as stated by him in the O.A.

5. Supplementary Counter Reply has also been filed by the counsel for respondents and thereafter, counsel for applicants has also filed Supplementary Rejoinder reply.

6. Heard the learned counsel for applicants Sri Satya Prakash and learned counsel for respondents Sri P. Mathur.

7. The contention of the respondents that 3rd financial upgradation under MACP scheme was allowed to the applicants on completion of 20 years of service from 1st promotion considering deemed 2nd MACP well before 1.9.2008. As the MACP scheme has come into effect from 1.9.2008 only, such an assumption is blatantly flawed. It is also submitted that 3rd financial upgradation is admissible either on completion of 30 years of service from the date of initial appointment or further 10 years from the date of 2nd financial promotion/upgradation whichever is earlier.

8. Learned counsel for applicants submitted that applicants were given third financial upgradation on the basis of recommendations made by the Screening Committee constituted by the Railway Board according to MACP scheme dated 10.6.2009 and without hearing the applicants respondents have passed the order dated 27.6.204 and 19.8.2014 which is against the principle of natural justice. It is further submitted that there is no fault of the applicants in fixation of their pay.

9. Learned counsel for applicants filed Supplementary Rejoinder reply and submitted that Madras Bench of this Tribunal in O.A. 335 of 2007 has clearly discussed the present controversy and Clerks Grade I (including existing sub heads) was given the pay scale of Rs. 1400-2600 after completing the departmental examination. The aforesaid judgment was affirmed by the High Court at Chennai and also by the Hon'ble Supreme Court of India, therefore, the applicants are entitled to get the benefit of 3rd upgradation.

9. The Court is unable to accept the contentions raised by the learned counsel for respondents.

10. Some of the similarly situated employees have separately filed O.A. No. 330/01324/2014 before this Tribunal challenging the order dated 12.9.2014 and this Tribunal vide order dated 27th July, 2016 quashed the order dated 12.9.2014 on the ground that no opportunity was granted to the applicants before passing the impugned order which violates principle of natural justice and remitted the matter to the respondents to pass appropriate order in accordance with rules after issuing notice to the applicants and after giving opportunity of being heard. The applicants of this O.A. have also challenged the order dated 27.6.2014 and order dated 19.8.2014 by which they have cancelled the 3rd MACP granted to the applicants and started recovery from the

applicants without giving any show cause notice to them. As such respondents have violates the principle of natural justice which clearly provides that no one should be condemned unheard and further the justice should not only be done but it appears to have been done. Since the facts of this case is similar to the OA. No. 330/01324/2014 filed before this Tribunal and this Tribunal has decided the same vide impugned order dated 27th July, 2016 and quashed the impugned order dated 12.9.2014 and remitted the matter to the respondents for taking a decision afresh after giving an opportunity to the applicants, this Court is also of the view that the present O.A. is deserves to be allowed on the same terms and conditions.

11. Accordingly, O.A. is allowed. Impugned orders dated 27.6.2014, 19.8.2014 and 29.4.2015 are quashed. Respondents are directed to initiate fresh proceedings after issuance of notice to the applicants and after giving them an opportunity of being heard and only then pass a reasoned and speaking order. No order as to costs.

(DR.MRUTUNJAY SARANGI) (JUSTICE DINESH GUPTA)
MEMBER (A) CHAIRMAN

HLS/-