

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1386 /2013

New Delhi, this the 1st day of September, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Javed Ahmed S/o Abdul Mannan
R/o DRM Office, Estate Branch
A61 Rail Vihar, Indira Puram
2. Sh. Vimal Chander S/o Sh. Durga Dass,
R/o SSE (W)/ Pahar Gang, Q. No.61/12,
Railway Flat, Sarojini Nagar, New Delhi.
3. Mohinder Singh S/o Sh. Hamaniya Ram,
R/o JE (W) /P.K. Road, Q. No. 20/7,
Railway Colony, Sarojini Nagar, New Delhi.
4. Awadhendra Kumar S/o Sh. D.N. Thakur,
R/o JE(W) , Nizamudin, Q. No. 81/1
Railway Colony, Sewa Nagar, New Delhi.
5. Akhlesh Kumar S/o Sh. Anand Kumar,
R/o JE (W) / Deli Kishan Ganj, 222/2
Railway Colony, Kishan Ganj
6. Ram Khilwar S/o Sh. Ram Adhar
R/o SSE (Hort)/ Kishan Ganj
29-B Railway Colony, Sarojini Nagar, New Delhi.
7. Mohinder Kumar S/o Sh. Kanha Ram,
R/o SSE (W)/ San Martin Marg,
H No.39, Railway Colony, S.P. Marg,
Chankaya Puri, New Delhi.
8. Deepak Saxena S/o Sh.Girish Chand Saxena,
R/o JE(W) / Ghaziabad, 1/233, Chiranjiv Vihar,
Ghaziabad, (UP)
9. Brijendra Singh, S/o Sh. Charan Singh
R/o SEE(Hort),Sarojini Nagar,
T-12, Pul Mithai Railway Colony,
New Delhi-06

10. Sh. Bainami Singh, S/o Sh.Daulat Ram
R/o SEE (Hort)/DEE, B-32 K. Vihar
Ghazibad (UP)
11. Sh. Raghbir singh S/o Sh. Mahla Ram
R/o SEE (W), Land Section, DRM Office,
H. No. G2/21, Budh Vihar, Delhi.
12. Sh.Jasvir Singh S/o Sh. Dalip Singh
R/o JE(W)/ Delhi Kishanganj-II
216/1, Railway Colony Kishan Ganj
Delhi-07
13. Jagdish Kumar S/o sh. Manohar Lal,
R/o Arora Clinik , Jhansa Road Chowk
Kurukshetra,
14. Virender Singh S/o Sh. Ajmer singh,
R/o 681, Sector-8 U.E. Kurukshetra,
15. Rameshwar Dass S/o Sh. Ram Singh
R/o 946, Sector -13, 17 Panipat,
16. Surender Kumar S/o Sh.Bihim Singh,
R/o 735/30, Vikas Nagar, Behind Durga Mandir
Kakroi Road, Sonepat
17. Harpreet Singh S/o Sh. Amrish Singh,
R/o C-6, Railway Colony, Karnal,
18. Balesh Kumar S/o Sh. Krishan Yogesh
R/o E-117, Railway Colony, Jakhal
Distt. Fatehabad (Haryana)
19. Sh. Ravi Kant Sxena, S/o sh. I.S. Saxena,
R/o E-273, Railway Colony, Jind (Haryana)
20. Surender Kumar Goel S/o Sh. Sushil Chand,
R/o T-15A, Railway Colony, Fornt of Marriage Palace, Jind
Jn. Railway Station.
21. Surender Singh S/o Sh.Baljeet Singh
R/o E-115, RailwayColony, Meerut City
Meerut (UP).

22. Ravinder Singh S/o Sh.Jagat Singh
R/o E-74, Railway Colony, Rohtak (Haryana)

23. Mukesh Kumar S/o Sh. Ved Parkash Malik
R/o H. No. 11, Roop Vihar , Adarsh Nagar,
Rohtak.

24. Roshan Lal S/o sh. Ganpat Ram
R/o H.No. 1828, W. No. 34 Hakiat Nagar,
Janta Colony, Rohtak (Haryana-124001.) Applicants

(By Advocate : Mr. Yogesh Sharma)

Versus

1. Union of India through, the General Manager,
Northern Railway, Baroda House, New Delhi.

2. The General Manager (P)
Northern Railway, Baroda House, New Delhi.

3. The Divisional Railway Manager,
Northern Railway, Delhi Division
State Entry Road, New Delhi.

4. Sr. Divisional Personnel Officer,
DRM's office, Northern Railway, Delhi Division
State Entry Road, New Delhi. Respondents

(By Advocate: Mr.Kripa Shankar Prasad)

ORDER (ORAL)

Hon'ble Mr. P.K. Basu, Member (A)

The applicants who were initially appointed as Mistries (SOM) in the scale of Rs. 1400-2300, were promoted to the next promotional post of J.E prior to year 1998. At that stage JE's were also in the scale Rs.1400-2300. In the year 1998 pay scale of JE was raised to Rs.5000-8000 and pay scale of Mistries was kept as 4500-7000/-.

2. Vide circular dated 9.10.2003, the Ministry of Railway decided to restructure certain Group 'C' & 'D' cadres w.e.f. 01.09.2003. The said instructions are as follows :-

"13. Upgradation of the posts of Supervisor (erstwhile Mistries):-

(a) Subject to provisions of Para 13.2 below, all the post of Supervisors (erstwhile Mistries) in grade 4,500-7000+ Rs. 100 Special Allowance (Excluding Supervisors (P.Way) should enbloc be upgraded to the post of Junior Engineer Gr. II in the pay scale of Rs. 5,000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs. 5,500-9000, 6,500-10500 & 7,450 -11,500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders.

(b) In case of Supervisor (P.Way), the posts being held by the erstwhile PWMs supervising more than one gang upto a maximum of 17.26% of the sanctioned cadre of PWMs shall be upgraded to and merged with the posts of junior Engineer (P. Way) Gr.II in the pay scale of Rs. 5,000-8000 with its spread effect in higher grades of JE-I, SE & SSE in grade Rs. 5.500-9,000, 6,500-10,500 & 7,450-11,500 respectively, as per the revised percentages prescribed for Technical Supervisors in these orders.

13.1. The financial implications involved in the upgradation covered by (a) & (b) above should be offset by surrender of posts of Supervisors of equivalent money value.

13.2 Procedure for fitment: The placement of the existing incumbents will be regulated as per the procedure given below:-

(a) The existing regular incumbents of the post of Supervisors (including Supervisors/P.Way to the extent of upgradation of posts) will be placed in grade Rs.5,000-8,000 without subjecting them to normal selection procedure. Their suitability shall be adjudged by following modified selection will be based on scrutiny of service records and confidential reports only.

(b) The Supervisors (other than P. Way) who do not get promoted to grade Rs. 5,000-8000- shall continue to hold the post in the existing grade Rs. 4,5000-7000+ Rs. 100 SA as personal to them. To this extent, the posts upgraded to grade Rs.5,000-8000 will be operated in the lower grade Rs. 4,5000-7000+ Rs.100 SA till the existing incumbents vacate the same by way of promotion, retirement et. On vacation of the posts, the same will be automatically be operated in grade Rs. 5,000-8000."

3. When the MACP Scheme was implemented w.e.f. 01.09.2008, the respondents granted the applicants first financial upgradation with GP Rs.4600 and second financial upgradation with GP Rs.4800, as the revised pay scale of JEs after 6th CPC was in the Pay Band of Rs. 9300-34800/+ GP Rs.4200/-.
4. The applicants grievance is that now the respondents are withdrawing this benefit.
5. The short controversy is that the respondents have treated the merger of Mistries with JE as promotion because of their interpreting clause 13.02 as promotional procedure.
6. The applicants contention is that para 13(a) makes it clear that all Mistries in the grade of 4,500-7000/- stand merged with scale of Rs.5000-8000/- and there are no posts of Mistries in the scale of pay Rs.4,500-7000 except those who, as per para 13.2 (b), did not get the higher grade of Rs.5000-8000.

7. Moreover, the learned counsel for the applicant also relied upon para 5 Modified Assured Career Progression Scheme (MACPS), which is as follows:-

5. Promotion earned /upgradations granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to merge of pay scales / upgradations of posts recommended by the Six Pay Commission shall be ignored for the purpose of granting upgradations under modified ACPS.

8. The only issue to be decided is whether the order dated 1.9.1993 para 13 is merger of pay scales or is merger with promotion. 13.2 (b) uses the expression "supervisors who do not get **promoted** to pay scale of Rs. 5,000-8000/-", whereas 13 (a) uses the expression of "all posts of Mistris should enbloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs.5,000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades. Rs.5,500-900, 6,500-10,500 & 7,450-11,500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders. However, para 13.2 is regarding procedure for fitment and, therefore, it cannot be treated as promotion as that would contradict 13 (a). Therefore, the scales were indeed merged. Once it is treated as merger, para 5 of MACP guidelines

clearly establishes that all promotions from Mistries to JE (erstwhile 1400-2300) has to be ignored for the purpose of MACP. The OA is, therefore, allowed and respondents are directed to restore the first and second MACP with GP of Rs.4600 and 4800 from respective dates to the applicants.

9. We fix a time frame for the above exercise as 60 days from the date of receipt of a certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member A)

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