

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 778/2014

New Delhi this the 24th day of November, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)**

1. Manoj Kumar Singh,
S/o Sh.S.N. Singh,
R/0 H.No.88, Silver Town,
Nainana Jat, Gwalior Road,
Agra-282 001
2. Keshav Dev,
S/o Sh.P.S.Sharma,
R/o 01 Baikunth Dham,
Opp: Pawan Dham Colony,
Shamashabad Road,
Agra-282 001
3. Bhupendra Singh Chauhan,
S/o Late Sh.S.S.Chauhan,
R/o H.No.134- Defence Estate-II,
Deori Road, Agra-282001
4. Sanjay Kumar Mishra,
S/o Sh.K.D.Mishra,
R/o H.No.39/69E/34A, Govind Vihar,
Deori Road, Agra-282 001
5. Atin Agrawal,
S/o Sh.H.P.Agrawal,
R/o A-8, Shalimar Enclave,
Kamla Nagar, Agra.
6. Rajesh Kumar Singh,
S/o Sh. Radhey Shyam Singh,
R/o H.No.8, Gopal Vihar Colony,
Deori Road, Agra 282 001
7. Naveen Chand Bajetha,
S/o Sh.Ravendra Bajetha,
H.No.63A/116, Dwarika Kunj,
Defence Colony, Agra 282 001
8. Sain Singh,
S/o Late Sh.Haroo,
R/o H.No. 16, Ganpati Dham Colony,

Bamroli Road, Agra-282 009

9. Deepak Gupta,
S/o Sh.Vijay Kumar Gupta,
R/o H.No.13B, Dayanand Colony,
Deori Road, Agra-282 001
10. Hariom Kumar,
S/o Sh Late Sh Hargovind Singh,
R/o H.No.37/46E, Bundu Katra,
Gwalior Road, Agra-282 001
11. Smt. Gunjan,
W/o Sh. Raj Kumar Singh Parmar,
R/o H.No.25/2, Rana Pratap Colony,
Sadar Bazar, Agra.
12. Sunil Kumar
S/o Sh. Om Prakash Gupta
R/o H.No. 37A/111A/9,
Madhu Nagar, Agra-282001
13. Deepak Kumar Kaushal
S/o Sh. Ramesh Chandra
R/o Vill + PO: Gunachaur,
Teh: Banga, Distt: Shahid Bhagat Singh Nagar,
Punjab.
14. Chandra Shekhar
S/o Sh Shyam Singh Verma
R/o H.No.37A/262, Durga Nagar,
Nagla Padi, Dayal Bah, Agra
15. Charan Singh
S/o Sh.Girraj Singh,
R/o H.No.38/3A, Gopal Pura,
Gwalior Road, Agra-282 001.
16. Anwar Hussain,
S/o Sh.Amir Mohammad,
R/o Nangla Ram Kishan, Line Par,
Tundla, Dist: Firozabad, 283 204
17. Ahay Jain,
S/o Late Sh.Surendra Jain,
R/o H.No.18/162, Babri Gummat,
Fatehabad Road, Tajganj,
Agra-282 001
18. Dilip Kumar,
S/o Sh.Om Prakash Gupta,
R/o H.No.37A/111A/9,
Madhunagar, Agra

19. Manoj Kumar,
S/o Sh.Baidyanath Prasad,
R/o H.No.72, Silver Town, Nainana Jat,
Gwalior Road, Agra-282 001
20. Manoj Singh
S/o Sh. Ratan Singh,
R/o H.No.36/116, Gummat Takht Pahalwan,
Deori Road, Agra-282 001
21. Sharad Kumar Bathrey,
S/o Late Sh.Ramesh Kumar Bathrey,
R/o 61/62, Silver Gold Colony,
Pocket-C, Gwalior Road, Agra-282001
22. Kumar Rajneesh
S/o Sh. Singh Surendra Prasad
R/o H.No.37, Kasturi Vihar,
Deory Road, Agra 282001
23. Vijay Singh
S/o Sh. Mahinder Singh
R/o H.No.34-Defense Estate-II,
Deori Road, Agra 282001
24. Ramhet
S/o Late Sh. Gajadhar
R/o H.No.64-Defense Paradise,
Samari Tal, Deori Road, Agra 282001
25. Devendra Kumar Rajput
S/o Late Sh.Dhara Singh Rajput
R/o Village: Budhera, Post: Shyamo,
Agra 282125
26. Nilesh Kumar
S/o Sh. Ramesh Chandra
R/o 135- Defense Estate-II,
Deori Road, Agra 282001
27. Jitendra Singh
S/o Sh Nahar Singh,
R/o H.No.79, Dashrath Kunj (A),
West Arjun Nagar, Agra 282 001
28. Prasanta Kumar Seth
S/o Late Sh.Gobardhan Seth
R/o H.No. 62/A Amit Nagar,
Deori Road, Agra-282 001
29. Govind Singh
S/o Late Sh Khushi Ram,
R/o H.No.29-Diamond City,

Gwalior Road, Rohta,
Agra-282 001

30. Renu Gupta
W/o Sh. Balkishan Gupta,
R/o H.No.206- Defense Estate-II,
Deori Road, Agra-282 001
31. Rana Chakraborty
S/o Sh R R Chakraborty,
R/o H.No.E-3/1951 Shaheed Nagar,
Shamshabad Road, Agra.
32. Preetika Chakraborty
W/o Sh. Rana Chakraborty
R/o H.No.E-3/1951 Shaheed Nagar,
Shamshabad Road, Agra.
33. Pankaj Kumar
S/o Sh. Shyam Manohar Sharma,
R/o H.No.107, Veedha Nagar,
Bodla, Agra- 282 010
34. Deepak Sharma
S/o Sh S.P.Sharma,
R/o H.No.29, Indra Colony,
Shahganj, Agra-282 010
35. Vinish Kumar Agrawal,
S/o Sh. Mahesh Chandra Agrawal,
R/o H.No.194, Defense Estate-I,
Gwalior Road, Agra-282 001
36. Swarna Singh Shakya
S/o Sh Kundan Singh
R/o H.No.66, Vigyan Vihar,
Gwalior Road, Rohta, Agra-282 001
37. Hemant Kumar Verma
S/o Sh Rama Shankar Verma
R/o H.No.35/133, Naubasta,
Lohamandi, Agra-282 002
38. Mukesh Kumar Tyagi
S/o Sh Naval Singh Tyagi
R/o Vill + Post : Mahav,
Thana: Iradatnagar,
Dist :Agra 283 112
39. Nivedita Bose
W/o Sanjay Bose
R/o H.No.57, Ved Nagar,
Deori Road, Agra 282001

40. Pankaj Bhalla,
S/o Late Sh M M Dev Bhalla
R/o E-425, Kamla Nagar, Agra.

41. Chitra Singh
W/o Sh Manoj Singh
R/o 16/1 Shakti Nagar Colony,
Gwalior Road, Agra 282001

42. Jitendra Kumar
S/o Sh Om Prakash
R/o 37A/111A/9 Madhu Nagar,
Agra 282001

43. Tajender Pal Singh
S/o Sh Param Jeet Singh
R/o 82-A Defense Estate, Phase-1,
Gwalior Road, Agra 282001 Applicants

(By Advocate Shri M.K. Bhardwaj)

Versus

Union of India and others

1. Union of India
Through its Secretary
Ministry of Defence, Govt. of India,
Sena Bhawan, New Delhi.

2. The Directorate General (EME)
Master General of Ordnance Branch,
IHQ, MOD (Army), New Delhi.

3. The Commander, Base Wksp Gp EME
Meerut Cantt,
Meerut (UP).

4. The Commandant,
509, Army Base Workshop,
Agra, UP Respondents

(By Advocate Shri A.K. Singh)

ORDER

Mr. P.K. Basu, Member (A)

The applicants claim that they were appointed in 509 Army Base Workshop, Agra as Highly Skilled Grade I of Part I cadre

(the part I cadre contains 11 trades such as Telecommunication Mechanic (TCM), Radar Mech., Instrument Mechanic (IM), Instrument Mechanic Optical (IMO), IME, EE Mech. (EEM) etc.) during 1997 to 2002 respectively in the pay scale of 4000-100-6000. Tradesman Part-I and Tradesman Part-II have different qualifications and nature of jobs. While for Part-I cadre, recruitment is 100% by direct recruitment, for Part-II cadre, there are two grades, Highly Skilled Grade-II and Highly Skilled Grade-I and they get promotion from Highly Skilled Grade-II to Highly Skilled Grade-I in their respective trades after certain years of experience and passing of the trade test. Highly Skilled Grade II and Highly Skilled Grade I, who were in the pay scale of Rs.1200-1800 and Rs.1320-2040 in the 4th Central Pay Commission, were awarded the merged scale of Rs.4000-6000 by the 5th Pay Commission, which is the same pay scale as Highly Skilled Grade I (Part I).

2. Subsequently, the pay scale of Highly Skilled was revised from Rs.1320-2040 to Rs.4500-7000. The applicants claim that at that point of time, they should also have been granted the pay scale of Rs.4500-5700. In fact, it is stated that Skilled Artisans Grade I in the Ministry of Railways and other ministries were given the pay scale of Rs.4500-7000. In this regard, RBE No.269/1998 dated 24.11.1998 issued by the Ministry of Railways is annexed as Annexure A-4 in which the revised pay scale for Skilled Artisan Grade I is shown as Rs.4500-7000 and Skilled Artisan Grade II as Rs.4000-6000. After the Sixth Pay Revision, skilled staff has been placed in PB-I i.e. Rs.5200-20200

with Grade Pay of Rs.1900/- for skilled category, Rs.2400/- for Highly Skilled Grade-II and Rs.2800/- for Highly Skilled Grade-I.

3. The applicants claim that since they were directly appointed at the level of Highly Skilled Grade-I, therefore, on implementation of 6th Pay Commission recommendations, they were entitled for Grade Pay of Rs.2800/- from 1.01.2006 and Grade Pay of Rs.4200/- on completion of 10 years of regular service as per MACP Scheme but the respondents did not grant them the Grade Pay of Rs.2800/- nor granted them first financial upgradation in the Grade Pay of Rs.4200/-. In this regard, attention is drawn to order dated 9.10.2013 by which the representation of the applicants has been rejected for grant of Grade Pay of Rs.4200/- on completion of 10 years' of service.

4. The applicants further state that decision of not granting them the Grade Pay of Rs.4200/- even on completion of 10 years of regular service is based on erroneous notion that 50% of the total strength of Highly Skilled are placed in Grade Pay of Rs.2400/- (Highly Skilled – II) and remaining 50% in Grade Pay of Rs.2800/- (Highly Skilled – I) and the respondents treated movement from Highly Skilled – II to Highly Skilled – I as promotion whereas there was no promotion involved.

5. It is also explained that next promotional post for Highly Skilled Grade-I (Part-I cadre) is Chargeman – II in the Grade Pay of Rs.4200/- and, therefore, they are entitled to the Grade Pay attached to the said promotional post available in the hierarchy. It is further stated that similar objection was raised

while granting financial upgradation under ACP Scheme to the Assistant Engineers (AEs) of Central Public Works Department (CPWD) where 50% AEs were placed in the higher scale of Rs.7500-12000 and 50% in the scale of Rs.6500-10500. The matter came before the Principal Bench of the Central Administrative Tribunal in OA 818/2000. The Tribunal allowed the OA in the following terms:

"Present O.A. in the circumstances, is allowed. Respondents are now directed to fix the pay of the applicant in the pay scale of Rs.7500-12000 with effect from 1.1.1996 and thereafter grant him upgradation of pay scale with effect from 18.9.1999, calculating the benefits accruing on the aforesaid basis and to pay him his dues including arrears expeditiously and within a period of three months from the date of service of the order. No order as to costs."

The respondents preferred Writ Petition No.4664/2001 in the Hon'ble High Court of Delhi, which was dismissed. Thereafter, the SLP No.289/2003 filed in the Hon'ble Supreme Court was also dismissed on 19.09.2003.

6. The applicants stated that their case is squarely covered by the judgments cited above. They further state that they have filed a representation before the respondents citing another case decided by the Tribunal namely **Rajpal Vs. UOI and ors.**, OA 1038/CH/2010, which was upheld by the Hon'ble High Court of Punjab and Haryana vide order dated 19.10.2011.

7. The applicants further relied on the decision of the Calcutta Bench of the Central Administrative Tribunal in OA 172/2012,

Indranil Roy Chowdhury and others Vs. Union of India and others, in which the Tribunal passed the following order:

“13. The respondents have thus failed to disclose the reason as to why the placement of erstwhile (pre 1.1.06) Highly Skilled workers to Highly Skilled Gr.I in terms of seniority and Highly Skilled Gr.II in the ratio of 50:50 due to restructuring of artisan cadre be treated as a promotion. We find from a clarification dated 10.2.2000 that mobility under ACPs is to be allowed in the existing hierarchy. Any selection grade/ in situ promotion which is not a part of the hierarchy shall not be counted as promotion for the purpose of ACPs which supports the applicants’ case.

14. Being not supported by any cogent reason we hold that the placement of erstwhile (pre 1.1.06) HS to HS1 due to cadre restructuring effected on 13.12.10 w.e.f. 1.1.06, should not be treated as a promotion for the purpose of MACP. Consequently, we hold that the applicants shall be entitled to MACP.

15. Accordingly we quash the para 2 (1) of the impugned order dt. 1.12.10 and direct the respondents to examine the claim of each of the applicants for grant of MACP benefits as applicable and pass appropriate orders within three months. The OA is allowed in aforesaid terms. The applicants are directed to pay individual court fees.”

Reliance was also placed on **Satyavir Singh and others Vs. Union of India and others**, O.A. 4101/2012, where the Tribunal held as follows:

“11. Considering the above facts and going by the ratio of F.C. Jain’s case (supra), we quash and set aside the impugned orders dated 12.05.2012, 01.12.2010 and 20.06.2011 to the extent these letters declare the grade pay of Rs.2800/- as promotion for the purpose of MACP for the workers in the Highly Skilled grade pay of Rs.2400. It is further ordered that the Highly Skilled workers in the grade pay of Rs.2400/2800 will be eligible to the grade pay of Rs.4200/- on the 1st financial upgradation under MACP Scheme. The OA is accordingly allowed. No costs.”

8. The applicants have prayed for the following reliefs:

- (i) To quash and set aside the impugned order dated 9.10.2013 and direct the respondents to grant the Pay Band and Grade Pay of CM-II (9300-34800 + Grade Pay of Rs.4200 to the applicants on completion of 10 years of service under MACP Scheme dated 19.05.2009.
- (ii) To declare the action of respondents in treating the placement in Grade Pay of Rs.2800 on falling in 50% of the cadre strength in Instrument & Telecom Mechanic (highly skilled), EE Mech etc as promotion as illegal, arbitrary and unjustified.
- (iii) To declare the action of respondents in treating the placement in the Grade of Rs.2800 as promotion/ upgradation under MACP Scheme as illegal and arbitrary.
- (iv) To quash and set aside the impugned clarification dated 01.12.2010 and direct respondent to grant grade pay of Rs.2800 to the applicants from 01.01.2006 with arrears/ due date.
- (v) To allow the O.A. with costs.

9. The respondents argued that no parallel can be drawn with the Ministry of Railways as the Ministry of Defence has separate rules/ regulations and policies on various issues/aspects and different hierarchy of posts. Second, it is argued that the applicants have been placed in the category of HS-I (in the Grade Pay of Rs.2800/-) by virtue of their seniority and this comprises a promotion as per the Ministry of Defence I.D. dated 1.12.2010. The MACP Scheme stipulates that the applicants are entitled for next financial upgradation on completion of 10 years of regular service in HS-I category. The contention of the applicants that they were initially appointed in the HS-I category

stands supplanted on introduction of the SRO dated 28.08.2009. Their category of grade at the time of initial appointment stands as HS Grade consequent to introduction of the aforesaid SRO. Therefore, the applicants are entitled for Grade Pay of Rs.2800/- on their placement from HS to HS-I and will be entitled for grant of Grade Pay of Rs.4200/- on completion of 10 years of regular service as HS-I under the MACP Scheme.

10. It is also argued that comparison with AEs of CPWD is misplaced since the applicants belong to Artisan staff and not engineering staff. For the same reason, it is argued that the decision of the Tribunal in OA 818/2000 (supra) is not relevant and applicable in the present case as they belong to Artisan staff. The applicants in the court cases cited, all belong to non-industrial category and hence are not comparable in the instant case. Our attention was drawn to Ministry of Defence instructions dated 14.06.2010 (Annexure - 5), which is regarding restructuring of cadre of Artisan staff in defence establishments. Para 3 (b) of these instructions provide as follows:

“3.(b) The placement of the individuals in the posts resulting from the restructuring shall be made w.e.f. 1.1.2006, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure.”

It is stated that ruling relied upon by the applicants has not taken note of this provision in the instructions, which is crucial as this indicates that there are conditions to be fulfilled before grant of upgradation.

11. The respondents also relied on the orders of the Bangalore Bench of the Tribunal in OA No.385 to 394/2012 with connected cases, in which it has been held as follows:

“14. In such view of the matter, the stand taken and communicated in Para 2 (i) of letter dated 01.12.2010 of Govt. of India, Min. of Defence that placement of 50% of the Highly Skilled Workers (Grade Pay of Rs.2400) as Highly Skilled Grade-I Workers (Grade Pay Rs.2800) with effect from 1st January, 2006 (Annexure A4), would be treated as promotion for the purpose of ACP, was in order. The case covered by the judgment/ order of the Hyderabad Bench of the Central Administrative Tribunal in OA No.447 of 2008 on 27.07.2010 which was upheld by the Hon’ble High Court of Andhra Pradesh in WP No.3719 of 2011 on 21.02.2011 is not identical to the instant cases. The OAs accordingly fail and are dismissed. No order as to costs.”

12. We have heard the learned counsel for the parties and gone through the pleadings available on record.

13. First of all, we take up the question whether movement from Highly Skilled – II to Highly Skilled – I on restructuring of cadre with 50/50 ratio should be treated as promotion or not. The respondents have drawn our attention to their instructions dated 14.06.2010, where grade structure etc. have been mentioned. We find that the Calcutta Bench of the Tribunal in Indranil Roy Chowdhury (supra) has not considered this provision. As mentioned in para 10 above, these instructions are very relevant to decide these matters and specifically applicable in such cases. Moreover, the order of the Calcutta Bench in this case was passed on 16.01.2014, i.e. subsequent to the order of the Bangalore Bench in OA No.385 to 394/2012, which was

passed on 19.06.2013 but took a diametrically opposite view by failing to take note of the 19.06.2013 order of the Coordinate Bench. Therefore, in view of judgments of the Hon'ble Supreme Court in **U.O.I. and another Vs. Manik Lal Banerjee**, (2006) 9 SCC 643 and **V. Krishna Rao Vs. Nikhil Super Speciality Hospital and another**, (2010) 5 SCC 513, this order of the Tribunal is *per incuriam*. In Satyavir Singh (supra), though the Tribunal has taken note of clause 3 (b) of letter dated 14.06.2010 (wrongly mentioned as 14.09.2010 in the order), regarding MACP Scheme, it has recorded as follows:

"The MACP Scheme, on the other hand, prescribes grant of scale to which the Government servant would have been promoted in the normal course as the 1st financial upgradation."

None of the parties had pointed out to the Tribunal that in the MACP Scheme, it is clearly stipulated that upgradation will be in the next hierarchy of pay scale/ grade pay.

14. The order in Satyavir Singh (supra) had been passed on 13.11.2013. Though, Hon'ble Dr. K.B. Suresh was a Member of the Bangalore Bench which decided OA No.385 to 394/2012 (supra) on 19.06.2013, but when the Principal Bench decided Satyavir Singh (supra) case (Hon'ble Dr. K.B. Suresh was a Member in this Principal Bench) the Bench did not refer to order of this Tribunal of the Bangalore Bench in OA No.385 to 394/2012 (supra) and completely contradictory orders have been passed in both the cases. In other words, the Tribunal in OA 4101/2012 (supra), which was heard on a date subsequent

to the judgment dated 19.06.2013 in OA No.385 to 394/2012 failed to take note of its earlier order dated 19.06.2013 that had taken a view that placement of 50% Highly Skilled workers as Highly Skilled-I with effect from 1.01.2006 would be treated as promotion for the purpose of ACP. Therefore, in accordance with Manik Lal Banerjee (supra) and V. Krishna Rao (supra), the judgment rendered in Satyavir Singh (supra) being *per incuriam* will not govern this matter as the ratio laid down in OA No.385 to 394/2012 (supra) holds the field. Therefore, movement from Highly Skilled – II to Highly Skilled – I will be considered as promotion, in which case, respondents' stand is correct that the applicants are entitled for first upgradation under MACP only after completion of 10 years of coming into service. The occasion for applicability of the order in Rajpal (supra) also does not arise at all. Moreover, as rightly argued by the respondents, Artisans cannot be compared with Engineers.

15. In view of above discussion, we find no merit in this OA and it is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/