

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00084/2015**

**Thursday, this the 1<sup>st</sup> day of November, 2018**

**CORAM:**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr. Ashish Kalia, Judicial Member**

1. P.M. Somasundaran,  
Aged 75, S/o. (late) Sri. Madhavan Nair,  
Indian Railway Traffic Service (Retired),  
Palakkad Division, Residing at "Pranavam",  
No. 33, Samrudhi Nagar, Edappally, Kochi – 682 024.
2. G. Gopalakrishnan Nair,  
Aged 71, S/o. Govinda Pillai,  
Deputy Chief Engineer/ Construction (Retired),  
Ernakulam, Residing at "Sudarsanam", H.No. 244,  
Bhavana Nagar, Kadappakkada, Kollam – 691 008.
3. C.M. Balan,  
Aged 65, S/o. Late C.K. Madahavan),  
Deputy Chief Engineer (Retired),  
Residing at Chittath House, P.O. Kallayi,  
Haritha Nagar, 2<sup>nd</sup> Street, Thrissur – 680 305.
4. K. Sankaranarayanan,  
Aged 65, S/o. Kailasom Iyer,  
DYCSTE/OFC/MAS (Retired),  
Residing at No. A/2, Kailash, Bel Haven Gardens,  
Kandiar P.O., Trivandrum – 3.
5. Mathew George,  
Aged 65, S/o. K.C. George,  
Additional Registrar, Railway Claims Tribunal,  
Ernakulam, Residing at Koottummel House,  
Pudhuchirra, Cheerauchira P.O., Changanacherry – 686 106.
6. Unnikrishnan,  
Aged 62, S/o. Late P.N. Kesava Pillai,  
Deputy Chief Engineer, Southern Railway,  
Residing at 28/960, Cheruparambath Road,  
Kadavanthara, Kochi – 20.

7. K. Ramachandra Kurup,  
Aged 75, S/o. Krishna Pillai,  
Retired from Indian Railway Traffic Service,  
As Senior Divisional Commercial Manager (Retired),  
Southern Railway, Thiruvananthapuram,  
Residing at "Kaveri", Maveli Buildings No. 28,  
Perunna P.O., Changanacherry – 686 102.
8. C.M. Chandrasekharan Nair,  
Aged 64, S/o. G. Sankarapanicker,  
Retired from Indian Railway Traffic Service,  
As Senior Divisional Commercial manager (Retired),  
Southern Railway, Thiruvananthapuram, Residing at Sumideep,  
CMP I, Cherthala – 688 524.
9. George John,  
Aged 61, S/o. K.D. John,  
Retired from Indian Railway Traffic Service,  
As Dy. COM/CN/Chennai, Residing at Kulathungal,  
1 B3, B4, Swas Mystic Charms, Bhuvaneshwari Road,  
Vyttila, Kochi – 682 019. .... **Applicants**

**(By Advocate : Mr. P.V. Mohanan)**

### **V e r s u s**

1. Union of India represented by Secretary,  
Ministry of Finance, Department of Expenditure,  
North Block New Delhi – 110 001.
2. The Secretary, Ministry of Railways,  
Railway Bhavan, New Delhi – 110 001. .... **Respondents**

**[By Advocates : Mr. N. Anilkumar, Sr. PCGC ® (R1) and  
Mrs. Sumathi Dandapani, Sr.  
Mr. Sunil Jacob Jose (R2)]**

This application having been heard on 05.10.2018 the Tribunal on  
01.11.2018 delivered the following:

### **ORDER**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicants are as under:

“i. To call for the records leading to Annexure A9 dated 12.2.2014 and direct the respondents to fix the pay of the applicants in Pay Band-4 ie., Rs.37400-67000/- with effect from 1.1.2006 and to have the pension

fixed/consolidated based on the fixation in PB-4 as recommended by the CCS (Revised) Pay Rules, 2008 and disburse the arrears of revised pension to the applicants with 9% interest from the date of retirement till the date of actual disbursement.

ii. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

iii. To call for the records leading to Annexure R2 dated 31.3.2014 and set aside the same.

iv. To direct the respondent No. 2 to provide the first applicant NFSG Grade w.e.f. 6.6.2000 with all consequential benefits.”

2. The applicants No 1, 2 and 7 are pre- 1.1.2006 pensioners and applicants No 3,4,5,6, 8 and 9 are post-1.1.2006 pensioners. They were in the Junior Administrative Grade (Functional Grade) in PB-3 pay band. They claim fixation of pay in the Pay Band-4 ie. Rs 37400-67000 + Grade Pay Rs. 8700/- w.e.f 1.1.2006 in the Non- Functional Selection Grade (NFSG) and to have the pension consolidated which shall not be less than 50% of the minimum of the pay in the Pay Band. The pension of the applicant No 1 and 5 was fixed by reckoning the pay in the PB- 3 ie. Rs 15600-39100/- with Grade Pay Rs. 7600/- and the pension of other applicants was fixed by reckoning the pay in PB-3 ie. Rs. 15600-39100/-with Grade Pay Rs. 6600/- + Charge Allowance Rs.1500/- (Senior Scale). The applicants are, thus, aggrieved.

3. The applicants commenced service in Group ‘C’ cadre in the Railway and there after promoted to Group ‘B’ cadre. Thereafter on passing the prescribed Departmental Test, they were promoted to Group ‘B’ Gazetted service. The next higher cadre in the Organized Central Group ‘A’ Cadre is Junior Scale, Group ‘A’ in Indian Railway Establishment Code Vol. 1.

Appointment to the said post in terms of Rule 209(B) I R E C are to be made by selection on merit from Group 'B' officers with not less than three years of non- fortuitous service in the grade. The next Grade is Senior Scale which is to be filled from incumbents having three years non- fortuitous service in Group 'B' and four years in Junior Scale. The next higher grade is Junior Administrative Grade which has to be filled from incumbents having six years of service in Junior Scale, ie (from the Date of Increment of Time Scale-DOITS) on ad hoc basis and eight years for regular Junior Administrative Grade. The next higher grade is Non- Functional Selection Grade of Junior Administrative Grade. An officer to be eligible to be placed in Non- Functional Selection Grade must have completed thirteen years from DOITS (Date of Increment on Time Scale) and entered the fourteenth year of service on the first of January of the year. The seniority of the officers appointed to various Indian Railway Services shall be determined on the basis of Date of Increment on Time Scales (DOITS). In the case of Group B officers permanently promoted to the Junior Scale of Group 'A' services, the relative seniority of the officers in each Railway shall be in the order of their position in the panel in that Railway. The Date of Increment on Time Scale (DOITS) of the above officers, shall be determined by giving weight age based on:

- (a) The year of service connoted by the initial pay on permanent promotion to Group 'A' service; or
- (b) half the total number of years of continuous service in Group 'B' both officiating and permanent;

Whichever is more, subject to a maximum of five years provided that the weightage so assigned does not exceed the total non - fortuitous service rendered by the Officers in Group

‘B’.

The officer permanently appointed as Junior Scale (Class I) from Group ‘B’ against the quota of vacancies reserved for them, shall be placed below or above a particular batch of direct recruits accordingly as their dates for increment on time scale are earlier or later than the earliest date on which any one of the direct recruits in a particular batch joined service. The Date Of Increment on Time Scale (DOITS) of the applicants are:

First applicant -1.6.1987,	Second applicant- 3.8.1995,
Third applicant- 12.6.2003,	Fourth applicant-29.5.2004,
Fifth applicant- 8.7.1999,	Sixth applicant- 18.6.2004,
Seventh applicant-1.6.1987,	Eighth applicant-18.6.2004,
Ninth applicant- 30.12.2005	

4. The first applicant with DOITS as on 1.6.1987 on Time Scale had completed 13 years as on 1.6.2000 and at the entrance of fourteenth year of service as on 6.6.2000 and is entitled to be promoted as Non- Functional Selection Grade as on 6.6.2000 against the upgraded vacancies of 30% vide Annexure A1 and A2 orders. The first applicant retired on 30.6.2000. But the first applicant was not promoted w.e.f 6.6.2000 due to some omission by Railway Administration. Annexure A1 and A2 were implemented in the year 2001 after the retirement of the first applicant. His Date of Increment in Time Scale is shown as 1.6.1987 in Gazette dated 1.1.2000. Except applicant No 1 and 5, other applicants were placed as detailed to look after the duties in Junior Administrative Grade on ad hoc basis conferring the Charge Allowances but granted only Senior Scale of pay in PB-3 Rs.

15600-39100-+ Grade Pay of Rs. 6600/-+ Charge Allowance of Rs. 1500/- though they had been discharging the duties, functions and responsibilities of Junior Administrative Grade in all purport and tenure. Pursuant to the recommendation of the Fourth Central Pay Commission, the Non-functional selection Grade ( NFSG) has been granted in all organized group 'A' Central Services. The number of the posts in NFSG shall be equal to 30% of the senior duty posts ( ie. all duty posts at the level of Senior Time Scale and above in the cadre). Since NFSG is a segment of JAG, the strength in NFSG shall not exceed the number of posts available in JAG. No member (Officer) of the service shall be eligible for appointment to NFSG until he has entered the fourteenth year of service on the first January of the year calculated from the year following the year of examination on the basis of which the member was selected. NFSG is a segment of JAG and is also 'non-functional' in character; appointment to NFSG is not a promotion but merely placement in the higher pay scale. It is not a distinct functional grade carrying a higher level of responsibilities than those associated with JAG but part of JAG itself, the scale of pay being an extension of JAG pay scale. In other words, it is tantamount to an extended pay scale for holder of JAG post, the pay scale of Rs. 12000-16500/- being extended to Rs. 18300/- under certain condition. (Vide Annexure A1, A2 and A13 respectively). The Resolution dated 29.8.2008 and the Rules placing Junior Administrative Grade in PB-3 is discriminatory and the personal in Junior Administrative Grade is entitled to be placed in Pay Band- 4 (Rs.37400-67000) w.e.f 1.1.2006 on the following reasons.

- (i) That the two scales, namely, Junior Administrative Grade

and Non Functional Selection Grade, were merged into one Pay band by the VIth Central Pay Commission in PB-3 with enhanced Grade pay for Non Functional Selection Grade. Accordingly, the decision of the Government to place the Non Functional Selection Grade in PB-4 with enhanced Grade pay caused major disparity. Both JAG and NFSG being the same cadre posts are required to be placed in PB-4 for imparting natural justice.

(ii) The Ministry of Railways sent a proposal on this matter ( Annexure A9) only in the month of February, 2014 after four years of delay and if this had been forwarded in time, a favorable decision would have been taken in time.

(iii) The identical issue and anomaly was rectified in respect of Armed Forces by the Ministry of Defence by placing Lt. Colonel of the Army and its equivalent ranks in Navy and Air Force in PB-4 along with Colonels( Annexure A10).

(iv) The Non Functional Grade is not a distinct grade carrying a higher level of responsibility than those associated with JAG but part of JAG itself; the scale of pay being extension of JAG Pay Scale. Non Functional Selection Grade should strictly remind Non functional Since the Grade is granted as personal to the offices concerned and as such, the appointment to NFSG will not be treated as promotion.

(v) The Government by placing NFSG in PB-4 ignored the mandate of the VIth Central Pay Commission not to cause any change/modification in the basic structure of the recommendations, as the Government modified the recommendations and placed NFSG in PB-4, ignoring JAG. Government should have placed both JAG and NFSG.

5. Notices were issued to the respondents. They entered appearance.

Respondent No. 1 by Shri N. Anilkumar, SCGSC and Respondent No. 2 through Smt. Sumathi Dandapani, Sr. Advocate along with Shri Sunil Jacob Jose. Respondent No. 2 in their reply statement contended that all the 9 applicants had retired on superannuation. Out of them, applicants 1, 2 and 7 retired prior to 1.1.2006. All the remaining applicants retired after 2006. The applicants retired while serving in Group 'A' service. Earlier they all

served in Junior Time Scale in the grade pay of Rs.5,400/-. The entry to the Junior Time Scale is by direct recruitment based on the examination conducted by the UPSC and for the employees in Group 'B' holding the Assistant post (Assistant scale) (APO, AME, ADEE cadre) are inducted to Junior Time Scale after a period of 3 years on the basis of the ratio specified in respect of vacancies arising each year. As per the contention in the O.A. itself the next level above the Junior Time Scale is Senior Time Scale. The 3<sup>rd</sup> level in the hierarchy is the Junior Administrative Grade. As per para 15 of the O.A. Junior Administrative Grade consists of 2 segments, Functional Grade (FG) in the scale of pay of Rs.12,000 – 16,500 and the Non Functional Grade (NFSG) in the pay scale of Rs. 14,300 – 18,300.

6. The grievance of the applicants to have their pay fixed in Pay Band 4 of Rs.37,400 – 67,000 with grade pay of Rs.8,700/- with effect from 01.01.2006 though they made various representations and in spite of the recommendation of the Railway Board also to the Finance Ministry. Annexure- A.9 representation has already been rejected by the Ministry of Finance by their order dated 31.03.2014. On production of Annexure – R.2 the applicant sought for amending the O.A. The applicants are not at all entitled to claim for the enhanced Pay Band as well as Grade Pay as per PB-4. As per Annexure A2 dated 06.06.2000 office memorandum the NFSG has to be granted subject to certain conditions prescribed from time to time. As per the first condition the number of posts in NFSG shall be equal to 15% of the senior duty post which had been subsequently increased to 30% as per para 3 of the same memorandum. As per Clause 5, no member of the service



shall be eligible for appointment to NFSG until he has entered the fourteenth year of service on the 1<sup>st</sup> January of the year calculated from the year following the year of examination on the basis of which the member was recruited. Recommendation for appointment to NFSG shall be made by committee as per Clause 7. Admittedly, none of the applicants had entered the 14<sup>th</sup> year of service. As far as the 1<sup>st</sup> applicant is concerned kindly refer to Annexures A16, A17 which is produced along with the Rejoinder. Annexure A16 is the seniority list published by the Railway Board with effect from 1.06.1992. The 1<sup>st</sup> applicant is Sl. No. 11 in that list and in Annexure A17 seniority list published on 13.04.2000 he is Sl. No. 168. As per Annexure A-17 'Date for Increment on the Time Scale'(DOITS) (See page 44) from this date incumbent has to complete 13 years. Though as per this he become eligible on 01.06.2000 as per A18 list published on 23.07.1999 his DOITS is changed to 06.09.1988. This is retained in the subsequent list published on 18.03.2002 which had not been produced by the applicant. If this date is taken into account he is not completing 13 years and thereby he is not eligible to be considered for the appointment to the Junior Administrative Grade Non Functional post. Since the applicants except 1 and 5 had not completed 8 years of Group 'A' service they are not eligible to be considered for Junior Administrative Grade post on Regular basis. On this ground also they are not eligible to hold the functional grade of JAG.

7. Heard Shri P.V. Mohanan learned counsel appearing for the applicants, Mr.N. Anilkumar, SCGSC learned counsel appearing for

respondent No. 1 and Smt. Sumathi Dandapani, Sr. along with Shri Sunil Jacob Jose learned counsel appearing for respondent No. 2. Perused the records.

8. It is well settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. It is also well settled principle of law that a policy decision of the Government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estoppel [See paragraph 17 of the apex court judgment in *K.S. Krishnaswamy & Ors. v. Union of India & Anr.* - (2006) 13 SCC 215]. In view of the apex court decision recommendation of the Pay Commission are subject to changes and modifications by the executive instructions. Therefore, the grievances of the applicants for non-grant of NFSG or JAG comes within the purview of executive instructions. During the course of arguments it has also been submitted by the counsel for the respondents that none of the applicants have completed 13 years of service on 1<sup>st</sup> January of particular year which is mandatory requirement for grant of JAG/NFSG. However, learned counsel for the applicants submitted that vide Annexure A10 the Defence Ministry has implemented JAG for the similarly situated persons.

9. We are of the considered view that the present controversy cannot be dealt with by this Tribunal and it needs to be referred to an expert body like the Pay Commission Anomaly Committee for taking appropriate decision

after careful examination of aspects in this regard. We are guided by the decision of the Hon'ble Supreme Court in *State of West Bengal v. Subhas Kumar Chatterjee*, (2010) 11 SCC 694 once again reaffirmed its earlier decisions and also condemned the Tribunal's action in interfering with the administrative authorities' power. In paragraph Nos.14 and 21, it was observed as follows:

“14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission.”

Accordingly, we hereby direct the respondents to refer the case of the applicant with regard to his grievance to the Anomaly Committee on Pay Scales.

10. With the above observation and direction, the O.A. is disposed of. Parties are directed to bear their own costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 180/00084/2015**

**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of the Circular No. PC-V/2000/I/11/3 (Gaz.) dated 14.07.2000.
- Annexure A2** - True copy of the Office Memorandum No. 22/1/2000 – CRD dated 06.06.2000.
- Annexure A3** - True copy of the relevant extract from 6<sup>th</sup> CPC' Recommendation.
- Annexure A4** - True copy of the letter No. 2010/E(O)II/24/5 dated 31.05.2010.
- Annexure A5** - True copy of the communication Ack. No. DPG/ Z/2010/00959 dated 22.07.2010.
- Annexure A6** - True copy of the communication No. 2010 PG/7/DOP &PW dated 13.08.2010.
- Annexure A7** - True copy of the representation dated 12.11.2010.
- Annexure A8** - True copy of the representation dated 23.10.2010.
- Annexure A9** - True copy of the Memorandum No. PC VI/ 2012/RU/NFIR/3 dated 12.02.2014.
- Annexure A10** - True copy of the proceeding No. 17(4)/2008 (1)/(D) (Pen/Policy) dated 21.05.2009.
- Annexure A11** - True copy of the letter No. NFIR/VI CPC/Main/10/Pt.X dated 07.03.2014.
- Annexure A12** - True copy of the representation dated 20.09.2014.
- Annexure A13** - True copy of the Office Memorandum No. 22/1/2000- CRD dated 06.06.2000.
- Annexure A14** - True copy of the scheme Rly. Bd's No. E (O)I- 72/SR-6/29 dated 30.11.1976.

- Annexure A15** - True copy of the order No. E(GP)91/1/58 dated 22.07.1992.
- Annexure A16** - True copy of the proceeding P(G) 185/II/I Vol. II Dated 25.02.1994.
- Annexure A17** - True copy of the order No. E(O) III-2000/SR/01 dated 13.04.2000.
- Annexure A18** - True copy of the office order No. E(GP)1/91/SR-6/22 dated 23.07.1999.
- Annexure A19** - True copy of the letter dated 22.01.2001.
- Annexure A20** - True copy of the appeal petition dated 20.05.2000.
- Annexure A21** - True copy of the order passed by the Delhi High Court in W.P.(C) 9765/2015 dated 14.10.2015.
- Annexure A22** - True copy of the order in OA 280/2008 dated 07.03.2012.
- Annexure A23** - True extract of the Gazetted establishment as on 01.01.2000.
- Annexure A24** - True extract of the Gazetted establishment as on 01.01.2001.
- Annexure A25** - True copy of the order in O.A. No. 784/93 dated 14.02.1994.
- Annexure A26** - True copy of the proceeding dated 29.09.2000.
- Annexure A27** - True copy of the proceeding dated 11.12.2001
- Annexure A28** - True copy of the proceeding dated 07.01.2003.
- Annexure A29** - True copy of the proceeding dated 27.01.2003.
- Annexure A30** - True copy of the proceeding dated 01.01.2004.
- Annexure A31** - True copy of the proceeding dated 14.08.2008.

- Annexure A32** - True copy of the proceeding dated 21.11.2008.
- Annexure A33** - True copy of the proceeding dated 26.12.2008.
- Annexure A34** - True copy of the proceeding dated 30.12.2008.
- Annexure A35** - True copy of the report dated 01.01.2009.
- Annexure A36** - True copy of the Gazette Notification as on 01.01.2010.
- Annexure A37** - True copy of the order dated 21.07.2009.
- Annexure A38** - True copy of the Presidential Notification dated 17.07.2009.
- Annexure A39** - True copy of the order dated 28.07.2009.
- Annexure A40** - True copy of the order dated 08.12.2009.
- Annexure A41** - True copy of the order dated 17.08.2004.
- Annexure A42** - True copy of the order dated 27.05.2008.
- Annexure A43** - True copy of the proceeding dated 04.02.2009.
- Annexure A44** - True copy of the proceeding dated 08.04.2013.
- Annexure A45** - True copy of the proceeding dated 27.10.2009.
- Annexure A46** - True copy of the order dated 22.02.2011.
- Annexure A47** - True copy of the Presidential Notification dated 10.02.2011.
- Annexure A48** - True copy of the proceeding dated 25.07.2012.

#### **RESPONDENTS' ANNEXURES**

- Annexure R1** - Copy of the resolution dated 29.8.2008 notified by Ministry of Finance conveying acceptance of recommendations of 6<sup>th</sup> CPC by the Government.
- Annexure R2** - Ministry of Finance letter dated 31.3.2014.

- Annexure R3** - Copy of Annexure showing scale available to Pharmacists.
- Annexure R1** - Photocopy of the extracts of para 2.2.2018 of the 6<sup>th</sup> CPC.
- Annexure R2** - Photocopy of the resolution dated 29.08.2008 conveying acceptance of 6<sup>th</sup> CPC.
- Annexure R3** - Photocopy of notification by the Ministry of Railways as Railway Service Revised Pay Rules 2008.
- Annexure R4** - Photocopy of the OM No. 36(1) E.III B/2014 31.03.14.
- Annexure R5** - Photocopy of the scale available to pharmacists.
- Annexure R6** - Photocopy of the extracts from para 2.2.2011.
- Annexure R7** - Photocopy of the OM dated 15.04.2008.
- Annexure R8** - Photocopy of the extracts from minutes of the meeting of committee of Secretary dated 05.06.2008.
- Annexure R9** - Photocopy of the extracts from the Committee of Secretary dated 10.06.2008.
- Annexure R10** - Photocopy of the order in O.A. No. 971/12 dated 28.01.2015.
- Annexure R11** - True copy of the statement containing the details of the applicants' seniority and when they were considered for empanelment/promotion to Junior Administrative Grade.
- Annexure R12** - True copy of the order dated 13.01.2016 of the Hon'ble High Court, Delhi in W.P. (C)No. 10148/2015.
- Annexure R1(a)** - True copy of the O.M. No. 36(1)/E.IIIB/2014 dated 15.12.2015.

**Annexure R1(b)** -

True copy of the letter No. PCVI/2015/CC/5  
dated 21.04.2016.

-X-X-X-X-X-X-X-