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## Central Administrative Tribunal

Calcutta Bench

H.A.No. 481/2017 with O.A. 1683/16

Biswarup Ojha, S/o Shri Chittaranjan Ojha, aged about 55 years, working as Sr. Section Engineer (W), under the overall control of General Manager, CLW, Chittaranjan at present residing at Street No.6, Qtr. No.5A, CLW Chittaranjan District-Burdwan, PIN - 713331.

... Applicant

- Vs -

1. Union of India through General Manager  
CLW, Chittaranjan, Dist. Burdwan  
PIN - 713331.
2. Chief Personnel Officer  
CLW, Chittaranjan, Dist. Burdwan,  
PIN - 713331.
3. Chief Engineer (Civil)  
CLW, Chittaranjan, Dist. Burdwan  
PIN - 713331.
4. Dy. Director, Pay Commission - V  
Railway Board, Ministry of Railways,  
Rail Bhavan, New Delhi - 110001.
5. Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhavan, New Delhi - 110001.

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No. M.A. 350/00481/2017  
O.A. 350/01683/2016

Date of order: 6.7.2017

Present: Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. M.K. Bandyopadhyay, Counsel

**ORDER (Oral)**

**Per Jaya Das Gupta, Administrative Member:**

The applicant, Shri Biswarup Ojha, has approached this Central Administrative Tribunal under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

- "(a) To set aside and quash impugned notice being No. GMA/TA/MACP/Gr. 'C' (Supervisors) dated 16/19.8.2016 issued by APO (Admn.), CLW, Chittaranjan as regard applicant are concerned.
- (b) To set aside and quash impugned letter being No. PC-V/2009/ACP/21/SER dated 12.5.2015 issued by Dy. Director, Pay Commission-V, Railway Board.
- (c) To direct the respondents to allow the applicant to enjoy the Financial Upgradation under MACP Scheme in Grade Pay of Rs. 4800/- as has been granted to him vide order dated 24.1.2011.
- (d) To direct the respondents not to make any recovery from the salary of the applicant taking recourse of DOP&T's Office Memorandum dated 2.3.2016 and RBE No. 72/2016 and to refund any amount if already recovered.
- (e) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

2. He has also sought the following interim relief in the O.A. The relief sought for is as follows:-

" An Interim Order do issue staying the operation of Impugned Notice being No. GMA/TA/MACP/Gr.'C' (Supervisors) dated 16/19.8.2016 issued by APO (Admn.), CLW, Chittaranjan as regard applicant is concerned."

Through an M.A. 481/2017 he has also sought for the following interim reliefs:-

- "(a) An order do issue staying impugned office order No. GMA/TA/01A/2017 dt. 14.3.2017 and Impugned Notice dated 16/19.08.2016.
- (b) To direct the respondents not to make any recovery or further recovery from the salary of the applicant till the final disposal of the O.A.
- (c) Any other order or orders as the Hon'ble Tribunal deems fit



and proper."

3. It is seen that the interim reliefs sought and the final reliefs sought in O.A. will have the same effect ultimately and granting of interim relief will effectively lead to granting of final reliefs also.

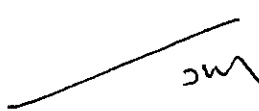
4. It is the case of the applicant that he was recruited as Works Mistry Gr.-I in the Civil Engineering Department of the Chittaranjan Locomotive Works in the pay scale of Rs. 380-560/-. This pay scale was revised in the 4<sup>th</sup> CPC to Rs. 1400-2300/-. He has further stated that the pay scale of Works Mistry Gr. I and Inspector of Works Gr.-III (JE-III) is same and identical to that of Rs. 1400-2300/- as per 4<sup>th</sup> CPC.

5. Consequent upon the implementation of the 5<sup>th</sup> CPC the pay scale of the applicant was revised from Rs. 1400-2300/- to Rs. 4500-7000/- while the pay scale of Inspector of Works Gr.III (JE-II) was revised from 1400-2300/- to Rs. 5000-8000/- though the qualification for recruitment of both the posts of Works Mistry Gr. I and Inspector of Works Gr. III (JE-II) is identical being Diploma in Civil Engineering.

6. Further the applicant has taken benefit as per Srl. No. 05/97 dated 7.1.1997 where the Railway Board decided as under:-

**" The Board have considered the matter and decided that 10% of vacancies worked out for being filled by direct recruitment in the category of Inspector of Works, Gr. III in scale Rs. 1400-2300/- may be filled by LDCE from amongst the serving Works Mistries in scale Rs. 1400-2300/- having the requisite qualification of direct recruitment subject to the condition that any shortfall against the quota will revert back to the Direct Recruitment quota."**

7. Accordingly the applicant qualified in the LDCE i.e. Limited Departmental Competitive Examination and was appointed to officiate as Jr. Engineer Gr.-II in the scale of Rs. 5000-8000/- w.e.f. 13.7.2000. The applicant further received the restructuring benefit in terms of RBE No. 177 of 2003 dated 9.10.2003, which introduced restructuring of certain Gr. 'C'



and 'D' cadres as per two paras, Para 13(a) and Para 13.2(b) according to the applicant. These paras will be discussed later.

8. That being beneficiary of Railway Board's order RBE No. 177/2003 the applicant was placed in the grade of Jr. Engineer Gr.-I/W w.e.f. 1.11.2003 in the scale of Rs. 5500-9000/- vide order dated 23.6.2004. Further vide office order dated 14.2.2006 the applicant was appointed to officiate as Section Engineer (W) in the scale of Rs. 6500-10500/-. He was also awarded the Second Financial Upgradation in the Grade Pay of Rs. 4800/- in PB Rs. 9300-34800/- w.e.f. 1.9.2008.

9. However, the applicant was shocked and surprised after issued of the impugned notice dated 16/19.08.2016 whereby the financial upgradation granted to applicant under MACP Scheme was withdrawn from the date it was granted.

10. That it is further stated that earlier an Original Application being O.A. No. 1346 of 1997 was moved before this Central Administrative Tribunal, Calcutta Bench praying for the reliefs that they should be treated at par with the Inspector of Works Grade – III according to their mode of recruitment and consequential benefits should be extended to them. The said O.A. was disposed of vide order dated 27.7.2004 which is as under:-

"4. Now the submission made by the Learned Counsel for the respondents is that since the reliefs as has been prayed for by the applicants has already been granted, hence nothing survives in the O.A. By going through the orders, we are accepting the above submissions made by the Counsel for the respondents. Therefore we are of the view that the O.A. is closed. However, we make it clear that if any grievance is left out to the applicant by virtue of this order, they are at liberty to approach the appropriate forum for redressal of their grievances.

5. With the above observations, the O.A. is closed. No order as to costs."

As the grievance of the applicant has still not been redressed, the

2017

applicant has approached this Central Administrative Tribunal by filing the present O.A. and M.A. seeking the interim reliefs.

11. As I am sitting singly today I will pass orders only on prayer of interim relief.

12. It is the contention of the Ld. Counsel for the respondents that all the benefits have been extended to the applicant as per the extant rules namely the RBE No. 177 of 2003 and also communication of the Government of India, Ministry of Railways, Railway Board dated 12.5.2015. As per the authorities the upgradation of the Work Mistry's to JE <sup>in I/w m</sup> as per the restructuring order has been made following the modified selection procedure and, therefore, cannot be termed as upgradation. Accordingly, they have prayed that no grant of interim relief should be extended at this stage and since the reply has been filed on behalf of the respondents on 6.7.2017, the matter should be heard out on merit.

13.(a) On examining the records it would be worthwhile to set out the relevant extracts of RBE No. 177 of 2003 which as per the applicant is beneficial to him:

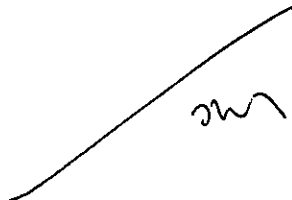
**GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS/RAIL MANTRALAYA  
(RAILWAY BOARD)**

**RBE No. 177/2003**

**No. PC-III/2003/CRC/6 dated 09/10/2003**

**Subject :- Restructuring of certain Group 'C' & 'D'  
cadres.**

The Ministry of Railways have had under review cadres of certain Group 'C' & 'D' staff in consultation with the staff side with a view to strengthening and rationalising the staffing pattern on Railways. As a result of the review undertaken on the basis of functional, operational and administrative requirements, it has been decided with the approval of the President that the Group 'C' & 'D' categories of staff as indicated in the Annexures to this letter should be restructured in accordance with the revised percentages indicated therein. While implementing these orders the following detailed instructions should be strictly and carefully adhered to :



Date of effect. (hereinafter referred to as cut-off 1. date)

This restructuring of cadres will be with reference to the sanctioned cadre strength as on the date following the date on which the cadres in the headquarter offices of new Zonal Railways/new Divisions are closed. The benefit of restructuring will be restricted to the persons who are working in a particular cadre on the cut-off date.

Applicability to various cadres

2. These orders will be applicable on the regular cadres (excluding surplus & supernumerary posts) of the Open Line establishments including Workshop and Production Units. These orders will, however, not be applicable to staff of RDSO for which separate orders will be issued.

2.1 These orders will not be applicable to ex-cadre & work-charged posts which will continue to be based on worth of charge.

2.2 These instructions will also not be applicable to construction Units and Projects, where posts are generally created on worth of charge basis, though those should broadly be conforming to these percentage distributions.

Pay Fixation (Rule 1313 (FR 22) - R-II)

3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1313 (FR-22) (I)(a)(1)-R-II on proforma basis w.e.f the cut-off date with the usual option for pay fixation as per extant rules. Actual payment based on the pay so fixed should be made from the date of taking over the charge of the higher grade post arising out of these restructuring orders. The benefit under this rule will, however, no longer be available in the case of movement from lower grade to higher grade in the non-functional situations where there is no change in, duties as in the case of movement from Goods Guards to Sr. Goods Guards and Goods Drivers to Sr. Goods Drivers etc. In the case of such movement, the pay will be fixed under Rule 1313 (FR 22) (I) (a) (2) - R-II. However, the benefit of fixation of pay under Rule 1313 (FR-22)(I)(a)(1) R- II will now be admissible in the cases of functional promotions such as promotion from Sr. Goods Guards to Passenger Guards and Sr. Goods Drivers to Passenger Drivers etc. though in identical scale of pay.

Existing classification and filling up of vacancies

4. The existing classification of the posts covered by these the orders as 'selection' and 'non-selection', as the case may be, remains unchanged. Action should be taken to position the employees on the basis of selection/ non-selection/ suitability/ Trade Test, as the case may be. However, the instructions contained in Para - 13.2 should be followed in case of placement

**of Supervisors (erstwhile Mistries) to grade Rs.5000-8000.**

5. Extant instructions for D&A/Vigilance clearance will be applicable for effecting promotions under these orders with reference to the cut-off date.

**Minimum years of service in each grade**

While implementing the restructuring orders, instructions regarding minimum period of service for promotion issued from time to time should be followed. In other words, residency period prescribed for promotions to various categories should not be relaxed.

**Basic functions, duties and responsibilities**

7. Since the cadres as detailed in the annexures to this letter are being restructured on functional operational and administrative considerations, the posts being placed in higher scales of pay as a result of restructuring should include the duties and responsibilities of greater importance.

**Adjustment of excess number of posts**

8. If prior to issue of these instructions the number of posts existing in any grade in any particular cadre exceeds the number admissible on the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents.
9. While implementing these orders, specific instructions given in the foot-notes for the relevant categories in the enclosed annexures should be strictly and carefully adhered to.

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**Upgradation of the posts of Supervisor 13 (erstwhile Mistries)**

- (Subject to provisions of Para-13.2 below,
- a) all the posts of Supervisors (erstwhile Mistries) in grade Rs.4500-7000 + Rs. 100 Special Allowance (excluding Supervisors (P.Way) should enbloc be upgraded to the posts of Junior Engineer Gr. II in the pay scale of Rs. 5000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs. 5500-9000, 6500-10500 & 7450-11500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders.

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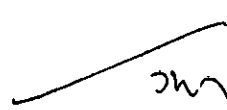
- 13.2. The placement of the existing incumbents will be regulated as per the procedure given below:-
- a. The existing regular incumbents of the posts of Supervisors (Including Supervisors/P. Way to the extent of upgradation of posts) will be placed in grade Rs. 5000-8000/- without subjecting them to normal selection procedure. Their suitability shall be adjudged by following modified selection procedure according to which the selection will be based on scrutiny of service records and confidential records only.

The Supervisors (other than P.Way) who do not get promoted to grade Rs. 5000-8000 shall continue to hold the post in the existing grade Rs. 4500-7000 + Rs. 100 SA as personal to them. to this extent, the posts upgraded to grade Rs. 5000-8000 will be operated in the lower grade Rs. 4500-7000 + Rs. 100 S.A. till the existing incumbents vacate the same by way of promotion, retirement etc. On vacation of the posts, the same shall automatically be operated in grade Rs. 5000-8000/-."

The Ld. Counsel for the applicant relies heavily on para 13(a) (supra) from which it is clear that Para 13(a) would be subject to the provisions of Para 13.2. Para 13.2.a clearly mentions that existing regular incumbents will be placed in grade Rs. 5000-8000/- without subjecting them to normal selection procedure. Their suitability shall be adjudged by following modified selection procedure according to which the selection will be based on scrutiny of service records and confidential reports only.

Hence, the stipulations of Para 13(a) is subject to provision of Para 13.2 (supra). Also para 4 of RBE No. 177 of 2003 stipulates that Para 13.2 should be followed in case of placement of Supervisors (erstwhile Mistries) to grade Rs. 5000-8000/-. For the sake of repetition Para 4 of RBE No. 177/2003 is set out below:-

<p>"Existing classification and filling up of vacancies</p>	<p>4. The existing classification of the posts covered by these the orders as 'selection' and 'non-selection', as the case may be, remains unchanged. Action should be taken to position the employees on the basis of selection/ non-selection/ suitability/ Trade Test, as the case may be. However, the Instructions contained in Para - 13.2 should be followed in case of placement of</p>
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**Supervisors (erstwhile Mistries) to grade  
Rs.5000-8000."**

(b) Accordingly, an Office Order was issued on 23.6.2004, which is set out below:-

" No.....

Dated: 23.6.2004

### OFFICE ORDER

Consequent on implementation of Restructuring of certain Gr. 'C' & 'D' categories vide Railway Board's letter No. PC-III/2003/CRC/6 dtd. 09.10.2003 and 06.01.2004 circulated under CPO's letter No. GMA/AU/CRC/2003 (Master file) of 01.04.2004 the following staff under Civil Engg. Department have been found suitable for the Post of JE-Gr-I/W in scale Rs. 5500-9000/- as a result of scrutiny of service record and confidential reports with w.e.f the date as noted below against the vacancies arising out of Restructuring.

Sl. No.	Name	Designation	Date of effect	
xx	Xx	xx	Xx	Against the vacancies arising out of restructuring
Xx	Xx	xx	xx	
xx	Xx	xx	xx	
04.	Shri B. Ojha	JE-Gr. I/W	1.11.2003	

The above Promotion will not conform above staff any claim/right for seniority and their senior, if any, who could be promoted as such as yet due to obvious reasons.

The above promotion is treated as provisional subject to finalisation of the Court Case bearing No. O.A. No. 1346/97, B. Ojha v. UOI.

23.6.04  
DY CE(M)

Copy to:-

Xxxxx

2. Dy. CE (M)

For information staff concerned may be advised to submit their option for fixation of Pay within one Month from the date of issue of this order in terms Of Sl. No. 4/92."

The above office order clearly shows that Shri B. Ojha has been promoted to the scale of Rs. 5500-9000/- w.e.f. 1.11.2003 in the post of JE-Gr.-I/W. Also as per this Office Order dated 23.6.2004 Shri B. Ojha at Srl.

*[Handwritten signature]*

No. 4 has been promoted to the post of JE. GR.-I/W in the scale of Rs. 5500-9000/- as a result of scrutiny of service record and confidential reports which is as per Para 13.2. of the restructuring order acting as a proviso to stipulations of Para 13(a) of RBE No. 177 of 2003.

(c) A bare perusal of Annexure 'A-9' which is order dated 14.2.2006 shows that he has been placed in the scale of pay of Rs. 6500-10500/- w.e.f. 14.2.2006. The said order is quoted hereunder:-

CLW/Chittaranjan

No. GMA/TA/66/SE(W)Pt.I

Dated: 14.02.2006

#### OFFICE ORDER

Having been selected for the post of SE (W) in scale, Rs. 6500-10,500/- (RSRP) vide this office panel of even number dated 03.02.2006, the following staff under Dy. CE (M)/CLW/CRJ is appointed to officiate as SE(W) in scale Rs. 6500-10,500/- with immediate effect against existing vacancies in Civil Engg. Deptt. (3.U.No. 361).

Sl. No.	Name & Designation	Control Number	Present Pay in Gr. Rs. 5500-9000/-	Pay fixed in Gr. Rs. 6500-10500/-
Xx	Xx	xx	xx	xx
Xx	Xx	xx	xx	xx
Xx	Xx	xx	xx	xx
Xx	Xx	xx	xx	xx
Xx	Xx	Xx	xx	xx
Xx	Xx	Xx	xx	xx
07.	Sri B. Ojha, JE-I(W)	355696	Rs.7250/-p.m.	Rs. 7500/-p.m.

This has the approval of the Competent authority.

Dy. CE(M)

Copy to:-

01. XXXXXXX

02.Dy CE(M)/CLW/CRJ – for information please. The joining report

Of the above named staff may please be  
sent to this office early for further action. The  
staff concerned may please be advised to  
exercise option for fixation of his pay within  
one month from the date of issue of this  
Office Order in terms of Sl. No. 4/92."

(d) He was also awarded Second MACP with Grade Pay of Rs.  
4800/- from 1.9.2008 vide order dated 24.1.2011.

14. The impugned notice dated 16/19-08-2016, which allegedly  
took away his benefits under MACP is set out below:-

" CLW/Chittaranjan  
No. GMA/TA/MACP/Gr.'C' (Supervisors) Dated: 16/19.08.2016

### NOTICE

In terms of Railway Board's clarification regarding grant of  
financial upgradation under MACPs to Works Mistries vide letter No.  
PC-V/2009/ACP/21/SER dated: 12.05.2015 employees recruited as  
Works Mistry/Supervisors in scale Rs 4500-7000- (Revised GP Rs.  
2800/- PB-1)

The following SSE/SE of Civil Engineering department cadre  
who were granted 2<sup>nd</sup> and 3<sup>rd</sup> MACPs with GP Rs. 4800/- and 5400/-  
in Pay Band Rs. 9300-34,800/- after taking initial appointment as  
"Works Mistry" in pay Rs. 380-560/- corresponding grade of Rs.  
4500-7000/- (in Vth CPC) and in pay band of Rs. 5200-20,200/- with  
GP Rs. 2800/- (In VIth CPC) vide this office order of even No. dated  
11.08.2010 is hereby withdrawn from the date it was granted,  
considering the fact that the initial appointment in Works Mistry will  
be treated as GP Rs. 2800/- instead of Rs. 4200/- and restructuring  
granted vide Rly. Bd's. RBE No. 177/2003 to the Works Mistries will  
be treated as first promotion instead of treating it as a merger with JE  
(Technical Supervisor) while granting MACP. Accordingly the pay  
will be re-fixed after due revision of the order. Deduction against over  
payment there on will be deducted on monthly installments.

### Details particulars of MACP granted and Actual MACP to be revised

Sl. No.	Name	Initially	Date	of	Pay/GP on	Promotion/UP	MACP	MACP to
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*[Handwritten signature]*

		appointed as	Initial Appointment	Initial Appl.	gradation granted	granted	be revised
XX	Xx	XX	XX	XX	XX	XX	XX
XX	Xx	XX	XX	XX	XX	XX	XX
XX	Xx	XX	XX	XX	XX	XX	XX
27.	Sri Biswarup Ojha, SSE	Ty. Works Mistry	21.6.1986	2800/-	JE-II/13.7.2000 JE-I/1/11/2003 SE(W)/14.2.2006 1 <sup>st</sup> ACP-1.10.89 2 <sup>nd</sup> ACP-22.7.2008	2 <sup>nd</sup> MACP in GP 4800/- w.e.f. 1.9.2008	He should be entitled for 3 <sup>rd</sup> MACP on 14.2.2016 on GP Rs. 4800/-

This has the approval of the competent authority.

Asst. Personnel Officer(Admn.)

15. Ld. Counsel for the respondent authorities brought to my attention a letter dated 12.5.2015 which is a communication from the Railway Board, Ministry of Railways, Government of India given as a result of queries put forward by Dy. Chief Personnel Officer (Welfare) for General Manager dated 12.1.2015 to the Director Pay Commission-V, Ministry of Railways, Railway Board, New Delhi. Both the letters dated 12.1.2015 and 12.5.2015 are set out below:-

(a) "

SOUTH EASTERN RAILWAY

Office of the  
General Manager  
Garden Reach,  
Kolkata-700043

Dated: 12/01/2015

No. SER/P-HQ/EE/122

To  
The Director Pay Commission -V  
Ministry of Railways,  
Railway Board  
New Delhi

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Sub: Prayer for implementation of Judgment Passed by Hon'ble CAT/Principal Bench New Delhi on 31/01/2014 in O.A No. 3441/2012 to the Cadre of Supervisors Works (Erstwhile Mistries) Redesignated as J.E (Works).

Shri D.K Ghosh was appointed as Works Mistry/Supervisor in Scale Rs. 380-560 (3<sup>rd</sup> PC) scale and in Vth PC the post was assigned in the pay scale of Rs. 4500-7000/-). The Post of Works Ministry/Supervisors was up-graded to the post of JE (Works)-II in the pay scale Rs. 5000-8000/- as per RBE No. 177/2003. Consequent on which the post of Works Mistry/Supervisors was up-graded to the post of J.E-II(Works) on 01-11-2003. He was granted 1<sup>st</sup> and 2<sup>nd</sup> MACP w.e.f 01.09.2008 treating his entry grade pay Rs. 4200/- from the date of appointment instead of Rs. 2800/- in the Grade Pay of Rs. 4600 and Rs. 4800/-.

Sri. D.K. Ghosh and other similar Erstwhile Mistries have now claimed 3<sup>rd</sup> MACP in GPRs. 5400/- treating their initial appointment/absorbed to the post of J.E-II (Works) in G.P. 4200/- Their claim has been turned down by this Railway administration by treating the upgradation from Mistry/Supervisor as promotion from GP Rs. 2800/- to GP Rs. 4200/-.

Now they have represented again on 03/11/2014 enclosing a Office Orders of Khurda Divn of ECoR that similarly placed employees of ECoR have given benefit of Grade Pay of Rs. 5400/- and cited the directions of Hon'ble CAT/Principal's Bench/NDLS's direction dt. 31/1/2014 in Pharmacists case. It is not clear in the existing instructions on the subject as to whether these upgraded PW Mistries will be entitled to 3<sup>rd</sup> MACP to GP of Rs.5400/-.

Board are therefore requested to examine the case and communicate the decision as to whether the staff appointed as Works Mistry/Supervisor in scale Rs. 380-560/- (3<sup>rd</sup> PC) upgraded to JE-II (Works) in pay band Rs. 9300-34800/- + GP Rs. 4200/- may be granted 3<sup>rd</sup> MACP in pay band Rs.9300-34800/- and GP Rs. 5400/- treating direct entry grade in GP Rs. 4200/- or otherwise.

This issue with the approval of C.P.O.

Encl: As above.

(B.N. Soren)  
Dy. Chief Personnel Officer (Welfare)  
For General Manager"



(b)

"GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(Railways Board)

No. PC-V/2009/ACP/21/SER

New Delhi, dated 12.05.2015

The General Manager (P)  
South Eastern Railway  
Kolkata

Sub:- Grant of financial upgradation under MACPS to  
Works Mistries-clarification reg.

Ref: - SER's letter No. SER/P-HQ/EE/122,  
dt.12.01.15 followed by reminder dt. 25.02.2015

With reference to SER's letter under reference, it is stated that Works Mistries/Supervisor have never been allotted the pay scale of Rs.5000-8000/GP-4200. Instead, in terms of para 13 (a) of Board's restructuring letter dated 09.10.2003 (RBE No. 177/2003) all the posts of Supervisors/Works Mistries were upgraded to the post of JE Gr.II and the existing regular incumbent of the post of Supervisors were placed in pay scale of Rs. 5000-8000 based on modified selection procedure and benefit of pay fixation under Rule 1313 (FR-22) (1) (a) (1) R-II (erstwhile FR-22-C) with the usual option for pay fixation as per extent rules. Further, the supervisors who could not get promoted to the grade of 5000-8000 continue to hold the post in existing grade of Rs. 4500-7000+Rs.100 SA as personal to them.

From the above factual position relating to the case of Supervisors, it is evident that staff initially appointed as Work Mistry/Supervisors in scale of Rs. 4500-7000 (revised as GP Rs. 2800/- PB-1) were upgraded to the post of J.E Gr.II in scale of Rs.5000-8000 (revised as GP Rs. 4200/PB-2) on promotion through modified selection procedure. Since, as per policy instructions on MACPs, grant of financial upgradation under the Scheme is allowed from the date of actual joining of the post in the entry grade on direct recruitment basis, as such, it is not feasible to treat GP Rs. 4200/PB-2 as entry grade i.e. direct recruitment grade of Work Mistry/Supervisor for the purpose of MACP Scheme.

(N.P. Singh)

Dy. Director, Pay Commission-V  
Railway Board"

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The above clarification given by Railway Board, Ministry of Railways, Government of India dated 12.5.2015 amply clarifies that the existing regular incumbents were placed in pay scale of Rs. 5000-8000/- based on modified selection procedure and benefit of pay fixation under Rule 1313 (FR 22) (1)(a)(1) R-II (erstwhile FR-22-C) has been applied as per extant rules.

**IREM Rule 1313 (FR22)(1)(a)(i)** is set out below:-

"1313.(FR-22)(i) – The initial pay of a railway servant who is appointed to a post on a time scale of pay is regulated as follows:-

(a)(1) Where a railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more."

The above rule regarding pay fixation shows that it relates to a case of promotion.

16. Considering all the facts above, in the interest of justice an interim relief is given to the extent only that any action taken by the respondent authorities during the course of adjudication of the O.A. shall be subject to the final decision of the O.A.

17. Ld. Counsel for the respondents has filed their reply. Rejoinder, if any, be filed within a period of 2 weeks. List this matter on 25.7.2017 for hearing.

SP

(Jaya Das Gupta)  
Administrative Member