

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01349-01356/2018

DATED THIS THE 08th DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. P.Raman
S/o Panchikkal Krishnan
Retired Senior Section Officer (Accounts)
South Western Railway
House no.T41, Shambhavi Colony
Gandhinagar, Dharwad-580004
Karnataka.

2. Mohan B.Sattur
S/o. Balavantrao
Retired SSO(A), SWR
Indira Building, Sattur Colony
Vidyagiri, Dharwad-580004.

3. Gopal R.Vernekar
S/o. Ramachandra
Retired SSO(A), SWR
House no.59
Manjunath nagar, Gokul road
Hubli-580030.

4. Somappa D.Mestri
S/o Devendrappa
Rtd. SR.TIA, SWR
Chandrasadan Building
Yalakki Shettar Colony
P.B.Road, Dharwad-580004
Karnataka.

5. Sripati D.Kashikar
S/o Dattushastri
Rtd. SR.ISA, SWR
Chandrasadan Building
Yalakki Shettar Colony
P.B.Road, Dharwad-580004
Karnataka.

6. Mohan S.Harapanahalli

S/o Shamrao
Rtd. SR.TIA, SWR
73, 3rd main, 4th cross
Navodaya nagar kolhnur
Dinni Main road, J.P.Nagar 8th phase
Bangalore-560076.

7. Sri.Balu A.Manwadkar
S/o Appaji
Rtd. SR.TIA, SWR
No.12/2 vidyanagar
Samarth, morewadi
Near old mohada colony
Kolhapur-416013.
Maharashtra.

8. Dayanand S.Mahendrkar
S/o Shamrao
Rtd. SR.TIA, SWR
Plot No.612, H.No-13
TV Centre Urban Development Authority
Belgaum-590001.

.....Applicants

(By Advocate M/s.S.Kala & K.Hanifa)

Vs.

1. The Union of India
Rep. by the Chairman
Railway Board, Rail Bhavan
New Delhi-110 001.
2. The Financial Advisor and CAO
South Western Railway
Zonal Office, Gadag Road
Hubli-580020.
3. The Senior Divisional Finance Manager
South Western Railway
Old GM Office Building, Club Road
Keshwapur, Hubli-580023.

....Respondents

(By Advocates Sri N.Amaresh, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicants in a nutshell is that they initially joined as Accounts

Clerk Grade II and got promotion to the post of Jr.Accounts Assistant(JAA)/CG-I. The residency period for JAAs is three years after which they were promoted to Accounts Assistants(AAs) and after passing Appendix III-A examination conducted by the Railway Board, they all were promoted to the cadre of Senior Section Officer(SSO) in Accounts Department. All of them retired from service on attaining superannuation on various dates prior to 2006. They submit that according to the notification dtd.4.9.2008 issued by the Railway Board under Article 309 of the Constitution, the new revised pay scales were implemented as per which the pre-revised scale of Rs.6500-10500 for SO etc., and that of Rs.7450-11500 for Sr.SO etc., of the Accounts Dept. were merged and the Grade Pay was fixed at Rs.4800 corresponding to the scale of pay of Rs.7450-11500. The VI CPC recommendation for the Railways is at Annexure-A1 and the Railway Board Letter dtd.22.9.2008 is at Annexure-A2. The respondents are granting pension to the applicants on the basis of the cadre structure in other departments in similar cadre ignoring the Accounts Dept's pay structure for the post of Section Officer etc. As a result of which, the juniors to the applicant in the batch and in the respective seniority are getting higher pension as against them which is great injustice and denial of equality and equal protection besides blatant discrimination. The applicants are losing around a sum of Rs.400 to Rs.2500 approximately per month by this fixation which is untenable and unreasonable. They submit that they are entitled to the pay for their post. They are not even given equal GP on par with their juniors but paid lesser GP. This anomaly resulted because of the peculiar situation in Accounts Dept. The Railway Accounts Dept. which has evolved its own pattern for promotion for their staff in that passing departmental examination conducted by the Railway Board

has been given prominent weightage. The Dept. of Personnel, PG & Pension, Department of Pension and Pensioners' Welfare also issued a proceeding dtd.28.1.2013(Annexure-A3) revising the pension and issuing the corresponding posts with GP. The GP Rs.4800 to Sr.SOs in the same cadre is now emphatically accepted and recommended in VII CPC report(Annexure-A4). A similar issue with regard to the parity in pension for the pre 2006 retirees and post 2006 retirees for the same cadre is settled in WP(C) No.3035/2016 by the Hon'ble High Court of Delhi which is applicable to the applicants also(Annexure-A5) as the said judgment is in rem with intention to give benefit to all similarly situated persons whether they approached the Court or not as the decision touches upon the policy decision in the matter of revision of pension and the grant of equal pension to the seniors of the Accounts Dept. The 1st applicant being the President of the SW Railway Pensioners Association Dharwad had given a representation on behalf of the other applicants on 25.4.2017(Annexure-A6). But the 3rd respondent by order dtd.13.6.2017(Annexure-A7) rejected their claim. Against the same, when the applicants through their Association represented to the 2nd respondent on 23.6.2017(Annexure-A8) stating that the said order was passed based on the letter dtd.28.1.2013 but the Railway Board's letter dtd.22.9.2008 has to be taken as basis for fixation of grade pay to SO of the Railway Accounts Department and also requested that if the issue is still considered contentious, the case may be referred to Railway Board, till now there is no response to the same by the 2nd respondent.

2. The applicants submit that in all other zones, the pension granted to the retired SSO(A) is in GP Rs.4800 whereas in South Western Railway only, pension is fixed in GP Rs.4200/4600. This is highly unfair and unreasonable and highly

discriminatory. The respondents failed to note that the applicants are retired Accounts Department employees where there is no GP Rs.4600 at all. While implementing the MACPS, the employees were not given the financial upgradation on the promotional hierarchical Grade Pay. Instead they were given on an imaginary basis and the grade pay which is not available in the Railway pay rules but it is available in other departments for the similar cadre. In the present case, the applicants are eligible and entitled to be fixed in GP 4800 and not in GP 4200/4600 as it is not the corresponding pay for the post of the applicants. According to the latest order of the Min. of PG and Pensions, Dept. of P&PW OM dtd.28.1.2013, the applicants are entitled for the pension w.e.f. 1.1.2006 not less than 50% of the minimum of the PB + GP, corresponding to the pre-revised pay scale from which they had retired, as arrived at with reference to the fitment tables annexed to Min. of Finance, Dept. of Expenditure OM dtd.30.8.2008. They submit that as far as the Section Officer cadre in Railway Accounts is concerned, it is equivalent to other departments like Income Tax and Auditing, Accountant General etc. Considering the inter-transferable nature and the historical parity, the 6th CPC recommended the upgraded GP of Rs.4800 to all the Accounts departments. There is a specific recommendation in the 6th CPC and the same was incorporated and implemented by all the departments. In Railways also, the same is implemented by Board's letter dtd.22.9.2008. But the respondents failed to take note of this and the 1st respondent has also miserably failed to give suitable instructions to the 2nd respondent in this regard. This is in clear violation of the equality before law guaranteed under Article 14 and 16 of the Constitution of India. Aggrieved by the action of the respondents in discriminating them against their juniors, the applicants have filed the present OA

seeking the following relief:

- a. *To grant pension to the applicants in Rs.4800 Grade Pay with effect from 01.01.2006 on par with their immediate Juniors who retired after 2006, and revise the pension accordingly*
 - b. *Consequently direct the Respondent 2 to re-fix the pension of the applicants by stepping up the grade pay on the basis of RS(RP) Rules 2008 with all consequential benefits including arrears of pay and corresponding Travelling Allowances with simple interest.*
 - c. *Issue such further and other appropriate orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case by suitably moulding the relief and award costs and thus render justice.*
3. Per contra, the respondents in their reply statement have submitted that the OA filed by the applicants is highly belated and the cause of action has arisen as long back as 2008 when OM dtd.14.10.2008(Annexure-R1) was implemented by the respondents when the GP was fixed as per Sl.Nos.13 & 14 in line with the instructions regarding revised pension based on revised pay bands and grade pays for posts carrying present scales in Group 'A', 'B', 'C' & 'D' as per Sixth CPC. After a lapse of about 10 years, the applicants are challenging their fixation of Grade Pay. The applicants did not approach the Tribunal even when the revised PPOs were issued during 2009. Being Sr.Section Officers in Accounts Dept., they were supposed to know all the rules and regulations governing the fixation of pension and cannot plead ignorance for not filing the application in time and hence the OA has to be dismissed for inordinate delay.
4. The respondents submit that having fixed the GP of the applicants as per Annexure-A1 & A2 and further instructions as per Annexure-R1 purely belonging to Accounts Dept. since Railway Board has given directions separately for Accounts Department, the respondents are concerned with the basis on which cadre restructure was done in other departments in similar cadre. The averment that the juniors of the applicants in the batch in the post of Sr.Section Officer and

equivalent cadre are getting higher pension as against the applicants is denied as false and baseless. The juniors to the applicants were all serving employees and were governed by Annexure-A2 whereas the applicants' fixation of GP for the purpose of pension is governed by Annexure-R1. Hence, there is no anomaly as perceived by the applicants. If the applicants are aggrieved by higher pay/pension to their juniors, they should have arrayed them as respondents in the OA since any adverse orders by this Tribunal will affect their juniors. As such the OA has to be dismissed for non-joinder of necessary parties.

5. The respondents further submit that Annexure-A3 is nothing to do with fixation of GP but it is guidelines issued for revision of pension from pro-rata basis up to 31.12.2005 and further the basic pension shall be fixed at 50% of the last pay drawn from 1.1.2006 as per guidelines issued in Annexure-A3. Annexure-A4 has also nothing to do with fixation of GP to the applicants as they are governed by Annexure-R1 for the purposes of fixation of GP for calculating pension. The judgment of the Hon'ble High Court of Delhi in WP.No.3035/2016 pertains to Min. of Defence and hence not applicable to the Min. of Railways more so for the Accounts Dept. The applicants have given representation belatedly after a gap of 9 years and the respondents were very considerate in giving reply at Annexure-A7. Not satisfied with the same, when the applicants submitted another representation at Annexure-A8, the respondents did not respond to the same as in Annexure-A7 itself they gave reply and hence there was no need for them to reply to Annexure-A8. The claim of the applicants that in other zones, the SSO(A) are granted pension at GP Rs.4800 is denied as false. The issue being policy matter, any such violation of guidelines issued by Railway Board in Annexure-R1 by SW Railway would have resulted in a flurry of representations to Railway

Board. The SW Railway cannot have their own policy for fixation of grade pay to retired Section Officers and are bound by the guidelines of Railway Board. There is no unfairness and the fixation of grade pay is just and fair and according to rules. They have not violated any rules while fixation of grade pay to the applicants as per Annexure-R1. The scheme of MACP was not at all applicable to the applicants since they retired way back during 1990 to 1996 and hence the claim of the applicants itself is on hypothetical and imaginary basis. Therefore, the OA is liable to be dismissed.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicants have filed their written submission. The main request of the applicants is for granting them the Grade Pay of Rs.4800 w.e.f. 1.1.2006 whereas based on the dates of retirements and other factors, they are being given the Grade Pay of Rs.4200 or Rs.4600. In support, they have cited Annexure-A2 where in relation to the Accounts Department, Section Officers in the pay scale of Rs.6500-10500 and Sr.Section Officers in the pay scales of Rs.7450-11500 have been merged into the same pay in Pay Band-2 Rs.9300-34000 with Grade Pay of Rs.4800. This order is dtd.22.9.2008. They also cited Annexure-A3 OM dtd.28.1.2013 where with respect to pre-2006 pensioners, it has been clarified that their pension would be stepped up to 50% of sum of the minimum of pay in the pay band and grade pay corresponding to the pre-revised pay scale from which the pensioner had retired and the relevant pay bands as per the said Annexure in relation to the applicants are at Sl.No.13 & Sl.No.14. A mere reading of this Annexure will show that vide Sl.No.14, the corresponding grade pay for persons who were in the pre-revised scale of pay Rs.7450-11500 is only in GP Rs.4600 whereas after 2006, due to

the merger of these two posts, a higher grade pay of Rs.4800 has been given. The respondents would contend strongly that the fixation of pension could be only based on the Annexure-R1 dtd.14.10.2008. From a reading of all the directions in this regard, it is apparent that the persons who retired before 1.1.2006 would be eligible for 50% of the sum of the minimum of pay band and grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of the applicants, it is apparent that they were either in the pay scale of Rs.7450-11500 or in Rs.6500-10500 and even then they would be eligible for only the Grade Pay of Rs.4600 for the pay scale of Rs.7450-11500 as has been rightly held by the respondents in Annexure-A7. The point whether because of the merger of these two scales, the applicants would be eligible for the higher grade pay of Rs.4800 can only be considered in the negative since the merger had taken place after 2006 and would be available only for persons who are still in service after 1.1.2006. As far as pensioners are concerned, they will be covered by the Annexure-R1 as well as Annexure-A3 which clearly refers to the pre-revised pay scale from which the pensioner had retired. The applicants cited Annexure-A5 wherein the Hon'ble High Court of Delhi in WP(C).No.3035/2016 dtd.3.8.2016 has held that a person would be eligible for an upgradation based on the post last held by the person being given a higher grade pay. In that particular case, an Office Memorandum of 2009 which denied the benefit of the upgradation of post subsequent to the retirement, to the pre-2006 pensioners, had not been accepted. So far as that particular case is concerned, pay band and grade pay corresponding to the pre-revised scale of pay from which the pensioner had retired would only be the upgraded pay band after 2006 as the said post itself was upgraded to that pay band and grade pay and that order

cannot be considered as appropriate in the case of the applicants since a concordance table based on the pre-revised scales of pay has clearly put them either in the grade pay of Rs.4600 or in the grade pay of Rs.4200. The respondents have also assailed the application itself since all the orders quoted relating to the applicants were issued in the year 2008 and the applicants by merely citing their representations vide Annexure-A6 cannot wish away the period of limitation. There is a merit in this contention since if at all any grievance could have been raised by the applicants, it should have been done at least within a period of one year from Annexure-A3. The order which they have cited in their favour is in the year 2008 where the higher grade pay for the merged pay scale of Rs.6500 and Rs.7450 was given uniformly as Rs.4800. In a number of decisions, the Hon'ble Supreme Court had held that there should be valid reasons for assailing any decisions beyond the period prescribed for limitation. In this case, apart from the judgment of the Hon'ble High Court of Delhi which came in the year 2016 which probably made the applicants to feel that they are also in a similar situation, we cannot find any justification for the enormous delay in the application filed by the applicants.

7. For all the above reasons, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexure-A1: Relevant pages in the VI Central Pay Commission's recommendations for the Railway Accounts Department

Annexure-A2: The Railway Board Letter No.124/2008

Annexure-A3: The Letter F.No.38/37/08-P&PW(A) issued by the Department of Personnel PG and Pension

Annexure-A4: Relevant pages in the 7th Central Pay Commission

Annexure-A5: WP(C) No.3035 of 2016 by the Hon'ble High Court Delhi the dictum is applicable to the applicants also

Annexure-A6: Representation

Annexure-A7: Reply by the 3rd respondent

Annexure-A8: Representation to the 2nd respondent

Annexures with reply statement:

Annexure-R1: DOPT letter dtd.14.10.2008

Annexures with written submission filed by the applicants:

Annexure-1: Copy of Hon'ble Apex Court order in CA.No.10857/2016
