

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**RA No. 35 of 2019
OA No. 723 of 2015
MA No. 693 of 2019**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Union of India, represented through the General Manager, East Coast Railway, Rail Sadan, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
2. Principal Financial Adviser, East Coast Railway, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
3. Deputy Director, Pay Commission-V, Railway Board, New Delhi – 110001.

.....Review Applicants.

VERSUS

Md. Tayabuddin, aged about 60 years, S/o late Mohammad Salumudda, at present working as Senior TIA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Vill/PO- Bhairpur, Via – Bahugram, Dist. – Cuttack – 754200, Odisha.

.....Respondents

For all other RAs in this batch except RA Nos.40/2019, 46/2019, 47/2019, 48/2019 and 73/2019

1. Union of India, represented through the General Manager, East Coast Railway, Rail Sadan, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
2. Principal Financial Adviser, East Coast Railway, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
3. Deputy Director, Pay Commission-V, Railway Board, New Delhi – 110001.

.....Review Applicants.

In RA Nos.40/2019, 46/2019, 47/2019, 48/2019 and 73/2019

1. Union of India, represented through the General Manager, East Coast Railway, Rail Sadan, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
2. Principal Financial Adviser, East Coast Railway, At-Chandrasekharpur, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017.
3. Deputy Director, Pay Commission-V, Railway Board, New Delhi – 110001.
4. Secretary, Railway Board, Rail Vihar, New Delhi – 110001.

..... Review Applicants

VERSUS

RA No.31 of 2019**O.A.No.728 of 2015****MA No. 656 of 2019**

N.Chandra Sekhar, aged about 47 years, S/o Late N.Prabhakar, at present working as Senior TIA, O/o FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Flat No. 404, NU Symphony Apartments, Sector-11, MVP Colony, Visakhapatnam-530017, Andhra Pradesh.

RA No. 32 of 2019**O.A.No.777 of 2015****MA No.657 of 2019**

Suresh Chandra Nayak, aged about 56 years, S/o Late Pravakar Nayak, at present working as Senior Section officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Plot No.4699/27, C/o Kalpana Swain, Adimata Colony, PO – Mancheswar, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 33 of 2019**O.A.No. 767 of 2015****MA No. 658 of 2019**

U.Rajagopalum, aged about 62 years, W/o V.Rajagopalan, retired Senior Section Officer (A), Office of FA & CAO, E.Co. Rly., Chandrasekharpur, Bhubaneswar, R/o Dr. No.45-52-1, Abid Nagar, Akkayyapalem, Visakhapatnam – 530016, Andhra Pradesh.

RA No. 34 of 2019**O.A.No.727 of 2015****MA No. 659 of 2019**

J.V.K.Sekhar, aged about 54 years, S/o Late J.Viswanadham, at present working as Senior TIA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Dr.No.49-35-16/A, SFS, Laxmi Nilayam Apartments, NGGO's Colony, Akkayyapalem, Visakhapatnam, Andhra Pradesh

RA No. 36 of 2019**O.A.No. 722 of 2015****MA No. 694 of 2019****MA No. 695 of 2019**

G.S.Patnaik, aged about 47 years, S/o Late V.S.Patnaik, at present working as Senior TIA, Office of FA & CAO, E.Co. Rly., Chandrasekharpur, Bhubaneswar, R/o B.62, Dayal Nagar, Visakhapatnam-530043, Andhra Pradesh.

RA No. 37 of 2019**O.A.No.724 of 2015****MA No. 696 of 2019****MA No. 697 of 2019**

J.V.Rajeswari, aged about 52 years, W/o J.Tirumala Nath, at present working as Senior Section Officer (A), Office of FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Dr. No.43-4-4, Flat No.5, CV Dlight Apartment, Subba Laxmi Nagar, Visakhapatnam-530016.

MA No. 38 of 2019**O.A.No.725 of 2015****MA No. 808 of 2019**

P.R.S.Goutam, aged about 51 years, S/o Rajeswara Rao, at present working as Senior ISA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Srinivasa Residency, 4th Floor, A Block, TIC Point, Arilova, Visakhapatnam-530040, Andhra Pradesh.

RA No. 39 of 2019**O.A.No.726 of 2015****MA No. 809 of 2019**

B.V.Satish, aged about 46 years, S/o B.Kameswara Rao, at present working as Senior Section officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Flat No. 102, Sai Brundavan Residency, PM Palem Last Bus Stop, Visakhapatnam - 530041, Andhra Pradesh.

RA No. 40 of 2019**O.A.No.801 of 2015****CP No. 110 of 2019****MA No. 667 of 2019**

Kumar Chandra Tripathy, aged about 52 years, S/o Dibakar Tripathy, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Plot No. 3652/5725, Rangamatia Upar Sahi, PO - Mancheswar Railway Colony, Bhubaneswar, Dist. - Khurda, Odisha.

RA No. 41 of 2019**O.A.No.766 of 2015****MA No. 668 of 2019****MA No. 669 of 2019**

G.Srinivas Rao, aged about 63 years, S/o Late GAdi Jagannadha Rao, retired Senior Section Officer (A), Office of FA & CAO, E.Co. Rly., Chandrasekharpur, Bhubaneswar, R/o Dr. No.11-102, Durga Nagar, RRV Puram, Vishakhapatnam - 530029, Andhra Pradesh.

RA No. 42 of 2019**O.A.No.757 of 2015****MA No. 670 of 2019**

B.V.Satyanarayan, aged about 64 years, S/O Late B.Rama Rao, retired Senior Section Officer (A), Office of FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Dr. No. 49-8-17/7, FF3, Simhagiri Towers, Lalita Nagar, Visakhapatnam-530016, Andhra Pradesh.

RA No. 43 of 2019**O.A.No.870 of 2015****MA No. 671 of 2019**

Surendra Nath Behera, aged about 54 years, S/o Late Bhundaban Behera, at present working as Senior Section Officer (A), Office of Senior DFM/KUR, East Coast Railway, Jatni, R/o At.- Baikuntha Nagar, Second Lane, PO - Berhampur, Dist. - Ganjam - 760001.

RA No. 44 of 2019**O.A.No.934 of 2015****MA No. 672 of 2019**

Rabindranath Mohapatra, aged about 65 years, S/o Radhakishore Mohapatra, retired Senior Section Officer (A/Cs), Office of Senior DFM/KUR/E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Near PNB Lane, Ramachandrapur Bazar, At/PO- Jatni, Dist. - Khurda-752050, Odisha.

RA No. 45 of 2019**O.A.No.823 of 2015****MA No. 673 of 2019**

Satya Narayan Sahu, aged about 52 years, S/o Lokanath Sahu, at present working as Senior Section Officer (A), Office of FA & CAO/CON, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Quarter No.D/99/S, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. - Khurda, Odisha.

RA No. 46 of 2019**O.A.No.800 of 2015****CP No. 94 of 2019****MA No. 674 of 2019**

Bijaya Kumar Shasani, aged about 56 years, S/o Late Gopinath Shasani, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Plot No. 4699/26, Adimata Colony, PO-Mancheswar Railway Colony, Bhubaneswar, Dist.- Khurda, Odisha.

RA No. 47 of 2019**O.A.No.790 of 2015****MA No.675 of 2019**

Basanta Kumar Barik, aged about 60 years, S/o Late Pitambar Barik, at present working as Senior Section officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Plot No.-1140, Mahanadi Vihar, Chauliaganj, Dist. – Cuttack, Odisha.

RA No. 48 of 2019**O.A.No.799 of 2015****MA No. 676 of 2019**

Kulamani Pani, aged about 58 years, S/o Late kalakar Pani, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Qr. No.,D/12/G, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 49 of 2019**O.A.No.784 of 2015****MA No. 692 of 2019**

Ms. Dipti Rekha Brahma, aged about 52 years, D/o Late Hari Hara Brahma, at present working as Senior Section Officer (A), Office of Senior AFA/RE, Rail Vihar, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o 5/D, Block-B, Trishna Manor, Nayapali Nuasahi, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 50 of 2019**O.A.No.744 of 2015****MA No. 811 of 2019**

E.V.K.Sivanand, aged about 52 years, S/o E.Ramam, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Dr.No.49-36-33, NGGO's Colony, Akkayyapalem, Visakhapatnam, Andhra Pradesh.

RA No. 51 of 2019**O.A.No.745 of 2015****MA No. 810 of 2019**

K.Srinivas, aged about 49 years, S/o K.S.Sastry, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Dr.No.45-51-9, Abid Nagar, Akkayyapalem, Visakhapatnam-530016, Andhra Pradesh.

RA No. 52 of 2019**O.A.No.750 of 2015****CP No. 96 of 2019****MA No. 736 of 2019**

Sarat Chandra Das, aged about 54 years, S/o Sambhu

Charan Das, at present working as a Senior TIA, office of FA & CAO/East Coast Railway/Chandrasekharpur, Bhubaneswar, R/o Plot No. N/5-449, IRC Village, Bhubaneswar- 751015, Dist. – Khurda, Odisha.

RA No. 53 of 2019**O.A.No.752 of 2015****MA No. 813 of 2019**

V.Raghavendra Rao, aged about 44 years, S/o V.Hanumantha Rao, at present working as Senior ISA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Flat No. 407, Rail Vihar Apartments, Near YNCA, Kirlampudi layout, Visakhapatnam – 530017, Andhra Pradesh.

RA No. 56 of 2019**O.A.No.753 of 2015****MA No. 818 of 2019**

V.C.S.S.Rao, aged about 45 years, S/o V.V.Krishna Rao, at present working as Senior ISA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Flat No. 302, Vinayagar, West Avenue, Dr. No.9-19-36, CBM Compound, Visakhapatnam-530003, Andhra Pradesh.

RA No. 57 of 2019**O.A.No.755 of 2015****MA No. 807 of 2019****MA No. 817 of 2019**

V.Sitaram, aged about 47 years, W/o N.V.N.Sarma, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Dr. No.22-104-13, Tummalapalli Vari Street, Town Kotha Road, Near Reading Room, Visakhapatnam – 530001, Andhra Pradesh.

RA No. 58 of 2019**O.A.No. 765 of 2015****MA No. 816 of 2019**

Susarla Nageswara Rao, aged about 62 years, S/o S.V. Suryanarayana, retired Senior Section Officer (A), Office of FA & CAO, E.Co. Rly., Chandrasekharpur, Bhubaneswar, R/o S.E.Railway Qr.No.548/2, Jail Area, Dondaparti,Visakhapatnam-530004, Andhra Pradesh.

RA No. 59 of 2019**O.A.No.781 of 2015****MA No. 812 of 2019**

Sukanta Kumar Jena, aged about 51 years, S/o Baidhar Jena, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Qr. No.D/74/F, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 60 of 2019**O.A.No.935 of 2015****MA No. 827 of 2019**

Sashibhusan Mohanty, aged about 65 years, S/o Late Nityananda Mohanty, retired Senior Section Officer (A/Cs), Office of Senior DFM/E.Co. Rly./ Khurda Road, under FA & CAO, E.Co.Railway, Bhubaneswar, R/o S-22, Green Garden, Kalinga Vihar-K-9A, PO – Patrapada, Bhubaneswar, Dist. – Khurda-751019, Odisha.

RA No. 61 of 2019**O.A.No.893 of 2015****MA No. 828 of 2019**

Subash Chandra Mohapatra, aged about 63 years, S/o Late K.C.Mohapatra, retired Senior Section Officer (A), Office of Senior DFM/KUR/E.Co.Rly., At/PO – Hatni, Dist. – Khurda, R/o Plot No.S/28, Mahavir Colony, Beside B.D.A.Colony, Po – Hatni, Dist. – Khurda, Odisha-752050.

RA No. 62 of 2019**O.A.No.892 of 2015****MA No. 829 of 2019**

D. Adi Reddy, aged about 64 years, S/o D.Sanyasi, retired Senior TIA, office of FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Flat No.3/C, Vrinda Villa Apartment, S.P.Marg, R.C.Pur Bazar, PO – Jatni, Dist. – Khordha, Odisha – 752050.

RA No. 63 of 2019**O.A.No.747 of 2015****MA No. 830 of 2019**

A.P.Shyam, aged about 53 years, S/o Anim Umapati, at present working as Senior Section Officer (A), Office of FA & CAO, Est Coast Railway, Chandrasekharpur, Bhubaneswar, resident of Dr. No.43-5-45A/6, Sai Sadan Residency, New Railway Colony, Visakhapatnam-530010, Andhra Pradesh.

RA No. 64 of 2019**O.A.No.756 of 2015****MA No. 831 of 2019**

M.Sridhar, aged about 49 years, S/o M.B. Satyanarayana, at present working as Senior ISA, Office of FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Plot No. 107, Dr. No. 10/94, Vishalashinagar, Near Post Office, Visakhapatnam – 530040, Andhra Pradesh.

RA No. 65 of 2019**O.A.No. 754 of 2015****MA No. 832 of 2019**

K.V.Anand, aged about 51 years, S/o Kuppili Adinarayana, at present working as Senior Section officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswawr, R/o Rly.Qr. No. 476/A, Wireless Colony, Opp. APEPDCL Office, Dondaparthi, Visakhapatnam-530004, Andhra Pradesh.

RA No. 66 of 2019**O.A.No.775 of 2015****MA No. 833 of 2019****MA No. 834 of 2019**

Rama Chandra Rout, aged about 57 years, S/o Gobardhan Rout, at present working as Senior TIA, Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, Permanent resident of At/PO – Nuagaon, Via – Jajpur Road, Dist. – Jajpur – 755019, Odisha.

RA No. 67 of 2019**O.A.No.776 of 2015****CP No. 113 of 2019****MA No. 835 of 2019**

Sidheswar Sahoo, aged about 53 years, S/o Jhulan Sahoo, at present working as Senior Section Officer (A), Office of FA & CAO/Con., East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Qr. No.V/73/F, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 68 of 2019**O.A.No.780 of 2015****MA No. 836 of 2019**

Chitta Ranjan Mishra, aged about 60 years, S/o Late Shyama Kanta Mishra, at present working as AFA(G), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Qr. No. BM-100, Plot GA-32, Basudev mansion, Defence Colony, Niladri Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 69 of 2019**O.A.No.882 of 2015****MA No. 837 of 2019**

Srikanta Rath, aged about 60 years, S/o Late Sripathi Rath, at present working as Senior Section Officer (A), Office of Senior DFM, East Coast Railway, Khurda Road Division, At/PO – Jatni, Dist. – Khurda, R/o At/PO – Sabhamel, Dist. – Jagatsinghpur.

RA No. 70 of 2019**O.A.No.881 of 2015****MA No. 838 of 2019**

Gandharb Sen Moharana, aged about 56 years, S/o Late Iswar Chandra Moharana, at present working as Senior Section Officer (A), Office of Sr. DEE (TRS)/Angul under Administrative Control of Sr.DFM/East Coast Railway, Khurda Road Division, R/o Vill/PO – Baulepur, Dist. – Dhenkanal.

RA No. 71 of 2019**O.A.No.883 of 2015****MA No. 839 of 2019**

Trinath Parida, aged about 65 years, S/o Late Gopinath parida, retired Senior Section Officer (A), Office of Senior DFM/KUR, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o At/PO-Ralaba, Via – Hinjilicat, Dist. – Ganjam, Odisha.

RA No. 72 of 2019**O.A.No.778 of 2015****MA No. 840 of 2019**

Bibhuti Bhusan Mohanty, aged about 62 years, S/o Late Jadumani Mohanty, retired Senior ISA, Office of FA & CAO, E.Co.Rly., Chandrasekharpur, Bhubaneswar, R/o Vill – Girima, PO – Biratunga, Dist. – Puri, Odisha.

RA No. 73 of 2019**O.A.No. 749 of 2015****CP No. 112 of 2019****MA No. 848 of 2019**

Madhabananda Bhatt, aged about 51 years, S/o Late Sanatan Bhatt, at present working as a Senior SO(A), Office of FA & CAO/East Coast Railway/Chandrasekharpur Bhubaneswar, R/o Plot No. N/3, Netaji Subash Enclave, Gadakana, Bhubaneswar – 751017, Dist. - Khurda, Odisha.

RA No. 74 of 2019**O.A.No.782 of 2015****CP No. 109 of 2019****MA No. 849 of 2019**

Deba Prasad Khuntia, aged about 51 years, S/o Late Gadadhar Khuntia, present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Raja Bajar, Jatni, Dist. – Khurda – 752050, Odisha.

RA No. 75 of 2019**O.A.No.783 of 2015****MA No. 850 of 2019**

Nirmal Chandra Sarangi, aged about 50 years, S/o Janardan Sarangi, at present working as Senior Section Officer (A), Office of FA & CAO/Con., East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o Qr. No.D/49/S, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

RA No. 76 of 2019

O.A.No.822 of 2015

MA No. 851 of 2019

Manas Ranjan Khandai, aged about 48 years, S/o Late Rama Chandra Khandai, at present working as Senior Section Officer (A), Office of FA & CAO, East Coast Railway, Chandrasekharpur, Bhubaneswar, R/o GA-310, Shailashree Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

.....Respondents.

For the review applicant :

Mr.T.Rath, counsel (RA Nos. 35, 36, 37, 38 of 2019)
 Mr.N.K.Singh, counsel (RA Nos. 31, 32, 33 and 34 of 2019)
 Mr.R.N.Pal, counsel (RA Nos. 40, 41 and 42 of 2019)
 Mr.D.K.Mohanty-A (RA Nos.43, 44 and 45 of 2019)
 Mr.S.Barik (RA Nos.46, 47, 48 and 49 of 2019)
 Mr.R.S.Behera (RA Nos.50, 51, 52 and 53 of 2019)
 Mr.D.K.Behera (RA Nos.56, 57, 58 and 59 of 2019)
 Dr.C.R.Mishra (RA Nos.60, 61 and 62 of 2019)
 Mr.M.K.Das (RA Nos.63, 64 and 65 of 2019)
 Ms.S.Rajaguru (RA Nos.67 and 68 of 2019)
 Mr.B.B.Patnaik (RA Nos.69, 70 and 71 of 2019)
 Mr.M.B.K.Rao (RA Nos.72 and 73 of 2019)

For the respondents:

Mr.N.R.Routray, counsel for RA. No. 35/2019
 and other RAs

Heard & reserved on : 13.11.2019

Order on : 22.11.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

All the Review Applications in this batch are filed on identical grounds impugning the common order dated 13.5.2019 passed in the batch of OAs. Each of the RAs is accompanied by the MAs for condoning delay on the similar grounds. Since all the RAs are similarly placed, these alongwith the MAs are heard together at the admission stage and are being disposed of by this common order, taking the RA No. 35/2019 with MA No. 693/2019 as the leading case.

RA No. 35/2019 with MA No. 693/2019

2. This Review Application (in short RA) is directed against the order dated 13.5.2019 passed by this Tribunal in the OA No. 723/2015 (Annex-A/1 to the RA), in which the said OA was allowed and the respondents were directed to allow the Grade Pay of Rs. 5400/- in PB-2 to the applicant of the OA from the date his junior was allowed the same benefit. The impugned order was passed by this Tribunal by following the judgment dated 3.4.2014 of Hon'ble Madras High Court in the Writ Petition Nos. 1078, 10046 to 10049 of 2012 and the judgment dated 20.8.2018 of Hon'ble Karnataka High Court in the case of Union of India vs. T. Danapa & others under similar circumstances. The RA is

filed by the respondents of the OA on the ground that this Tribunal has decided the question of the judgments relied upon by the applicants being per incuriam without referring to the judgments cited in paragraph 17 of the counter, which is an error apparent on the face of record.

3. The RA has been filed with the MA No. 693/2019 for condoning the delay in filing the RA. The reason mentioned in the MA is that the copy of the impugned order was received by the respondents on 28.5.2019 and the approval of the competent authority was obtained for filing the RA to challenge the order dated 13.5.2019, after which the counsel was requested to prepare the draft vide the letter dated 9.7.2019. The draft application was received from the counsel on 4.8.2019 and the RA was filed on 7.8.2019 after a delay of more than one month. The reason was therefore, the delay in obtaining the approval of the competent authority and time taken for the counsel for the review applicant to prepare the draft application.

4. Similar Review Applications have been filed impugning the order dated 13.5.2019 for other OAs in the batch of OAs, which were disposed of by the impugned order dated 13.5.2019 of this Tribunal. All the RAs were listed together and learned counsels for the review applicants (respondents in the OAs) were heard at the admission stage. We also heard Mr. N. Routray, learned counsel for the review respondent in RA No. 35/2019, who filed copy of three judgments in support of his submissions opposing the RA.

5. Regarding the MA No. 693/19 filed with RA No. 35/2019 for condoning delay, it is noticed that the Rule 17(1) of the CAT (Procedure) Rules, 1987 stipulates the time for filing the RA as under:-

“No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed.”

Thus there is a clear provision under the rules that the application for the review of the order of this Tribunal shall not be maintainable, unless it is filed within time as specified under the rule 17. The issue of delay in filing the Review Application under the Administrative Tribunals Act, 1985 was examined by the Full Bench of this Tribunal (Principal Bench) in the case of **Raghava Reddy, AE (Civil) and others vs. Union of India and others reported in 2010 (1) SLJ (CAT) 1**, in which, it was held as under:-

“51. In terms of the decision of the Full Bench of Hon’ble Calcutta High Court and Hon’ble Gujarat High Court, we hold that this Tribunal has the power to condone the delay in filing of review applications on sufficient cause being shown. The decisions of the Benches of the Tribunal contrary to this enunciation of law are held to be bad in law. The individual review applications may be placed before the concerned Benches for disposal in accordance with the law as explained above.”

6. In the case of **Akshaya Kumar Parida (dead) and after him Manoj Kumar Parida & others vs. Union of India & others in W.P. (C) No. 5738 of 2008**, it was held by the Full Bench of Hon'ble High Court of Orissa as under:-

“20. In view of the authoritative pronouncement of the apex Court in the case of Mukri Gopalan (supra), a situation wherein a period of limitation is prescribed by a special or local law for an application of review and for which no provision is made in the Schedule to the Act, the second condition for attracting Section 29(2) of the Act is attracted. From the enunciation of law laid down in Mukri Gopalan (supra), it must be held that in view of Section 29(2) of the Limitation Act, the Tribunal has the jurisdiction to entertain the application for condonation of delay filed under Section 5 of the Limitation Act. Rule 17 of the Rules does not take away the jurisdiction of the Tribunal to entertain and dispose of the application under Section 5 of the Limitation Act, since applicability of Section 5 of the Limitation Act has not been expressly excluded thereby.”

7. In view of the above, this Tribunal can consider condoning the delay in filing the RA provided sufficient justification for such delay has been placed on record. In this case, although the provision of law under which the MA No. 693/19 has been filed is not mentioned in the MA, we consider it treating it to be under section 5 of the Limitation Act and following the ratio of the judgment of Hon'ble High Court in the case of Akshaya Kumar Parida (supra) as extracted above, we consider the MA. It is seen that although the approval of the competent authority to file the RA was obtained on 9.7.2019, still one month more time was taken for preparation of the draft for preparation of the draft application and RA was filed on 7.8.2019. The explanation furnished in the MA for the delay after 9.7.2019 is that time was taken for preparation of draft by the counsel which is not satisfactory since the proposal for filing the RA could have been accompanied by the draft application for RA which could also have been prepared pending approval of the competent authority to file the RA in view of limitation under the Rule 17. Hence, we do not find the reasons to have explained the delay satisfactorily. However, in view of the issues mentioned in the RA, we are of the considered opinion that the RA needs to be examined on merit, for which, we allow the MA No. 693/2019 in the interest of justice and condone the delay in filing the RA No. 35/2019.

8. We will now consider the merit of this Review Application taking into account the arguments placed before us by learned counsels for the parties at the admission stage. The RA No. 35/2019 has been filed mainly on the following grounds to challenge the impugned order dated 13.5.2019 (Annex-A/1 to the RA):-

(i) The Tribunal did not consider the judgment cited at paragraph 17 of the Counter, while passing the impugned order while deciding the question of per incuriam.

(ii) The Full Bench judgment referred by the respondents at Annexure-R/2 of the Counter fully applies to the facts of the present case and it is binding on the Division Bench.

(iii) The judgment cited by the respondents for the OA No. 967/2015 (Jagdish Chander Arora vs. Union of India & others) enclosed at Annexure-R/5 of the Counter has not been considered by the Tribunal while passing the impugned order and for difference of opinion the matter ought to have been referred to larger Bench.

9. In paragraph 17 of the Counter filed in the OA No. 723/2015, the respondents have cited the judgment of Hon'ble Apex Court in the case of **A.R. Antulay vs. R.S. Nayak and another, AIR 1988 SC 1531** in which the principles laid down are that per-incurred judgments are those which are given in ignorance or forgetfulness of the statutory provisions governing the dispute in question or of the authority/judgments which are binding on the concerned Court and that such per-incurred judgments can be ignored. It has not been explained in paragraph 17 of the Counter as to how the said judgment will be applicable to the OA No. 723/2015 except on the question of the judgments cited by the applicant being per-incurred, should not be followed. No other aspect of the judgment in the case of A.R. Antulay (supra) was mentioned in the Counter or in the Review Application. On perusal of the impugned order dated 13.5.2019 it is seen that the question whether the judgments relied on by the applicant can be treated as per-incurred, has been discussed in detail and it was held in paragraph 20 and 21 of the impugned order dated 13.5.2019 as under:-

“20. Like the case of T. Danappa & others (supra) before Bangalore Bench, all the orders of different coordinate Benches of the Tribunal in which the relief was allowed following the order of Madras Bench, were unsuccessfully challenged by the respondents before respective High Courts. In some of these cases, SLP filed against the order has been dismissed and the order has been implemented by the respondents as stated in the pleadings of the applicant and also pointed out by the applicant's counsel at the time of hearing. As pointed out by the applicant's counsel, the respondents have implemented these orders for the employees who were parties to those cases while refusing to extend similar benefit to other similarly placed employees. The ground was that Madras Bench order was followed and it was not considered as per-incurred. Still the respondents have taken the same ground in this case that these orders/judgments should be treated as per-incurred, when in the case after case, the Tribunal was following the order passed by Hon'ble High Courts as well as the coordinate Benches of the Tribunal while allowing similar reliefs to the similarly placed employees as the applicant. These orders of different coordinate Benches of the Tribunal were upheld before the higher forum and have attained finality. Further, as observed in the judgments of Hon'ble Madras High Court and Hon'ble Karnataka High Court, the anomaly in these cases is identified to be due to the faulty cadre structure of the Accounts cadre of the Railways and it is not due to implementation of the MACP Scheme. Hence, the argument of the respondents that these orders/judgments should be treated as per-incurred in view of the para 9 and 20 of the guidelines of the Railway Board on MACP is not convincing. It is noticed that inspite of these judgments, the respondents have not taken any corrective policy action to remove the

deficiencies in the cadre structure in spite of the orders of different Benched of the Tribunal and the anomalies like the junior getting higher Grade Pay are continuing instead of taking appropriate corrective steps.

21. In view of the discussions above, we are unable to agree with the respondents' averments that the orders and judgments cited by the applicant should be treated as per incuriam and the issue No. (i) of paragraph 14 of this order is decided accordingly."

10. Another judgment referred in paragraph 17 of the Counter is the judgment dated 20.5.2016 of Chandigarh Bench of the Tribunal in OA No. 967/2015, copy of which was enclosed at Annexure-R/5 of the Counter. This judgment dated 20.5.2016 was based on the judgment dated 26.11.2015 of the Principal Bench of the Tribunal in OA No. 436/2015, which was discussed in detail alongwith the judgment dated 20.5.2016 vide paragraphs 25, 26, 27 and 28 of the impugned order dated 13.5.2019 and it was held that the order dated 26.11.2015 in OA No. 436/205 will not be applicable to the OA under consideration. Hence, it cannot be said that the judgment dated 20.5.2016 has not been discussed in the impugned order.

11. Paragraph 17 of the Counter also referred to the Full Bench judgment dated 22.3.2013 of this Tribunal (Ernakulam Bench) in the case of J. Leelamma and others vs. Union of India and others in OA No. 1103/2011 (Annexure-R/2 of the Counter). The issue before the Full Bench related to the validity of the guidelines under MACP which made the claim of stepping up of pay of senior compared to the higher pay allowed to the junior on account of MACP, not permissible and the Full bench in the judgment at Annexure-R/2 upheld validity of the MACP guidelines. Paragraph 23 of the impugned judgment discussed the Full Bench judgment in question with the following findings:-

"23..... It is seen from the above judgment dated 22.3.2013 that stepping up of pay by comparing with juniors can be considered without challenging the guidelines of the MACP, which were held to be in order. In the present OA before us, the applicant has not challenged the provisions of the MACP Scheme and is seeking stepping up of the pay at par with their juniors, which was permissible as stated in the order dated 22.3.2013 of the Tribunal and similar relief has been allowed by different co-ordinate Benches of Tribunal to the employees similarly situated as the applicant. There is nothing in the order dated 22.3.2013 to prohibit the relief sought in the OA by the applicant."

12. As discussed in the impugned order dated 13.5.2019, the anomaly due to disparity in the pay/grade pay of the applicant vis-a-vis some of his juniors was due to faulty cadre structure and it was not due to the MACP Scheme as per the opinion of the DOPT mentioned in the judgment dated 3.4.2014 of Hon'ble Madras High Court as discussed in para 16 and 17 of the impugned order which state as under:-

"16. The order dated 5.8.2011 of Madras Bench of the Tribunal was challenged by the respondents in Hon'ble Madras High Court in Writ petition

No. 1078, 10046 to 10049 and 18262 of 2012, in which the order dated 5.8.2011 of the Tribunal was upheld vide order dated 3.4.2014 (Annexure A/6) of Hon'ble High Court. The following observations/findings of Hon'ble Madras High Court are extracted from order dated 3.4.2014 :-

“4. Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioners/official respondents, has drawn the attention of this Court to the Office Note dated 11.11.2013, written by the Department of Personnel and Training, Establishment (D), Government of India, wherein, the anomaly faced by the incumbents of the Accounts Department of Ministry of Railways, consequent to implementation of the MACP Scheme, was considered and it was opined that the instant anomaly brought forward by the referring Department (Ministry of Railways) cannot be attributed to the ACP/MACP policy, but due to faulty cadre structure and therefore, the referring Department may be advised to restructure the Accounts cadre to rectify the anomaly, and would contend that appropriate steps will be taken in that regard.

5. The fact remains that consequent to the implementation of the MACP Scheme, senior employees, who got promotion, are deprived of third MACP, whereas their juniors are availing the benefit of the same by getting Grade Pay of Rs.5400/-, but their seniors are getting Grade Pay of Rs.4800/- only. The Tribunal in the impugned orders passed in the Original Applications, has referred to its earlier orders passed in O.A.Nos.966 and 967 of 2009, and following the same, has allowed the Original Applications.”

17. From the orders extracted above, it is noticed that as per the views of the DOPT as submitted by respondents' counsel before Hon'ble Madras High Court in the case extracted in para 12 above, the anomaly appearing in this cadre is on account of “faulty cadre structure” and it is not due to MACP Scheme. This implies that there are deficiencies in the cadre structure of the Accounts staff of the Railways, for which the juniors are drawing higher pay than the seniors at some stage. When the order of Madras Bench was upheld by Hon'ble Madras High Court and then by Hon'ble Supreme Court without any interference with the MACP guidelines, it should have been clear that the anomalies in the pay structure of this particular cadre will keep on arising unless some policy decision is taken to restructure the cadre as recommended by the DOPT. But the respondents have chosen not to act as per the suggestion of the DOPT to restructure the Accounts cadre in order to remove the anomalies.”

13. It is noticed that no action has been taken by the respondents as per observations of the DOPT to restructure the Accounts cadre under the respondents as observed in the impugned order dated 13.5.2019. There is also a recommendation of the seventh pay commission in this regard, on which no action has been taken by the respondents as observed in para 32 and 33 of the impugned order dated 13.5.2019, which state as under:-

“32. It is noticed that the respondents have not furnished before us if any action to remove the anomalies has been taken as nothing has been mentioned by the respondents in their pleadings about it in the context of the observations made by Hon'ble Madras High Court in para 4 of the judgment dated 3.4.2014 (Annexure-A/6) regarding the view of the DOPT that the anomaly is due to faulty cadre structure and not due to MACP Scheme. It is stated in the Additional Counter that no decision has been taken by the Government on the recommendations of the Seventh Pay Commission regarding stepping up of pay of the seniors at par with the juniors. It is also stated that the Railway Board's reference to the DOPT for allowing stepping up of pay of the seniors, is an inter-departmental reference, which does not lay down any law. These averments show that the respondents are well aware of the anomalous situation in the cadre for which, some of the juniors end up getting higher Grade Pay than the

seniors after the juniors are allowed the benefit of MACP, where as the seniors are not eligible for MACP benefit.....

33. As noted in the judgment of Hon'ble Karnataka High Court (discussed in para 19 above), the respondents are aware of the anomaly in pay between senior and junior employees of the Accounts cadre. It cannot be said that the anomalous situation is arising due to implementation of the MACP and as observed in the judgment dated 3.4.2014 (Annexure A/6) of Hon'ble Madras High Court, the DOPT was of the view that the anomalous situations are arising due to faulty cadre structure. It is clear that the faulty cadre structure is mainly responsible for the anomaly in pay between senior and junior and the respondents are yet to address the problem through suitable policy intervention.

14. It is clear from above discussions that the findings on the question as to whether the judgments relied upon by the applicant can be treated per incuriam or not, have been recorded in the impugned order dated 13.5.2019 relying on the judgment dated 3.4.2014 of Hon'ble Madras High Court in Writ Petitions No. 1078, 10046 to 10049 of 2012 and judgment dated 20.8.2018 of Hon'ble Karnataka High Court in the case of T. Danappa & others. Further, the anomaly in the OA was found to be not due to the MACP Scheme and it was due to faulty cadre structure as observed by the DOPT vide observation in the aforesaid judgment dated 3.4.2014 of Hon'ble Madras High Court. Hence, the relief was allowed in the OA No. 723/2015 following the aforesaid judgments of Hon'ble Madras High Court and Hon'ble Karnataka High Court, for reasons of such anomalies in the cadre which is not due to MACP Scheme. We are, therefore, unable to agree with the ground in the RA and submissions of learned counsel for the review applicants (respondents in the OA) that the judgments referred in paragraph 17 of the Counter have not been discussed by this Tribunal while passing the impugned order.

15. Learned counsel for the review applicants has cited the judgment of Hon'ble Himachal Pradesh High Court reported in **D. Nalagarh Dehati Cooperative Transport Society Ltd., Nalagarh v. Beli Ram [1981 AIR HP 1]**, in which it was held that failure to take into consideration the judgment of Hon'ble Apex Court taking a contrary view will be a mistake or error apparent on the face of the record. It is averred in the RA that the judgments cited in paragraph 17 of the Counter have not been considered while passing the impugned order dated 13.5.2019. As discussed earlier the findings in the impugned order dated 13.5.2019 are based on the judgments of Madras and Karnataka High Courts and no finding has been recorded contrary to the judgment of Hon'ble Apex Court on the issue of the per-incuriam judgments. Further, the reliefs allowed in the OA are based on the judgment dated 3.4.2014 of Hon'ble Madras High Court in Writ Petitions No. 1078, 10046 to 10049 of 2012 and judgment dated 20.8.2018 of Hon'ble Karnataka High Court

in the case of T. Danappa & others and such reliefs allowed are not on account of the MACP Scheme.

16. Learned counsel for the review applicants has also cited the judgment of Hon'ble Delhi High Court in the case of **Labh Singh Waryam Singh vs. Union of India through General Manager, Northern Rly., reported in 1967 AIR DEL 67**, in which it was held that a court cannot grant any relief which is not asked for. Learned counsel for the review applicants had submitted that the applicant in the OA had claimed the grade pay of Rs. 5400/- under MACP Scheme at par with his junior, which is not permissible as per the MACP guidelines. It is seen from the impugned order dated 13.5.2019 as well as from the para 8 of the OA No. 723/2015, that the reliefs prayed for include the prayer for the grade pay of Rs. 5400/- to the applicant which has been allowed vide the impugned order dated 13.5.2019, irrespective of the guidelines under MACP. Hence, we are unable to agree with the contentions of the review applicant that the prayer allowed was not asked for by the applicant in the OA.

17. Learned counsel for the review applicant has also cited the judgment of Hon'ble Apex Court in the case of **Manohar Lal (Dead) By Lrs. Vs. Ugrasen (dead) By Lrs. And Others, 2010 AIR SCC 3648**, in which it was held as under:-

“In view of the above, law on the issue can be summarised that the court cannot grant a relief which has not been specifically prayed by the parties.”

Applying above principle to the case, it was held by Hon'ble Apex Court as under:-

“More so, in the writ petition filed by Shri Ugrasen relief sought was limited only to quash the allotment made in favour of Shri Manohar Lal. No relief was sought for making the allotment in favour of the writ petitioner/Shri Ugrasen. However, the High Court vide impugned judgment and order has issued direction to make the allotment in his favour. Thus, we are of the view that issuance of such a direction was not permissible in law. Even otherwise as Shri Ugrasen's land had been acquired for roads, he could not make application for taking benefit of the Land Policy, particularly, when the Land Policy was not declared to be invalid or violative of equality clause enshrined in Article 14 of the Constitution.”

In above cited case, although no prayer for allotment of land was made, Hon'ble High Court had directed for such allotment of land, which was held to be not permissible in law. This case will not be applicable to the present RA, since as discussed in para 16 above, it cannot be said that the relief of grade pay of Rs. 5400/- allowed to the applicant in the OA was not included in the prayer in the OA No. 723/2015. We are unable to agree with the submission of the learned counsel for the review applicant that there was no specific prayer in the OA for grant of grade pay of Rs. 5400/-.

18. Mr.N.K.Singh, learned counsel for some of the RAs in the batch had also argued that the applicants had not represented to the authorities for the relief that was granted by the Tribunal, prior to filing OA and hence, the applicant had approached the Tribunal without exhausting alternative remedy. Such an argument cannot be considered as an error apparent on the face of the record and cannot be allowed while considering merits of a Review Application under Section 22 of the Administrative Tribunals Act, 1985 read with the Rule 1 Order 47 of the Civil Procedure Code. Moreover, it was open to the respondents to challenge the order of this Tribunal to admit the OAs in question and consider the same on merit. No such challenge was made. Hence, the impugned order dated 13.5.2019 cannot be challenged on this ground in Review Application.

19. Learned counsel for the review respondents has filed some citations in support of applicants' claims in the OA. We are not inclined to consider these citations for deciding the RAs in this batch, since two cited judgments justify relief granted in the OA and these are not applicable for deciding the merit of these RAs. Third citation is the order of the Tribunal in another RA in which the legal principle that Review cannot be resorted to substitute one view with another, which is the settled law on Review Application.

20. In the circumstances and for the reasons discussed above, we are of the considered view that the review applicants have failed to make out any valid ground to justify any interference of this Tribunal in the impugned order dated 13.5.2019 passed in OA No. 723/2015, by invoking the provisions relating to review of the impugned order of this Tribunal under the section 22 of the Administrative Tribunals Act, 1985. The Review Application No. 35 of 2019 is accordingly dismissed on merit at the admission stage.

Other RAs in this batch other than RA No. 35/2019

21. In other Review Applications in this batch, having been filed with the MAs for condoning delay in filing the RAs on similar grounds, the MAs are allowed and delay condoned as stated in paragraph 7 of this order. For the reasons mentioned in this order for RA No. 35/2019, which are squarely applicable to other RAs in this batch, other RAs in this batch are also dismissed on merit at the admission stage like RA No. 35/2019.

22. There will be no order as to cost. Copy of this order be supplied to the learned counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

