

(2023) 02 CAT CK 0027

In the Central Administrative Tribunal

Case No : Original Application No. 260 Of 00263 Of 2021

Satyabrata Dhupal & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Citation : (2023) 02 CAT CK 0027

Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : J.M. Patnaik, S.K. Jee

Final Decision : Allowed

Judgement

Swarup Kumar Mishra, Member (J)

1. The case of the applicants is that they were initially appointed in Railway as Permanent (Way) Mistries (in short, PWM) in the scale of Rs. 1400-2300/-. On acceptance of recommendation of 5th CPC, the pay scale of 1400-2300 was replaced by Rs. 4500-7000/- with Special pay of Rs. 100/- and the pay scale of Jr. Engineer was replaced by Rs. 5000-8000/- w.e.f. 01.01.1996. The designation of PWM was changed as Supervisor (P.Way). In the meantime, applicant nos. 1, 4 and 8 were promoted to the post of Jr. Engineer in the scale of Rs. 5000-8000/-, GP Rs. 4200/- vide order dated 31.08.2004. The post of Supervisor (P.Way) was replaced/renamed as Sr. Supervisor (P.Way) carrying the scale of pay of Rs. 5000-8000/-, GP 4200/- vide RBE No. 45/2007 and as a consequence, the rest of the applicants became Sr. Supervisor (P.Way) carrying the pay of scale of Rs. 5000-8000/-, GP 4200/- . As a matter of policy, the Railway merged the posts of Sr. Supervisor (P.Way) in scale Rs. 5000-8000/-, GP 4200/- with Jr. Engineer (P.Way) carrying the pay scale of Rs. 5000-8000/-, GP 4200/- vide RBE No. 64/2013 dated 03.07.2013, resultantly, the post of Sr. Supervisor (P.Way) was abolished. According to the applicants, due to the merger of their entry grade, the applicants became Jr. Engineer (P.Way). The screening committee

considered the cases of the applicants for grant of MACP in accordance with RBE No. 101/2009. On the recommendation of the screening committee, the applicants were granted first and second financial upgradations under MACP in GP 4600/- and to GP 4800/- on completion of 10 and 20 years of regular service vide order under Annexure-A/1 series. Subsequently, in terms of Railway Board's letter No. P.C-V/2009/ACP/21/SER dated 12.05.2015, the financial upgradation granted to the applicants were depleted thereby the salary of the applicants was reduced without giving any opportunity of being heard. It is further case of the applicants that similarly situated employees of the railways challenged the said action/RBE before the CAT, PB, New Delhi in OA No. 1386/2013 (Javed Ahmed and Ors. Vs. UOI & Ors) which was allowed on 01.09.2016 holding that in terms of provisions under 13(a) of Boards letter dated 09.10.2003 (RBE No.177/2003) the scale s of works Mistries/Supervisor etc were indeed merged and once it is treated as merged, para 5 of MACP guidelines clearly establishes that all promotions from Mistries to JE (erstwhile Rs. 1400-2300/-) has to be ignored for the purpose of MACP. The Railways were directed to restore the first and second MACP with GP Rs. 4600/- and 4800/- respectively within a period of 60 days. The decision of the CAT, PB, New Delhi was challenged by the respondents department before the Hon'ble High Court of Delhi in W.P.(C) No. 10995/2016 and CM No. 43002/2016, which were dismissed. According to the applicants, in view of the decision, the withdrawal of MACP granted to them by applying the RBE is bad in law. Hence, in this OA the applicants have prayed for quashing the Railway Board letter No. P.C-V/2009/ACP/21/SER dated 12.05.2015 and the orders under Annexure-A/4 and A/5 series with further prayer to direct the respondents to restore the financial upgradation granted to them as per order under Annexure-1 series.

2. Respondents have filed their counter wherein they have stated that there is no rule for treating the applicants as Jr. Engineer after merger of their post held by them with Jr. Engineer. The MACP or financial upgradation can only be granted when no promotional benefits have been granted to any employee during entire service career. In the instant case, the applicants were appointed as PWM. Some of them were promoted to JE and Sr. PWS. The Railway Board clarified vide letter dated 12.05.2015 that decision taken in granting MACP to the applicants is contrary to the policy/instruction of MACP. Accordingly, grant of MACP to the applicants was reviewed and corrective measure was taken to avoid overpayments. The applicants are from PWM/PWS which are excluded from para 13(a) but dealt with para 13(b) and 13.2 to 13.5 of RBE No.177/2003. The para 13(a) is applicable to Works Wing of Civil Engineering Department and nor for Permanent Way Wings. Therefore, the decision of the CAT, PB, New Delhi is not applicable. Accordingly, respondents have prayed for dismissal of the OA.

3. Applicants have filed rejoinder clarifying as to how the decision of the CAT, PB, New Delhi is applicable to their case.

4. Heard Ld. Counsel for both the parties and perused the records.

5. Before proceeding in the matter, it is profitable to extract the relevant portion of the order of the CAT, PB New Delhi dated 01.09.2016 in OA No. 1386/2013, which is as under:

"8. The only issue to be decided is whether the order dated 1.9.1993 para 13 is merger of pay scales or is merger with promotion. 13.2 (b) uses the expression "supervisors who do not get promoted to pay scale of Rs. 5,000-8000/-", whereas 13 (a) uses the expression of "all posts of Mistries should enbloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs.5,000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades. Rs.5,500-9000, 6,500-10,500 & 7,450-11,500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders. However, para 13.2 is regarding procedure for fitment and, therefore, it cannot be treated as promotion as that would contradict 13 (a). Therefore, the scales were indeed merged. Once it is treated as merger, para 5 of MACP guidelines clearly establishes that all promotions from Mistries to JE (erstwhile 1400-2300) has to be ignored for the purpose of MACP. The OA is, therefore, allowed and respondents are directed to restore the first and second MACP with GP of Rs.4600 and 4800 from respective dates to the applicants.

9. We fix a time frame for the above exercise as 60 days from the date of receipt of a certified copy of this order. No costs."

The relevant portion of the order of Hon'ble High Court of Delhi is reproduced herein below:

"7. In our opinion, the Tribunal rightly interpreted the said clauses. Mistries (now Supervisors) in the grade of Rs 4500-7000 were upgraded to the post of Junior Engineer in the pay scale of Rs.5000- 8000. It is a case of merger and unification of posts. Paragraph 13(b) states that erstwhile Mistries would be en bloc upgraded to the post of Junior Engineers. No doubt Paragraph 13(a) is subject to Paragraph 13.2, albeit the said clause relates to "Fitment". It was a regulatory mechanism. It does not negate or curtail the effect of Paragraph 13(a). Upgradation was mandated. Suitability was to be examined, not as per normal procedure but with reference to the service records and confidential reports. Further, retention in the lower grade of Rs. 4500- 7000 was personal to the incumbents who would not be placed in the scale/grade of Rs.5000-8000. This was a stop gap arrangement till retirement etc.. For all intents and purpose, the scale/grade of Rs. 5000-8000 was granted to the erstwhile Mistries (now Supervisors). The amalgamation and merger was complete. It is apparent that the posts of Supervisor, as such, had ceased to exist or

Thus, the Tribunal has rightly held that this was a case of upgradation and, consequently, merger of the pay scales. Thus grant of pay scale of Rs 5000-8000 to erstwhile Mistries (Supervisors) cannot be treated as promotion to the post of Junior Engineer. Consequently, the earlier promotion granted to the respondents from the post of Supervisors (Mistries) to the post of Junior Engineer was

inconsequential. The two posts had identical payscale, ie the pre- revised pay scale of Rs.5000-8000 or revised scale of grade pay of Rs.4200 in the pay band of Rs 9300-13800 This being the position, the respondents would be entitled to financial upgradation at the first Stage to-grade pay of Rs.4600/-and second stage to grade pay of Rs.4800/- as per the CCS (Revised Pay) Rules, 2008 read with the Modified Assured Career Progression Scheme,

The writ petition has no merit and is accordingly dismissed.”

6. We find that the CAT, PB, New Delhi and the Hon’ble High Court of Delhi has vividly discussed the matter in great detail and came to the conclusion on principle that once the posts/scales were merged, it cannot be treated as promotion and in terms of para 5 of MACP all promotions from Mistries to JE (erstwhile 1400-2300) has to be ignored for the purpose of MACP. Thus, the stand of the respondents that since the applicants are from PWM/PWS which are excluded from para 13(a) but dealt with para 13(b) and 13.2 to 13.5 of RBE No.177/2003 and para 13(a) is applicable to Works Wing of Civil Engineering Department and not for Permanent Way Wings the decision is not applicable, is found to be not correct. As a consequence, it is held that the applicants were rightly allowed the first and second financial upgradation on the recommendation of the screening committee vide order under Annexure-A/1, which ought not to have been altered without giving opportunity of being heard to the applicants in compliance with the principles of natural justice. However, in course of hearing, it has been brought to the notice of this Bench that the respondents had filed Special Leave to Appeal (C) No. 11520-11521/2018 challenging the order of the CAT, PB, New Delhi, which was upheld by the Hon’ble High Court of New Delhi and the Hon’ble Apex Court vide order dated 08.10.2018 stayed the proceedings of the contempt in C.P.No. 278/2018 filed by the applicants therein before the CAT, PB New Delhi and directed to list the matter in first week of December, 2018 for final disposal and the matter seems to be pending before the Hon’ble Apex Court for final adjudication. Since the matter is pending for final adjudication before the Hon’ble Apex Court, the restoration of the MACP granted to the applicants under A/1 series shall be subject to the final outcome of the Special Leave to Appeal (C) No. 11520-11521/2018. Insofar as recovery is concerned, the respondents are directed not to effect recovery in the event of submission of an undertaking by the applicants that they will not claim any equity and to refund the excess payment made in the event the Special Leave to Appeal (C) No. 11520-11521/2018 is allowed.

7. In the result, the OA stands allowed to the extent stated above. There shall be no order as to costs.