

**BRIEF FOR ADVOCATE FOR FILING APPEAL BY IRTSA
AGAINST DECISION OF MOF & ORDERS OF CAT CHENNAI IN OA 706/2013
REG: GRANT OF HIGHER GRADE PAY OF RS.4600 TO JES & RS.4800 TO SSES**

Reference: 1) Orders of CAT Chennai Dated in 310/00706/2013 IRTSA Vs UOI & Others
ii) Memoranda of IRTSA No: IRTSA/CHQ/ MEMO/2016-12 dated 18-8-2016 &
No: IRTSA/CAT Chennai/2016-13 Dated 18.8.2016
iii) Office Memorandum No. PC VI/2009/DAC/1(pt2) dated 11.06.2010 of Ministry of Railways
(Railway Board) to Ministry of Finance Expenditure (Copy attached)
iv) Ministry of Finance reply to Railways vide letter No. 36(1)/E.III.B/2015 29th Nov 2016
(Copy attached)

1. BRIEF SUMMARY OF THE CASE:

a) IRTSA (vide OA No. 310/00706/2013 IRTSA-vs-Union of India & Others, filed in CAT Chennai), had prayed for higher Grade Pay for JEs (Junior Engineers) & SSEs (Senior Section Engineers) on Railways than the Staff working under them, to restore the vertical hierarchy as recommended by the Fifth and Sixth Pay Commissions but disturbed by the Railways, based on higher duties & responsibilities shouldered by them and based on decision taken by Railway ministry to upgrade the grade pay of JS & SSE, are some of the major points submitted by IRTSA.

b) After repeated adjournments of the case due to various reasons – including delay in filing of the Affidavits by Railways and non-filing of the Affidavit by Ministry of Finance, the Applicants IRTSA had urged the CAT to finalise the Case at the earliest especially regarding the proposal of the Railway Board pending since long with the MOF regarding higher Grade Pay of JEs & SSEs.

c) However, the CAT Chennai, summarily closed the Case and directed Ministry of Finance to take action on the proposal of the Railways and decide about it within 3 months on OM No.PC/VI/2009/DAC/1(Pt2) dated 11.06.2010 which was pending for approval of MOF for allotment of Grade Pay of Rs.4600 to JEs and Grade Pay Rs.4800 to SSEs.

d) However, Case was not decided by the CAT on merits thereof, either on the basis of the oral submissions or written averments made by the Applicants in the OA or in the Rejoinder thereof, but was left to be decided by the MOF, which disposed of the case on very unjust and unreasonable grounds and by subverting basic facts of the case and by subverting the settled law.

e) This is the main ground for filing this * **(fresh OA Or an Appeal against the CAT Orders dated 21-7-2016 and)** the unjust grounds given by the MOF for rejecting the pleas made by the applicants. * **(To be decided in consultation with the Advocate as per legal provisions).**

f) GS IRTSA had submitted a copy of CAT Chennai's orders in OA No. 310/00706/2013 to Secy. Finance Expenditure vide letter No IRTSA/CAT Chennai/2016-13 and a Memorandum No. IRTSA/CHQ/ MEMO/2016-12 giving justification on the merits of the case and urged to upgrade the JEs & SSEs on the Grade Pay Rs.4600 & Rs.4800 respectively, as per decision of the Departmental Anomalies Committee. This was followed up with reminder and queries under the RTI.

g) Ministry of Finance finally sent a reply to the Ministry of Railways vide letter No. 36(1)/E.III.B/2015 29th Nov 2016 But the OM reach the Applicants in Feb 2017 through the Chief Personnel Officer Southern Railway vide letter No. P(S) 353/IV/OA 706/2013 Dated 13-1-2017.

h) The Ministry of Finance vide their letter dated 29-11-016 cited above, had totally rejected the proposal of the Railway Board as well as the submissions of the Applicants – by not only falsely negating the facts but also referring to extraneous factors to deviate from the core issues involved in the matter.

2. Technical Supervisors *i.e. Senior Section Engineers (SSEs) & Junior Engineers (JEs)* on the Railways have been unjustly placed in the Grade Pay of Rs.4600 (Level-7) and Rs.4200 (Level-6) respectively which are the same as those of the employees working under them, which violates the basic principle of law of natural justice - upheld by various Court including by the Hon'ble Supreme Court of India that –

a) *"An equal cannot be over an equal"*

b) *'Promotion' implies advancement to a higher grade; &*

c) *Supervisor should be in a scale higher than Supervised.*

Position of JEs & SSEs on the Railways is unique and not comparable with any other Ministry or Department in view of the higher qualifications on the Railways, onerous nature of work and higher responsibilities and above, all the vertical and horizontal relativity which got distorted due to the staff working under them being placed in the same Grade Pay / Pay level at par with them thus disturbing the line of control and violating the settled law of justice.

3. Para wise reply to the points raised by MOF in their Letter No.36(1)/E.III.B/2015 Dated 29th Nov 2016, are submitted here below:

PARA WISE DRAFT REPLY TO THE POINTS RAISED BY MOF IN THEIR LETTER
NO.36(1)/E.III.B/2015 DATED 29TH NOV 2016

DECISION OF THE MOF	PROPOSED PARA WISE COMMENTS
<p>2 (a) The reason why the posts of Senior Technician and Junior Engineer come to lie in the same pay scale is because the 6th CPC merged the pre-revised pay scales of Rs.5000 – 8000 and Rs.5500 – 9000 in the same Grade Pay of Rs.4200/- for the sake of rationalization and reduction in levels. In the specific case of Junior Engineers, the Commission has consciously merged JE-II and JE-I in the Grade Pay of Rs.4200/-, despite of fact of Senior Technician also being in the same Grade Pay (para 7.36.77 of the report)</p>	<ol style="list-style-type: none"> 1. It is surprising MOF has referred to Para 7.36.77 of 6th CPC over here by misquoting its entire contents wrongly because the said para deals with the recommendations for Junior Engineers (Technical Supervisors) only. 2. Para 7.36.77 neither deals with the Grade Pay of Senior Technician nor relativity between Junior Engineer & Senior Technician. Copy of the said Para has been placed at Annexure-1 for ready reference in this regard. 3. The issue raised by the Applicant (IRTSA) was not in respect of the merger of Scales of Rs.5000 – 8000 and Rs.5500 – 9000 in the same Grade Pay of Rs.4200/- by the Sixth Pay Commission - as mentioned by the MOF but that of upgrading and placing the Senior Technician in grade Pay of Rs.4200 by the Railways at par with Junior Engineers outside the recommendations of the Pay Commission without simultaneous upgrading the Junior Engineers, who, thereby disturbing the vertical relativity held by the Pay Commission based on the functional hierarchy. 4. a) 6th CPC had recommended Grade Pay of Rs.4200 by merging Junior Engineer-II (Rs.5000-8000) & Junior Engineer-I (Rs.5500-9000) vide Para 7.36.77 of its Report. b) 6th CPC recommended for the Grade Pay of Rs.2800 (equivalent to Rs.4500-7000) vide Para 3.8.26 & 3.8.27 for the Senior Technicians. c) Senior Technicians were given the Grade Pay of Rs.4200 by the Railways vide their letter No. PC-VI/2008/IC/9 (RBE No 205/2009) dated 25.11.2009 and not by the 6th CPC which had recommended the Grade Pay of Rs.2800/- for the Senior Technician vide para 7.36.71 (Annexure-2), & 3.8.26 & 3.8.27 (Annexure-3) - specifically to maintain vertical relativity between the Senior Technician and the Junior Engineers. 5. 6th CPC in para 3.8.26 had clearly said that it has not been possible to place the post of Master Craftsman (i.e. Senior Technician) in the pay band corresponding to the pre-revised pay scale of Rs.5000-8000. Besides, no functional justification also exists for such upgradation, since they are feeder grade for the post of JE in the existing hierarchy. 6. 6th CPC in Para, 2.2.11 of its Report (Annexure-4) - recommended that – “Grade pay will determine the status of a post with a senior post being given higher grade pay. Grade pay being progressively higher for successive higher posts, the employees on promotion will get monetary benefit on promotion in the form of the increased Grade Pay apart from the benefit of one additional increment”. 7. The upgrading of Senior Technician from Grade Pay of Rs.2800 (as

recommended by 6th CPC) to Grade Pay of 4200 by the Railway Board without upgrading the Junior Engineers from Grade Pay of Rs.4200 to Rs.4600 violated the above said principle laid down by 6th CPC as well the settled law under Article 39 of the Constitution that “an equal cannot be over an equal”

8. After implementation of 6th CPC recommendations, the post of Senior Technician had been given upgradation equivalent to two scale of pays in 5th CPC scale from Rs.4500-7000 as recommended by 6th CPC to Rs.5500-9000 as modified by the respondents, as shown in the table below.

Desg	Hierarchy	5 th CPC Recomm	Scale changed after 5 th CPC	6 th CPC Recomm	GP changed after 6 th CPC
JE-I	↑	5500-9000	5500-9000	GP	GP
JE-II	↑	5000-8000	5000-8000	4200	4200
Sr. Tech	↑	4500-7000	5000-80e 00	GP 2800	GP 4200

9. It also violates the basic principle of law of natural justice – upheld by the Hon’ble Supreme Court of India that ‘promotion implies advancement to a higher grade’ & ‘supervisors should be in a scale higher than supervised’.

2 (b) The 7th Central Pay commission also considered the issue of Junior Engineers in Railways. However, the commission has not recommended any change in their pay scale (paras 11.40.104 to 11.40.115)

1. Anomaly created after implementation of 6th CPC recommendations by subsequent modification of Grade Pay of Senior Technician by placing them in the Grade Pay of Rs.4200 on par with JE which is promotional post for Senior Technician is not addressed till date.
2. 7th Central Pay commission in para 1.27 (Annexure-5) said that the anomalies created subsequent to the modification done in 6th CPC recommendations could not be rectified till date.
3. In Para 5.1.21, 7th CPC recommended that Pay matrix comprises two dimensions, “horizontal range” in which each level corresponds to a ‘functional role in the hierarchy’ and has been assigned the numbers 1, 2, and 3 and so on till 18. The “vertical range” for each level denotes ‘pay progression’ within that level. These indicate the steps of annual financial progression of three percent within each level.
4. In Para 5.1.22 On recruitment, an employee joins at a particular level and progresses within the level as per the vertical range, based on annual increments till the time of their next promotion.
5. Para 5.1.23 When the employee receives a promotion or a non-functional financial upgrade, he/she progresses one level ahead on the horizontal range. (Para 5.1.21 to 5.1.23 in annexure-6)

C (i) The same Grade Pay of Rs.4200/- for both JEs and Senior Technician is based on the recommendations of the 6th Pay Commission. This has been reviewed again by the 7th Pay Commission without any change. Since the Commissions are expert bodies to go into all considerations, any modification therein is not justified.

1. 6th CPC recommended Grade Pay of Rs.4200 for JEs vide para 7.36.77 and Rs.2800 for Senior Technicians vide para 7.36.71 and 3.8.27. Railway Board had upgraded the Grade Pay of Senior Technician to Rs.4200 without further upgrading the Grade Pay of JEs.
2. In para 1.27 Seventh CPC has recommended for removal of anomalies that arouse as a result of modification of Grade Pay after the implementation of 6th CPC recommendations.

<p>C (ii) Grade Pay of Rs.4200/- is a major pay scale in the Government in the Group 'C' category, belonging to Junior Engineers in all major Departments including CPWD, MES etc. Any change in the pay scale of Railways will have direct impact on JEs in general, leading to substantial financial implications.</p>	<ol style="list-style-type: none"> 1. In any case, Railway is governed by separate pay rules not by CCS rules. It has been held by courts also. 2. In its Judgment Hon'ble CAT Chandigarh in OA 060/00211/2014 IRTSA Vs Union of India held that the arguments placed by respondent that, Railways is a multi-disciplinary operational system governed by separate rules. Separate pay rules & DAR rules. Not governed by CCS & CCS classification, control & appeal rules. Railway servants specifically excluded from CCS rules 2008 as per explanatory memorandum. Due to unique nature, Railways stands in different footing than other Ministries of Central or State Governments. (para 22.3 & 22.6 of the Judgment are placed in annexure-7)
<p>C (iii) In the Government, horizontal relativity is an important factor for pay scales. Thus, if Rs.4200/- is revised, this will have cascading effect on all posts which are in the same Grade Pay and it would be a tough task to deal with such demands. Further round of court cases will follow.</p>	<ol style="list-style-type: none"> 1. Pay scales of Accounts, Nurses and Teachers had been upgraded in 6th CPC disturbing the horizontal parity with the Technical Supervisors (Junior Engineers and Senior Section Engineers). 2. Pay scales of various cadres were upgraded from time to time on the Railways disturbing the horizontal parity and vertical relativity with Technical Supervisors (JEs & SSEs). 3. <ol style="list-style-type: none"> a) Upgradation of pay scales for Accounts staff in Railways had been done out of Pay Commission recommendations. b) 5th Central Pay Commission in para 83.235 of its report, the Accounts staff in the Railways were granted normal replacement scales in terms of Railway Board's letter No. PC-V/97/I/RSRP/1 dated 16.10.97. c) Upgrading of pay scales for Accounts staff had been given vide Board's letter No. PC-V/98/I/11/23 (RBE No.48/2003) dated 7.3.2003 (annexure-8).
<p>C (iv) If the Grade Pay of Rs.4600/- is allowed, the next higher grade in the Railways belonging to Technical Supervisors is Section Engineer / Senior Section Engineer, who are in the Grade Pay of Rs.4600/-. They will demand higher Grade Pay and this will set in another chain of repercussions. In fact, revision of Pay scale of Technical Supervisors from Rs.4600/- to Rs.4800/- was considered in the Ministry of Finance on a proposal taken up by then Minister for Railway in February, 2013 and it was not accepted at the level of the then Finance Minister because of repercussions.</p>	<ol style="list-style-type: none"> 1. In fact the prayer is for allotment of higher Grade Pay for JE in GP Rs.4200 & SSE in GP Rs.4600. 2. After implementation of 6th CPC recommendations Railway Ministry has send an OM seeking the approval for its proposal for allotment of Grade Pay Rs.4600 for JEs & Grade Pay Rs.4800 for SSEs. The proposal has been made based superior recruitment conditions, duties and multifarious responsibilities shouldered by JE & SSE for efficient train operation. In the reply to RTI questions "Was any proposal / proposals submitted by Railway Ministry to empowered committee of Secretaries headed by Cabinet Secretary as Chairman on pay of Technical Supervisors Junior Engineer (JE) and Senior Section Engineers (SSE) working in Railways", Railways replied 'yes'. (Annexure-9)
<p>C (v) The possibility of immediate repercussion in</p>	<p>Every issue has to be decided on its own merit and the apprehensions raised by the Railway Board are totally unjustified. The Railway Board</p>

<p>the Ministry of Railways, as mentioned by them in the Counter Reply, is also real.</p>	<p>had proposed Grade Pay of Rs. 4800/- for SSEs in February 2013, as mentioned in para C (iv) of MoF's reply.</p> <p>Applicant in their rejoinder to the counter reply denied each and every one of the averments, statements and contentions of respondent Railways, which was neither denied by respondent railways so far.</p>
<p>C (vi) The fact of higher and lower posts lying in a same Grade does not appear to be unique in this case nor as a result of 6th CPC alone. The same issue arose in some cases at the time of 5th CPC. An order was issued by Ministry of Finance on 24.11.2000 that if it is not possible to merge the post on functional reasons, then the benefit of fixation of pay on promotion, even though promotion taking place in the same pay scale may be given. A similar order was issued after 6th CPC also on 7.1.2013. Thus, any special dispensation in this case may invite similar demands from such cases, which are not known readily.</p>	<ol style="list-style-type: none"> 1. In 6th CPC, Grade pay determines the status of a post with a senior post being given higher grade pay. The fact of higher and lower posts (JE & Senior Technician) lying in the same Grade is not as a result of 6th CPC recommendation. 6th CPC recommended different Grade Pay for JE & senior technician (vide Para 7.36.77 & 3.8.27 of its Report), it was the Railway Board which placed both the posts in the same Grade Pay outside the Pay commission recommendations. 2. Fifth Central Pay Commission in paras 54.33, 54.34, 54.35, 54.36, 54.37 & 54.38 of its report, specifically dealt with the problem of supervisor and supervised being placed in the same scale of pay and removed the anomaly by recommending the pay scale of Rs.4500-7000 to Master Craftsman and Rs. 5000-8000 for Technical Supervisors / Chargeman-B (since redesignated as Junior Engineer-II). But later Railways upgraded the scale of Master Craftsman (Senior Technicians) without correspondingly upgrading the scale of Chargeman (Junior Engineer) contrary to the principle of natural justice thereby disturbing the vertical relativity recommended by Fifth Central Pay Commission. Copy of Paras 54.33, 54.34, 54.35, 54.36, 54.37 & 54.38 of Fifth Pay Commission recommendations in Annexure-10 3. 6th CPC in para 2.2.2 said that "The Fifth CPC had compressed many scales. The number of pay scales was reduced from 51 pay scales as on 31.12.1995 to 34 pay scales by the Fifth CPC. In many cases, this led to the promotion and feeder cadres being placed in an identical pay scale. Although Department of Expenditure issued orders that existence of the feeder and promotion posts in the same pay scale will not constitute an anomaly, however, these orders have consistently been rejected by the various courts of this country". 4. Despite the 5th & 6th CPC recommending different Pay scale / Grade Pay for JE & Sr. technicians, by placing Sr. technicians pay scale / Grade Pay below that of JE. Respondents upgraded the pay scale / Grade Pay of Sr. technician on par with JE violating settled law and basic recommendations of Pay Commissions that "supervisor should be placed in higher pay scale than those being supervised". 5. As per trite law and definition of promotion in Union of India & Ors. Vs. Pushpa Rani, 2008 (9) SCC 242, promotion would entail discharge of higher duties and also upgradation in the pay scale. 6. For in the case of Rajasthan High Court v. Babu Lal Arora, (2004) 9 SCC 71, the Apex Court has held as under: One of the important indicia to find out whether an employee holds a higher post on promotion is whether such post carries higher emoluments. 7. Rejection of demand of Technical Supervisors on the plea of inviting similar demands from other such cases is illogical and unjust.

Prayer: To issue directions for placing the JEs on Railways in Grade Pay of Rs.4600 – above the Senior Technicians whom they Supervise and for placing SSE in Grade Pay of Rs.4800 – above Junior Engineers and Chief Office Superintendent whom they supervise and based on superior recruitment conditions, duties and multifarious responsibilities shouldered by JE & SSE for efficient train operation.