

**N THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.**

O.A.NO: 211/PB OF 2014

Indian Railways Technical Supervisors Association (IRTSA) &
others

...Applicants

Versus

Union of India & Others

....Respondents

I N D E X

| S.NO | PARTICULARS | DATE | PAGE NO. |
|-------------|---|-------------|-----------------|
| 1. | REPLICATION | 06.11.2014 | 1-38 |
| 2. | ANNEXURE A-17 (Information Under RTI Act i.e. notings) | 25.02.2013 | 39-121 |
| 3. | POWER OF ATTORNEY Already on record. | | |
| 4. | Total court fee affixed | Rs. | |

Note: 1. Advance copy supplied to CGSC.

2. Similar case Nil

Dated 06.11.2014

Chandigarh

(S.P.GARG) Advocate

Counsel for the Applicants

Enrl. No. (P/511/1986)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
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Replication to the reply filed by the respondents.

Respectfully Showeth:-

Preliminary submissions:-

1. That the contents of this para as alleged are wrong & misleading, hence denied Name of the applicants Association is Indian Railways Technical Supervisors Association, Respondents have wrongly mentioned it as Indian Railways Technical Officers Association. The Applicants number 1 - Indian Railways Technical Supervisors Association (IRTSA) is a Registered Association under Trade Union Act 1929 representing Technical Supervisors on the Railways working as Junior Engineers, Senior Section Engineers, Chemical and Metallurgical Assistant, Chemical and Metallurgical Superintendent, Depot Material Superintendent, Chief Depot Material Superintendent, Senior Engineer / IT etc. in various Departments of Indian Railways and is espousing their cause since the year 1965.

2. That Even though the category of applicants is being classified as Group-C from the First Pay Commission even then there are various numerous administrative reasons to classify these posts as Group-B (Gazetted) besides being a long pending demand of the Applicants as well as that of the Staff Side at large and hence there is a cause of grievance which have been mentioned in the O.A itself which may be read as part of this para.

The qualification in 1st Pay Commission era for Foreman (now designated as Senior Section Engineer/SSE) was much lower than the present day. 20% of SSE are directly recruited with minimum recruitment qualification of Graduate in Engineering in relevant branches along with one year on the job training, 50% of JE are directly recruited with minimum recruitment qualification of Diploma in Engineering along with one year on the job training and are subsequently promoted as SSE after a few years of service as per Seniority. This position was much different up to the Third and Fourth Pay Commissions

Similarly entry qualifications have also been raised in this period for Chemical and Metallurgical Superintendent, Depot Material Superintendent, Chief Depot Material Superintendent and Senior Engineer /IT.

3. That it is submitted that the Indian Railways is a multi-disciplinary operational system involving safety consideration in

operation of trains. This is all the more the reason due to which functional, operational and administrative requirements and to ensure safe, effective and efficient train operation require higher number of Gazetted posts. Moreover the Railway is governed by Pay Scales, Pension & Family Pension recommended by Central Pay Commissions which were issued by DOP&T thereafter. Railways cannot follow separate Pay Scales followed by PSUs, State Governments, etc.

- a. All Allowances like Dearness Allowance, House Rent Allowance, Transport Allowance, Travelling Allowance, Non-Practicing Allowance, Child Education Allowance, Night Duty Allowance etc, are all common for all Central Government Employees including Railway Employees.
- b. Modified Assured Career Progression Scheme (MACPS) is also common for all Central Government Employees including Railway Employees.
- c. For all the Central Govt. Employee, DOP&T is the nodal Department & Railways cannot deviate from or modify any policy on staff matters on its own.
- d. Ironically, Classification of Posts is the only area in which the Railways have deviated from the orders of the DOP&T and that too, to the detriment of the Staff as well of the Railways itself.
- e. Even though the Railway notifies all the above mentioned items separately like all other central Govt. departments. Yet all the Railway notifications strictly follow the principles &

policies issued by DOP&T. Only the words "Government Employees" appearing in DOP&T order, are changed as "Railway Employee", following all other norms strictly as per the orders of DOP&T).For any of the items mentioned above Railways cannot issue an order deviating from DOP&T's order nor there is any precedence thereof, except on the Issue of Classification of Posts on the Railways.

4. That reply to this para it is submitted that Article 309 of the Constitution of India 1949 lays' down as under: -

"309. Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any

rules so made shall have effect subject to the provisions of any such Act”.

And the Indian Railway Establishment Code, Volume – I para 101 states as under: -

“some of these rules correspond to the Fundamental Rules and Supplementary Rules applicable to all Civil servants (other than Railway servants) under the union, who are subject to the rule making powers by the President”.

But, except classification of posts all other service conditions are same as that of Civil servants. So the legitimate cause may be accepted as per prayed in the present O.A.

5. That as explained in para 4, Railway Service (Revised Pay) Rules, 2008, Railway Service (conduct) Rules 1966, Railway Service (Discipline & Appeal) Rules, 1968 etc, are following the principles & procedures applicable to all Central Government Employees. Every Major departments of Union of India issue their Service rules as like Railways and there is no uniqueness for Railways except that of functional, operational & Administrative requirements.

6. That all the Railway Rules i.e. Pay Rules, Conduct Rules, Discipline & Appeal Rules, MACPS rules etc, are only reproduction of respective DOP&T rules with minor changes to suit to the Railways vocabulary.

For Pay Rules or MACPS rules, there was no need for Railways to get separate approval from Ministry of Finance. Railways issue order based on the DOP&T order without deviating from any principle followed by DOP&T and Railway Ministry cannot take any decision of its own in Pay rules etc.

7) That with regard to the averments made by the Respondents that Allocation of Business rules exclude Railway ministry in matter regarding classification of posts and grant of Gazetted status in relation to service, it may be submitted that, as per settled law no Rule can be framed by the Railways or by any other Department or Ministry which is discriminatory or in violation of Articles 14, 16 or 39 of the Constitution of India.

Classification of posts directly affects the Avenues of Promotion of the Applicants besides other benefits. As such, the discriminations viz-a-viz other Central Government employees' is violative of settled law and ultra vires the Constitution of India.

8. That Railway Service Revised Pay Rules 2008 (RBE No108/2008), First Schedule Section-I on Revised Pay Structure & First Schedule Section-II on entry pay in the revised pay structure for direct recruits appointed on or after 1.2.2006 are exactly same as the First Schedule of Central Civil Service revised pay rules 2008.

9. That Rule 2 of CCS (PR) 2008, explanatory memorandum, doesn't exempt Railway employees from the purview of CCS (RP) Rules 2008. Both Railway & Defence Ministry have issued their Revised Pay Rules strictly based on Central Civil Service Rules only.

10. That Railways is not empowered to follow separate set of Pay Rules deviating from Central Civil Service Rules issued after Government's acceptance of every Pay Commissions orders.

11. That this petition seeking quashing of Railway Board order PC.VI/2009/I/RSRP/4 dated 08.01.2010 [RBE No.05/2010], the order is issued based on Foot Note (iii) of First Schedule Part-A Section-I of Railway Services (Revised Pay) Rules 2008 notified via GSR 643 (E) dated 4.9.2008. So, this Gazette notification also needs to be corrected as per other CCRs.

12&13. That the Revised classification of Railway service posts after implementation of 6th CPC pay structure has not been reviewed keeping in view administrative, functional, operational requirements etc, – leading to filing of this petition.

14. That the applicants have not claimed any relief on procedure for appointments or related norms.

15. That no drastic upheaval will happen by changing the post of petitioners as Group 'B', since the applicants (SSE, CMS, CDMS & Sr.

Engineer /IT) are discharging almost similar responsibilities in addition to any other duties & responsibility being assigned to them on being Classified as Group 'B' officers.

In other Central Government departments the overall ratio of Gazetted to non-Gazetted employees is 1:20. In Railways, - the ratio is 1:114, in spite of an essential need for higher level of Supervision and intensive management required on the Railways to ensure safety and efficiency on the Railways due to all the modernization & up-gradation of technology on Railways and introduction of superfast trains the Group 'B' status being derived to the applicants.

16. That the decision for classifying them as Group-B may be taken based on the demand made from staff side duly keeping in view Pay Commission recommendations, DOP&T orders, service conditions, etc. Also, all of those categories do not supervise 5 tiers of semi skilled, skilled & highly skilled workforce and Supervisory cadres, along with clerical cadres, under them.

17. That classifying the posts of SSE, CMS, CDMS & Sr. Er/IT as Group-B will improve administrative, functional and operational efficiencies of the Railways.

18. That the cadre restructuring for Group C posts on the Railways has been done four times since 1984 (i.e. in 1984, 1993, 2003 & 2013) for Group C staff (and more so for Group B & Group A) with functional justifications and matching financial savings. Thousands of posts of various categories have been upgraded as a result of Cadre Restructuring.

This exercise brought some relief to the employees (and Officers) at every level, except those in the apex scale in Group-C (pre-revised Rs.7450-11500 or presently in Grade Pay of Rs.4600 PB-2 Rs.9300-34800) never benefited by it as none of the posts of SSE, CMS, CDMS were ever upgraded as a result of Cadre restructuring on the Railways.

Every department of central Government is increasing the number of gazetted posts for effective & efficient governance but, Railways is not doing so in spite of huge need of it on Administrative & functional justifications.

According to Census of Central Government employees published by Ministry of Labour, between the year 2001 and 2008 number of Group-B employees have increased to the tune of 35.65% from 1,59,517 to 2,47,822 despite of reduction of total number of employees to the tune of 24.5% from 38,76,395 to 31,11,610 which is being shown in following chart. The above clearly shows the discrimination being meted out to the applicants.

| Year | Number of posts classified as Group-B | Total Government employees | Central Government employees | Percentage to the total |
|------------|---------------------------------------|----------------------------|------------------------------|-------------------------|
| 2001 | 159517 | 3876395 | | 4.12% |
| 2008 | 247822 | 3111610 | | 7.96% |
| Difference | (+) 35.65% | | (-) 24.5% | |

Part of Census of Central Government employees are reproduced below: -

Census of Central Government employees as on 31st March 2001

Table-6

REGULAR CENTRAL GOVERNMENT EMPLOYEES CLASSIFIED BY
GROUP OF POSTS HELD
(2001)

| Group of posts | 2001 | |
|----------------|------------------|----------------|
| | No. of Employees | % age to Total |
| A | 97976 | 2.53 |
| B | 159517 | 4.12 |
| C | 2513252 | 64.83 |
| D | 1105650 | 28.52 |
| TOTAL | 3876395 | 100.00 |

Census of Central Government employees as on 31st March 2008

Table-6

REGULAR CENTRAL GOVERNMENT EMPLOYEES CLASSIFIED BY
GROUP OF POSTS HELD
(2008)

| Group of posts | As on 31 st March, 2008 | |
|----------------|------------------------------------|----------------|
| | No. of Employees | % age to Total |
| A | 92716 | 2.98 |
| B | 247822 | 7.96 |
| C | 1857222 | 59.69 |
| D | 913850 | 29.37 |
| TOTAL | 3111610 | 100.00 |

19. That there is an administrative need to link the number of posts in Group-A, B & C and the Railways fully accepts it as per its own records and documents received by the Applicants under the RTI Act.

In the meeting convened by Member Staff (MS) Railway Board on 19.07.2007, (page 32 & 33 in Annexure-A-17) it was agreed there was need to upgrade the management cadre to develop and monitor the advanced technology, increased staff productivities and fast changing operation, on Railways. The meeting also took note of stagnation, resulting from non-implementation of up-gradation from Group-C to Group-B.

Parts of minutes are reproduced below: -

Minutes of meeting chaired by Member Staff (MS) held on 19.07.2007

A meeting was convened on 19.07.2007 in MS's chamber, which was attended by Adviser (Staff), Advisor Finance, DEF(F) and the undersigned along with JDPC to discuss the modalities for processing implementation of the up-gradation scheme for Group-C employees to Group-B. All were briefed about the background of the case and the salient issues involved.

All concerned noted the intent of the top management to implement the scheme and of the assurance given to the Federations, for a favourable decision. In fact there is a need to upgrade the management cadre to develop and monitor the advanced technology, increased staff productivities and fast changing operation, on Indian Railways.

While Cadre Restructuring of all groups of staff and officers and reclassification from Group 'D' to 'C' has taken place, no such step has been taken for advancement of staff from Group 'C' to Group 'B'. The meeting took note of stagnation resulting from non-implementation of up-gradation from Group 'C' to Group 'B'. MS also indicated that the Railway Ministry remains the solitary exception in non-

implementation of the DOP&T's order for reclassification of posts issued in 1998. In view of this it was agreed that there is sufficient ground to move forward with the scheme.

The modalities for implementation of the scheme was discussed and the meeting took note of the fact that the proposal apart from reclassification also involved up gradation of posts and as such, would need to be referred to the Ministry of Finance, for approval. On being indicated that the MOF may not entertain such a proposal at this stage, when matters relating to pay, allowance, etc were under consideration of the 6th CPC, it was opined that process may be initiated for a minimum number of posts to be upgraded, for which functional justification would be provided for each such post by the Railways. The Zonal Railways would need to be suitably addressed, for obtaining the requisite information, so as to process the case further.

Before action is taken on the above lines, may kindly approve.

B.B.VERMA

EDPC-1

20. That this OA is not seeking changes in the selection procedure to be followed or being followed for selection to Group-B from Group-C.

It is pertinent to note that Group-B entry in all other Government departments happen either in Rs.4600 Grade Pay or in Rs.4200 Grade Pay. It is only in the Railways that the Group B starts from Grade Pay of Rs.4800 – ignoring those in Grade Pays of Rs. 4200 and Rs. 4600.

21. That the Ordnance factory and other Defence establishments in which similar type of categories are available like applicants' category in Railways, have classified the post of Charge man/ Junior Engineer (JE) in Rs. 4200 Grade Pay as Group-B (non-Gazetted) and Junior Works Manager in Rs. 4600 Grade Pay as Group-B (Gazetted).

22. That Considering the factors such as duties & responsibilities, position in the hierarchy, various functional, operational, administrative considerations etc. in a note on 25.5.2007 Member Staff (MS) Railway Board (page 21 in Annexure-A-17) had agreed that the demand is justified as in addition to large scale stagnation in the highest grade in the maximum of the grade, there is a massive up gradation of technology, up gradation of management and IT practices in IR and further noted that reclassification from Group-C to Group-B has been very marginal and is needed for enlarging the management category.

Advisor Staff in his note (Page 22 & 23 of Annexure-A-17) agreed that "the proposal of up gradation of Group 'C' senior most supervisors to Group 'B' is also in compliance of the DOP&T order dated

20.04.1998, which suggested that a Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs. 9,000 but less than Rs.13,500 be classified as Group 'B'".

Further notes made by Financial Commissioner (FC) (Page 21 to 24 of Annexure-A-17) also went on to justify the reclassification from Group-C to Group-B and financial concurrence was also given to the proposal, which are reproduced below: -

Minutes of Board meeting on the subject of upgradation of posts in the Grade Pay Rs.7450-11500 to Group-B in scale 7500-12000.

Member Staff (MS) Note dated 25.05.2007

The issue of up gradation of highest grade of Group 'C' to Group 'B' is a longstanding agenda item in various formal forums from the 2 recognised Federations. The demand is justified as in addition to large scale stagnation in the highest grades at maximum of the grade, there is a massive up gradation of technology, updation of management and IT practices on Indian Railways.

Whole Group 'A' cadre, Group 'C' cadre and Group 'D' cadre have been restructured and there has been reclassification of Group 'D' post to Group 'C' posts in large number of categories. But re classification from Group 'C' to Group 'B' has been very marginal and is needed for enlarging the Management Cadre.

However, financial evaluation and issue of approving authority may be viewed as projected in the above note.

K.C.Jena

Member Staff

Financial Commissioner (FC) Note dated 26.5.2007

During discussions held in many forums one issue that used to get highlighted was the acute shortage of supervisory officers (in Junior officers category) which might affect the huge outlay of plan expenditure and also the growth in revenue expenditure related works. In case the shortage persists we may have to resort to outsourcing of such works in significant volumes to outside agencies like Project Management Consultancies.

We should try to work out the above financial impact of outsourcing at least as a rough estimate so that the Rs.51 crore consequential impact of this measure be validated.

Subject to this being done I have no objection to this proposal, but before we approach MOF/DOP&T, it is better to provide some justification on the lines suggested. Any other benefits, that we can think of will add to the strength of the proposal.

MS in consultation with other members may attempt such an exercise.

Financial Commissioner

Advisor Staff note dated 30.05.2007

As already indicated above larger management cadre is required to absorb and capitalize huge investment, technology induction, formation of PSUs and extension of Railway System. The process of additional investments, change of technology and extension of railway system will continue to exist and need for more managers is going to be there. The proposal of upgradation of Group 'C' senior most supervisors to Group 'B' is also in compliance of the DOP&T order dated 20.04.1998, which suggested that a Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs.9,000 but less than Rs.13,500 be classified as Group 'B'

It is therefore, once again proposed that keeping in view the large scale of upgradation of Group 'A' posts and cadre restructuring of Group 'C' and Group 'D' posts, it is necessary that some fillip to the upgradation of junior management cadre i.e. upgradation of Group 'C' posts to Group 'B' posts is also done to absorb the ensuing changes in Railway working. The observations of FC to assess the impact of the outsourcing to financially justify this proposal would be done in due course before the case sent to Hon'ble MR for approval.

P.K.Sharma

Advisor (Staff)

30.05.2007

Financial Commissioner (FC) concurrence dated
31.5.2007

Originally when this was discussed by Board, it was stated to be a revenue (near) neutral proposal because most of the staff who would be the beneficiaries would have reached the maximum of their pay scales. If at all there is any marginal financial implications, that would be more than off-set by the possible savings from outsourcing the supervisory man power through project management and consultancies for supervisions.

The next five year plan provides Rs.250,000 cr plan expenditure ie 2007/08 – 2012 as compared to a plan expenditure of Rs.81000 cr in 10th plan period. This outlay requires a massive supervisory manpower for effective and safe implementation. That shortfall will have to be made good through outsourcing (PMCs). It is here that we will be able to obtain savings through these upgradations.

*These should be quantified and kept on record.
Subject to such an exercise, I concur with this proposal.*

Financial Commissioner

23. That there is no need for fresh stenographic assistance. SSE, CDMS, CMS & Sr.Er/IT are already having separate offices in their command, hence no additional expenditure will happen on the account of fresh stenographic assistance and other related matters. Value of

passes issued to Railway Employees and Officers are calculated only on notional value. Moreover utilisation of passes are subjected to availability of leave and other convenience of employee as well their dependents as also availability of pass quota in reservation in trains which further reduces pass usage. Moreover the travel entitlements like LTC (Leave Travel Concession) are available to incumbents in all other ministries according to their classifications and are not exclusive to Railways.

24. That lot of technical advancements, functional, managerial & administrative advancements are happening continuously to improve the efficiency, productivity, safety and customer satisfaction in Indian Railways. Age old argument of exemption to Railways on the classification of posts doesn't hold any merit as evident from the notings of Additional Member Staff, Member Staff & Financial Commissioner cited in previous paras, which explains the necessity for substantial enlargement of management category.

25. That Hon'ble CAT/PB, New Delhi in OA No.836/1989 accepted that there was an anomaly in classification of posts of the Applicants on the Railways and directed the respondent to do away with it.

26-27. That the respondents are taking contradictions stated in the reply. As averments of the respondents in letter No. PC IV/89/CRT/3 dated 27.04.1992, OA No. 1038/1992 of CAT Madras and OA

No.2202/1992 of CAT Delhi are very much irrelevant in present days and doesn't hold any merit and Railway Board clearly made attempt to classify the posts in the highest Group-C (pre-revised) scale of Rs.7450-11500 to Group-B Gazetted. Part of the railway Board note (in page 15 of annexure-A-17) is reproduced below,

V CPC had recommended revised classification of all Central Government civil posts into six categories namely top executives, senior executives, executives, supervisory staff, supporting staff & auxiliary staff. This recommendation was not accepted by the Government. DOP&T vide their Gazette Notification, dated 20-04-98 conveyed orders for classification of posts more or less on the existing pattern placing Government servants into group 'A', 'B', 'C' & 'D'. As per this O.M., posts in the pay scale of Rs.5500-9000 and above but below Rs.8000-13500 have been placed in Group 'B', though all of them are not gazetted.

Traditionally, Railways have adopted a classification different from the DOP&T's classification. A table indicating slab-wise classification in the IVth and Vth scales is placed below.

At this juncture, Federation had raised an issue in the forum of PNM for reclassification of all the posts in apex Group 'C' scale of Rs.7450-11500 as group 'B' gazetted. The matter was first examined by the Board in its meeting held

on 17-12-98 and after taking into account the various implications, it was decided to maintain status quo. The issue of classification was re-examined by the Board in its meeting held on 26th and 29th July, 1999 and then again on 30-9-99 wherein it was decided that a committee consisting of AM(Staff), OSD(A/cs) and OSD(Management Services) would examine the implications including financial, of reclassification of the posts in the highest Group 'C' scale of Rs.7450-11500 to Group 'B' gazetted.

28. That respondent has quoted inappropriate case & Judgement, since after the judgement of Supreme Court in CA No.4647/1992 dated 21.01.1998, Railway Board had themselves agreed to the need of classification of these posts as Group-B keeping in view their administrative, operational and functional requirements as explained in previous paras with the relevant notings of Railway Board members which is attached in annexure A-17.

29. That the decision taken on classification of posts during Third Pay Commission & Fourth Pay Commission, Pay Scales will not hold any merit in the present technologically driven era. At the time of Third Pay Commission & Fourth Pay Commission, Railways were having high number of unskilled workforce with conventional work execution methods. Over the years Railways have introduced lot of new technologies, upgraded its working system, and improved its productivity & safety through various methods, which warrants clear

administrative reforms with higher number of managerial posts. Further, outsourcing of various activities and services involving crores of rupees has become prevalent in all the technical departments of Railways over the years. Effective execution of these out sourced activities need higher degree of functional, operational and administrative requirements. It is pertinent to note that these employees (SSE, CMS, CDMS & Sr. Engineer /IT) are responsible for the proposal, finalisation, execution and validation of these outsourcing activities. These facts have been wilfully ignored by the respondent merely to justify their wrongful stand.

In para 44.4 of Fifth Pay Commission recommendation, DOP&T have clarified that in classification posts, though there are certain exceptions to the rule, like the case of Assistants of Central Secretariat, the effort was to ensure that posts carrying similar functions were given similar classification.

Para 44.4 of Fifth Pay Commission recommendation is reproduced below,

44.4 Department of Personnel and Training have clarified that though there were certain exceptions to the rule, like the case of Assistant of Central Secretariat, the effort was to ensure that posts carrying similar functions were given the same classification. There were situations in which the functions of a post might not adequately match

the high pay scale attached to it and therefore, though they were eligible for higher classification, they were classified at a lower level.

In Ministry of Defence, Ordnance Factory Board, posts of Asstt. Foreman / Foreman / Store holder in the pre revised pay scale of Rs.6500-10500 and Junior Works Manager in the pre-revised pay scale of Rs.7450-11500, which are placed in the Grade Pay of Rs.4600 after the implementation of Sixth Central Pay Commission recommendations, which are having very similar nature of functions like applicants posts in Railways (SSE, CMS, CDMS & Senior Engineer/IT) are classified as Group-B Gazetted.

In para 2.2.8, Sixth Pay Commission has recommended Group-B even for the posts in the pre-revised scale of Rs.5000-8000 clearly understanding the implications of its recommendations and the requirement of high level of governance. Sixth Pay Commission didn't mention about any exemption given to any department and this recommendation has been accepted by Government.

Para 2.2.8 of Sixth Pay Commission recommendation is reproduced below,

Running Pay Bands 2.2.8 The Commission is recommending introduction of running pay bands for all posts in the Government presently existing in scales below that

of Rs.26,000 (fixed). Four distinct running pay bands are being recommended – one running band each for all categories of employees in group 'B' and 'C' (posts in the scale of Rs.5000-8000 have, as a result of layering and elongation of certain scales, been placed in Group 'B') with 2 running pay bands being given for all Group A posts as under:-

- Posts up-to the Fifth CPC scale of Rs.16400 – 20900.*
- Posts higher than Rs.16400 – 20900 but below that of Secretary to Govt/equivalent (Rs.26,000 Fixed)*

30. That Pay scales, promotional policies, avenue of promotions, classification of posts, Allowances and other staff matters are being reviewed by various expert bodies particularly by Pay Commissions at regular intervals with clear cut recommendations including their Administrative, financial & functional implication. These accepted recommendations are implemented in all central government departments. Applicants' plea of classifying their posts (SSE, CMS, CDMS & Senior Engineer/IT) as Group-B (gazetted) has been recommended by various Pay Commissions and accepted & implemented by Government through DOP&T's order thereafter. Even though Railways is excluded (not exempted) from following the classification order issued by DOP&T, there is also declaration made by

DOP&T to Fifth Pay Commission that *"the effort was to ensure that posts carrying similar functions were given similar classification"*.

Similarly posts with similar functionalities in Ordnance Factory (Ministry of Defence), CPWD, MES, Department of posts & Telecommunications, etc in the Grade Pay of Rs.4600 are classified as Group-B (Gazetted). Even the similar posts available in various state Governments are also classified as Group-B (Gazetted).

Service conditions in Railways keeping in view functional, operational and administrative requirements to ensure safe, effective & efficient train operations requires enlargement of management cadre as evidently accepted by Railway Board as per file notings made by Member Staff, Financial Commissioner, Additional Member Staff, Railway Board etc.

It was also accepted by Member Staff that, *"whole Group-A cadre, Group-C cadre and Group-D cadres have been restructured and there has been reclassification of Group-D posts to Group-C posts in large number of categories. But reclassification from Group-C to Group-B has been very marginal and is needed for enlarging management Cadre."*

Financial Commissioner of Railways also granted formal concurrence for enlargement of management cadre accepting the requirement of massive supervisory officers (in junior officers' category) to meet the needs of huge outlay of plan expenditure and also growth

in revenue expenditure. He also recorded that it was stated to be revenue (near) neutral proposal and if at all there is any marginal extra financial implications, which would be more than off-set by the possible savings from outsourcing.

Full Board meeting held on 29.11.2011 decided and directed that, *"a comprehensive proposal on restructuring involving Group-C, Group-B and Group-A cadres be worked out to enable Board to take a considered view"*.

Respondent in their reply wilfully withheld these facts from this Hon'ble Tribunal and tried to mislead with malafide intentions.

Plea of the applicants is based on the recommendations of various Pay Commissions, Government's acceptance and implementation of the same there after. Similar posts with similar functionalities in other Government departments are classified as Group-B (Gazetted). Railway Board agreed that there is an urgent need to increase the number of managerial posts for Administrative, functional & operational requirements of Railways, Percentage of Gazetted cadre is the least in Railways among all Central Government departments which need to be improved drastically since Railway is a multi-disciplinary operation system to ensure safe, effective and efficient train operations.

Para wise reply ON MERITS:-

1 to 3. That the contents of the reply to this paragraph are wrong as alleged hence denied. However in reply to the contents of these paras it is submitted that reply to preliminary submission by respondents there is clear case of anomaly, illegality and Discrimination in classification of posts in Railways. The case is within the jurisdiction of this Hon'ble Tribunal. The reply given above in preliminary submissions may be read as part of this para.

4(1). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para.

4(2)-(3). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. It is the fact that Railways has not followed the recommendations of Third and Fourth Pay Commissions on classification of posts and orders issued by DOP&T thereafter.

4(4). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be

read as part of this para. Central Administrative Tribunal, Principal Bench in OA No.836/1989, directed the respondent to reconsider the matter of placing the members of Association in Group 'B' to do away with the existence of anomaly. Decision conveyed by respondent dated 27.4.1992 is not relevant today and there is urgent need to upgrade these categories to Group-B (Gaz) on administrative & functional and legal grounds as narrated in reply to the preliminary submissions of respondent which may be read as part of this para.

4(5). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Reasons submitted by the respondent for O.A. No.1038 of 1992 before Hon'ble CAT Madras & O.A. No.2202/92 Hon'ble CAT Principle Bench New Delhi were reviewed by Railway Board and it had come to the conclusion that there is an urgent need to expand the Group 'B' cadre and agreed that *"The issue of upgradation of highest grade of Group 'C' to Group 'B' is a longstanding agenda item in various formal forums from the 2 recognised Federations. The demand is justified as in addition to large scale stagnation in the highest grades at maximum of the grade, there is a massive upgradation of technology, updation of management and IT practices on Indian Railways"*.

Judgement of Hon'ble Supreme Court in CA No. 4647 dated 21.1.1998 is not applicable to the facts and circumstances of the present case as the same was passed before DOP&T's submission to

Fifth Pay Commission which states that, in classification of posts, though there are certain exceptions to the rule, like the case of Assistants of Central Secretariat, the effort was to ensure that posts carrying similar functions were given similar classification. All similar posts in the Grade Pay of Rs.4600 in other central Government departments like Defence ordnance factory, DGQA Department of Defence, CPWD, MES, etc. have been classified as Group 'B' Gazetted.

4(6)-(8). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Even though Fifth Pay Commission had recorded that, in classification of posts certain deliberate departure have been made in certain cases, DOP&T had agreed to Fifth Pay Commission that, "the effort was to ensure that posts carrying similar functions were given the same classification".

Fifth Pay Commission vide para 44.19 had done away with existing system of classification and recommended a new classification comprising of

- i. Auxiliary staff
- ii. Supporting Staff
- iii. Supervisory Staff
- iv. Executives
- v. Sr. Executives
- vi. Top Executives

All these recommendations were made purely based on the scale of pay and no other criteria had been mentioned.

Sixth Pay Commission's recommendations on classification of posts didn't exclude any ministry or category from its classification, which is reproduced below,

Running Pay Bands 2.2.8 The Commission is recommending introduction of running pay bands for all posts in the Government presently existing in scales below that of Rs.26.000 (fixed). Four distinct running pay bands are being recommended – one running band each for all categories of employees in group 'B' and 'C' (posts in the scale of Rs.5000-8000 have, as a result of delayering and elongation of certain scales, been placed in Group 'B') with 2 running pay bands being given for all Group A posts as under: -

- Posts up-to the Fifth CPC scale of Rs.16400 – 20900.*
- Posts higher than Rs.16400 – 20900 but below that of Secretary to Govt/equivalent (Rs.26,000 Fixed)*

The contention of the respondents are completely wrong since the recommendations of Fifth & Sixth Pay Commissions on classification of posts are based on scale of pay or Grade Pay, applicable to all Central

Government Employees and they didn't exclude any Government department from their recommendations on classification of posts.

4(9). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Railway Services (Revised Pay) Rules, 2008 strictly follow the principles & policies issued by DOP&T except the case of Classification of posts.

4(10)-(14). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. It is pertinent to note that all these departments i.e.(Defence ordnance factory, DGQA Department of Defence, CPWD, MES, etc) have classified the posts in the Grade Pay of Rs.4600 which are having similar functions, as Group 'B' Gazetted. The claim of the applicants' Association is perfectly since DOP&T had agreed to Fifth Pay Commission that, "the effort was to ensure that posts carrying similar functions were given the same classification" and Sixth Pay Commission had also given its recommendation on classification of posts uniformly to all Central Government departments.

4(15). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are

retreated. The reply given above in preliminary submissions may be read as part of this para. The contents of said paras of OA are about recommendations of various pay commissions and orders issued by DOP&T thereafter. There is no scope for misconceived and misdirected view on them. It is only the intention of respondent to mislead the Hon'ble Tribunal.

4(16)-(17). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Respondent has mentioned about the cases pertaining to the year 1992, many changes have taken place since then, two pay commissions have given their recommendations which are explained in preceding paras, Railway Board also agreed on the demand and said that there are administrative needs to upgrade the apex Group 'C' posts to Group 'B'.

4(18). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Purpose of constituting many expert bodies to study & submit their recommendations are to follow their recommendations to improve the functional & operational efficiency, safety of train operation etc – not to ignore them. As already detailed in reply to preliminary submission and in preceding paras, Railway Board

agreed with the applicants' demand that there are functional, operational and administrative requirements of the organisation to ensure safe, effective and functioning of the system.

4(19). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Adamant attitude of respondent is reflected in this para, as in Government Service there is no career progression.

There are nearly 8 lakh employees available in Group 'C' technical cadres of Railways, whose promotion chances are limited to the vacancies generated from about 4200 Group-B posts available in Group 'B' technical cadre.

MACPS merely places the employees in the immediate next higher grade pay on financial upgradation after completing 10, 20 & 30 years of service. Financial upgradation on MACPS cannot be considered as promotion and it is obvious that MACPS cannot place any employee in Group 'B'.

Merely because the post of Secretary to GM/RCF, Dy.CME/Monitoring etc. are at present occupied by officers who were recruited as Technical Supervisors cannot be considered to imply that all those who are recruited as Technical Supervisors are getting good career progression. Respondent, as a responsible Management of one of the biggest Railway system in the world and among the largest single employer in the world is not attempting factually & scientifically to the

applicants' plea, instead the respondent is only attempting to mislead the Hon'ble Tribunal by giving false and outdated information.

Respondent is not able to specify any career progression to these important categories whose performance is having direct bearing on performance and safety of train operation. Longer induction training and mandatory refresher courses demonstrate the important role played by these categories in safe train operation. These facts are being ignored intentionally by the Respondent.

All these stagnations exist even after the implementation of Cadre restructure order (CRC) w.e.f. November 2013, since the benefit of CRC will not be available to apex Grade Pay of Rs.4600.

4(20). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Respondent is not in a position to correctly explain the reasons for huge difference in overall ratio of Gazetted to Non-Gazetted which is 1:20 in Central Government Departments and 1:114 in Railways. Administrative requirement of more number of managerial posts is accepted by Railway Board to ensure safe and effective functioning of the system which are placed in reply to preliminary submission by respondents.

4(21)-(22). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are

retreated. The reply given above in preliminary submissions may be read as part of this para. It is the fact that MACPS is no replacement for regular promotions and career progression. The selection procedure explained is not exclusive for Group 'B' alone and this OA doesn't have any claim on selection procedure.

4(23). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. A career with no promotional opportunity is definitely not enticing for any candidate meritorious or not. The posts of these employees (SSE, CMS, CDMS & Sr. Engineer /IT) with element of Direct Recruitment provides only marginal avenues for promotion. The recruits are stagnated in the initial post itself since only around 4200 Group-B posts are available in the Technical departments in which the members of the applicants' Association is working. Their promotions are only limited to only the vacancies created in these 4200 Group-B posts.

4(24)-(26). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Applicants are entitled for the relief as per law since similarly placed employees in the Grade Pay of 4600 in Departments of Defence, CPWD, MES, etc are placed in Group 'B'.

4(27)-(28). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Claim of applicants is absolutely right on merit as explained in answer to preliminary submission and in the preceding paras.

4(29). That contents of this para needs no reply.

4(30). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para.

4(31)-(32). That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. The applicants have prayed for relief based on the recommendations of various Pay Commissions, Government's acceptance and implementation of the same thereafter. Similarly placed posts with similar functionalities in other Government departments are classified as Group 'B' (Gazetted). Railway Board agreed that there is an urgent need to increase the number of managerial posts for Administrative, functional & operational requirements of Railways.

Percentage of Gazetted cadre is the least in Railways among all Central Government departments which need to be improved drastically since Railway is a multi-disciplinary operation system to ensure safe, effective and efficient train operations.

5. That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para.

6. That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Applicants have availed all the channels available to them and have valid & legal reasons to approach this Hon'ble Tribunal.

7. That the contents of this para needs no reply.

8 & 9. That the contents of the reply to this paragraph are wrong as alleged hence denied. The contents of corresponding para are retreated. The reply given above in preliminary submissions may be read as part of this para. Applicants are entitled for the relief as prayed for in the OA.

10-12. That the contents of these paras needs no reply.

It is therefore respectfully prayed that the O.A. may kindly be allowed with costs in the interest of justice.

Dated 06.11.2014

Chandigarh

Signature of Applicant

Through Counsel

(S.P.GARG) Advocate

Counsel for the Applicants

VERIFICATION : I, Darshan Lal, S/o. Shri Shri Mehar Chand Aged 50 years, Working as Senior Section Engineer, Rail Coach Factory, Kapurthala, Resident of 148-A, Type-IV, RCF Colony, Kapurthala, Punjab do hereby verify the contents of para no.1 to 4 and para no.6 to 11 are true to my personal knowledge and para no.5 is believed to be true on the legal advice sought and I have not suppressed any material fact. No part of it is false and nothing material has been kept concealed therein.

Dated 06.11.2014

Chandigarh

Signature of Applicant