

K.V. Ramesh

**BEFORE THE HONOURABLE
CENTRAL ADMINISTRATIVE
TRIBUNAL MADRAS BENCH**

OA No.1568 of 2017

Indian Railways Technical
Supervisors Association
represented by Shri.K.V.Ramesh,
Chennai - 82 and 11 Others

.....Applicants

-Vs-

Union of India rep. by
The Secretary,
Govt. of India,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi - 1 and 4 others

.....Respondents

**Reply Statement filed
on behalf of Respondents**

Recd on 1/7/19

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FILED ON BEHALF OF RESPONDENTS

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Certified that the above documents are true copies of originals.

Dated at Chennai on this the 28th day of June, 2019.

Counsel for Respondents

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.....Respondents

REPLY STATEMENT FILED ON BEHALF OF RESPONDENTS

The address for service of all the notices and process on the respondents is that of their Counsel Shri D.Simon, Railway Advocate, Room No.25 Q&K, First Floor, Pandu Clix Plaza, No.330, Thambu Chetty Street, Chennai - 600 001.

The above said respondents deny all the averments and allegations contained in the OA except those that are specifically admitted and put the applicants to strict proof of the same.

The OA has been filed against the disposal of Ministry of Finance (Dept. of Expenditure) O.M. dated 29.11.2016 which was made in obedience of the directions dated 21.07.2016 of this Hon'ble Tribunal in OA No.706/2013.

It is humbly submitted that based on the accepted recommendations of 6th Central Pay Commission constituted by the Govt. of India, the Central Government had implemented the revised pay structure of various categories of central government employees with effect from 01.01.2006. Further the recommendations of the 7th Pay Commissions were also accepted by the Government and the same were implemented with effect from 01.01.2016. Aggrieved against the allotment of equal Pay Band and Grade

Pay/Level to the applicants as well as Sr.Technicians/MCMs, Chief Office Supdts. etc. on such revision, the OA has been filed.

In this regard it is humbly submitted that a bench of three learned judges of the Hon'ble Supreme Court in the case of State Bank of India Vs. M.R.Ganesh Babu [2002(4)SCC 556] have expressed in para 16 that:

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystalised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scale of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected to an incumbent, would be a value judgment of the authorities concerned which, if arrived at bonafide, reasonably and rationally, was not open to interference by the Court."

It is also submitted that the Apex Court in the case of State of West Bengal and Ors. Vs. Hari Narayan Bhowal and Ors. [1994(4)SCC 78] has observed that:-

"This Court in the case of Delhi Veterinary Assn. Vs. Union of India [1984(3) SCC1] said that in addition to the principle of 'equal pay for equal work', the pay structure of the employee of the Government should reflect many other social values. It was said:

'The degree of skill, stain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task,

hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level of which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualification prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativities with other jobs in the same service or outside are also relevant factors.'

In view of the above judgments, the present OA praying for higher Grade Pay than that already recommended by the 6th Central Pay Commission and accepted by the Government has no merit and may be dismissed by this Hon'ble Tribunal.

It is also submitted that Hon'ble CAT Chandigarh vide it's order dated 12/03/2016(Annexure R-1) in OA No.060/211/2014 (IRTSA Vs UoI & ors) had passed severe strictures against the IRTSA. The operative part of judgment is stated as

"We find no justification for grant of Group B status to applicants. The OA is a gross abuse of process of law because the matter had already attained finality with order dated 21/02/1992, letter dated 27/04/1992 and order dated 19/04/1994 and dated 04/01/1996. The OA is completely devoid of substance and is accordingly dismissed. No costs."

The 6th Pay Commission was constituted under the Chairmanship of Justice B.N.Krishna, Chairman with Prof Ravindra Dholakia, Sri J.S.Mathur and Smt. Sushama Nath M.S., as members and the recommendations of the Commission have been implemented by the Government notifying Central Civil Services (Revised Pay) Rules 2008, vide GSR 622(E) dated 29.08.2008, which are statutory rules notified in exercise of powers conferred by proviso to Article 309 of the Constitution of India. As per Memorandum explanatory to Rule 2 of the above rules, these rules do not apply to the employees under the Ministry of Railways. Corresponding statutory rules for Railway employees were notified by Ministry of Railways as Railway Services

(Revised Pay) Rules, 2008, vide statutory notification GSR 643 (E) dated 04.09.2008. Applicants in the instant OA, being Railway Servants, are governed by statutory Railway Services (Revised Pay) Rules 2008 and Schedules issued by Ministry of Railways on subsequent dates. A copy of the said notification dt.4.9.08 is produced herewith and marked as **Annexure R-2**.

As regards para 4.1 and 4.2 no remarks as the same are detailing about the existence of the Petitioner Association.

As regards the averments in para 4.3 to 4.7 of the OA, the respondents submit that the 2nd respondent had consciously considered and disposed the issue on just and reasonable grounds. (Ann. A-7)

As regards the averments in para 4.8(1) of the OA, it is humbly submitted that the Successive pay Commissions have reduced the number of pay scales available under Government of India. Further, 6th CPC has introduced the system of de-layering of government machinery by merging various pre-revised scales and introducing the system of four running pay bands. In such a situation it is not feasible to ensure separate pay band/grade pay for each pre-revised scale/grade.

It is further submitted humbly that successive Pay Commissions have been making innovative recommendations to bring about improvements in public services. With the implementations of schemes like ACP / MACP Schemes, it is very common that Junior (subordinate) and senior (supervisor) are in the same pay/scale of pay. Further, there are also various situations where a junior (subordinate) may be drawing higher pay/pay scale as compared to his senior (supervisor).

As regard the averments in para 4.8(2)(a) to (m) the respondents humbly submit that a new higher grade in the form of Master Craftsmen was created based on the specific recommendation of 3rd Central Pay Commission to retain Skilled artisans in their line and not to opt the supervisory posts of

Technical Supervisors etc. The Master Craftsmen and Jr. Engineers have been in same/identical pay structure right from 1.1.1986. They were in scale Rs.1400-2300 (during 4th CPC/01.01.1986-31.12.1995) and Rs.5000-8000 (5th CPC-01.01.1996-31.12.2005). Thus no situation/ground for anomaly has been created w.e.f. 01.01.2006. 6th CPC had recommended general revised pay structure of PB2 GP Rs.4200 to all other posts in pre-revised pay scale Rs.5000-8000 and 5500-9000. Same has been allotted to Master Craftsmen/Sr.Technician and Jr.Engineers. While the job of Technical Supervisors (JEs) is supervisory in nature, that of Master Craftsmen/Sr.Technician involves skill acquired over a period of time in the given trade which needs to be retained in their line and accordingly a higher scale justified, as recommended by 3rd CPC and continued since then.

It is further submitted that the pre-revised scales of Artisan staff as noted by the Commission in para 7.36.60 (Railways) and para 3.8.27 (elsewhere), were different. Whereas on the Railways pre-revised scale Rs.4500-7000 was available to skilled Grade I Artizans and Scale Rs. 5000-8000 to Master Craftsmen, in other Ministries, Master Craftsmen were in scale Rs. 4500-7000. Further, the normal replacement scale of Rs.5000-8000 was supposed to be PB2 GP Rs.4200 as per the general principles adopted by the Commission and not PB I GP Rs.2800 as recommended by the Commission in para 3.8.27. Further even the commission had recommended in the said para 3.8.27 that Master Craftsmen presently in the scale of Rs.5000-8000 shall be merged in the cadre of Chargeman 'B' who were in scale Rs.5000-8000 and for whom Commission had recommended revised pay structure of PB2 GP Rs.4200.

The recommendations of the Commission were accepted by the Government of India with certain improvements/modifications as a package vide Resolution dated 29.08.2008. However, it was decided by the Government of India vide para 5 of above resolution to refer the recommendations of the Commission in regard to pay scales of Master

Craftsmen in the Ministry of Railways to a Fast Track committee. It was further decided that in the meantime, normal replacement scales (viz. to the scale of Rs.5000-8000) was to apply in the case of Master Craftsmen. A copy of Railway Board's letter No.PCVI/2008/I/RSRP/1 dt.31.10.2008 (RBE 162/2008) issued in this regard is produced herewith and marked as **Annexure R-3.**

As per the decision of government as conveyed vide resolution dated 29.08.2008 notified by Ministry of Finance (which is a Statutory Notification), Master Craftsmen /Sr. Technician on the Railways in pre-revised scale Rs.5000-8000 were placed in revised pay structure of PB2 GP Rs.4200 pending examination of issue by Fast Track Committee vide Note 6 of Board's letter d1.31.10.2008 (RBE 162/2008){R-2}. Further the recommendations of Fast Track Committee were accepted by Government under Gazette Notification GSR 552(E) dated 28.07.2009. A copy of the said Notification is produced herewith and marked as **Annexure R-4.** Based on the above, orders were issued to allot the revised pay structure viz. Rs.9300-34800 (PB2) with Grade Pay of Rs.4200 to the Master Craftsman/Sr.Technicians finally vide Board's letter No.PC VI/2008/IC/9 dt.25.11.2009 (RBE No.205/2009) Annex.A-9 to O.A.

The respondents further submit that the 6th Pay Commission in para 3.8.3-b of its Report has mentioned as under:-

"3.8.3-(b) The Commission has recommended running pay bands and many of the existing pay scales have been merged with a view to de-layer the Government by cutting down the number of hierarchical levels. This would necessitate merger of posts which hitherto were in different pay scales and which, in a few cases, also constituted feeder and promotion posts."

The Commission again in para 3.8.3-g of its Report has mentioned that as a measure of delayering, the Commission has recommended merger of

the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. In a large number of cases, posts in these pay scales have existed as feeder and promotion posts. While the Commission has tried to ensure that the promotion post is normally placed in a higher pay scale, however, in many cases, the same has not been done. Consequently, for a few categories, the erstwhile feeder and promotion posts have been merged. This is a conscious decision of the Commission and has been resorted to in cases where functional justification for maintaining two distinct levels as feeder and promotion post did not exist or where the operational efficiency was not impacted or is likely to actually improve by the merger. In all such cases, the interests of personnel in the erstwhile promotion grade have been protected by ensuring that their seniority as well as higher pay is kept intact in the revised running pay bands being recommended by the Commission.

Thus, in the situation of promotion of Master Craftsmen as Jr. Engineer, though in same Pay Band and Grade Pay, monetary incentive of promotional pay fixation (with benefit of one increment) has been allowed vide Board's letter No.PC VI/2011/IC/I dated 12.9.2013(RBE 95/2013). A copy of the said letter is produced herewith and marked as **Annexure R-5**. This ensures adequate and fair compensation for assumption of higher duties of promotional post.

As regard averments in para 4.8.2(n) & 4.9 it is humbly submitted that the Government of India appointed 7th Central Pay Commission with Justice A.K. Mathur as Chairman and Shri Vivek Rai, Dr. Rathan Roy as Members and Smt. Meena Agarwal as Secretary on 28th February 2014 to examine, review, evolve and recommend changes and desirable feasible regarding principles that should govern the employment structure including pay, allowances and their facilities/benefits in cash or grant having record to rationalization and simplification therein as well as specialized things of various departments under the ambit of the Government of India.

Commission during its tenure, held wide range of consultation and meetings with all the stakeholders including the various staff associations

and federations, including the Association represented by applicants, Indian Railways Technical Supervisors Association. The Commission also sought comments on the representations submitted by various staff associations with respect to the demands raised by them from the concerned Ministries including Ministry of Railways.

Ministry of Railways while furnishing comments to the 7th CPC vide OM dated 13.04.2015 (**Annexure R-6**), mentioned all the facts in a holistic manner involving pay structure of Technical Supervisors cadre of all the Departments highlighting historical background and also brought about the implications on various horizontal and vertical relativities presently exist both within and outside the organization.

7th CPC after having detailed consultation and analyzing the demands submitted by various staff Associations through their memorandum and in the personal meeting held with the commission and also taking into accounts the inputs submitted by the Ministry of Railways submitted its report on 19th November 2015.

The 7th Pay Commission in its recommendations replaced the grade pay and running pay band system and introduced a new pay matrix. The pay matrix comprises two dimensions. It has horizontal range in which each level corresponds to a functional role in the hierarchy and has been assigned the number from 1 to 18. The vertical range for each level denotes pay progression within that level. The starting point of the pay matrix is the minimum pay. On recruitment an employee joins at a particular level and progresses within level as per the vertical range. The minimum is usually on an annual basis based on annual increments during the time of their next promotion on a non-functional financial upgradation he/she progresses one level ahead on the horizontal range. The new pay matrix is common to all the Central Government Employees.

7th CPC in its recommendations neither introduced any new pay scale nor merged any of the pay scales prevailed in the 6th CPC regime and

recommended replacement pay scale for most of the categories except few selected categories.

The 7th CPC dealt with the issue of the Technical Supervisors in its recommendations as contained in para 11.40.104 to 11.40.115. The crux of the recommendations are as below:-

11.40.113 considering the feedback provided by the Railway Board and upon close analysis of the cadre structure, we are of the view that there is some element of stagnation at the GP 4600 stage. Accordingly, it is suggested that Railway Board should consider enhancing the number of posts in the next higher level, with commensurate increase in the number of directly recruited Group 'A' officers so as to maintain the 1:1 ratio, keeping its functional requirement in mind. It is recommended that the percentage of the employee eligible under the upgradation scheme should be changed from 80% to 100%, but the period should be increased from three years to four years of regular service.

Copy of the entire recommendations pertain to Technical supervisors are enclosed as **Annexure R-7**

It may be appreciated that 7th CPC recommended the replacement scales to Technical Supervisors Category after detailed examination only and has also taken into account of anomalies created after implementation of 6th CPC recommendations and inputs provided by Ministry of Railways also. However, 7th CPC decided to recommend replacement scale for this category broadly in line with the recommendations of 6th CPC to grant GP4200 (corresponding pay level 7th CPC, L-6) to Diploma Engineers and GP4600 (corresponding pay level 7th CPC, L-7) to Graduate Engineers. The recommendations of 7th CPC were further scrutinized by an empowered committee of Secretaries headed by Cabinet Secretary and various Secretary level officers of Government of India including Chairman Railway Board and thereafter only the recommendations were accepted by Government of India

and notified by Ministry of Finance resolution dated 25.07.2016. Grant of pay scale to these categories have relativities with similarly placed categories in other departments of Central Government and any decision to grant pay scales to junior engineers and section engineers of Ministry of Railways in isolation would have caused severe ramifications all across similarly placed categories in Government of India.

The recommendations of the 7th CPC to upgrade the pay scales of 13 categories of various categories including the following 6 categories of Ministry of Railways were referred to Department of Personnel and Training for taking comprehensive view.

| S.No. | Name of Post (Para No. of Report of 7 th CPC) | Present Grade Pay | Grade recommended by 7 th CPC |
|-------|--|-------------------|---|
| 1. | Senior Section Officer (Accounts), Ministry of Railways (11.40.83) | 4800 | 5400 (PB-2) on completion of 4 years of Service |
| 2. | Senior Travelling Inspector (Accounts), Ministry of Railways (11.40.83) | 4800 | |
| 3. | Senior Inspector (Store Accounts), Ministry of Railways (11.40.83) | 4800 | |
| 4. | Chemical and Metallurgical Assistant (CMA) Ministry of Railways (11.40.124) | 4200 | 4600 |
| 5. | Chemical and Metallurgical Superintendent (CMS) Ministry of Railways (11.40.124) | 4600 | 4800 |
| 6. | Assistant Chemist and Metallurgist, Ministry of Railways (11.40.124) | 4800 | |

Department of Personnel and Training constituted an inter-ministerial Committee consisting of representatives of DOP&T, Ministry of Finance and Ministry of Railways to examine the issue and the process is not yet complete.

The applicants through their submissions contained in para 4.8(n) and 4.9 has merely reproducing generic nature of the pay structure implemented by the 7th CPC which is no relevance in the context of the case and merely reiterating their grievance that the recommendations are not sustainable without any basis. The applicant has not considered the detailed submission made by the 7th CPC in its recommendations pertain to Technical Supervisors category, a plain reading of which makes abundantly clear that 7th CPC arrived its recommendations after an in depth analysis of various demands raised by the Associations inputs submitted by Ministry of Railways and considering inter-intra departmental relativities prevailing. The applicant has not submitted in substantial reason to negate the logic arrived by 7th CPC while recommended the replacement scale to the Technical Supervisors category.

As regard averments in para 4.10 it is humbly submitted that acceptance of demand of the applicants will have serious implications on various horizontal/vertical relativities within and outside the organization leading to industrial unrest / huge burden on public exchequer. The same will have cascading effect on the promotional hierarchy/avenue leading to demands from many Railway employees for higher Grade Pay. Based on the recommendations of 6th CPC, similar revised pay structure of PB2 /GP Rs.4200 and 4600 has been given to numerous other categories on the Railways which were in pre-revised scales Rs.5000-8000/5500-9000 and 6500-10500/7450-11500. Some of the categories are illustrated below:

| Designation | Grade Pay in Rs. | | Feeder Grade | Grade Pay |
|------------------------|------------------|--|----------------|-----------|
| Station Superintendent | 4600 | | Station Master | 4200 |

| | | | |
|---|------|----------------------------------|------|
| Chief Commercial Inspector4600 | 4600 | Commercial Inspector | 4200 |
| Commercial Superintendent4600 | 4600 | Chief Commercial Clerk | 4200 |
| Reservation Superintendent4600 | 4600 | Reservation Supervisor | 4200 |
| Chief Controller4600 | 4600 | Section Controller | 4200 |
| Head Shipping Inspector4600 | 4600 | Sr. Shipping Inspector | 4200 |
| Chief Staff and Welfare Inspector4600 | 4600 | Staff and Welfare Inspector | 4200 |
| Chief Office Superintendent4600 | 4600 | Office Superintendent | 4200 |
| Private Secretary Gr.II4600 | 4600 | Stenographers Gr.I | 4200 |
| Superintendent (Typist)4600 | 4600 | Chief Typist | 4200 |
| Chemical and Metallurgical Superintendent4600 | 4600 | Chemical and Metallurgical Asst. | 4200 |
| Physiotherapist Gr.I4600 | 4600 | Physiotherapist Gr.II | 4200 |
| Chief Depot Material Superintendent4600 | 4600 | Depot Material Superintendent | 4200 |

As regard the averments in para 4.11 of the OA it is humbly submitted that the Central Pay Commission as for as the categories of Teachers and Nurses are concerned, in para 3.8.3-d to para 3.8.3-f have observed as follows:-

"3.8.3(d) The Commission has also taken a conscious decision to upgrade the pay scales of teachers, especially the primary school teachers. This, again, is a conscious decision because in the

opinion of the Commission, the role of teachers is very important and a higher incentive needs to be extended to this category.

(e) Similarly, higher scales have been recommended for the nursing cadre keeping in view the arduous nature of their duties.

(f) It is emphasized that the focus of the report is to ensure better delivery mechanisms for the citizens of this country. The most frequent inter-face of the common man with the Government is at the level of beat constable and nurses in hospitals and health care. Teachers are critical as they are an investment for the future of the country. To ensure that best available talent enters the Government in these fields and continues to feel motivated to give their best after joining, the Commission has consciously recommended higher entry level pay scales for constable, teachers and nurses. **The Commission is fully aware that these upgradations may upset some relativities, real or perceived, but the recommendations for these upgradations have been made as same were considered necessary to ensure a better delivery system at the focal points of good governance. As stated earlier, disturbance of any of the existing relativity on this account cannot be taken as an anomaly merely on the ground that posts hitherto placed in an identical pay scale have come to lie in different pay scales pursuant to recommendations of this Commission.**

{emphasis supplied}

In this regard it is also submitted that in the case of Union of India and Ors. Vs. Hiranmoy Sen and Ors. (**Annexure R-8**) the Apex Court in para 4 and 5 of their orders have observed as under:-

4. This Court in S.C.Chandra and Ors. Vs. State of Jharkhand and Ors. [JT 2007 (10) 4 SC 272] has held that the Court cannot fix pay scales as that is the purely executive function. In the aforesaid decision one of us (Markandey Katju, J.) has discussed in detail the principle of equal pay for equal work and has observed that the said principle has been considerably watered down in recent decisions of this Court, and it is not applied unless there is a complete and wholesale identity between the two groups and even there the matter should be sent for examination by an Expert Committee appointed by the Government instead of the Court itself granting the higher pay scale. The entire case law on the subject has been discussed in the said decision. Following the aforesaid decision in S.C.Chandra's case (supra) this appeal has to be allowed. It cannot be said that there is a complete and wholesale identity between the Senior Auditors in the office of Accountant General, Assam and Meghalaya and Assistants in the Central Secretariat.

5. Learned counsel for the respondents submitted that the auditors and assistants have been historically treated at par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct, that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of Post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self-restraint and not encroach into the executive or legislative domain.'

It is submitted that the 6th CPC in para 7.56.1 to 7.56.9 had elaborately detailed the reasons behind recommending the Grade Pay of Rs.4800 to the Section Officers of Organised Accounts Service. An extract of the same is produced herewith and marked as **Annexure R-9**.

It is humbly submitted that as already explained, in view of the detailed reasoning indicated in the 6th Pay Commission's Report on the grounds necessitating grant of higher grade pay to Teachers, Nursing Staff and Accounts Staff, there is no violation of Principles of Natural Justice and no arbitrariness or illegality in the same. Further the Hon'ble Supreme Court in the case of Secretary Finance Department and Ors vs. West Bengal Registration Service Association and Ors {1993 (Supp.) 1 SCC 1} has held as under:-

"It is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction."

It is humbly submitted that the 6th Pay Commission after a detailed study had more elaborately made out the reasons in recommending higher grade pay to the Teachers, Nursing Staff etc. Hence there is no violation of Article 14 and 16 of the Constitution of India and there is no discrimination and the impugned action is totally valid in law.

In view of the above all the averments in this para are baseless and do not merit consideration.

As regard the averments in para 4.12(1) to (3) of the OA the respondents humbly submit that this Hon'ble Tribunal in their orders dated 21.7.2016 had directed the Ministry of Finance to consider the OM No. PC VI/2009/DAC/1(Pt.2) dated 11.6.2010 and in obedience of the same the

Ministry of Finance (Dept. of Expenditure) had disposed the same and conveyed their decision vide OM No.36(1)/E.III.B/2015 dated 29.11.2016 (marked as Annexure A-7).

As regards the averments in para 4.12(4) to (10), considering the stagnation in the level of Technical Supervisors, a proposal was placed before Empowered Committee of Secretaries proposing to upgrade 75% of the existing supervisors posts in GP-4600(L-7) as in case of all non- accounts department (Technical and Non-Technical where GP4600 is presently the apex Grade 'C' Scale by creating a new supervisor level in Level 8 (GP-4800). This was aimed at improving the administrative efficiency and also to ensure better supervision and also to meet the observation of 7th CPC regarding the need to resolve existing large stagnation in Level 7 (GP-4600).

Ministry of Finance (implementation cell) vide their O.M. dated 23.12.2016 (**Annexure R-10**) advised that Empowered Committee of Secretaries (E-Cos) was constituted to screen the recommendations of the 7th CPC after taking into account the views of the concerned stakeholders viz, the Ministries/Departments, staff Associations and the JCM so as to firm up the final conclusions for approval of the cabinet. The E-Cos has considered the recommendations contained in the report of the 7th CPC and any fresh issue beyond the report had not been considered. Subsequently, it has been decided that other administrative issues specific to departments/cadres/posts may be examined by the concerned Ministries/Departments as the transaction of Business Rules/allocation or business rules. MoF also advised Ministry of Railways to re-consider the proposal and furnish self-contained detailed proposal for consideration of the Department Expenditure.

Keeping in view the advise tendered by MoF, a consolidated proposal on the following issues was forwarded to Department of Expenditure/Ministry of Finance vide Ministry of Railways O.M. dated 08.02.2017 (**Annexure R-11**)

- i) Revision of Pay Levels of Group 'B' Officers of all Railway Departments (other than Accounts Departments) to Level-10 and Level-9 of the 7th CPC pay matrix on par with the Pay Levels of Group 'B' officers of the Accounts Department of the Railways.
- ii) Revision of the pay structure of senior supervisors in Group 'C' of all departments (other than Accounts Department) to upgrade 75% of such supervisor from level 7 (erstwhile GP4600) to Level 8 (erstwhile GP4800) to iron out the anomalies which has arisen consequent to implementation of 6th CPC.

Ministry of Railways pursued the proposal through various reminders and personal meetings. It has been communicated by Department Expenditure on 16.10.2018 that since the matter of implementation of the 7th CPC recommendations for upgradation of certain categories of posts mentioned in Annexure III of Ministry of Finance's O.M. dated 25.07.2017, including the posts of Railways Accounts Department and Chemical and Metallurgical organisations are under consideration with the Department of Personnel and Training (DOP&T) as per the decision of the cabinet dated 29.06.2016 and the proposal of Ministry of Railways has a linkage with it, the proposal of the Railways forwarded on 08.02.2017 would be considered after a decision in the matter is taken by the DoPT. Since the proposal is still under consideration, it is premature for the applicants to approach the Tribunal at this stage.

As regards the averments in para 4.13 of the OA the respondents humbly submit that the apprehension of the Government (i.e. Dept. of Expenditure, Ministry of Finance) is based on the reasoning that there are many other categories/posts obtaining in Railways with the same Grade Pay of Rs.4200 and 4600 as already explained in above. As such the averments of the applicants are devoid of any merit.

As regard the averments in para 4.14(1) to (8) the respondents humbly submit that as submitted earlier, a new higher grade in the form of

Master Craftsmen was created based on the specific recommendation of 3rd Central Pay Commission to retain Skilled artisans in their line and not to opt the supervisory posts of Technical Supervisors etc. The Master Craftsmen and Jr. Engineers have been in same/identical pay structure right from 1.1.1986. They were in scale Rs.1400-2300 (during 4th CPC/01.01.1986-31.12.1995) and Rs. 5000-8000 (5th CPC-01.01.1996-31.12.2005). Thus no situation/ground for anomaly has been created w.e.f. 01.01.2006. 6th CPC had recommended general revised pay structure of PB2 GP Rs.4200 to all other posts in pre-revised pay scale Rs.5000-8000 and 5500-9000. Same has been allotted to Master Craftsmen/Sr.Technician and Jr.Engineers. While the job of Technical Supervisors (JEs) is supervisory in nature, that of Master Craftsmen/ Sr.Technician Involves skill acquired over a period of time in the given trade which needs to be retained in their line and accordingly a higher scale justified, as recommended by 3rd CPC and continued since then.

The respondents further submit that the 6th Pay Commission in para 3.8.3-b of its Report has mentioned as under:-

"3.8.3-(b) The Commission has recommended running pay bands and many of the existing pay scales have been merged with a view to de-layer the Government by cutting down the number of hierarchical levels. This would necessitate merger of posts which hitherto were in different pay scales and which, in a few cases, also constituted feeder and promotion posts."

The Commission again in para 3.8.3-g of its Report has mentioned that as a measure of delayering, the Commission has recommended merger of the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. In a large number of cases, posts in these pay scales have existed as feeder and promotion posts. While the Commission has tried to ensure that the promotion post is normally placed in a higher pay scale, however, in many cases, the same has not been done. Consequently, for a few categories, the

erstwhile feeder and promotion posts have been merged. This is a conscious decision of the Commission and has been resorted to in cases where functional justification for maintaining two distinct levels as feeder and promotion post did not exist or where the operational efficiency was not impacted or is likely to actually improve by the merger. In all such cases, the interests of personnel in the erstwhile promotion grade have been protected by ensuring that their seniority as well as higher pay is kept intact in the revised running pay bands being recommended by the Commission.

As regard the averments in para 4.15 it is submitted that the rejection of the proposal of the Railway Board by Respondent No.2 was not only on the ground of inviting similar demands from other similarly placed staff but also due to the following reasons:-

- (i) The same Grade Pay of Rs.4200/- for the both JEs and Senior Technician is based on the recommendation 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.
- (ii) Grade Pay of Rs.4200/- is a major pay scale in the Government in the Group "C" category belonging to JE in all major Departments including CPWED, MES, etc. Any change in the pay scale of Railways will have direct impact on JEs in general leading to substantial financial implications.
- (iii) In the Government, horizontal relativity is an important factor for pay scales. Thus, if Grade pay of Rs.4200/- is revised, this will have cascading effect on all the posts which are in the same Grade pay and it would be a tough task deal with such demands. Further round of court cases will follow.

In view of the above submissions there is no merit in the OA and as such the grounds raised therein may be summarily rejected.

As regards the averments in para 5(a) of the grounds the respondents submit that the impugned OM rejecting the claim of the applicants is legal, valid and reasonable and there is no arbitrariness or violation of Article 14, 16, 21 and 39 of the Constitution.

As regards the averments in para 5(b) the respondents humbly submit that the 6th Pay Commission had also mentioned in para 3.8.3-b of its Report as under:-

"3.8.3-(b) The Commission has recommended running pay bands and many of the existing pay scales have been merged with a view to de-layer the Government by cutting down the number of hierarchical levels. This would necessitate merger of posts which hitherto were in different pay scales and which, in a few cases, also constituted feeder and promotion posts."

The Commission again in para 3.8.3-g of its Report has mentioned that as a measure of delayering, the Commission has recommended merger of the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. In a large number of cases, posts in these pay scales have existed as feeder and promotion posts. While the Commission has tried to ensure that the promotion post is normally placed in a higher pay scale, however, in many cases, the same has not been done. Consequently, for a few categories, the erstwhile feeder and promotion posts have been merged. This is a conscious decision of the Commission and has been resorted to in cases where functional justification for maintaining two distinct levels as feeder and promotion post did not exist or where the operational efficiency was not impacted or is likely to actually improve by the merger. In all such cases, the interests of personnel in the erstwhile promotion grade have been protected by ensuring that their seniority as well as higher pay is kept intact in the revised running pay bands being recommended by the Commission.

As regards the averments in para 5(c) of the grounds it is submitted that the post of Sr.Technicians/MCMs were newly created based on the recommendations of the 3rd Pay Commission and they were allotted with pay

scale of 425-700(3rd PC)/1400-2300(4th PC) and 5000-8000 based on the recommendations of the 5th Pay Commission. However Railway Board vide Board's letter dated 24/11/2018 having RBE No.269/98 (**Annexure R-12**) had allotted the revised scale of Rs.5000-8000 in place of existing scale of Rs.4500-7000 effectively from 01.01.1996 and the applicants are finding fault with the same now i.e. after a lapse of more than three decades. On this score alone the averments in this para are liable to be rejected. Further Hon'ble Courts in a catena of cases have laid down that the recommendations of expert bodies like Pay Commissions are not justiciable since the Court is not equipped to take upon itself the task of job evaluation, which is a complex exercise. In this regard copies of judgments of Hon'ble Supreme Court in the cases of S.C.Chanda and Ors. Vs. State of Jharkand and Ors. & UOI and Ors. Vs. Hiranmoy Sen and Ors are produced herewith and marked as **Annexure R-13 and 14.**

As regard the averments in para 5(d) and 5(g) the respondents humbly submit that the 7th Pay Commission had exhaustively analysed the issues raised in these paras and reported as under:-

Technical Supervisors

11.40.104 Technical Supervisors on Indian Railways play a vital role in the safe and efficient Report of the Seventh CPC 748 Index running of the trains. Presently, their cadre structure is as follows:

Designation Grade Pay

Sr. Section Engineer (SSE) 4600

Junior Engineer (JE) 4200

11.40.105 At the level of JE, there is 50 percent direct recruitment with educational qualification requirement of Diploma in Engineering. Remaining 50 percent seats are filled departmentally, 25 percent through Limited Departmental Competitive Examination (LDCE) and 25 percent through selection from the highest category of technicians, viz., Master Technician.

11.40.106 At the level of SSE, 20 percent seats are directly filled with educational qualification required of Bachelor in Engineering. Remaining 80 percent seats are filled departmentally through seniority cum suitability.

11.40.107 In their representations to the Commission, besides asking for better pay scales, they have demanded that JEs should be promoted directly to Assistant Engineers, without going through the stage of SSE. They have also demanded Non-Practicing Allowance at par with Doctors and a hardship allowance for the onerous duties which they perform.

11.40.108 Demands have also been received regarding grant of Group 'B' status to JEs/SSEs in the Railways on the grounds that posts with identical Grade Pay in other departments are classified as Group 'B'.

Analysis and Recommendations

11.40.109 The next post in the hierarchical structure for Technical Supervisors is the post of Assistant Engineer. There is a 1:1 ratio between the posts of Assistant Engineer filled by Direct Recruitment and those filled through promotion.

11.40.110 For the post of Assistant Engineer filled through promotion, 70 percent seats are filled up through Limited General Selection (LGS), based on seniority cum suitability, wherein only SSEs (with GP 4600) are eligible. However, for the remaining 30 percent posts, there is a Limited Direct Competitive Examination in which both SSEs and JEs are allowed to appear. Hence, a meritorious and deserving JE can aspire to become Assistant Engineer directly, bypassing the SSE stage.

Designation Grade Pay

Assistant Engineer 4800

Sr. Section Engineer (SSE) 4600

Junior Engineer (JE) 4200

11.40.111 It is also noted by the Commission that an "80 percent upgradation scheme" is also in vogue in Indian Railways since June 2003. Under this scheme, 80 percent Gr.B officers (in Report of the Seventh CPC GP 4800) are eligible for being upgraded from GP 4800 to GP 5400 (PB-3) after completion of three years regular service.

11.40.112 As far as the JE/SSE/Assistant Engineer career progression on Indian Railways is concerned, it may be pointed out that such a structure is not unique to Indian Railways. Similar progression exists in Border Roads Organizations, Ordnance Factories and few other organizations. The Ministry of Railways has strongly defended the continuation of this arrangement on functional grounds. It has also been pointed out to the Commission that the Recruitment Rules of most of the organised technical services on Railways already contain provisions to maintain 1:1 ratio between direct recruits and promoted officers.

11.40.113 Considering the feedback provided by the Railway Board and upon close analysis of the cadre structure, we are of the view that there is some element of stagnation at the GP 4600 stage. Accordingly, it is suggested that Railway Board should consider enhancing the number of posts in the next higher level, with commensurate increase in the number of directly recruited Group 'A' officers so as to maintain the 1:1 ratio, keeping its functional requirement in mind. It is recommended that the percentage of employees eligible under the upgradation scheme should be changed from 80% to 100%, but the period should be increased from three years to four years of regular service.

11.40.114 Regarding the grant of Group 'B' status, Ministry of Railways is of the view that the grant of Group 'B' status to employees with identical Grade Pay in other ministries is as per the provisions of CCS(CCA) Rules, 1965, while posts in Railways are specifically excluded from the purview of these rules vide Rule 3(1)(a). Similarly, Central Civil Services (Revised Pay) Rules, 2008 are also not applicable to Railway servants who are governed by RS(D&A) Rules, 1968 and Railway Services (Revised Pay) Rules, 2008. This

differentiation has been done keeping in view the unique functional, administrative and operational requirements of Railways which are very different from any other ministry or department in Government of India. The Ministry of Railways further contends that these views of the ministry have been upheld by the Hon'ble Supreme Court and no change is warranted.

11.40.115 Considering the arguments proffered by the concerned ministry, no change is recommended in the classification of these posts. Other demands lack merit.

As regards the points raised in the para 5(f) of the grounds, it is submitted that the position have already been elaborated w.r.t comments offered against para 4.12 above.

As regards the points raised in the para 5(g) and (h) it is humbly submitted that grant of higher pay scales to Teachers, Nurses and Accounts staff was based on the specific recommendations of 6t CPC as contained in para 7.36.24, 3.8.21, 3.8.15 and 7.56.9 respectively.

In this regard it is further submitted that the Apex Court in the case of State of U.P. and Others Vs. J.P. Chaurasia and Others 1989 (I) SCC I21, has ruled thus:

"The equation of posts or equation of pay must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. "

In view of the above there is no violation of Article 124, 16 and 39 of the Constitution of India and no law laid down by Hon'ble Courts has been violated.

In the above circumstances the respondents humbly pray that the OA may be dismissed with costs as devoid of merit and thus render justice.

Dated at Chennai this the day of 2019.

Counsel for Respondents

Respondents

VERIFICATION

I, Meena Bhaskaran, d/o D.Jayasingh aged about 55 years, presently working as Deputy Chief Personnel Officer (Traffic, M&E), General Managers' Office, Southern Railway, Chennai -3 do hereby verify and state that all the facts stated above are true and correct based on record and to the best of my knowledge and belief and I have not suppressed any material from this Hon'ble Tribunal. I am filing this for and on behalf of all the Respondents in the above Original Application for which I am authorised.

Verified at Chennai this the 28th of June 2019.

Respondents