

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

PC-VI No. 400

No. PC-VI/2014/Misc/04

New Delhi, dated 13.11.2019

**The General Manager/CAOs,
All Zonal Railways/Production Units
(as per mailing list)**

Sub: Sharing of order dated 16.09.2019 of Hon'ble CAT/Mumbai Bench in OA No. 688/2014 filed by Shri Girish Kumar Sabu & Ors Vs UOI & Ors.

A number of court cases have been filed by the employees (in the pre-revised scales of Rs. 6500-10500/-/7450-11500) of various Zonal Railways seeking re-fixation of pay in 6th CPC pay structure based on upgraded pre-revised pay scales (Rs. 7450-11500/7500-12000). The issue has been gone into on the merits by CAT/Mumbai Bench vide their judgement dated 16.09.2019 in O.A. No. 688/2014 filed by Shri Girish Kumar Sabu & Ors Vs UOI & Ors. Hon'ble Tribunal has been pleased to pass the following orders:-

"In view of the stipulation under the rules mentioned above and details explained by the respondents in paragraph No.3(i) and (j) above, fixation of pay of the applicant was done correctly corresponding to his earlier pay scale of Rs. 6,500-10,500/-. Based on the subsequent clarification issued by the Railway Board dated 22.12.2009, revision of grade pay of the applicant to Rs. 4,600/- has also been done correctly by the respondents. The contentions of the respondents discussed above are, therefore, justified.


4(j). In view of this, we find that the present OA lacks merit and it deserves dismissal.

5.Decision:-

The OA is dismissed. No costs."

2. The Railways may bring the above position to the notice of Railway Advocate contesting such other cases and take necessary action to file a copy of above judgement before the respective Tribunals/ court and also to utilize the same during arguments.

DA: AS ABOVE


(U.K.Tiwari)
Jt. Director, Pay Commission
Railway Board

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 688 OF 2014

Dated this Monday, the 16th day of September, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)

Girish Kumar Sabu, Age : 47,
working as Chief Ticket Inspector, Nanded Division,
South Central Railway,
R/o Behind Novelty Saree Centre,
Vaziabad, Nanded 431 601. - Applicant
(By Advocate Shri Joe D'Souza)

VERSUS

1. Union of India (Through) Senior Divisional Personnel Officer,
Nanded Division, South Central Railway,
Nanded 431 605.
2. Chief Personnel Officer, South Central Railway,
Rail Nilayam, Secunderabad 500 007.
3. Deleted.
4. Director, Implementation Cell, Department of Expenditure,
Ministry of Finance, North Block, New Delhi 110 001.
5. Secretary, Implementation Cell, Department of Expenditure,
Ministry of Finance, North Block, New Delhi 110 001.
6. Director, Department of Personnel & Training,
Lok Nayak Bhavan, Khan Market, New Delhi 110 003.
7. Secretary, Department of Personnel & Training,
Lok Nayak Bhavan, Khan Market, New Delhi 110 001.
8. Secretary, Ministry of Finance, North Block,
New Delhi 110 001.
9. Secretary, Ministry of Personnel,
Public Grievances and Pensions, North Block,
New Delhi 110 001. - Respondents

(By Advocate Shri R.R.Shetty)

Order reserved on 04.07.2019

Order pronounced on 16.09.2019

ORDER

Per : Dr. Bhagwan Sahai, Member (Administrative)

Shri Girish Kumar Sabu working as Chief Ticket Inspector, with Nanded Division of South Central Railway filed this OA on 28.10.2014. In it he has sought declaration that he was entitled to get benefit of and to opt for fixation of pay according to 6th Central Pay Commission; and quashing and setting aside of the communications in letter dated 20.09.2011 and 14.11.2011 from Sub Divisional Personnel Officer, Divisional Office Personnel Branch, Nanded rejecting his representation dated 22.08.2011 for his pay fixation in Pay Band II (Rs.9,300-34,800/- corresponding to pre-revised pay scale of Rs.7,450-11,500/-) with GP of Rs.4,600/-.

2. *Summarized facts :*

2(a). The applicant has stated that he has been working as Chief Ticket Inspector with Nanded Division of South Central Railway since 04.01.2006 after his promotion based on selection through departmental examination.

2(b). Before implementation of 6th Central Pay Commission recommendations, pay scale of the post of Chief Ticket Inspector was Rs.6,500-10,500/-. The 6th CPC recommended a higher pay scale of Rs.7,450-11,500/- for this post to be revised as Pay Band 2 of Rs.9,300-34,800/- along with Grade Pay of Rs.4,600/-. Accordingly, the Railway Services (Revised Pay) Rules, 2008 were notified on 04.09.2008 giving them effect from 01.01.2006 and the Railway Board Circular dated 11.09.2008 instructed for revision of the pay scales.

2(c). The higher grade pay of Rs.4,600/- in pay band 2 was to be allowed because for that post the earlier pay scale of Rs.6,500-10,500/- was merged with another pay scale of Rs.7,450-11,500/-. The Railway Board Circular dated 25.09.2008 clarified in paragraph No.6(2) that in case of upgradations recommended by the 6th CPC, where all posts in a particular grade have been granted higher replacement pay scale/grade pay, the higher replacement scale and grade pay be granted automatically, without assessing suitability of incumbents, by fixing the pay in the pay

band with reference to the fitment table corresponding to the pre-revised pay scale but with the grade pay corresponding to the upgraded post.

2(d). As per Railway Board letter dated 22.12.2009, while fixing the revised pay as per 6th CPC recommendations, the posts which had pre-revised pay scale of Rs.6,500-10,500/- as on 01.01.2006 were to be granted grade pay of Rs.4,600/- instead of Rs.4,200/- as per the earlier revision (Annex A-5).

2(e). Since the respondents did not fix the applicant's pay correctly, he represented through a letter to the respondent No.1 (i.e. Senior Divisional Personnel Officer, Nanded Division, Nanded) on 27.07.2009 for correctly fixing his basic pay and grade pay in Pay Band 2 with Grade Pay of Rs.4,600/-, (pay of Rs.18,460/-) as per the Railway Services (Revised Pay) Rules, 2008.

2(f). He received a reply dated 20.09.2011 that his claim for fixation of pay as per fitment table corresponding to earlier pay scale of Rs.7,450-11,500/- (revised pay band

Rs.9,300-34,800/-) plus GP Of Rs.4,600/- was not applicable to him as per the Railway Board instructions because there was no element of pre-revised pay scale of Rs.7,450-11,500/- in the ticket checking cadre; and his pay had been fixed on 01.01.2006 corresponding to his earlier pay scale of Rs.6,500-10,500/- on that date. The applicant again submitted his representation on 27.09.2011 to the respondent No.1 to revise his pay as per the Railway Board clarification dated 22.12.2009. By letters dated 28.10.2011 and 14.11.2011, the applicant was informed by the respondent No.1 rejecting his representation of 27.09.2011.

2(g). He also made representations for granting him increment on 01.07.2006 instead of 01.07.2007 as done for other employees under similar circumstances because of their promotions from February to May, 2005. Therefore, this OA.

3. *Contentions of the parties :*

In the OA, rejoinder filed on 25.04.2016 and during the arguments on 04.07.2019, the applicant has contended that -

3(a). the 6th Central Pay Commission recommendations were made applicable to all Central Government employees including those of the Railways. While Grade Pay of Rs.4,600/- has been allowed to Chief Ticket Inspectors by the respondents vide Railway Board letter dated 22.12.2009, corresponding to old pay scale of Rs.6,500-10,500/- but because of merger of that pay scale along with the pay scale Rs.7,450-11,500/- in Pay Band 2, the respondents have not fixed his pay accordingly and have denied its benefit;

3(b). the respondents have rejected his representation without any reason thereby denying his rightful claim for fixing the basic pay from the date of his promotion with reference to the fitment table corresponding to earlier pay scale of Rs.7,450-11,500/-;

3(c). the 6th CPC recommendations ensured parity between secretariate and field posts but even then Personal Assistants were given better pay fixation than the Chief Ticket Inspectors. Therefore, the Grade Pay of Rs.4,600/- was allowed to the Chief Ticket

Inspector for the old pay scale of Rs.6,500-10,500/-;

3(d). as per CCS (Revised Pay) Rules, 2008 and clarification issued by the Department of Expenditure (Implementation Cell), Ministry of Finance dated 04.02.2010 (Annex A-9), the pay was to be refixed based on the option exercised by the concerned employees i.e. either to have it fixed on 01.01.2006 with reference to the old pay scale on that day or from the date of promotion which took place after 01.01.2006. The revised pay was to be fixed with reference to the fitment table for the old pay scales and revised pay band with Grade Pay;

3(e). vide circular dated 13.06.2011, the issue raised by the Comptroller and Auditor General of India had been accepted by the Ministry of Finance, Government of India. The Railway Board being the Central Government Department should also have issued clarification / circular to avoid misinterpretation of provisions of the 6th CPC recommendation for the post of Chief Ticket

Inspector. But such clarification was not issued. DOPT also issued clarification that in cases of promotion between 01.01.2006 and 31.08.2008, Grade Pay of Rs.4,600/- in Pay Band 2 is to be fixed; and

3(f). the grant of the next increment to the applicant from 01.07.2007 instead of 01.07.2006 was also wrongly done by the respondents. The clarification issued by the Department of Expenditure (Implementation Cell), Ministry of Finance dated 04.02.2010 was with reference to Assistants and Personal Assistants who were promoted between 01.01.2006 and 31.08.2008. The same principle should be applied to the applicant as his promotion order was issued on 02.01.2006. Therefore, the applicant's pay has to be fixed corresponding to the old pay scale of Rs.7,450-11,500/- and not Rs.6,500-10,500/-. The respondents have failed to understand that the 6th CPC recommended for the Chief Ticket Inspector the pay scale of Rs.7,450-11,500/-. Since the applicant joined on promotion as Chief Ticket Inspector on 04.01.2006, as on 01.07.2006 he had already completed six months

of service in the promoted post and therefore, he is entitled to next increment from 01.07.2006 which the respondents has wrongly granted from 01.07.2007. Therefore, the OA be allowed.

In their reply and additional written statement, reply to the rejoinder and during the arguments, the respondents have contended that -

3(g). the applicant was promoted as Chief Ticket Inspector from 04.01.2006 in the pay scale of Rs.6,500-10,500. As per the 6th CPC recommendation, that pay scale has been replaced by the pay band 2 (Rs.9,300-34,800/-) with Grade Pay of Rs.4,200/-;

3(h). since the applicant came to be promoted as Chief Ticket Inspector with effect from 04.01.2006, he never opted for fixation of his pay from the date of his next increment in the lower post of Travelling Ticket Inspector in the pay scale of Rs.5,500-9,000/-. In fact the applicant opted for pay fixation immediately from the date of his promotion and accordingly his pay was fixed

with effect from 04.01.2006 corresponding to his earlier pay scale of Rs.6,500-10,500/-. Therefore, he cannot seek fixation of his next increment from 01.07.2006;

3(i). because of merger of earlier two pay scales of Rs.6,500-10,500/- and Rs.7,500-11,500/- as per the VI CPC recommendation, the Grade pay of Rs.4,600/- has been allowed with pay band 2 for the merged post. However, the applicant wants to get fixed his pay corresponding to the old pay scale of Rs.7,450-11,500/- from the date of his promotion as Chief Ticket Inspector i.e. 04.01.2006. However, in that pay scale he had never been promoted as there was no post in that pay scale among the Ticketing Staff (reference to table at Annex R-1). He was promoted on 04.01.2006 in the pay scale of only Rs.6,500-10,500/-. Therefore, his pay had to be fixed under Scale 12 corresponding to that pay scale of Rs.6,500-10,500/- i.e. pay band 2 (Rs.9,300-34,800/-) with Grade Pay of Rs.4,200/- (page 126, First Schedule attached to Railway Services (Revised Pay) Rules, 2008. Therefore, the request of the

applicant cannot be accepted without any such stipulations in the relevant rules. Hence, the OA has no merit; and

3(j). the cause of the action for grant of next increment to the applicant arose from 01.07.2006 but he has filed this OA after more than eight years and therefore, it is barred by limitation and should be dismissed on this ground itself. The policy guidelines and instructions issued by the Railway Board dated 11.09.2008 with reference to Railway Services (Revised Pay) Rules, 2008 prescribed various schedules for fixation of pay as per the 6th CPC recommendations (Annex R-3) and a uniform date as 01.07.2006 for increments to all the employees, with stipulation that those who had put in at least six months of service as on 01.07.2006 in the existing post would be granted the increment from 01.07.2006.

Since the applicant joined on the post of promotion only on 04.01.2006, he had not completed the period of six months of service before 01.07.2006. Therefore, he was not eligible for grant of next increment from

01.07.2006 and accordingly as per his eligibility he was granted the next increment on 01.07.2007.

3(k). the respondents have also relied on the following case laws :

(i). decision of Chennai Full Bench of the Tribunal dated 07.07.2015 in CA No.173 of 2014 involving dispute about fixation of pay as Clerks / Auditors who had been promoted as Assistant Accounts Officers prior to 01.01.2006 and those who were promoted after 01.01.2006 holding that what is relevant for fixation of pay in the revised pay scale is the actual pay drawn by the applicants from the date of promotion.

(ii). that decision of the Chennai Bench of the Tribunal has also been upheld in the Apex Court decision dated 31.01.2018 in Civil Appeal No.1350 of 2018 (Union of India and Others Vs. K.V.Rama Raju and Others), while dealing with the question of how pay is to be fixed for implementing 6th Central Pay Commission recommendations holding that the pay scale is to be determined by multiplying

the basic pay as on 01.01.2006 by a factor of 1.86 and the view taken by the Chennai Bench of the Tribunal in order dated 07.07.2015 in OA No.173 of 2014 (R.Karthikeyan and others Vs. Union of India and others) has been upheld. In that Apex Court decision it was also stated that the view taken by the Chennai Bench of the Tribunal is approved and contrary view on the subject stands set aside.

(iii). decision of Patna Bench of the Tribunal dated 09.09.2016 in OA No.441 of 2014 in Dharmendra Singh Vs. The Union of India, through the Chairman of Railway Board, New Delhi, after dealing with the clarification/circular issued by the Railway Board about implementing the 6th CPC recommendations as well as the Railway Services (Revised Pay) Rules, 2008, upheld the pay fixed of the applicant therein by the respondents based on the principle that for fixation of pay on switching over to the revised pay band and and grade pay, the pre-revised pay or the existing pay scale as actually drawn in the pre-revised pay as on 01.01.2006 or on the later date elected by an

employee is applicable. The pay in the pay band so arrived at is to be added the Grade Pay.

(iv). decision of the Principal Bench of the Tribunal dated 24.12.2014 in OA No.1049 of 2014 (Thomas John and Others Vs. Secretary, Ministry of Urban Development and others), the order passed by the Directorate General, CPWD dated 18.03.2012 was not interfered with. In that decision, reliance of the applicants on pay fixation adopted by the Comptroller and Auditor General of India and Government of Poducherry was not accepted because the pay fixation by the respondents had been done in accordance with the existing rules and instructions; and if certain organization under the Government had issued instructions contrary to the rules and instructions issued by the Department of Expenditure, Ministry of Finance and DOPT, it was a matter for the respondents to examine as to how it happened and take suitable action and a wrong example cannot be followed as there is no principle of negative parity; and

(v). a decision of Bengaluru Bench of this Tribunal dated 02.01.2014 in OA No.302/2011 (Rameshwar Adhatrao & Another Vs. Union of India and Others).

4. *Analysis and conclusions :-*

We have carefully perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, written notes of arguments filed by both the parties, various case laws cited by the parties and considered the arguments advanced by both of them on 04.07.2019. Based on their analysis, we conclude as follows :-

4(a). The main issue for decision in this OA is whether the applicant was entitled for fixation of his pay on 01.01.2006 in pay band 2 with Grade Pay of Rs.4,600/- corresponding to earlier pay scale of Rs.7,450-11,500/-. The cause of action in this case for the applicant arose with fixation of his revised pay as per the recommendations of the 6th Central Pay Commission on his promotion as Chief Ticket Inspector from 04.01.2006 but he has filed this OA on 28.10.2014.

4(b). In his application filed for condonation of delay, he has mentioned that there is delay of 612 days and has requested for its condonation in the interest of justice in view of his representations submitted to the respondents which were finally rejected by the order dated 20.09.2011. In this application, he has not mentioned any specific reasons which prevented him from filing the OA on time. In reply to the application for condonation of delay, the respondents have contended that this OA has been filed after a period of more than eight years. Since the fixation of the applicant's pay as per the recommendations of 6th Central Pay Commission was done after issuance of the CCS (Revised Pay) Rules, 2008 and Railway Services (Revised Pay) Rules, 2008, the delay seems to be of about six years. However, in absence of satisfactory reasons given by the applicant, his application for condoning the long delay cannot be allowed.

4(c). For fixation of pay to implement the recommendations of 6th Central Pay Commission recommendations, the relevant rules i.e. the

CCS (Revised Pay) Rules, 2008 dated 29.08.2008 were issued by Department of Expenditure, Ministry of Finance and Railway Services (Revised Pay) Rules, 2008 issued by the Railway Board on 11.09.2008 which took effect from 01.01.2006. As per the above Rules, the earlier pay scales of different cadres and posts existing on 01.01.2006 were replaced by pay bands with different grade pays in each pay band. The employees were given option for getting their pay revised either from 01.01.2006 or from a later dates on their promotion.

4(d). For fixing the revised pay from 01.01.1986, the existing basic pay as on 01.01.2006 was to be multiplied by a factor of 1.86, to which the prescribed grade pay was to be added. In cases where fixation was done from a date later than 01.01.2006 as per the option of the employees, the pay in the pay band was to be fixed by adding to the basic pay payable on the later date, the dearness pay applicable on that date. The rules prescribed that the first basic pay under the 6th Central Pay Commission recommendations was

to be fixed as per the fitment table in Schedule A or B with reference to existing pay i.e. the actual pay drawn by the employees in the pre-revised pay scale as on 01.01.2006.

4(e). In the present case as submitted by the respondents, the applicant opted for revision of his pay on his promotion from 04.01.2006 and as stipulated under Rules 7 and 11 of the Revised Pay Rules, his pay was fixed in the pay band 2 corresponding to his existing pay scale of Rs.6,500-10,500/- and applicable grade pay of Rs.4,200/-.

In view of the stipulations under the rules issued vide the OM of Department of Expenditure, DOPT and Railway Board, this fixation of pay of the applicant in pay band 2 with grade pay of Rs.4,200/- was correct. Subsequently, as per the Railway Board clarification dated 22.12.2009, his grade pay was revised to Rs.4,600/-.

4(f). As explained by the respondents, while implementing the recommendations of the 6th Central Pay Commission, the earlier two pay scales of different cadres i.e. Rs.6,500-

10,500/- and Rs.7,500-11,500/- were merged in Pay Band 2 with a grade pay of Rs.4,600/-. However, in the ticketing staff of the Railways, there was no post with earlier pay scale of Rs.7,500-11,500/- and therefore, the claim of the applicant for fixation of his pay from 04.01.2006 in the pay band 2 corresponding to that pay scale with grade pay of Rs.4,600/- was not justified. The action taken by the respondents in this regard is correct.

4(g). The principle for revision of pay of the employees while implementing the 6th Central Pay Commission recommendations stipulated under the above rules has also been upheld by the Apex Court decision in Civil Appeal No.1350 of 2018 (Union of India and others Vs. K.V.Rama Raju and others) i.e. the pay was to be revised by multiplying the existing pay as on 01.01.2006 with a factor of 1.86 and rounding off the resulting figure to the next multiple of 10 as per the fitment table given in the part B and part C of the first schedule to the CCS (Revised Pay) Rules,

2008 and Railway Services (Revised Pay) Rules, 2008.

4(h). In that Supreme Court decision, the view taken by the Chennai Full Bench of the Tribunal in its decision in OA No.173/2014 dated 07.07.2015 was approved and contrary view on that subject was set aside. A similar Court view has also been taken by the Patna Bench of this Tribunal in OA No.441/2014 decided on 09.09.2016 (Dharmendra Singh and others Vs. The Union of India, through the Chairman, Railway Board, New Delhi) as well as in decision of the Principal Bench of the Tribunal in OA No.1049/2013 decided on 24.12.2014.

In view of the stipulation under the rules mentioned above and details explained by the respondents in paragraph No.3(i) and (j) above, fixation of pay of the applicant was done correctly corresponding to his earlier pay scale of Rs.6,500-10,500/-. Based on the subsequent clarification issued by the Railway Board dated 22.12.2009, revision of grade pay of the applicant to Rs.4,600/- has also been

done correctly by the respondents. The contentions of the respondents discussed above are, therefore, justified.

4(j). In view of this, we find that the present OA lacks merit and it deserves dismissal.

5. *Decision :-*

The OA is dismissed. No costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sāhai)
Member (Administrative)

kmg*

JD
19/3/19