

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4838 of 2015

- 
1. The Union of India represented through the General Manager, Eastern Railway, Fairlie Place, 17 Netaji Subhash Road, Kolkata- 1 (W.B.)
 2. The Chief Personnel Officer, Eastern Railway, Fairlie Place , 17, Netaji Subhash Road , Kolkata -1 (W.B.).
 3. The Divisional Railway Manager, Eastern Railway, Malda Division, Malda(W.B.).
 4. The Sr. Divisional Personnel Officer, Eastern Railway, Malda Division, Malda (W.B.).
 5. The Divisional Personnel Officer, Eastern Railway, Malda Division , Malda (W.B.)

.... Petitioner/s

Versus

1. Vinay Bhushan Mishra, Son of Late Kamala Pati Mishra , working as Mail Guard, Eastern Railway, Jamalpur, at present residing in Railway Quarter no 292/AB , Rampur Colony, At & P.O. - Jamalpur, District- Munger (Bihar)
2. Ram Janam Bhagat, Son of Shri Bishwanath Bhagat , working as Mail Guard , Eastern Railway , Sahibganj , resident of Samalapur (Lal Kothi) At & P.O. - Sahibganj , District- Sahibganj
3. Subhash Chandra Ram, Son of Late JodhanRam , Working as Mail Guard Eastern Railway, Sahibganj, resident in Railway Quarter no 48D, South Colony, At & P.O. - Sahibganj, District- Sahibganj.
4. Birendra Kumar Singh, son of Late Nawal Kishore Singh , working as Mail Guard , Eastern Railway, Sahibganj resident in the Railway Quarter no 15/CD, North Colony, At & P.O. - Sahibganj , District Sahibganj.
5. Yogendra Nath Pandey, son of Late Kashi Nath Pandey , working as Mail Guard , Eastern Railway , Jamalpur, residing in the Railway Quarter no 293 GH Rampur Colony , At & P.O. Jamalpur, District- Munger (Bihar) .
6. Gopal Prasad, son of Late Triyogi Nath , working as Mail Guard , Eastern Railway, Jamalpur, resident at Mohanpur, P.O. Jamalpur, District- Munger (Bihar).
7. Gopal Prasad Poddar, son of Late Muneshwar Prasad , working as Mail Guard , Eastern Railway, Malda Town , residing at Shivpuri Colony, P.O. - Sahibganj , District- Sahibganj.
8. Subrat Kumar Sarkar, son of Nirmal Kumar Sarkar, working as Mail Guard , Eastern Railway, Malda Town , residing at Mahananda Colony (Near Anarkal Ashram) P.O. - Jhalgahaliya, At - Malda, District- Malda.
9. Henry Besra, son of Late James Besra , working as Mail Guard , Eastern Railway, Malda Town, residing at Dhoraopur Mission Road , P.O. Pathna , At Barharwa, District- Sahibganj.
10. Ashok Kumar Haldar, son of Sirish Chandra Haldar, working as Mail Guard , Eastern Railway, Malda Town , residing at Vidhanpalli (East), P.O. Jhal Jhalia , District - Malda.
11. Dinesh Prasad, son of Late Rajendra Ram, working as Mail Guard , Eastern Railway, Jamalpur, residing at Railway Quarter no. 289/CD, Rampur Colony, At & P.O. - Jamalpur, District- Munger (Bihar).
12. Kailash Prasad Sah, son of Late Dhapu Sah, working as Mail Guard , Eastern Railway, Sahibganj residing at Railway Quarter no 151/F, South Colony, At P.O. & District- Sahibganj.

13. Subash Kumar, son of Late Shital Prasad Yadav , working as Prassenger Guard , Eastern Railway, Jamalpur, residing of Village- Bari Mirjapur, P.O. & District- Munger (Bihar).
14. Ram Prit Tanty, son of Sri Jagdish Tanty @ Jagdish Tany, working as Mail Guard , Eastern Railway, resident of village Sikandrapur, P.O. Jamalpur , District- Munger (Bihar).
15. Dilip Kumar Paswan, son of Late Ram Das , working as Mail Guard , Eastern Railway, Jamalpur, resident of Village- Mohanpur (Near St. Roberts School no. 2) Khalashi Mahalla, P.O. - Jamalpur, District- Munger (Bihar).
16. Niraj Kumar Jha, son of Uma Kant Jha , working as Pass Guard , Eastern Railway, Sahibganj , residing at Railway Quarter no 304B Jharha Colony , At & P.O. - Sahibganj , District- Sahibganj.
17. Ahmad Ulla Khan, son of Jameel Ahmad Khan , working as Mail Guard , Eastern Railway , Jamalpur, resident of Mohalla - Azad Colony , Purabsarai, P.O. & District- Munger.
18. Bateshwar Sharma, son of Late Ram Kishan Sharma , working as Mail Guard , Eastern Railway , Sahibganj , residing at Railway Quarter no. 48/B, South colony , At & P.O. - Sahobganj , District- Sahibganj.
19. Shobha Kant Mandal, son of Sri Tarni Mandal , working as Mail Guard , Eastern Railway, P.O. & P.S. & District- Sahibganj.
20. Suresh Prasad, son of Late Raghubir Prasad , working as Mail Guard , Eastern Railway, Sahibganj, residing at Railway Quarter no 136-A, South Colony, P.O.& P.S. - Sahibganj, District- Sahibganj.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. D K Sinha, Sr. Advocate
Mr. Anil Singh, Advocate

For the Respondent/s : Mr. Amar Nath Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-05-2016

The order dated 25th February, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A.No. 721 of 2012 is the subject matter of challenge in the present writ petition. The learned Tribunal has allowed the Original Application filed by the applicant-respondent herein setting aside the order dated 18.05.2012 and directed to restore the financial upgradation under

MACPS (Modified Assured Career Progression Scheme) after extending the benefit of the judgments dated 22nd February, 2012 and 19th July, 2013 passed by Central Administrative Tribunal, Ernakulam Bench and the High Court of Allahabad, respectively.

In an Original Application, the applicants have given their date of respective appointment which ranged from 1974 to 1990. Some of the applicants were appointed as Goods Guard, whereas some others were appointed as Commercial Clerk as well as Trains Clerk. It is the assertion of the applicants that at present they are working as Mail Guards. The stand of the applicants is that the Screening Committee in its meeting held on 03.12.2009 has granted benefit of financial upgradation to next grade pay under the MACPS. But such benefit has been withdrawn on 18.05.2012.

The Modified Assured Career Progression Scheme has been appended by the petitioners along with the present writ petition. The relevant conditions read as under :-

“1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay.

.....

“8. Promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.”

Though the learned Tribunal decided the Original Application on the basis of an order passed by the Ernakulam Bench of the Central Administrative Tribunal referred to above, but there is no factual basis to return a finding that the applicants have not got any financial upgradation for 10, 20 or 30 years and have worked in the same grade pay for that number of years.

The petitioners have not disclosed as to on what date they were promoted as Mail Guards. In the absence of such communication, the petitioners cannot be considered for MACPS grade after completion of 10, 20 or 30 years. It is only if the applicants have not got any promotion, for more than at least 10 years as Mail Guards, the applicants will be entitled to MACPS grade. Since there is no foundation to establish the claim of the applicants, we find that the order of the Tribunal cannot be sustained.

Consequently, the matter is remitted back to the Central Administrative Tribunal, Patna Bench, Patna to decide the question of entitlement of each of the applicants for MACPS grade after giving liberty to the applicants to inform that the date of promotion as Mail Guards to find out as to whether each of the applicants has worked for 10/20/30 years continuously in the same grade pay and are thus entitled to financial upgradation in terms of MACPS.

In view of the facts as discussed above, the present writ petition stands allowed with a direction to the parties to appear before the Tribunal on 4th July, 2016, when the Tribunal will give liberty to the parties to furnish additional affidavits giving details of their promotion as Mail Guards and thereafter decide the Original Application in accordance with law.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl

U			
---	--	--	--