



**Central Administrative Tribunal  
Principal Bench: New Delhi**

**O.A. No. 4474/2018**

**This the 03<sup>rd</sup> day of March, 202**

**Hon'ble Mr. Manish Garg, Member (J)**

1. Sh. Sanjeev Kumar, (Group-C),  
Aged about 49 years,  
S/o Shri Satya Prakash Sharma  
R/o 9/49-B, Gali Bagichi,  
Vishwas Nagar, Shahdara,  
Delhi – 110032  
(Working as Accounts Supervisor)
2. Sh. Kamal Singh, (Group-C),  
Aged about 49 years,  
S/o Shri Ram Singh  
R/o C-4/379, Sultan Puri,  
Delhi- 110086  
(Working as Sr. Accountant)
3. Ms. Jasvinder Kaur, (Group-C)  
Aged about 40 years  
D/o Shri Avtar Singh  
R/o 13/1-A, Second Floor,  
Park Facing, Tilak Nagar,  
New Delhi – 110018  
(Working as Accountant)
4. Sh. Praveen Kumar Bhan, (Group –C),  
Aged about 46 years  
S/o Shri Chandra Bhan  
R/o E-273, Aastha Kunj,  
Sector -18, Rohini,  
Delhi – 110089  
(Working as Accounts Supervisor)
5. Sh. Shriom Gyal, (Group –C)  
Aged about 58 years  
S/o Shri Murari Lal Goyal  
R/o A-19, Naya Bazar, Najafgarh  
New Delhi  
(Working as HRO (HAG-I))
6. Sh. Rajesh Kumar Sharma, (Group-C),  
Aged about 55 years



S/o Shri Babu Ram Sharma  
R/o E-25/ Patel Nagar,  
Ghaziabad (UP)  
(Working as HRO (HAG-I))

7. Sh. Deva Nande, (Group –C)  
Aged about 55 years  
S/o Sh. Balwant Rai,  
R/o H. No. 341, Ward No.1,  
Near Salar Ganj Gate,  
Panipat (HR)  
(Working as Accounts Supervisor)
8. Sh. Anu Dandriyal, (Group-C)  
Aged about 45 years  
D/o Sh. Jagdish Kumar  
R/o 3142, Gali No.6, Jain Nagar,  
Kashmiri Block, Rohini,  
Sector 38, Delhi – 110081  
(Working as Accounts Supervisor)
9. Dinesh Singh Rawat, (Group-C)  
Aged about 52 years  
S/o Sh. Manwar Singh Rawat,  
R/o 81, Sector -6, R.K.Puram,  
New Delhi  
(Working as Head Sorting Asstt. (HSG-I))
10. Laxmi Narayan, (Group-C)  
Aged about 45 years  
S/o Sh. Om Prakash  
R/o E-5, P&T colony,  
Delhi Cantt, New Delhi  
(Working as Inspector of Post Offices)
11. Sh. Dev Kishan, (Group-C),  
Aged about 53 years  
S/o Bhajan Lal  
R/o H.No.101, SS Society,  
West Punjabi Bagh,  
New Delhi – 110026  
(Working as HRO (HAG-I))
12. Sh. Tajinder Singh, (Group-C)  
Aged about 48 years  
S/o Sh. Mohan Singh,  
R/o S-8, Janta Market,  
Rajouri Garden, New Delhi – 27  
(Working as Accounts Supervisor)



13. Ms. Pushpa Jugran, (Group-C)  
Aged about 49 years  
W/o Sh. R.K. Jugran,  
R/o Flat No.58, Sector-11,  
UNI Apartment, Vasundhra,  
Ghaziabad (UP)  
(Working as head Sorting Asstt., HSG-I)

....Applicants

[By Advocate(s): Mr. Surinder Kumar Gupta]

**Versus**

Union of India through

1. Secretary,  
Department of Posts,  
Ministry of Communication & IT,  
Dak Bhawan, New Delhi
2. Chief Post Master General,  
Delhi Circle, Meghdoot Bhawan,  
New Delhi
3. Director,  
New Delhi Sorting Division,  
Meghdoot Bhawan, New Delhi.
4. Sr. Supdt. of Post Offices,  
Delhi Sorting Division,  
Delhi – 110006
5. Senior Superintendent,  
Air Mail Sorting Division,  
Chanakyapuri, New Delhi

...Respondents

[By Advocate(s): Mr. A K Singh]

**ORDER (ORAL)**



This Original Application has been filed by the applicants under Section 19 of Administrative Tribunals Act, 1985, seeking the following relief(s):

*“(a) quash and set aside the order dated 04.10.2018 (Annexure A-1 Colly) and order dated 21.08.2018 (Annexure A-2 Colly);*

*(b) direct the respondents to restore the basic pay of the applicants to its original position and refund the recovered amount to each of the applicants along with interest;*

*(c) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”*

2. The applicants are aggrieved by the Impugned Orders dated 04.10.2018 (Annexure A-1 Colly) and 21.08.2018 (Annexure A-2 Colly), whereby the department has reduced the basic pay of the applicants and ordered recovery from their salaries.

3. Learned counsel for the applicants places reliance upon Order dated 10.01.2013 and concedes to the facts that though said Office Order at a relevant point of time was against the applicants. However, he draws attention to judgment dated 04.03.2020 in a batch matter leading one being OA No.512/2013 (titled ***Shaukat Hasan Inamdar vs. Union of India and others***) passed by a Co-ordinate Bench of this Tribunal. The relevant paragraphs of the same read as follows:-



*“4(a). The main prayer sought in these OAs is direction to the respondents to refix their pay at the time of time-bound promotion/grant of MACP even after 22.04.1998 by including the special pay/special allowance in their Basic Pay received by them before the promotion/financial upgradation and pay them arrears of pay accordingly.*

*4(b). The undisputed facts in these cases are that the applicants before their promotion under the time-bound promotion scheme or grant of financial upgradation under MACP, they were in receipt of Special Pay as per Fundamental Rule 9(25). After acceptance of V Central Pay Commission recommendations, DOPT issued the OM dated 22.04.1998 by which amount of the Special Pay already admissible was doubled in those cases where it had been sanctioned at current rates between 01.01.1986 and 31.12.1990, and enhanced by 50% in those cases where it was revised or introduced at higher rates after 31.12.1990. That OM further specified that the Special Pay would henceforth be termed as Special Allowance and would be granted subject to same conditions as are stipulated in Fundamental Rule 9(25) and these orders would be effective from 01.08.1997.*

*4(c). As per the letter dated 10.01.2013 issued by the Department of Posts, Ministry of Communications and Information Technology, Government of India, in view of dismissal of SLP No.CC 1080/2012 by Apex Court in Union of India Vs. S.Mohan Kumar, the issue of reckoning Special Pay termed as Special Allowance for pay fixation on promotion/financial upgradation was examined with consultation of the Department of Expenditure, Ministry of Finance and as per their concurrence, the Nodal Ministry gave concurrence dated 21.12.2012 to implement the judgment of the Bengaluru Bench of the CAT dated 22.10.2002 in OA No.296/2002 upheld by the Karnataka High Court in Writ Petition No.7593/2003 in respect of Shri Mohan Kumar and other similarly placed persons who were promoted after completing three years of service as PO and RMS Accountants before 22.04.1998 and in whose cases the Special Pay was Rs.90/- at the time of promotion.*

*4(d). In the letter dated 10.01.2013, concurrence was also conveyed that the above judgment of the Tribunal, and the judgments of Ernakulam Bench*



of the Tribunal in OA Nos.691/2005 and 437/2006 in cases of Ms. K.Rajeshwari and Ms. Anita K. Alexander, respectively and of Chennai Bench of the Tribunal in OA No.773/2010 in case of Ms. Jayalaxmi may be implemented by reckoning the Special Pay termed as Special Allowance as part of the Basic Pay for the purpose of pay fixation of the above then PO and RMS Accountants. The recovery, if any made from their pay and allowances on that account shall be refunded.

It was further mentioned in that letter that the above benefit of pay fixation on promotion/financial upgradation shall also be extended to all similarly placed cases of PO and RMS Accountants where the Special Pay/Special Allowance at the rate of Rs.90/- per month was drawn continuously for three years before 22.04.1998. In cases where promotion/financial upgradation has taken place on or after 01.08.1997 but before 22.04.1998, special pay/allowance of Rs.90/- will only be reckoned for this purpose.

4(e). As per the DOPT OM dated 22.04.1998, the Special Pay drawn before 01.08.1997 was doubled to Rs.180/- per month from that date and termed as Special Allowance. However, at the time of their one time-bound promotion or grant of financial upgradation under MACP to the applicants, the Special Allowance at the rate of Rs.180/- per month has not been included in their Basic Pay while re-fixing the pay. The applicants in these OAs seek the inclusion of the Special Allowance of Rs.180/- per month as part of their Basic Pay at the time of re-fixation of their pay after promotion under the one time bound promotion or grant of financial upgradation under the MACP Scheme.

4(f). However, The respondents contend that in view of stipulation in para 4 of the letter dated 10.01.2013, only in those cases where the concerned employees had received Special Pay of Rs.90/- per month continuously for a period of three years has been included as a part of Basic Pay but as the promotion/financial upgradation to the applicants has been granted after 22.04.1998, the Special Allowance received by them cannot be included as part of the Basic Pay on their promotion or grant of financial upgradation.

4(g). A gist of the case laws relied upon by the applicants brings out the position that once an





*employee has been extended the benefit of Special Pay/Special Allowance for certain period as per the existing rules, that employee has a vested right in favour of that Special Pay/Allowance and by subsequent instructions or amendment to the Rules such a vested right cannot be withdrawn retrospectively. Non-inclusion of the Special Pay as a part of Basic Pay at the time of re-fixation of pay has been set aside by Jaipur Bench of the Tribunal in case of Mohd. Yusuf Khan Vs. Union of India and that decision was upheld by the Rajasthan High Court Jodhpur Bench.*

*4(h). As per the DOPT OM dated 22.04.1998, the distinction has been removed between the Special Pay received earlier as per stipulations under Fundamental Rule 9(25) and its subsequent name as Special Allowance at doubled the rates allowed from 01.08.1997 under the same conditions stipulated under FR 9(25). Therefore, the contention of the respondents is not correct that only Special Pay was to be included as part of the Basic Pay on promotion or financial upgradation and the Special Allowance does not qualify for such inclusion.*

*In fact in the order of the respondents in letter dated 10.01.2013, there is no such distinction between the Special Pay and Special Allowance and based on the decisions of the Bengaluru, Ernakulam and Chennai Benches of the Tribunal, the Special Pay termed as Special Allowance has been allowed as a part of Basic Pay for pay fixation of PO and RMS Accountants i.e. similarly placed counterparts of the present applicants.*

*4(i). The second main contention of the respondents is reliance on the Apex Court decision dated 10.04.1990 in case of Mallikarjuna Rao and others Vs. State of Andhra Pradesh and others, reported in (1990) 2 SCC 707 holding that it is neither legal nor proper for the High Court or the Administrative Tribunals to issue directions or advisory sermons to the Executive in respect of sphere which is exclusively within the domain of the executive cadre under the Constitution such as framing of rules under Article 309 of the Constitution.*

*However, it is to be noted that the present cases are not for issuing any special directions with reference to rule making power of the Government under Article 309 of the Constitution.*



*They are seeking relief by treating the Special Allowance received by them on par with the Special Pay received by them earlier for inclusion in their Basic Pay while refixing the pay on promotion or grant of financial upgradation. Therefore, this contention of the respondents is also not helpful to them.*

*4(j). The language of the DOPT OM dated 22.04.1998 was very unambiguous that the Special Pay would henceforth be termed as Special Allowance and would be granted subject to same conditions as are stipulated under Fundamental Rule 9(25). Therefore, for this purpose, there is no distinction between Special Pay and Special Allowance and as the applicants were granted the Special Pay earlier under Fundamental Rule 9(25) under certain terms and conditions, the Special Allowance granted to them under the same FR 9(25) at the applicable rates qualifies for inclusion as part of the Basic Pay when their pay was refixed on promotion under the One Time Bound Promotion Scheme or on grant of MACP upgradation.*

*4(k). As regards the differentiation made by the respondents with reference to inclusion of the Special Pay in the Basic Pay only if it was received before 22.04.1998, the Jodhpur Bench of this Tribunal in its decision dated 10.11.2017 in OA No.463/2015 in case of Mohd. Yusuf Khan Vs. Union of India & Others & Ors. has held that the refixation of the pay of the applicant by excluding the Special Pay was illegal and this decision of the Tribunal has been upheld by the Rajasthan High Court (Jodhpur Bench) dated 06.10.2018 and that there is no justification in restricting the benefit between the two dates i.e. giving benefit of the Special Pay only when the promotion/financial upgradation took place between 01.08.1997 to 22.04.1998. Also when decisions of other Benches of this Tribunal mentioned in the order of the respondents dated 10.01.2013, have been implemented for similarly placed Accountants by reckoning the Special Pay termed as Special Allowance as part of the Basic Pay for the purpose of the pay fixation, such benefits cannot be denied to the present applicants.*

*In view of the above analysis, we are of the opinion that the applicants in these OAs have made out a justified case for inclusion of the special allowance granted to them under FR 9(25)*





*in the basic pay on re-fixation of the pay on promotion/financial upgradation under MACP. Therefore, these OAs deserve to be allowed.*

**5. Decision:**

*OAs are allowed with direction to the respondents to include the Special Allowance received by the applicants at the time of their promotion under the One Time Bound Promotion Scheme or grant of financial upgradation under the MACP Scheme and release payment of arrears of their pay to them accordingly in three months from today. However, they will not be entitled for payment of any interest on such arrears. If any recovery has been made from the applicant(s) after withdrawing such inclusion of Special allowance in basic pay, it should be refunded.”*

4. Learned counsel for the applicants further contends that the aforesaid Order has been implemented in letter and spirit as per the communication dated 02.03.2022.

5. As per the Order dated 01.11.2022 passed by this Tribunal in the instant case, learned counsel for the respondents was directed to take appropriate instructions from the respondents' department as to whether the aforesaid decision is squarely applicable to the present case. During the course of hearing, learned counsel for the respondents places on record an Office Order dated 28.02.2022, the contents of which are reproduced as under:-

*“Kindly refer to the above mentioned case on further course of action to be taken on the judgement dated 04.03.2020 by the Hon'ble CAT Mumbai Bench, on OA 218/2014, 196/2014, 187/2014, 195/2014 and 512/2013 filed by Smt V A Javkar, Smt M K Madneni, Shri S R Dubey, Shri*



*A T Sawant and Shri S H Inamdar against UOI & Ors.*

2. *The case was referred to Department of Expenditure, Ministry of Finance for their advice. Department of Expenditure vide their diary No. 08-1/2021-E III(A)/2448573 dated 21.02.2022 has agreed to the implementation of CAT Mumbai bench order dated 04.03.2020 for the applicants only (Copy enclosed).*

3. *I am directed to request to implement the above order of Hon'ble CAT, Mumbai dated 04.03.2020 in case of applicants and send a compliance report to this Directorate."*

6. Learned counsel for the respondents concedes to the fact that the aforesaid Order has been implemented.

7. It is a well settled law that similar benefits ought to be extended to the similar persons even though who have not approached the Courts, as held in a catena of judgments rendered by the Hon'ble Supreme Court. More particularly, in light of decision rendered in ***State of Karnataka Vs. S.M. Kotrayya and others***, reported in 1996 (6) SCC 267 and ***State of Karnataka Vs. C. Lalitha***, reported in 2006 (2) SCC 747.

8. In view of aforesaid proposition of law, no divergent view can be taken by this Tribunal in the present matter.

9. In view of aforesaid, the Impugned Orders dated 04.10.2018 (Annexure A-1 Colly) and 21.08.2018 (Annexure A-2 Colly) are hereby quashed and set aside. The



respondents are directed to issue appropriate orders regarding restoration of the basic pay of the applicants to its original position and recovery, if any, made so far shall be refunded to them and arrears, if any, shall be released within a period of three months from the date of receipt of a certified copy of this Order. It is made clear that the applicants are not entitled to interest on any such payment. However, the aforesaid exercise is not done within the prescribed time limit then the applicants shall be entitled to interest at the rate of GPF till the date of actual payment.

10. The OA is allowed in the aforesaid terms.

No order as to costs.

**(Manish Garg)**  
**Member (J)**

/sm/