

**(2025) 12 CAT CK 0002**

**Central Administrative Tribunal**

**Case No:** Original Application No. 330, 00797 Of 2022

Ram Nath Joshi & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

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**Date of Decision:** Dec. 8, 2025

**Acts Referred:**

- Administrative Tribunals Act, 1985 - Section 19

**Hon'ble Judges:** Om Prakash VII, Member (J); Mohan Pyare, Member (A)

**Bench:** Division Bench

**Advocate:** Prashant Mathur, B.K. Srivastava, P.K. Mishra, Anil Kumar

**Final Decision:** Allowed

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**Judgement**

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of the Administrative Tribunal Act, 1985 seeking following reliefs:-

***“(i) Quash the order dated 03.08.2022 (Annexure No.1 Colly) and the order dated 16/22.08.2022 (Annexure No. 2) passed by Divisional Personnel Officer, NCR, Jhansi in respect of the applicants.***

***(ii) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper.***

***(iii) to award the costs to the applicants”.***

2. The brief facts of the case are that the applicants retired from service as Chief Law Assistants (Applicants No. 1, 2, 4 and 5) and as Assistant Personnel Officer (Applicant No. 3). They challenge the impugned orders dated 03.08.2022 and 16/22.08.2022 by which the Railway authorities suddenly withdrew the MACP benefits earlier granted to them through office orders dated 24.04.2018, 06.08.2019 and 24.08.2020. These benefits had been duly approved on the

basis of RBE 101/2009 and RBE 143/2010, and on the recommendations of a Screening Committee, the post of Chief Law Assistant was recognized as an ex-cadre post. However, relying solely on an internal Headquarters letter dated 20.07.2022, the respondents suddenly reversed their own stand and held that the post of Chief Law Assistant is not an ex-cadre post, cancelled the MACP benefits and further ordered refixation of pay and issued revised Pension Payment Orders, without giving any notice, without providing the inquiry report and in complete violation of the principles of natural justice. The applicants, therefore, prayed that the impugned actions are arbitrary, illegal, contrary to established rules and unsustainable in law.

3. The respondents, in their counter affidavit, have averred that although the applicants were earlier given MACP benefits, these benefits were later reviewed after receiving a letter from the Headquarters referring to a CAT Principal Bench judgment. A committee was formed by the General Manager/NCR to recheck all such MACP cases. The committee found that the post of Law Assistant is not an ex-cadre post, and therefore the MACP benefits earlier given to the applicants were not as per rules. Based on this finding, Headquarters instructed Jhansi Division to correct the earlier mistake. Following these instructions, a legal notice dated 03.08.2022 was issued to all applicants, informing them that their MACP benefits would be withdrawn and their pay would be refixed. After giving them reasonable time, an order was passed cancelling the MACP benefits and sending their revised pension cases to the settlement section. The respondents clarify that, as per CAT Allahabad's interim order, no recovery is being made from the applicants; only pension revision has been processed. Thus, their actions are lawful, taken after proper verification by a competent committee and only to correct benefits wrongly granted earlier.

4. The applicants have filed Rejoinder Affidavit to the Counter Affidavit as filed by the respondents refuting the contentions made by the respondents in his Counter Affidavit while reiterating the averments made in the O.A. and nothing new has been added.

5. We have heard Shri Pradeep Kumar Mishra, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and perused the record.

6. Submission of the learned counsel for the applicants is that all the applicants were fully eligible for selection to the post of Law Assistant, as they were law graduates with more than five years of regular service and had accordingly appeared in the GDCE examination held on 10.01.1994. They qualified in the written test, were duly empanelled, and were appointed to the ex-cadre post of Law Assistant in the grade of Rs. 1600-2660 (RPS). Their appointments were later confirmed by the competent authority on 23.12.1999. Learned counsel for the applicant further submitted that the applicants thereafter continued to work as Law Assistants/Chief Law Assistants and completed the required length of regular service. It is further submitted that in compliance with the directions of the Hon'ble Supreme Court, a High-Level Committee was constituted to streamline the Legal Department of the Railways and the Railway Board accepted its recommendations through letter dated 31.03.2003. Later, pursuant to the implementation of the 6th Central Pay Commission, the Modified Assured Career Progression (MACP) Scheme replaced the earlier ACP Scheme, granting financial upgradations after 10, 20, and 30 years of continuous service.

Learned counsel for the applicants again submitted that as per RBE No. 101/2009 and RBE No. 143/2010, employees appointed through LDCE/GDCE, such as the applicants, are to be treated as having earned promotion to an ex-cadre post, and therefore are fully entitled to MACP benefits. Based on these rules, the Screening Committee duly recommended the applicants for MACP and they were lawfully granted financial upgradations. However, after granting these benefits, the respondents arbitrarily changed their stand and cancelled the MACP benefits through orders dated 03.08.2022 and 16/22.08.2022 without issuing any notice, without supplying the alleged inquiry report, and without providing any opportunity to the applicants to submit objections. Learned counsel for the applicants argued that this action is illegal, void, hit by the doctrine of estoppel, and in gross violation of the principles of natural justice. It is further submitted that the applicants have already superannuated after long and dedicated service and the sudden withdrawal of MACP benefits gravely affects their livelihood in old age. Learned counsel for the applicants placed on record a judgment of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih reported in LAWS (SC) 2014 12 59***, which prohibits recovery from retired employees or employees nearing retirement. These principles have also been reaffirmed in the DOPT Office Memorandum dated 02.03.2016 (adopted by RBE No. 72/2016). Therefore, the impugned orders not only violate statutory instructions but also disregard binding judicial precedent. Thus, the learned counsel submits that the cancellation of MACP benefits is arbitrary, unjust, contrary to rules, violative of natural justice, and deserves to be quashed.

7. In rebuttal, learned counsel for the respondents submitted that although the applicants were initially granted MACP benefits, those benefits were later found to be wrongly given. He submits that as per the Mumbai Central Railway notification of 1988, the applicants were posted as Law Assistants, but later scrutiny revealed that the post of Law Assistant is not an ex-cadre post, which is a necessary condition for granting MACP benefits under RBE 143/2010. Learned counsel for the respondents further submitted that the financial upgradations earlier given to all five applicants came under question after a letter dated 27.05.2022 from Headquarters referred to a judgment of Hon'ble CAT, Principal Bench, New Delhi (20.04.2022) in the case of Shri Chinta Mani Sharma, where the Tribunal directed NCR to verify whether certain employees had been wrongly granted MACP benefits. Following this direction, a Committee was constituted by the General Manager, NCR, vide letter dated 15.06.2022. The Committee examined the cases and found that the MACP granted earlier to similarly placed employees (Shri S.S. Bundela, Shri R.N. Joshi, Shri Naresh Mishra) was not as per the rules. Therefore, the same mistake had also occurred in the case of the present applicants. Based on the Committee's findings, Headquarters issued instructions dated 20.07.2022 to Jhansi Division to take corrective action, as the earlier MACP benefits were legally incorrect. Following on these instructions, notices were issued to the applicants on 03.08.2022 informing them that their MACP benefits were wrongly granted because the post of Law Assistant is not ex-cadre, and therefore their pay needed to be revised. After giving them reasonable time, the respondents passed the impugned order cancelling the MACP benefits and directing revision of their pension. Learned counsel for the respondents again submitted that this action is lawful because if a benefit is wrongly granted, the administration has full authority to correct the error, as also acknowledged by the Hon'ble CAT Allahabad in its order dated 13.09.2022 in OA 797/2022. He further submitted that the Tribunal has already held that

pension can be revised if benefits were wrongly given, although recovery can be considered separately by the Division Bench. Therefore, the respondents have only forwarded the pension revision to the Settlement Section and have not initiated any recovery, strictly following the Tribunal's order. Thus, the respondents argued that their actions are legal, justified, in accordance with rules, and based on the mandatory verification directed by the CAT Principal Bench. Accordingly, the OA deserves to be dismissed.

8. We have considered the rival submissions advanced by the learned counsel for the parties and gone through the entire record.

9. It is evident from the record that one Shri Chintamani Sharma had earlier approached the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4720/ 2015, which was decided on 20.04.2022. The Tribunal, while comparing his case with similarly situated employees who had been granted MACP benefits under RBE No.143/ 2010, directed the General Manager, North Central Railway, to re-examine his case through a duly constituted Selection Committee and extend similar benefits if found similarly situated. The aforesaid order is reproduced below:-

***“Central Administrative Tribunal Principal Bench:***

***New Delhi***

***O.A. No. 4720/2015***

***This the 20th day of April, 2022***

***Hon’ble Ms. Manjula Das, Chairman***

***Hon’ble Mr. Mohd. Jamshed, Member (A)***

***Shri Chintamani Sharma S/o Late Jagdish Nath Age about 60 years Working as Chief Law Asstt. Under DRM, North Central Railway Agra (U.P.).***

***... Applicant***

***(By Advocate: Mr. Manjeet Singh Reen)***

***Versus***

***Union of India & Others : through***

***1. The Secretary Ministry of Railway Railway Board Rail Bhawan New Delhi.***

***2. The General Manager North Central Railway Allahabad (U.P.)***

***3. The Divisional Railway Manager North Central Railway Agra Cantt., Agra (U.P.)***

***...Respondents***

**ORDER (ORAL)**

**Hon'ble Ms. Manjula Das, Chairman**

*The present O.A. has been filed by the applicant challenging the impugned order dated 21.12.2015, whereby the 2nd MACP benefit extended to him w.e.f. 12.11.2009 vide order dated 28.11.2014 has been withdrawn by the respondents, that too, just nine days prior to his retirement, without assigning any reasons. The applicant has also sought a direction to the respondents to adopt and implement the Railway Board Policy dated 29.09.2010 circulated under RBE No.143/2010.*

*2. Mr. Manjeet Singh Reen, learned counsel for the applicant submitted that the applicant was initially appointed as Telegraph Signaller in Operating Department, and was posted under Kota Division at Agra on 19.04.1983 in the pay scale of Rs.260-400. Thereafter, he applied and participated in the selection process for the post of Law Assistant, which is an ex-cadre post. He qualified the same and came to be appointed on the post of Law Assistant on ad hoc basis in the pay scale of Rs.1600-2660 (Revised to Rs.6500-10500) vide order dated 21.10.1991. He was regularised on the said post vide order dated 26.10.1999. The respondents extended the benefit of 2nd financial upgradation to him in Grade Pay of Rs.4800/- w.e.f. 12.11.2009. When the posts of Law Assistant and Chief Law Assistant were merged in the 6th CPC in the pay scale of Rs.6500-10500, he was promoted as Chief Law Assistant vide office order dated 09.11.2010 and his pay was fixed w.e.f. 31.05.2005 in the pay scale of Rs.7450-11500, and w.e.f. 01.11.2003 on proforma basis. Thereafter, the 2nd MACP benefit extended to him was withdrawn vide order dated 21.12.2015, without assigning any reason or giving an opportunity to him. As a result of that, recovery of an amount of Rs. 2,04,057/- has been made from him, despite the interim order dated 29.12.2015 passed by the Tribunal to the effect that there shall be no recovery from the applicant's salary. In support of his arguments, he relied upon various judgments passed by this Tribunal and also by the Hon'ble High Courts.*

*3. Mr. Manjeet Singh Reen, learned counsel for the applicant also drew our attention to an order dated 17.02.2020 passed by this Tribunal in MA No.565/2020, which was filed by the applicant for taking on record certain orders passed by the respondents, whereby the MA was disposed of with an observation that the document can be relied at the final stage.*

*4. Learned counsel for the applicant further submitted that the benefit of 2nd financial upgradation in Grade Pay of Rs.4800/- granted to the applicant was withdrawn in terms of RBE No.143/2010 vide order dated 21.12.2015 passed by the Agra Division of the respondents, whereas vide another Office Order No.592/2019 dated 06.08.2019 (Annexure R-2 enclosed to MA No.565/2020), Jhansi Division of the respondents extended the same benefit to three similarly situated employees, viz. S/Shri Surendra Singh Bundela, R.N. Joshi and Naresh Mishra, in terms of RBE No.143/2010 and, therefore, the applicant is also*

***entitled for the similar benefit.***

***5. Respondents have filed a counter reply opposing the O.A. Mr. A.K. Srivastava, learned counsel for the respondents submitted that the Railway Board vide letter dated 27.06.2014 directed to strictly adhere to the instructions communicated vide letter dated 29.12.2011 and to take necessary remedial action, wherever required. Therefore, the MACP granted to the applicant was withdrawn with the approval of the competent authority, and there is no irregularity.***

***6. We have heard Mr. Manjeet Singh Reen, learned counsel for the applicant and Mr. A.K. Srivastava, learned counsel for the respondents, and perused the pleadings on record.***

***7. From a perusal of the Office Order No.592/2019 dated 06.08.2019, it is evident that Jhansi Division of the respondents have extended the benefit of 2nd MACP to three similarly situated employees, viz. S/Shri Surendra Singh Bundela, R.N. Joshi and Naresh Mishra, in terms of RBE No.143/2010. However, in the case of the applicant, the benefit has been withdrawn vide order dated 21.12.2015 passed by the Agra Division, without affording an opportunity to him, under the same provision of RBE No.143/2010. The respondents cannot have two set of rules for their employees.***

***8. In view of the above, we dispose of the O.A. directing the respondent No.2, i.e. General Manager, North Central Railway, to convene a Selection Committee and to reconsider and verify the case of the applicant in the light of the decision taken in the case of S/Shri Surendra Singh Bundela, R.N. Joshi and Naresh Mishra, and if the applicant is found similarly situated to them, similar benefit be extended to him. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.***

***There shall be no order as to costs”.***

10. In the present matter, it is not disputed that the applicants had initially been granted financial upgradations under the MACP Scheme through office orders dated 24.04.2018, 06.08.2019 and 24.08.2020, on the basis that their movement to the post of Law Assistant was treated as appointment/promotion to an ex-cadre post, consistent with RBE No. 101/2009 and RBE No. 143/2010. The respondents have placed on record that, pursuant to the Headquarters' letter dated 27.05.2022 and in compliance with the direction of the CAT Principal Bench to review certain cases, the General Manager, NCR constituted a Committee to re-verify the MACP benefits. The Committee concluded that the post of Law Assistant was not an ex-cadre post for the concerned employees and that certain financial upgradations had been wrongly granted earlier.

11. On the basis of the material before us, it is also evident that the respondents were within their jurisdiction to verify and review the correctness of the MACP benefits earlier extended. Administrative authorities are not precluded from rectifying mistakes or withdrawing benefits that were granted contrary to rules. However, such correction must always be consistent with law and supported by reasoned decision-making. The record shows that legal notices dated 03.08.2022

were issued before passing the impugned cancellation orders. Nevertheless, it must be ensured that the principles of natural justice are strictly followed before taking any adverse action, particularly when pensioners are affected. The applicants have relied on the judgment of the Hon'ble Supreme Court in *Rafiq Masih* and DoPT instructions dated 02.03.2016 (adopted by RBE No. 72/2016), which restrict recovery from retired employees in specified circumstances. It is settled that recovery from pensioners should not be made except strictly in accordance with law and only after observing due procedure.

12. Therefore, while the respondents may lawfully conduct a review, any corrective action must strictly comply with the principles of natural justice. Pension revision may be carried out in accordance with rules, but recovery of any alleged excess payment must follow due process and must be assessed ensuring the protections available to pensioners under *Rafiq Masih* (supra) case and the relevant DoPT/Railway Board instructions.

13. In view of the above discussion, the following conclusions are drawn:-

(a) The respondents were competent to undertake the review and verification exercise pursuant to directions of the Headquarters and the Tribunal, and correction of wrongly granted benefits is permissible in law.

(b) The impugned orders dated 03.08.2022 and 16/22.08.2022 are held unsustainable as the review was undertaken without strict adherence to the principles of natural justice. The respondents must supply all documents/material relied upon and follow due procedure before taking any corrective action.

(c) No recovery shall be made from the applicants as per the protective principles laid down in *Rafiq Masih* (supra) case and applicable DoPT/Railway Board instructions.

13. It is further noted that the impugned orders were passed on the basis of recommendations of the Committee constituted pursuant to directions of the Tribunal. The applicants have not specifically challenged the Committee's report. Unless the Committee's findings are challenged and set aside, the question of entitlement to MACP benefits cannot be conclusively adjudicated. The applicants have pleaded that they were not provided the Committee report or the complete material relied upon before issuance of legal notice. Accordingly, the respondents are directed to furnish to each applicant the full Committee report, all relied-upon documents, and a clear statement of the proposed recovery amount along with its legal basis within four weeks. The applicants shall thereafter have four weeks to submit their reply, and if requested, a personal hearing shall be granted within two weeks. The competent authority shall thereafter pass a detailed, reasoned order on the correctness of MACP grant. It is clarified that in no case recovery of excess payment could be made from the applicants as they have retired from the service and MACP has been allowed by the department and there was no fault or misrepresentation on part of the applicants as has been held in *Rafiq Masih* (supra) case. It is further clarified that till decision is taken pension already fixed in respect of the applicants shall not be reduced.

14. With the above directions, the Original Application is allowed. The impugned orders dated 03.08.2022 and 16/22.08.2022 are quashed. Recovery, if any, made in the matter shall be refunded to the applicants within four months along with 6% per annum simple interest. There shall be no order as to costs. All pending Miscellaneous Applications stand disposed of.