

NEUTRAL CITATION NO. 2025:MPHC-IND:8311



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W.P. No. 7539 of 2019

W.P. No.10168 of 2019

W.P. No. 22728 of 2019

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 24th OF MARCH, 2025

WRIT PETITION No. 7539 of 2019

ANIL KAUSHAL

Versus

**MADHYA PRADESH PASHCHIM KSHETRA VIDYUT VITRAN
COMPANY LIMITED (MPPKVCL) AND OTHERS**

Appearance:

Shri Karpe Prakhar Mohan - Advocate for the petitioner.

Shri Prasanna Prasad – Advocate for respondents No.1 and 2.

WITH

WRIT PETITION No. 10168 of 2019

RAMKISHOR SINGH

Versus

**M.P. PASCHIM KSHETRA VIDYUT VITARAN CO. LTD. AND
OTHERS**

Appearance:

Shri Rahul Sethi - Advocate for the petitioner.

Shri Prasanna Prasad – Advocate for respondents No.1 and 2.

WRIT PETITION No. 22728 of 2019

NANDKISHORE

Versus

**MADHYA PRADESH PASHCHIM KSHETRA VIDYUT VITRAN
COMPANY LIMITED AND OTHERS**



Appearance:

Shri Karpe Prakhari Mohan - Advocate for the petitioner.

Shri Abhishek Bajpai – Advocate for respondents No.1 and 2.

Shri Dr. Amit Bhatia – G.A. for respondent/State.

ORDER

The petitioner has filed this present petition under Article 226 of the Constitution of India being decided together with W.P. 10168/2019 and W.P. 22728/2019 as they all raise common questions of fact and law. The petitioners in all the cases are retired employees of the Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd. (hereinafter referred to as “the Respondent Company”) and are seeking similar reliefs in relation to the grant of IIIrd Time Pay Scale of pay according to the policy dated 21.02.2015 issued by the respondent company.

2. The Petitioner - Anil Kaushal was appointed on the post of Junior Engineer in the erstwhile M.P. Electricity Board on 11.09.1980 and had completed thirty years of services on 10.09.2010. Thereafter, he applied for the benefit of IIIrd Time Pay Scale under the same policy dated 21.02.2015. His request was rejected vide communication dated 23.08.2016 and again through subsequent communications dated 27.04.2017 and 28.01.2019 with reasons of non-fulfillment of the benchmark criteria in the preceding five years of ACRs.

3. The Petitioner - Ramkishore Singh was initially appointed on the post of Technician Apprentice in the erstwhile M.P. Electricity Board on 29.05.1979. Thereafter, vide order dated 07.08.1981 he was promoted on the post of Sub-Engineer and after attaining the age of



superannuation he stood retired on 30.06.2016. On completion of thirty years of service i.e. on 19.06.2019, he had applied for the benefit of IIIrd Time Pay Scale on 23.04.2016. However, his claim was declined vide communication dated 26.04.2016 citing lack of requisite ACR gradings in the preceding five years.

4. The Petitioner - Nandkishore Carpenter was appointed on the post of Junior Engineer in the erstwhile M.P. Electricity Board on 16.02.1980 and has completed thirty years of service on 15.02.2010. Thereafter, he submitted his option for IIIrd Time Pay Scale benefit as per policy dated 21.02.2015 but by communication dated 01.06.2016 his claim was denied on the ground that he did not obtain the requisite benchmark ACR gradings in the previous five years.

5. The grievance of all the petitioners is that the action of the respondents in denying the IIIrd Time Pay Scale is arbitrary, illegal and in breach of their own policy particularly when adverse entries relied upon by them while deciding were not communicated to the employees and also that the decision suffers from non-application of mind and is a mechanical rejection based on a general reference to ACRs, rendering the decision legally unsustainable. Thus, the petitioners seek quashment of the impugned communications denying them the benefit of the third time scale of pay, and a direction to the respondents to reconsider their claims in light of the applicable policies and to release their monetary benefits including arrears and revised pension payment orders along with interest.

Arguments by Petitioners



6. Learned counsel for the petitioners submitted that the denial of such benefit by the respondents was arbitrary as they were based on adverse Annual Confidential Reports (ACRs) for the five-year period preceding the cut-off date and also as these adverse ACRs were never been communicated to the petitioners and thus the respondent company acted in a mechanical manner in issuing order of rejection without proper individual evaluation of their service records. Learned counsel further submitted that the pending Writ Petition No. 8107/2014 relied by the respondents has no direct bearing on the individual cases of the petitioners and hence could not be cited as a valid ground for deferring or rejecting their claims.

7. Learned counsel for the petitioners further submitted that the denial of the benefits based on un-communicated entries is contrary to the principles of natural justice and also goes against the settled service law jurisprudence which mandates that any adverse entry relied upon must first be communicated to the concerned employee along with an opportunity to represent.

8. In support of his contention learned counsel for the petitioners placed reliance on the judgment passed by the Apex Court in the case of *Dev Dutt v. Union of India* reported in (2008) 8 SCC 725 and *Sukhdev Singh v. Union of India* reported in (2013) 9 SCC 566, wherein the Hon'ble Apex Court held that non-communication of entries affecting career benefits is violative of principles of natural justice. Learned counsel also relied on the principles laid down in the case of *Vijay*



Kumar v. State of Maharashtra reported in (1988) *Supp SCC 674*, wherein the Apex Court reiterated that fairness in administrative action includes communication of adverse remarks.

Arguments by Respondents

9. The respondents have filed reply to support the impugned action in all petitions. Learned counsel for the respondents submitted that the IIIrd Time Pay Scale benefit under the policy dated 21.02.2015 is contingent not only on completion of 30 years of service but also on the employee meeting the prescribed performance benchmark. Specifically, the employee must have obtained a minimum 13 marks from ACR gradings over the previous five years and have no adverse entries. Upon examination of the service records of the petitioners, it was found that they failed to meet these criteria. In particular, it was noted that some petitioners lacked the minimum score, while others had adverse remarks.

10. Learned counsel for the respondents further submitted that the process followed by the respondents was not arbitrary as alleged since the entries relied upon were drawn from the official records of the petitioners and formed a valid basis for determining eligibility. Learned counsel submitted that the financial benefits such as time scale pay are not automatic and must comply with both tenure and performance conditions.

11. Learned counsel for the respondents further submitted that all decisions were made subject to the final outcome of W.P. No. 8107/2014 which involves a broader challenge to the implementation of the time



scale policy and therefore, has a bearing effect on the current matters. Thus, the counsel submitted that the denial by the respondents was lawful, justified and in strict adherence to the policy framework and administrative guidelines and requires no interference by this Court.

Appreciation and Conclusion

Writ Petition No.7539 of 2019

12. According to the respondents, last five years ACRs were considered and the petitioners secured 9 marks, therefore, he was not found fit for Third Time Pay Scale. Learned counsel for the petitioner submitted that he has never been communicated the adverse ACRs of the year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. Even if some adverse ACRs were there, they were not liable to be considered.

13. The respondents have filed the letter dated 21.09.2012 alongwith the return by which the ACR of 2010 and 2011 were communicated to the petitioner. No such document has been filed to establish that the ACRs of those years which were considered for grant of promotion were ever communicated to the petitioner, therefore, the ACRs have wrongly been considered by the DPC. Hence, the denial of grant of benefit of Third Time Pay Scale is not justified and accordingly, impugned communications dated 23.08.2016, 27.04.2017 and 28.01.2019 are hereby quashed.

Writ Petition No.10168 of 2019

14. According to the respondents last five years ACRs were considered and the petitioners secured 11 marks, therefore, he was



not found fit for Third Time Pay Scale. The counsel for the petitioner submitted that the petitioner has never been communicated the adverse ACRs. The petitioner has been awarded as Grade-A for the period from 21.08.2015 to 31.03.2016. Apart from the above, the petitioner was promoted on the post of Executive Engineer vide order dated 30.06.2015 and by the time, he had completed thirty years of service also, therefore, when service record was found fit for the purpose of promotion then the benefit of Third Time Pay Scale after completion of thirty years has wrongly been rejected. Accordingly, impugned communications dated 26.05.2016 and 26.06.2017 are hereby quashed.

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15. The respondents have not filed any document to demonstrate that any adverse ACR was communicated to the petitioner. The petitioner was only communicated the ACRs of 2014-15 in which the Grade-C was awarded. The petitioner submitted a representation which has been rejected. Thereafter, the petitioner has been awarded as Grade-A for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017. Accordingly, impugned communications dated 01.06.2016, 26.07.2017, 23.08.2016 and 20.12.2017 are hereby quashed.

16. The petitioners in all the writ petitions be given the benefit of IIIrd Time Pay Scale from the date of their entitlement within a period of 90 days from the date of production of certified copy of this order.

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17. With the aforesaid, all these writ petitions stands allowed and disposed of. No order as to costs.

Let copy of this order be kept in the record of connected petitions.

(VIVEK RUSIA)
JUDGE

Vatan