



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2026
[@ SLP (C) NO. 11595 OF 2023]

UNION OF INDIA & OTHERS

... APPELLANT(S)

VERSUS

SUNIL KUMAR RAI & OTHERS

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. The subject matter of the Civil Appeal centres around Para 7.4.13 (iv) (b) of the Seventh Central Pay Commission, and the letter dated 19.02.2021 issued by the Border Road Organization (For short “BRO”), rejecting the claim for extension of Non-Functional Upgradation (For short “NFU”) to Level 9. The excerpts of the above are noted hereunder:

“Analysis and Recommendations

7.4.13 The following is recommended:

- i. The VI CPC had recommended that posts carrying minimum qualifications of diploma in engineering should

- be placed in GP 4200. while those requiring a degree in Engineering should be placed in GP 4600. This Commission is also of a similar view. Accordingly, normal replacement pay scales are recommended.
- ii. The question of change in designations is an administrative one and best left to the discretion of the ministry concerned. Accordingly, no recommendations are made in this regard.
 - iii. The issue of MACP does not solely concern the Engineering cadres. but affects all Central Government employees. Separate recommendations regarding MACP have been made in Chapter 5.1 of the Report. They will apply to subordinate engineering cadres as well.
 - iv. The Commission took note of the issue of stagnation raised by various representative staff associations. Accordingly, the following is recommended:
 - a. The concerned ministries should earmark posts in Level 8 equal to 10 percent of total sanctioned strength in Levels 6 and 7 to be filled from subordinate engineering cadre personnel in Levels 6 and 7. 70 percent of such earmarked posts should be filled through promotion from Level 7. while 30 percent should be filled through a Limited Departmental Competitive Examination in which employees from both Levels 6 and 7 would be eligible to compete. This will enable deserving and meritorious employees at Level 6 to jump Level 7 and go directly to Level 8.
 - b. 80 percent of the employees in Level 8, will be eligible for non-functional upgrade to Level 9 upon completion of four years in Level 8, on a seniority-cum-suitability basis."

"13027/PF/ADGBR(NW)/96/E1A

19 Feb 2021

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CLARIFICATION REGARDING PAY FIXATION: GREF OFFICER

1. Reference your HQ letter No.028/PF/82/E1A & 028/PF/84/E1A both dt. 12 Feb 2021.

2. Applications regarding pay fixation in respect of following, officers received vide your HQ letter under ref are returned herewith, as provision of grant of GP Rs.5400/- on completion of 04 years of service was sanctioned for SPS post only & not for AE of BRO as per Min of Shipping, Road TPT & Highways, BRDB letter dated 17 Feb 2009.

a) GO-004219M AE (Civ) JP Sharma SC of 759 TF

b) GO-004792H AE (Civ) Sunil Kumar Mishra of HQ CE (P)
Deepak.

Sd/-”

3. The Civil Appeal arises from the Order dated 14.03.2023 in Writ Petition (Civil) No. 5518 of 2021 of the High Court of Delhi at New Delhi. The parties are referred to as arrayed in the Writ Petition. The Junior Engineers filed Writ Petition No. 5518 of 2021 to enforce their claim for NFU pay at Level 9 (Grade Pay of Rs. 5,400/-). The Writ Petitioners were appointed in the BRO in the Subordinate Engineer Cadre as Overseers, Charge Mechanics and Superintendents. In terms of the Fifth Central Pay Commission recommendations, the posts were merged and redesignated as Junior Engineer(s). As per the recommendations of the Sixth Central Pay Commission, the post of Junior Engineer was placed at Pay Band-2 with a Grade Pay of Rs. 4,200/-. As per the Modified Assured Career Progression Scheme (For short “MACP”), the next Grade Pay was stipulated at Rs. 4,600/- , Rs. 4,800/-, and Rs. 5,400/-, consequent to the completion of 10, 20, and 30 years of service, respectively. The Writ Petitioners averred that, as per Para 7.4.13 (iv) (b) of the Seventh Central Pay Commission recommendation, 80 per cent of employees at Level 8 would be granted NFU to Level 9 (Grade Pay of Rs. 5,400/-) upon completion of four years of service at Level 8, on seniority-cum-suitability basis. The Respondents, through a letter dated 19.02.2021, rejected the claim for granting the benefit of NFU to Level 9 (Grade Pay of Rs. 5,400/-) to the Writ Petitioners/Junior Engineer(s).

4. The Writ Petitioners contended that they were originally inducted into the BRO in various Subordinate Engineering Cadres as noted above and were later merged and redesignated as Junior Engineers following the Fifth Central Pay Commission recommendations. Again, in terms of the Sixth Central Pay Commission recommendations, the post of Junior Engineer was placed at Level 6 (Grade Pay of Rs. 4,200/-), with Career Progression to Level 8 (Grade Pay of Rs. 4,800/-) upon completion of 20 years of service under the MACP Scheme. The Writ Petitioners are presently at Level 8 with a Grade Pay of Rs. 4,800/-. The Writ Petitioners assert that, as per the applicable Paragraph, 80 per cent of the employees in Level 8 shall be eligible for NFU to Level 9 (Grade Pay of Rs. 5,400/-), subject to completing four years of regular service in Level 8, on a seniority-cum-suitability basis. The extension of NFU to Senior Private Secretaries and Assistant Accounts Officers, while denying the same to Writ Petitioners/Junior Engineers who have completed 20 years of service and are working at Level 8 with a Grade Pay of Rs. 4,800/-, is illegal and amounts to discrimination.

5. The Respondents contested the matter principally on the ground that the prayer for enforcement of right under Article 226 of the Constitution of India is based on a wrong premise of incorrect comparison of other posts, *viz.*, Senior Private Secretaries and Assistant Accounts Officer. Secondly, the Central Pay Commission recommendations are advisory in nature and, therefore, the recommendation by itself does not create a legal right in favour of Junior Engineers until a formal Government Order is issued either by the Ministry or the Department of Personnel and Training. The Respondents

argue that Para 7.4.13 (iv) (b) is applicable only to Group B Officers whose entry-level Grade Pay in the Sixth Central Pay Commission was Rs. 4,800/-. The Writ Petitioners/Junior Engineers had an initial Grade Pay of Rs. 4,200/- . They reached the Grade Pay of Rs. 4,800/- through Financial Upgradations under the MACP Scheme. Therefore, the NFU, in terms of Para 7.4.13 (iv) (b), is not applicable to the Writ Petitioners.

6. Senior Private Secretaries or Assistant Accounts Officers are not comparable posts and are in different cadres with different recruitment procedures and entry-level pay scales. There is no recommendation or Order from the Ministry or the concerned Department, and, therefore, the claim for NFU is illegal.

7. The Junior Engineers, drawing comparison, rely on the Judgment of the Division Bench of the High Court of Madras in *M. Subramaniam v. Union of India*¹, which is confirmed by this Court in *Civil Appeal No. 8883 of 2011*, *Sushil Kumar v. Union of India*², as confirmed by this Court in *S.L.P. (Civil) D. No(s). 13406 of 2025* and *Gajendra Singh and others v. Union of India*³, as confirmed by this Court in *S.L.P. (Civil) D. No(s). 1406 of 2026*.

8. The Respondents argue that NFU does not extend to the Writ Petitioners, as their request is contrary to the recommendations in Paras 7.4.16 and 7.4.17 of the Seventh Central Pay Commission.

9. The impugned Judgment considered the issues as follows:

¹ W.P No. 13225 of 2010.

² (2024) SCC OnLine Del 6482.

³ (2025) SCC OnLine Del 1651.

9.1 The Ministry of Finance's original Resolution dated 29.08.2008, modifying the Sixth Central Pay Commission, directed the grant of the Grade Pay of Rs. 5,400/- as NFU to various cadres. The respondents, in contravention of this broader Resolution, arbitrarily restricted the benefit only to Senior Private Secretaries *via* their communication dated 17.02.2009.

9.2 The Court rejected the respondents' argument that since the engineers' entry-level Grade Pay was not Rs. 4,800/- and they were ineligible for NFU. It was held that whether entry to the Grade Pay of Rs. 4,800/- is by promotion or direct recruitment is immaterial. The only condition precedent for the grant of Rs. 5,400/- is the completion of four years in the Grade Pay of Rs. 4,800/-.

9.3 Para 7.4.13 (iv) (b) of the Seventh Pay Commission recommends that 80 per cent of employees in Level 8 are eligible for a NFU to Level 9 after completing four years in Level 8, based on seniority-cum-suitability. Para 7.4.17, which denied pay upgrades to draughtsmen, must be read in consonance with Para 7.4.13 (iv) (b).

9.4 The High Court relied on this Court's dismissal of the Government's appeal in *Union of India v. M. Subramaniam (Supra)* filed against the Madras High Court Judgment. The said decision established the rule that the Grade Pay of Rs. 5,400/- must be granted upon four years of continuous service in the Grade Pay of Rs. 4,800/-, irrespective of whether it was gained by way of promotion or ACP/MACP.

9.5 It is "highly unacceptable" that the NFU benefit was granted to Senior Private Secretaries and Assistant Accounts Officers but denied to Junior

Engineers who have identically completed four years in the milestone Grade Pay.

9.6 The Writ Petitioners, having completed four years of service in the Grade Pay of Rs. 4,800/-, are fully entitled to the benefit of the NFU, Grade Pay of Rs. 5,400/-. The Writ Petition was disposed of by directing the Respondents therein to pass the necessary orders granting this upgradation to the Writ Petitioners within four weeks.

10. Hence, the Appeal.

11. The Union of India/BRO argue that the plain reading of Para 7.4.13 (iv) (a & b) does not confer a right for NFU to the Writ Petitioners. The same depends on the entry level, and, admittedly, the entry level for Junior Engineers is Rs. 4,200/-. The denial is legitimate, as evidenced by Paras 7.4.12, 16 and 17 of the Seventh Central Pay Commission Recommendations. We notice that Para 7.4.14 deals with Draughtsman. Therefore, once the Respondents admit that the Writ Petitioners are Junior Engineers, the entitlement to NFU is tested on the applicable recommendation. Sub-Para (iv) reads, and Clause (b) stipulates the criteria for NFU to Level 9 upon completion of four years of service in Level 8 on seniority-cum-suitability basis. The denial of NFU on the ground that the Writ Petitioners have not joined the service with grade pay of Rs. 4,800/-, thus, introducing entry-level into the subject paragraphs of Seventh Central Pay Recommendations, may amount to adding additional conditions for extending the benefit of NFU.

12. We have taken note of the view adopted in the cases referred to in the above paragraphs and the preponderance of consideration of para 7.4.13 (iv) (b) to a substantial extent supports the view in the impugned Judgment.

13. The requirement appears to be from the plain reading that upon completion of four years of service in Level 8 and on the seniority-cum-suitability, a Junior Engineer is entitled to NFU. The insistence on the option with an entry-level Junior Grade at Rs. 4,800/- would deny a benefit recommended by the Seventh Central Pay Commission to the Writ Petitioners. The view taken in the Special Leave Petition/Orders referred to above is not far from the circumstances of the case on hand. The denial is not for valid reasons. Therefore, we see no reason to interfere with the Order under appeal. The Civil Appeal stands dismissed. No order as to costs.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

**New Delhi;
April 1, 2026.**