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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2750/2004

New Delhi, this the 26th day of August, 2005

Hon'ble Sh. Kuldip Singh, Vice-Chairman (J)
Hon'ble Sh. D.R. Tiwari, Member (A)

1. S.K. Gupta S/o Sh. D.D. Gupta,
2. Biney Kumar Misra S/o Sh. R.N. Misra,
3. K.K. Dutta S/o Sh. M.L. Sutta,
4. Raghbir Singh S/o Sh. K.C. Chauhan,

All are working as Lab. Assistants, in the office of
Dy. Chief Chemist and Metrologist, N. Rly.
Station, Tugalakabad.

.....Applicants.

(By Advocate Yogesh Sharma)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station, New Delhi.

.....Respondents.

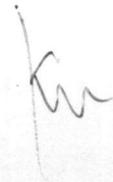
(By Advocate Shri Satpal Singh)

O R D E R (ORAL)

By Sh. Kuldip Singh, Vice-Chairman (J):-

This is a joint application filed by the applicants as all of them have common grievance to the fact that they have not been granted the benefits of second financial upgradation under ACP Scheme as the applicants have already completed more than 24 years of service, which is illegal, unjust, arbitrary and against the law on the part of respondents.

2. The facts as alleged by the applicants in brief are that all these applicants were initially appointed as Labour Khallasi in the pay scale of Rs.196-232/ 750-940 and subsequently promoted to the post of Lab. Assistants in the pay scale of Rs.975-1540/ 3200-4900/- and they are presently working as Lab. Assistants in the pay scale of Rs.3200-4900/- under Dy. Chief Chemist and Meteorologist,



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Northern Railway, Tuglakabad and their dates of appointment and promotion are as under:-

<u>Name</u>	<u>D/Appointment (Lab. Khallasi)</u>	<u>D/Promotion (Lab. Asstt.)</u>
S.K. Gupta	9.4.74	1977
Biney Kr. Misra	6.8.51	1978
K.K. Dutta	30.4.77	1985
Raghubir Singh	26.12.74	1980

3. It is submitted that next promotion of the applicants are to the post of JCMA in the grade of Rs.5000-8000/- but the applicants have not been promoted due to non-availability of vacancies. It is further submitted that all the applicants have completed 24 years of regular service and they are all due for their second financial upgradation as per ACP Scheme and are entitled for their second financial upgradation from the date of completion of 24 years of regular service in the grade of Rs.5000-8000/-.

4. It is also submitted that that the Railway Board vide Circular dated 17.8.1998 introduced additional scales of various cadres including the cadre of Lab. Assistants in Mechanical Department, in which three new pay scales were introduced and fixed the ratio for each pay scale as Lab. Asstt.-III – 70%, Lab. Asstt.-II – 20% and Lab. Asstt.-I – 10%. It is stated that all regular Lab. Asstts. Who in the scale of Rs.975-1540/- as on 31.12.1995 would be eligible to the post of JCMA in the grade of Rs.1600-2660/ Rs.5000-8000/. It is further stated that new percentage/ scales will be reached when all the existing incumbents in the grade of Rs.3200-4900/- vacate those posts by promotion/ superannuation etc. but the respondents illegally without implementing the above instructions, implement the new pay scales and passed the order of promotion of the applicants in the pay scale of RS.4000-6000/- vide order dated 30.3.2000.

5. It is further stated that there is clear observation given by the Hon'ble Tribunal in the judgement dated 12.5.2003 passed in OA 1073/2001 that the new

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pay scales are for fresh recruits. The existing incumbents in the grade of Rs.3200-4900/- vacate those posts by promotion/ superannuation, only to the post of JCMA and they cannot place in any of the new categories.

6. It is further stated that the posts in the pay scale of Rs.5000-8000/- are still vacant since long though the applicants have completed 24 years of regular service and are entitled for second upgradation as per ACP Scheme in the pay scale of Rs.5000-8000/-. It is further stated that the judgement given earlier by this Tribunal has yet not been implemented though the applicant made an MA and notices on the same were issued. Then the respondents have passed the order withdrawing their earlier order dated 30.3.2000 and stated that as regards the promotion on the post of JCMA in the grade of Rs.5000-8000/- their cases will be considered for the same as and when vacancies become available. But so far respondents have not considered the case of the applicants eve for grant of ACP benefits in spite of the fact that all the applicants are due for the ACP benefits.

7. Thus it is submitted that since the Tribunal has already held that applicants are entitled to the next grade of Rs.5000-8000/-, therefore, the applicants are entitled for the second financial upgradation in the pay scale of Rs.5000-8000/-. It is further stated that even all the applicants have also completed 24 years of regular service and as such they are entitled for the second financial upgradation. Therefore, it is prayed that the impugned order passed by the respondents is liable to be quashed.

8. Respondents are contesting the OA. Respondents in their reply pleaded that the applicants were initially appointed as Lab. Khallasi and were promoted to the post of Lab. Assistants. Normally the promotion of Lab Khallasi is to the post of Helper Lab. Khallasi in the grade of Rs.800-1150/-. Whereas the applicants given promotion as Lab. Assistants in the grade of Rs.975-1540/-. This inter alia means that these persons have already availed the promotion to the post of

Helper Lab Khallasi and then to the post of Lab. Assistants. Thus they have already got two promotions.

9. It is further stated that the financial upgradation is available only if no regular promotions during the prescribed period i.e. 12 years / 24 years have been availed by an employee. If an employee has already got one regular promotion he has to qualify for the second financial upgradation on completion of 24 years regular service under ACP Scheme. In case an employee has already received the two promotions, no benefits under the ACP Scheme should accrue to the employees. Since these applicants have already availed two promotions, they are not entitled to any other benefit under the ACP Scheme. It is admitted that as per Railway Board circular dated 17.8.1998 the existing incumbents in the grade of Rs.3900-4900/- are eligible for being considered to the post of JCMA in the grade of Rs.5000-8000/- subject to availability of the post/ vacancies and fulfillment of the conditions. But simultaneously the Railway Board had issued a letter dated 17.8.1998 introducing new pay scales to the cadre of Lab. Assistants with the grade of Rs.4000-6000/-. Based on these instructions, the applicants were promoted to the post of Lab. Assistants grade-II in the pay scale of Rs.4000-6000/- but the applicants had filed OA challenging those directions and seeking promotion to the post of JCMA in the grade of Rs.5000-8000/-. In that OA, the Tribunal had directed the Railways to withdraw the appointment of the applicants in the grade of Rs.4000-6000/-. Accordingly, their appointments withdrawn and recovery orders have been issued and decided that appointment to the post of JCMA will be considered on availability of vacancies as per seniority and fulfillment of the conditions as laid down. Since there is no vacancy on the post of JCMA, so it is not possible to give them promotion. Thus it is submitted that this OA is liable to be dismissed.

10. The directions given in the earlier OA filed by the applicants establishes one thing to the extant that the next promotion meant for the applicants is only to the post of JCMA in the grade of Rs.5000-8000/- and the order passed by the

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Tribunal has been implemented since the respondents have also withdrawn the appointments of the applicants given to them in the new pay scale of Rs. 4000-6000/- . Thus even the Railways admit that next promotion available in the hierarchy to the applicants is that to the post of JCMA in the grade of Rs.5000-8000/-.

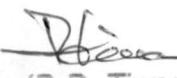
11. So, now the only question which survives is whether the applicants have already got two promotions i.e. one to the post of Helper Khallasi and then to the post of Lab. Assistant and by virtue of getting the post of Lab Khallasi to the post of Lab Assistants, they have got two promotions and they are not entitled to the second financial upgradation. On this aspect, the learned counsel for the applicant has relied upon the judgement given by the Ernakulam Bench of this Tribunal in OA 886/2001 reported in ATJ 2003 (3) 665 entitled as *K.G. Sasidharan Nair vs. Senior Accounts Officer (Admn.) Office of the Deputy Director of Accounts (Postal), Trivandrum*, the relevant portion of which is as under:-

“(A) Promotion – Assured Career Progression – Financial upgradation on completion of 12 and 24 years of service in postal department – if a regular promotion has already been availed by an employee, his next financial upgradation will be as per the hierarchy of the grade to which he has been promoted – in the present case applicant who was a Group ‘D’ employee had obtained one promotion to the post of LDC – His next financial upgradation should be to the post of next higher grade in hierarchy of LDC which is indisputably the scale of Rs.4000-6000/- pertaining to the Junior Accountant – Denial of second financial upgradation on completion of 24 years of service on the ground that he is getting the pay scale of Rs.3050-4590 as LDC which is higher than second financial upgradation that can be given to Group ‘D’ not justified – Direction given accordingly.” (emphasis supplied).

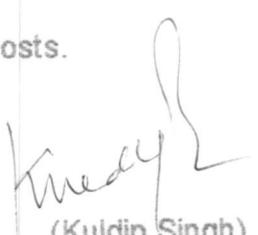
12. In this case the applicants had got as promotion to the post of Lab Assistants between the year 1977 and 1980 as mentioned above in the table in para 2 above and they have been promoted from Lab Khallasi to Lab Assistant. Railways have given only one promotion to the applicants though they have overstepped the post of Helper Khallasi but the promotion to the post of Lab Assistant was in accordance with rules of the Railways. The applicants in this case had

been promoted to the post Lab Assistants from the post of Lab Khallasi, which means that they were promoted in accordance with rules and the rules did permit a direct promotion from the post of Lab Khallasi to Lab Assistant so it cannot be implied that two promotions were given to the applicants. Now as per the law laid down by the Ernakulam Bench that after completion of 24 years of service, the next financial upgradation should be to the post of next higher grade in the hierarchy to Lab Assistant i.e. from regular promotion and Railway cannot contend that they have already given two promotion to the applicants and since it is an admitted case that the applicants are entitled to the next promotion in the grade of Rs.5000-8000/- and that is why they had earlier approached the Tribunal for cancellation of the appointment order giving intermediary grade in the pay scale of Rs.4000-6000/- and Railways have implemented that judgement that the applicants are entitled to the higher pay scale of Rs.5000-8000/- and since 24 years of service have been passed from the date they were promoted as Lab Assistants, we are of the considered opinion that the applicants are entitled to the next higher grade of second financial upgradation under ACP Scheme in the grade of Rs.5000-8000/-. Accordingly, we allow the OA and direct the respondents to consider grant of second financial upgradation under ACP Scheme from the date of completion of 24 years of service in the grade of Rs.5000-8000/- with all consequential benefits. This shall be complied within a period of three months from the date of receipt of a copy of this order.

13. With the above directions, OA stands disposed of. No costs.


(D.R. Tiwari)
Member (A)

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(Kuldip Singh)
Vice-Chairman (J)