

(5)

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1006 of 2005.

Allahabad, this the 23rd day of September, 2005.

Hon'ble Mr. K.B.S. Rajan, Member-J

Dinesh Kumar Srivastava,
Aged about 48 years,
S/o late Shri Banshi Dhar Srivastava,
R/o RB-1-902/D, Overbridge Road,
Railway Colony, Nagra,
Jhansi.

....Applicant.

(By Advocate : Shri Rakesh Verma)

Versus

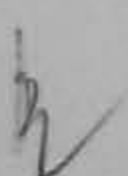
1. Union of India,
Through the General Manager,
North Central Railway,
Nawab Yusuf Road,
Allahabad.
2. The Divisional Railway Manager (P)
North Central Railway, Jhansi Division,
Jhansi.
3. The Divisional Personnel Officer,
North Central Railway, Jhansi Division,
Jhansi.

.....Respondents.

(By Advocate : Shri P. Mathur)

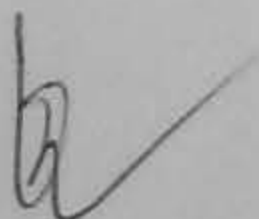
ORDER

When law is clear and action taken is based on the same,
any reversion of the action taken by the respondents without
proper appreciation of the legal issue involved cannot but be
termed as perverse. This case proves the same.



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2. Succinctly stated, the applicant, a low paid employee in the Grade of Rs.2550-3200 as Helper Grade II was afforded ACP to the Grade of Rs.2650-4000 w.e.f. 01.02.2000, vide order dated 27.11.2003 (Annexure A2). Subsequently, the applicant was accorded promotion as Helper Grade I in the pay scale of Rs.2650-4000 vide order dated 28.9.2004 (Annexure A3). As per this order the applicant was allowed to continue in the same station, Jhansi for a period of six months. By order dated 15.3.2005 (Annexure A4) the applicant has been transferred to Lalitpur, as Helper Grade I. It is at this juncture that the applicant had moved a representation to the Authorities submitting that since his wife and his teenaged daughter are mentally challenged patients and are old cases of Institute of Mental and Health Hospital, Agra, he may be permitted to continue at Jhansi itself instead of being posted to Lalitpur. This request of the applicant was however, turned down in April 2005 and the Authorities have directed the applicant to join Lalitpur since no post of Helper Grade I is available at Jhansi. The applicant by a further communication emphasized his pathetic domestic conditions and submitted that in order to remain at Jhansi, he is prepared to forego his promotion as Helper Grade I. Since no communication has been received to the aforesaid representation the applicant has moved this OA.

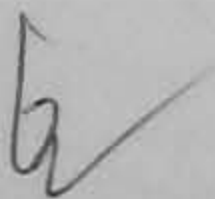


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3. The applicant is the beneficiary of the ACP as early as on 27th November, 2003 and later on he had been afforded the promotion in Sep. 2004 but on "AS IS WHERE IS BASIS" and as this promotion was with a stipulation that the individuals so promoted would continue in the same station for a period of six months when the suitable posts would be identified and they would then be posted accordingly, the applicant continued in the same station for the said six months and when he was transferred he had declined to move to the new duty station by accepting to forfeit his promotion. As the respondents have rejected his representation for the same, this OA has been preferred.

4. The respondents have contested the OA. According to them, the benefit of ACP is only a financial upgradation and the applicant is one of the beneficiaries of the cadre restructuring effected on 28-06-2004 which is as under:-

"It has been decided that in those cases where due to pin-pointing of posts staff is required to join duties in the upgraded posts at a different station, such staff may be allowed the benefit of upgradation/promotion on "AS IS WHERE IS BASIS" for the time being and allowed to join the pin-pointed post at the new station within six months time from the date of issue of promotion order subject to the satisfaction of the HOD on merit in each case."



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5. Again, it has been contended that the promotion order was issued on 29-09-2004 and the applicant was shifted from Jhansi to Lalitpur by the impugned order dated 12-04-2005. And, since the applicant had accepted the promotion, he cannot be allowed to remain in the same station.

6 Arguments were heard and documents perused. It is not disputed that the applicant was afforded the ACP benefit in Nov. 2003. It is also not disputed that from September, 2004 to 12th April, 2005 the applicant was retained in the same place and post on "as is where is basis". As such, the benefit that the applicant derived during this period cannot be said to have flown from the promotion either in normal turn or under restructuring but he continued to enjoy the benefit of ACP scheme. Nothing less; nothing else. Even, if the earlier one had been considered as promotion, his decline is in accordance with the provisions of the RBE 233/99 dated 01-10-1999 which inter alia stipulates as under:-

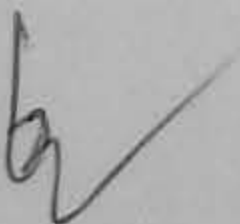
"10. Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become



eligible for the second upgradation under the ACP scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example:- if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12 + 2 + 1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2 + 10) in that higher grade. i.e. after 25 years (12 + 2 + 1 + 10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade."

7 The applicant falls in the above category. He could refuse his promotion and he is deemed to have refused from September, 2004 and accordingly as long as he does not accept the promotion, for the corresponding period, his services cannot be taken into account for the second ACP.

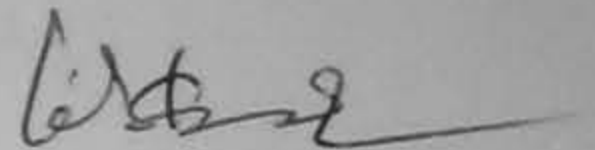
8 Under the above facts and circumstances, the OA is allowed. The impugned order dated 12th April, 2005 is quashed and set aside. The respondents are directed not to disturb the applicant from the present post he holds on the ground of the promotion under the re-structuring scheme. Necessary entry in the service records may be made as to the



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period which shall not count for the purpose of calculating the 12 years for the next ACP.

9. Under the above circumstances, there would be no order as to cost.



Member (J)

/RKM/