

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 20th Day Of May 2011)

Hon'ble Dr. K. B. S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

Original Application No. 176 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Ved Prakash Agarwal, Senior Clerk, Under Deputy C.C.M.
Northern Railway, Varanasi presently working under O.S.D.(P),
N.C. Railway, Allahabad.

..... Applicant

By Advocate: Shri Sudama Ram

Versus

1. Union of India through the General Manager, Northern Railway Baroda House, New Delhi.
2. Secretary, Railway Board, Rail Bhavan, New Delhi-1.
3. Chief Personnel Officer Northern Railway, Baroda House, New Delhi -1.
4. Deputy Chief Commercial Manager (Claims) Northern Railway, Varanasi.

..... Respondents

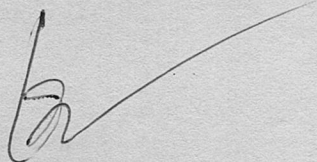
 By Advocate: Shri P. Mathur

ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

1. Facts of the case are not in dispute. The applicant joined as LDC in 1984 and was inducted as UDC in 1986 i.e. within two years. It is not exactly known whether he got the same by way of promotion from LDC or under the Graduates Quota through Limited Departmental Competitive Examination. (There appears some confusion in the date of such appointment, but safely one could go as per the records maintained by the respondents i.e. November, 1986). He completed 12 years of service in 1998 and some of his juniors who were recruited as Direct Recruits as Senior Clerks, on completion of 12 years of service had been granted ACP while the same is denied to the applicant as he had got his promotion as Senior Clerk and thus, he could be considered only for the second ACP after 24 years of service from the date of initial appointment as LDC i.e. in 2008. They have categorically stated that in so far as ACP is concerned, seniority has no role to play and as such, stepping up of pay is not admissible. In this regard, they had relied upon para 8 of Annexure to the ACP Scheme, vide Annexure A-3 of the OA which reads as under:-

"The financial upgradation under the ACP Scheme shall be purely personal to the employees and shall have no relevance to his/her seniority position. As such there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has tot higher pay scale under the ACP Scheme. "



2. They have also relied upon the decision of the Railway Board clarification vide para 23 of the Board's letter dated 11-05-2000 which reads as under:-

<p>The condition 8 of the Annexure-I of Board's letter dated 1-10-1999 operates very harshly against senior employees. It will give rise to serious anomalies in a situation where junior employee in a grade being direct recruit are given ACP upgradation on completing period of residency, claims of senior employees in the same grade and in the same department are ignored merely on the ground that they have already been promoted twice earlier. It would, as such, be very unfair to ignore the claim of seniors as that would lead to heart burning and demoralization.</p>	<p>The ACPS is to act as a 'safely net' to provide relief in cases of acute stagnation alien to the idea behind the ACPS recommended by the Fifth Central Pay Commission which had also quite specifically recommended against it. Benefits granted under the Scheme are "personal" in nature and in recognition of long hardships faced by stagnating of long hardships faced by stagnating employees. Moreover, it does not grant any status related benefits - nor does it change the seniority position. Senior will continue to be senior even if his junior has earned upgradations under ACPS. Relief granted to Railway servants facing stagnation/hardships, as visualized by ACPS, cannot provide a ground for claiming identical relief by others who are not similarly circumstanced.</p>
---	---

3. The applicant has filed this OA seeking the following relief(s):-

"(a) to quash the orders dated 3.1.2002 (Annexure A-1) and 29.7.2002 (Annexure A-2) passed by the respondent No.3.

(b) to declare the contents of para 8 of Annexure I of the Railway Board's letter dated 1.10.1999 along with its clarification vide para 23 of the Railway Board's letter dated 11.5.2000 (Annexure A-3 and A-4) respectively ultra vires and unconstitutional.

(c) to direct the respondents to step up the pay of the applicant in respect of his junior persons viz. S/Shri V.K. Srivastava (S. No.31), Arvind Kumar (S.

No.32), Rustam Ali (S. No.33), Nagraj Singh (S. No.34) and Smt. Arti Rani (S. No.35) etc, as these persons are drawing higher rate of pay than the applicant whose has been placed of S. No.22 of the seniority list dated 29.11.98 (Annexure A-5)."

4. In the written arguments, the applicant has relied upon the decision of the Bombay Bench of the Tribunal in the case of A.N. Pant and others vs Union of India and others O.A. No. 2117 of 2005 decided on 28-04-2010 reported in A.I.S.L.J (2010) 3 CAT 231. The said order referred to the earlier decision of the CAT (Madras) and CAT (Orissa) whereby the claims of the applicants therein had been rejected by the Tribunal and writ petition in respect of ^Mmadras judgment filed by the applicant therein was also dismissed. However, referring to the decision in the case of Ram Sarup Ganda, of the Apex Court ^(2P Mumbai Bench has) and held as under:-

"It is in this back drop, that the contention of the respondents, notwithstanding that grant of a higher scale of pay to a junior under ACP Scheme, a senior will always remain a senior for promotion etc. Moreover, it is contended by the respondents that grant of ACP does not in itself enjoin upon the junior any additional status or privilege other than the higher pay scale vis a vis his senior, has to be analysed. At this stage, it is relevant to refer to a judgment of Hon'ble Supreme Court passed on 2nd August, 2006 in the case of **Commissioner and Secretary to Government of Haryana and Ors. V. Ram Sarup Ganda and Ors.** The judgment pertains to the AC Scheme formulated by the State of Haryana, which is analogous to the one framed by the Central Government and applicable to the applicants in hand. In the Rama Sarup Ganda's case before the Hon'ble Supreme Court, the respondents were recruited as Group 'D'; employees and they received two promotions; first from Group 'D' to Group 'C' in the pay scale of Rs.3050 - 3950, and second ACP scale of Rs.4000- 4500-EB-6000. However, directly recruited

Group 'C' employees were given the scale of Rs.4000 – 6000 as first ACP and that of Rs.5000 – 7850 as second ACP. This is treatment by the respondents of similarly situated employees (LDCs) led to an anomaly because the promoted LDCs started receiving lower pay than their LDCs who were directly recruited in that post. In this context, the Hon'ble Supreme Court has categorically held that:-

By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group 'C' post, but the rules, as such do not provide for that. The rules say that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group 'D' employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors.

In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents in case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government.

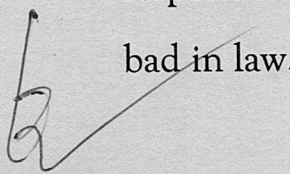


Applying the above said law in the present case, we have no hesitation in holding that all the applicants are also entitled to be given similar treatment in the matter of grant of pay scales as given to their established juniors from the same date with all consequential benefits. Orders accordingly."

5. In a recent case of **Gurcharan Singh Grewal v. Punjab SEB**, (2009) 3 SCC 94 about stepping up of pay, the Apex Court has held as under:

*17. Something may be said with regard to Mr Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to **the settled principle of law that a senior cannot be paid a lesser salary than his junior**. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2. (Emphasis supplied)*

6. Reading in tune the above decision with the decision of the Apex Court in the case of Ram Sarup Ganda (supra) and also taking into account the decision of the C.A.T. Bombay Bench, we are of the concrete opinion that the provisions of para 8 of the Annexure to the ACP Scheme and the clarification given by the respondents which have been assailed in this OA are to be held as bad in law.



7. Accordingly, the OA succeeds and the following directions are made:-

A. The following orders are quashed and set aside:-

(i) Para 8 of Scheme of ACP as applicable to the Railways, which reads as under:-

"The financial upgradation under the ACP Scheme shall be purely personal to the employees and shall have no relevance to his/her seniority position. As such there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has not higher pay scale under the ACP Scheme. "

(ii) Clarification No. 23 vide Annexure to Railway Board letter dated 11-05-2000 (Annexure A-4).

(iii) Annexure A-1 order dated 03-01-2002 whereby the claim of the applicant for stepping up of pay has been rejected;


(iv) Annexure A-2 order dated 29-07-2002 whereby also the claim of the applicant has been rejected.

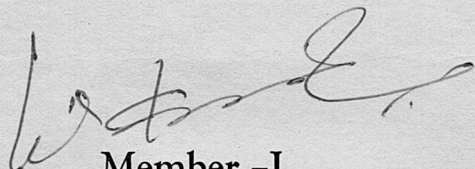
B. Respondents are directed to step up the pay of the applicant at par with his immediate junior as given

in the O.A. and make available the arrears of pay and allowances arising out therefrom.

C. The above order shall be complied with, including payment of arrears of pay and allowance, within a period of four months from the date of communication of this order.

No cost.


Member - A


Member -J

Sushil