

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.332 of 2003.

Allahabad this the 20th day of January 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mr. D.R. Tiwari, Member-A.

Gulab Pandey
S/o Sri Basudev Pandey
R/o L.W.20E, R.P.F. Colony, Manduadah, Varanasi, Presented posted as Clerk in the Office of D.R.M (Personal) N.E. Railway, Varanasi.

....Applicant.

(By Advocate : Sri D.B Yadav/
Sri R.D. Yadav)

Versus.

1. Union of India through its Secretary Department of Railway, New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. Divisional Rail Manager (P) N.E. Railway, Varanasi.
4. General Manager (P) N.E. Railway, Gorakhpur.
5. Divisional Rail Manager, N.E. Railway, Varanasi.

.....Respondents.

(By Advocate : Sri K.P. Singh)

O_R_D_E_R_

(Hon'ble Mr. Justice S.R. Singh, V.C.)

The applicant was appointed as Constable in Railway Protection Force (In short R.P.F) in the year 1965. While working on the post of Constable in the scale of Rs.825-1200, the applicant was medically decategorised and absorbed as Abhilekhpal in the scale of Rs.800-1150

86

w.e.f. 26.08.1992. Subsequently he was selected and promoted to the Clerical post in the scale of Rs.950-1500 w.e.f. 04.05.1993. Later on he appeared in the suitability test for further promotion to the post of Senior Clerk in the year 1995-1996 but could not succeed on merit. The applicant, however, staked his claim for financial upgradation under Assured Career Progression Scheme introduced vide Railway Board letter No.PC-V/99/T/1/1 dated 01.10.1999 by means of representation. It appears that respondents failed to consider and decide the representation of the applicant whereupon he filed O.A. No.1476/02 which came to disposed of by order dated 19.12.2002 with the direction to the Divisional Railway Manager, N.E.R. Varanasi to consider and decide the representation by a reasoned and speaking order, within a period of three, months from the date of receipt of a copy of the representation alongwith copy of this order. By order dated 14.02.2003 (Annexure A-5) the representation of the applicant came to be rejected in the following words:-

सं का/प्र/पीसी/गु. पा.

पूर्वोत्तर रेलवे

मण्डल रेल प्रबन्धक १काTO॥
वाराणसी
दिनांक 14-02-2003.

श्री गलाब पाण्डेय,
अवर लिपिक
मोरोगु १काTO १ कायलिय,
वाराणसी

विषय- वाद 1476/02 गलाब पाण्डेय बनाम संघ व अन्य में दिये गये आदेश दिनांक 19.12.02 का अनुपालन।

उपरोक्त वाद में संघ अधिकारी ने निम्न आदेश पारित किया है के सन्दर्भ में दिये गये निर्णय दिनांक 19.12.02 के अनुपालन आपके नया प्रतिवेदन दिनांक 03.01.2003 का अवलोकन करने पर निम्न तथ्य प्रकाश में आए।

आप रेलवे सुरक्षा बल के कांस्टेबल १८२५-१२०० के पद से विश्रंणीकृत होने के उपरान्त अभिलेखपाल १८००-११५० के पद पर दिनांक 26.08.92 को समाप्ति किये गये। उसके बाद चतुर्थ क्रेणी से द्वितीय क्रेणी के चयन में सफल घोषित होने पर दिनांक 04.05.९३ से लिपिक के पद पर पदोन्नति पाये। अबर लिपिक से बरिष्ठ लिपिक के पद पर पदोन्नति हेत आयोजित स्थोगयता परीक्षा में दो बार दिनांक 16.05.95 व दिनांक 10.१०.९६ आपको अवसर

१५१

दिया गया था । परन्तु दोनों बार आप असफल रहे ।

अतः ए.सी.पी के अन्तर्गत आपको वित्तीय प्रौद्योगिकी का लाभ देय नहीं है । भविष्य में होने वाली स्थैर्यता परीक्षा पर नियमानुसार आपको अवसर प्रदान किया जायेगा ।

इस प्रकार आपके प्रतिवेदन में उठाए गए मुद्दों को बिना अद्भाव के निस्तारित किया जाता है ।

कृते वण्डल रेल प्रबन्धक (कॉर्पोरेशन)

2. It has been contended by Sri D.B. Yadav that since the applicant had got one regular promotion before introduction of A.C.P Scheme, he qualified for second financial upgradation on completion of 24 years of regular service as provided in paragraph No.5.1 of the Railway Board's circular containing the conditions for grant of benefit under the A.C.P. Scheme and for that purpose he was entitled to count his services on the post of Constable (R.P.F.) in view of the provisions contained in paragraph 1312 of Indian Railway Establishment Manual Vol-1 revised edition 1989.

3. Sri K.P. Singh, learned standing counsel representing the Railway Administration, on the other hand, submits that the applicant would be eligible for grant of first financial upgradation under A.C.P Scheme only in the year 2005, after completion of 12 years of his service from the first regular promotion which was given to the applicant from Class 'IV' to Class 'III' post in the year 1993. Sri K.P. Singh has placed reliance on paragraph 4 of the Annexure 1 to the Railway Board's circular dated 01.10.1999 which provides condition for grant of promotion under A.C.P Scheme.

4. We have given our thoughtful considerations to the submissions made across the bar. The Assured Career Progression Scheme was launched vide letter dated 01.10.1999,

१८५

in view of the Vth Central Pay Commissioner Report, which had made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government Civilian employees in all Ministries/Department as a measure of 'Safety Net'. The relevant conditions for grant of benefit of A.C.P Scheme contained in Annexure 1 to the Railway Board's letter dated 01.10.1999 are as under:-

"The highest pay-scale upto which the financial upgradation under the scheme shall be available to these falling in the entitled categories will @ Rs.300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotion.

3. The financial benefits under the A.C.P Scheme shall be granted from the date of completion of the eligibility period prescribed under the A.C.P Scheme or from the date of issue of these instructions whichever is later.
4. The first financial upgradation under the A.C.P Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed condition. In other words, if the first upgradation gets postponed on account of employee not found fit or due to departmental proceedings etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.
- 5.1 Two financial upgradations under the A.C.P Scheme in the entire Railway Service career of an employee shall be counted against regular promotions (including in-situ promotion and/or any other promotion including fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that/two financial upgradations under the A.C.P. Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the A.C.P Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the A.C.P Scheme shall accrue to him.
- 5.2 Residency periods (regular service) for grant of benefits under the A.C.P Scheme shall be counted from the grade in which an employee was appointed as a direct recruit".

A conspectus of condition No.5.1 for grant of benefit

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under the A.C.P Scheme extracted above, would show that two financial upgradations under the A.C.P Scheme shall be available only if, no regular promotions during the prescribed periods have been availed by an employee. If, however, an employee has already got one regular promotion, he shall qualify for "the second financial upgradation" only on completion of 24 years of regular service under the A.C.P Scheme. The applicant as stated hereinabove was given one regular promotion in the year 1993 and therefore, the question that arises for consideration is whether the applicant is entitled to "the second financial upgradation" under the A.C.P Scheme, which is available to an employee on completion of 24 years of regular service. Paragraph No.1312 of Indian Railway Establishment Manual provides that a Railway Servant absorbed in an alternative post will, for all purposes, have his past service treated as continuous with that in the alternative post. Past services of the applicant was on the post of Constable which the applicant had joined in the year 1965 and if the past service rendered by the applicant were to be taken into reckoning as provided in the paragraph No.1312 of Indian Railway Establishment Manual, he would have become entitled to second financial upgradation on completion of 24 years of regular service in the year 1989 under condition No.5.1 of the Railway Board's letter dated 01.10.1999.

5. The applicant, in fact, became eligible to financial upgradation in the year 1989 itself because he had completed 24 years of regular service much before the introduction of A.C.P Scheme. Respondents, in our opinion, have illegally rejected the claim of the applicant for the second financial upgradation under the A.C.P Scheme and, therefore, the order dated 14.02.2003 is liable to be set aside.

(R.D.)

6. The submissions made by Sri K.P. Singh that the applicant has to qualify the departmental/trade test etc. as provided in the Railway Board's letter dated 11.05.2000 can-not be countananced in view of the fact that fulfilment of normal promotion norms prescribed, such as benchmark, trade-test, departmental examination, seniority-cum-fitness (in case of Group 'D' employees) etc. for grant of financial upgradation apply in case of Group 'D' employee.

7. In the result, therefore, the O.A. is allowed. The impugned order is quashed. The respondents are directed to grant the second financial upgradation under A.C.P Scheme to the applicant with all consequential benefits.

Atma
Member-A.

(Ran)
Vice-Chairman.

Manish/-