

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.145/2007

Date of decision: 25th May, 2011.

SK.

Hon'ble Dr. K.B. Suresh, Judicial Member.

Hon'ble Mr. Sudhir Kumar, Administrative Member.

Mukesh Kumar Sharma S/o Shri Ram Dasji Sharma, by caste Brahmin (Saraswat), aged 44 years, R/o Sarla Sadan, Near Bally Happy School, Rani Bazar, Bikaner and at present working as Courier at Commercial Branch, North Western Railway, Bikaner.

: Applicant.

Rep. By Mr. Nitin Trivedi: Counsel for applicant.

Versus

1. Union of India through General Manager, North Western Railway, Headquarter Building, Jaipur.
2. The Divisional Railway Manager, North Western Railway, DRM's Office, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, DRM's Office, Bikaner.
4. The Senior Divisional Commercial Manager, North Western Railway, Bikaner.
5. The Station Superintendent, North Western Railway, Bikaner.

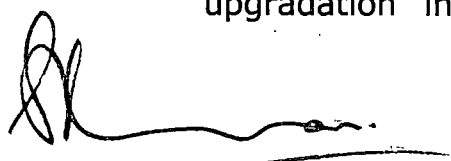
: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for respondents.

ORDER

Per Sudhir Kumar, Administrative Member.

The applicant of this O.A. is before us aggrieved by order dated 07.12.2006 (Annexure-A/1) passed by the respondent No.3, through which he has been redeployed from the post of Courier to that of a Trackman in the pay scale of Rs.2750-4400, and has prayed that since he had already been allowed financial upgradation in the pay scale of Rs.3050-4590, in Group 'C'



category in Commercial Branch at Bikaner, he may be allowed to retain that pay scale in Group 'C' category, with all consequential benefits. He had made an interim prayer also for the respondents being restrained from relieving him from the post of Courier for joining in the post of Trackman, which interim prayer was granted on 30.07.2007, staying the operation of the impugned order qua the applicant.

2. The applicant was initially appointed as a Constable in the Railway Protection Force at Bikaner. Subsequently, in pursuance of the recommendation of the Medical De-Categorization Board, he was de-categorized, and in accordance with his level of fitness he was absorbed as a Courier in the Commercial Branch. An option was later called for filling up the posts of Commercial Clerks in the pay scale of Rs.3200-4590, or in the category of Ticket Collectors in the pay scale of Rs.3050-4590. Through Annexure-A/5, it was notified that the class IV employees included in that list, including the applicant, had passed the examination held for ascertaining their suitability for promotion to Group 'C'/Class III, and accordingly, pending his substantive promotion, he was accorded financial benefit of fixation of pay under the Advance Career Progression Scheme (ACP Scheme) in the pay scale of Rs.3050-4590, while continuing him to be substantively appointed in the pay scale of Rs.2750-4400.

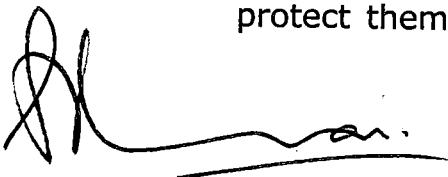
3. Much after issuance of this ACP benefit to him on 14.07.2004, on 12.01.2006, the applicant represented to respondents (through Annexure-A/6) that since the pay of invoice



Courier Rs.2750-4400 comes in category III and not in category IV, and since his pay fixation has already been made in the category III pay scale of RS.3050-4950 under the ACP Scheme, and since many posts of Ticket Collectors in the same pay scale are lying vacant, therefore, he may be appointed as a Ticket Collector. Collectively also, five of the Commercial Couriers including the applicant represented on 04.06.2007, through Annexure-A/7, stating that they are wrongly been counted as Class IV employees, while as per circular No.P.S. No.9444, their grade 825-1200/2750-4400 should be counted in Group 'C'.

4. However, the applicant is aggrieved that by the impugned order at Annexure-A/1, the respondents have continued to count his services as a Class-IV employees, and from the post of Courier, he has been posted to the post of a Trackman, not taking into account his having passed the eligibility test for substantive appointment in the pay scale of Rs.3050-4590 in the year 2004 itself, and nor taking into account the fact that he is already drawing that higher pay scale by way of ACP benefit granted to him through Annexure-A/5. He also submitted that once he had been medically de-categorized stating that he is not fit for the duty involving heavy exertion, posting him once again as a Trackman, involving heavy exertion duty, was incorrect on the part of the respondents. Hence this O.A.

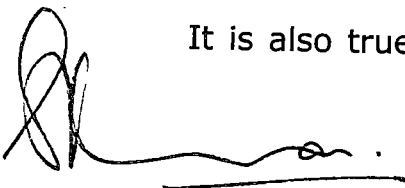
5. On their part, the respondents submitted that the ACP Scheme is only a financial benefit given to the employees to protect them from stagnation in a pay scale, but that it does not



mean that those who have been given such financial upgradation under the ACP scheme have been regularly promoted to the next higher grade. They submitted that the applicant was still working as a Surplus Commercial Courier in the grade of Rs.2750-4400 in substantive capacity, and that he has never been selected for the post of Ticket Collector, in the grade of Rs.3050-4950, which is a selection post, and is filled by a positive act of selection. They submitted that they had called for applications for filling up the posts of Ticket Collectors through their notification, Annexure-R/3 dated 26.07.2004, but the applicant did not apply for this selection.

6. It was further submitted by the respondents that now that the applicant had been rendered surplus in the Commercial Department, he had been redeployed in an equivalent post as a Trackman in the Engineering Department. They submitted that the applicant had never been posted in substantive capacity in a Group 'C' post, and that the applicant is not entitled to claim promotion as Ticket Collector without facing the positive act of selection for that post. The respondents submitted that the O.A. was highly misconceived and without any foundation, and, therefore, the same deserves to be dismissed.

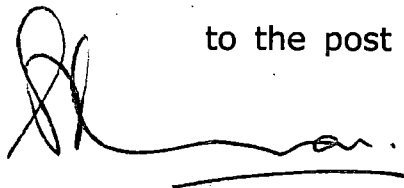
7. Heard. We have given our anxious consideration to the facts of the case, and the arguments advanced before us by both the learned counsels. The submission of the respondents that the grant of ACP benefit does not amount to a regular promotion is correct. It is also true that even when the ACP financial benefit is granted



to an individual, his substantive grade remains unaltered. In the impugned Annexure-A/1, dated 07.12.2006, the substantive grade of the applicant has been shown to be Rs.2750-4400, which, it appears, has continued to be the substantive grade of the applicant, even after the grant of the ACP financial benefit to him in the next higher scale of pay of Rs.3050-4590. To this extent, the argument of the learned counsel of the applicant that the pay-scale of Rs.3050-4590 should have been shown to be applicant's substantive pay-scale is not correct.

8. The applicant did not face the selection for the post of Group 'C' Ticket Collectors notified by the respondents through Annexure-R/3, dated 26.07.2004. Even one and a half years after that circular, through Annexure-A/6, through his individual representation, and through Annexure-A/7, his representation alongwith some others, the applicant only represented for being conferred automatic placement as a Ticket Collector in the pay scale of Rs.3050-4590, only because he had already been granted ACP benefit in that pay scale. Therefore, it is further clear that the applicant had never been substantively promoted to the higher pay scale, the financial benefit of which had been granted to him, and that he continued to be in the substantive pay scale indicated against his name in the impugned Annexure-A/1.

9. It is also not the case of the applicant, nor has it been stated by the respondents, that the redeployment of the applicant from the Commercial Department, where he has been rendered surplus, to the post of Trackman, in the same substantive pay scale and



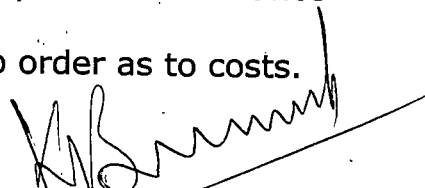
grade, would result in the withdrawal of the financial benefit under the ACP Scheme already granted to him earlier. Even the impugned order does not state anything about the withdrawal of ACP benefit, which financial benefit is quite apart from the substantive pay scale occupied by the incumbent.

10 As a result, the only grievance of the applicant which remains to be addressed is that while he had been declared medically unfit for duty involving heavy exertion, still he has been posted on redeployment as a Trackman, which duty, according to the applicant, involves heavy exertion.

11. While there is no merit in the O.A. otherwise, as discussed above, the respondents are directed to continue the ACP financial benefit granted to the applicant earlier, even after his redeployment, and also to consider his being redeployed against a post involving less exertion, which may be appropriate with the orders of his medical de-categorization issued through Annexure-A/2, dated 11.09.1990.

12. In the result, with these observations, this O.A. is disposed of. The stay granted to the applicant earlier against his redeployment is vacated, and the respondent authorities are directed to redeploy the applicant in a suitable post in accordance with his medical de-categorization category. No order as to costs.


[Sudhir Kumar]
Administrative Member


[Dr. K.B. Suresh]
Judicial Member