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(7/11)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

RM.

Date of decision: September 6th, 2011

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

1. O. A. No. 146/2010

Manohar Lal s/o Shri Hardayal, b/c Khatri, aged about 54 years, r/o Khairpur Bhawan, Kamla Colony, Bikaner. At present working as Courier, in the office of Divisional Railway Manager (Commercial Branch), Bikaner (Raj.)

..... Applicant

Mr. H.S. Sidhu , Counsel for the applicant.

Versus

1. Union of India, through the General Manager, North Western Railway, Head Office: Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Western Railway, Bikaner Division, Bikaner.

..... Respondents

Mr. Naresh Solanki proxy for Mr. Vinay Jain, counsel for the respondents.

2. O.A. No. 147/2010

Shri Ram s/o Shri Thawar Singh b/c Yadav aged about: 45 years, R/o Quarter No. T67G, Maal Godown Colony, Bikaner. At present working as Courier, in the office of Divisional Railway Manager (Commercial Branch), Bikaner (Raj.)

RM:

..... Applicant

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Mr. H.S. Sidhu , Counsel for the applicant.

Versus

1. Union of India, through the General Manager, North Western Railway, Head Office: Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Western Railway, Bikaner Division, Bikaner.

..... Respondents

Mr. Salil Trivedi, counsel for the respondents.

ORDER

Per Sudhir Kumar, Member (Administrative)

Both the applicants of these two O.As are before us, aggrieved by the implementation of the Assured Career Progression Scheme (ACP Scheme) in their cases, and their pleadings are similar, the cases were heard together, reserved for orders together, and are therefore being disposed of through a common order.

2. The applicant of O.A. No. 146/2010 Sh. Manohar Lal was initially appointed in the Railway on the post of Points Man on 3.12.1979, and later in March 1984 he was appointed as Courier in the Commercial Branch, and his pay was fixed in the pay scale of Rs. 2750-4400/-. Similarly, the applicant of O.A. No. 147/2010, Shri Ram was initially appointed on 17.1.1975 on the post of a Constable in Railway Protection Force, and later, on being declared medically unfit for the post of Constable, vide order dated 7.10.1986 he was also absorbed on the post of

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Invoice Courier, in the appropriate pay scale. Both the applicants have stated that as per the (ACP) Scheme, on completion of 12 years of substantive service, their pay was to be fixed in the pay scale of Rs. 3050-4590/- which is the pay scale of Ticket Collector, and, as the next promotional post for the applicants was Ticket Collector/Booking Clerk, in order to provide the benefit of the ACP Scheme, the respondent authorities called both these applicants on 4.2.2004 to sit in the qualifying written examination to be held on 20.2.2004. Through another order dated 5.2.2004, an option was also sought for from the eligible persons, including these two applicants to opt as to whether they would like to take the promotional avenues on the side of the pay scales of the Ticket Collector Rs. 3050-4590/-, or that on the side of the pay scales of Commercial Clerk Rs. 3200-4590/-. Both the applicants opted for absorption in the pay scale Rs. 3050-4590/- in the cadre of Ticket Collectors, and after they had cleared the requisite qualifying examination, on completion of 12 years of their service, both the applicants have submitted that they were placed in the pay scales of Rs. 3050-4590/-, through order dated 14.7.2004, Annexure A/6, which they have claimed to be an order of substantive promotion. A third person included in the order dated 14.7.2004 was one Sh. Mukesh Kumar who had earlier come before this Tribunal in O.A. No. 145/2007, which was decided on 25th May, 2011.

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3. Later on, through order dated 8.5.2006, Annexure A/7, after completion of 24 years of service, both these applicants, were fixed in the pay scale of Rs. 3200-4900/-. They are aggrieved with this fixation.

4. Both the applicants have assailed this order of second ACP pay fixation dated 8.5.2006, stating that granting them second financial up-gradation in the pay scale of Rs. 3200-4900/- was not in accordance with the ACP Scheme. They have both submitted that since they had both been given the first financial up-gradation in the pay scale of Rs. 3050-4590/- which was the pay scale of Ticket Collectors, and since the next promotional post from the posts of Ticket Collectors is the post of Senior Ticket Collector, in the pay scale of Rs. 4000-6000/-, their second ACP financial upgration should have been granted in that pay scale of Rs. 4000-6000/-.

5. Both of the applicants have stated that this pay scale of Rs. 3200-4900/- was offered to them by the respondent authorities earlier itself on 5.2.2004, when they were offered the second option of the pay scale of Commercial Clerks in the ACP Scheme, and that pay scale could have been availed of by them in the year 2004 itself, and that it was incorrect on the part of the respondent authorities to now grant them that pay scale. Both the applicants represented that as a part of second financial upgradation under the ACP Scheme, their pay ought to have been fixed in the pay scale of Rs. 4000-6000/-, through

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Annexure A/8, A/9 and they also filed applications under the RTI Act (Annexure A/10) to which similar replies were issued (as ~~at~~ Re. Annexure A/11).

6. The applicants have taken the grounds that once they had been given the option, and had ~~not~~ opted for the pay scale of Rs. 3050-4590/- which is the pay scale of the cadre of Ticket Collectors, they should have been given the second financial upgradation only in the pay scale applicable for the next higher post in that cadre, and the next higher post from Ticket Collectors is Senior Ticket Collector, which carries the pay scale of Rs. 4000-6000/-. Therefore, they assailed the non fixation of their salary after second ACP financial up-gradation in the pay scale of Rs. 4000-6000/-, and prayed for their salary to be fixed in that scale under the ACP Scheme after completion of 24 years of service, and that respondents be directed to pay the arrears of salary from the date they became entitled to get that pay Re. scale, alongwith interest at 9%, and any other order in their favour, apart from awarding the costs.

7. Respondents filed their written statements on 16.12.2010 in O.A. No. 146/2010 and on 3.11.2010 in O.A. No. 147/2010, both of which are quite similar in contents. The respondents denied that just by getting their first ACP financial up-gradation in the pay scale of Rs. 3050-4590/-, the applicants had automatically become entitled for regular promotion to the post of Ticket Collector/Commercial Clerk, and stated that such

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promotion was to be given effect to by a positive act of selection, which the applicants have to undergo, and merely by the grant of the financial up-gradation, there was no change in the substantive status of the applicants. It was submitted that the applicants are still working in substantive capacity as Couriers in the Commercial Branch. It was further submitted that above the first ACP pay scale of Rs. 3050-4590/-, the next available higher pay scale is Rs. 3200-4900/-, the benefit of which has correctly been given to them.

8. It was further submitted that in the year 2004, the applicants, alongwith others, had been called for suitability test for grant of financial up-gradation to them under the ACP Scheme, and not for the positive act of selection to the post of Ticket Collectors on regular basis. It was submitted that the applicants have not yet been promoted in substantive capacity to the posts of either Ticket Collectors or Commercial Clerks, and, therefore, the question of grant of second ACP financial up-gradation to them in accordance with the promotional hierarchy of Ticket Collectors/Commercial Clerks does not arise. It was therefore submitted that the benefit of ACP scheme as granted to the applicants was granted correctly, and that the actions of the respondents are neither arbitrary and nor violative of Article 14 of the Constitution of India. It was therefore prayed that the two O.As. filed by the applicants herein may be dismissed with costs.



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9. Heard the learned counsel appearing for the parties and we have carefully gone through the material placed on record.

10. The learned counsel for the applicants produced a copy of the Railway Board's Circular Sl. No. 2415 dated 14.2.1964, purporting to provide the channel of promotion for Class IV Staff and Staff in the Junior Class III Grade to the posts of Ticket Collectors and argued that the posts of Ticket Collectors were promotional posts in respect of all non technical Class IV Staff of Transportation and Commercial departments.

11. The two learned counsels for the respondents, however, pointed out that this notification itself stated therein the requirement of selection with written test, and further submitted that this notification of 1964 now stood modified by circular Sl. No. 4577 dated 30.1.69 which again reiterated that Commercial Couriers with 5 years' experience had to undergo selection with written test, and only after being successful therein, followed by successful completion of training, could they be appointed as Commercial Clerks. It was further pointed out by the learned counsel for the respondents that the applicants were still occupying Group- 'D' posts, as per classification of services notified through circular Sl.No. 9444 dated 23.11.87, reiterating the letter dated 30.10.87 in regard to introduction of Railway Service (Revised Pay) Rules, 1986.

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12. The learned counsel for the respondents also produced a copy of the order dated 25.5.2011 passed by this Tribunal in **O.A. No. 145/2007 titled Mukesh Kumar Sharma Vs. Union of India & Ors.** and submitted that both the present applicants and the said **Sh. Mukesh Kumar Sharma** the applicant of O.A. NO. 145/2007, were together called for their suitability test for grant of financial upgradation under ACP Scheme through Annexure A/2 dated 4.2.2004, and that their cases were exactly similar and that the cases of the two present applicants were also already covered by the order dated 25.5.2011.

13. It appears to us that the cases of the two present applicants are quite similar to the case of said **Sh. Mukesh Kumar** (Supra), in whose case, in the order passed on 25.5.2011, it was observed that applicant had never been posted in substantive capacity in a Group 'C' post, and that the applicant was therefore not entitled to claim promotion as Ticket Collector without first facing the positive act of selection for that post. It is further clear that the two present applicants had also never been substantively promoted to the higher pay scale, the financial benefit of which had been granted to them under the ACP Scheme, and that they had continued to be in the substantive pay scale attached to the posts of Commercial Couriers. Learned counsel for the respondents also relied upon the common order passed by this very Bench in O.A. NO.

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290/2007, O.A. No. 100/2008 and O.A. NO. 66/2008 on 25.5.2011, titled **Bal Kishan & Ors. Vs. Union of India & Ors.** and two other cases.

14. The condition for grant of ACP benefits under para 1 of RBE Circular No. 233/1993 dated 01.10.1999 specifically states that ACP scheme envisages financial up-gradation through merely placement in the next higher pay scale on a personal basis, and it does not amount to functional/regular promotion, since, the ACP Scheme envisages merely placement in the next higher available pay scale for grant of financial up-gradation. Para 4 of the ACP Scheme circular RBE 233/1999 dated 1.10.99 further specifically states that the introduction of ACP scheme can have no effect on the normal regular promotional avenues available on the basis of vacancies, and para 5 states that vacancies based regular promotions, as distinct from financial up-gradation under the ACP scheme, shall continue to be granted after following the prescribed procedure as per relevant guidelines.

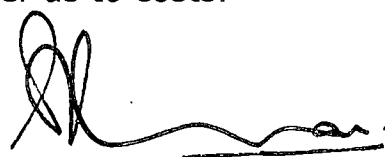
15. In the instant cases both these applicants have continued to be Commercial Couriers in their substantive capacity, and have never got substantive promotion as Ticket Collectors. Therefore, they cannot now claim their Second ACP benefit to be in the hierarchy of the promotional pay scale of post of Ticket Collector. Above their earlier First ACP pay scale of

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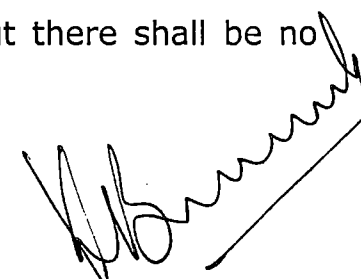


scale of Rs. 3050-4590/-, the next pay scale available for the grant of ACP benefits in the absence of their substantive promotion in only the pay scale ~~from~~ Rs. 3200-4900/-, and the respondents cannot be said to have erred in granting the next available higher pay scale to the applicants for the purpose of their second ACP financial up-gradation. Needless to add that the position would have been different if, in the meanwhile, these two applicants had been substantively promoted as Ticket Collectors. Si.

16. In the result, there appears to be nothing wrong in the impugned order Annexure A/7 fixing the benefit of Second ACP Financial Up-gradation to the applicants, and there is no merit in the prayers made by the applicants, and therefore the O.As. do not survive, and are dismissed, but there shall be no order as to costs.



(SUDHIR KUMAR)
MEMBER(A)



(DR. K.B. SURESH)
MEMBER (J)

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