

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 433 OF 2007

Dated the 29th September, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)

K. Sivadasan,
S/o Kesavan
Ballast Train Checker (BT Checker)
Office of the Assistant Divisional Engineer,
Southern Railway, Sengottai,
Residing at 'Kailas' Ambalathumkala PO,
Ezhukone,
Quilon District.

... Applicant

[By Advocate: Mr. TC Govindaswamy)

-Versus-

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office,
Park Town, PO, Chennai-3.
2. Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madhurai.
3. Chief Personnel Officer,
Southern Railway, Headquarters office,
Park Town PO, Chennai-3.
4. The Section Engineer/Permanent Way/
Southern Railway, Punalur Railway Station,
Punalur.

... Respondents

[By Advocates: Mr Sunil Jose)

This application having been heard on 20th August, 2008 the
Tribunal delivered the following -

ORDER

(Hon'ble Dr. KS Sugathan, AM)

The applicant is presently employed as Ballast Train Checker under the Respondent-Southern Railways. He is aggrieved by the denial of the second financial upgradation under the ACP Scheme. The applicant joined the railways as a Casual Labourer and was granted temporary status wef 21.10.75. He was absorbed as Gangman wef. 25.2.1984. He responded to a notification calling for volunteers to work as Ballast Train Checker on adhoc basis in the scale of pay of Rs. 260-400. After his selection he was promoted and appointed as Ballast Train Checker vide order dated 25.2.88 (Annexure-A2). It is contended by the applicant that he has completed 24 years of service as on 25th December, 2003 by counting 50% of the temporary status as casual labourer which is permissible as per the guidelines issued by the Respondents. The applicant is seeking the pay scale of Rs. 4500-7000/- as second financial upgradation under ACP Scheme. He is presently in the pay scale of Rs. 3050-4590/-.

2] Respondents have contested the OA. It is stated in the reply statement that Ballast Train Checker post is an ex-cadre post. There are only 4 posts in the Ballast Train Checker under Madurai Division under which the applicant is working. There is no higher grade post in the Ballast Train Checker. There is no promotion chance to the higher grade within this category. The

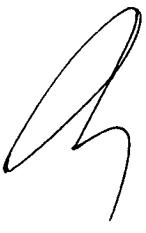


applicant is having his lien in his parent cadre and he has been considered for promotion/ selection available to the parent cadre. As per the ACP Scheme financial upgradation may be given to the next higher grade in the existing hierarchy in the cadre. In the case of isolated posts in the absence of defined hierarchy grades, financial upgradation shall be given to the next higher grade in the standard pay scale as per Annexure-A/2 of the Scheme. It is admitted that 50% of the casual labour service rendered from the date of temporary status to the date of empanelment may be taken into account for the purpose of reckoning 12/24 years of service for grant of financial benefits under ACP Scheme. The applicant belongs to trackman category and he was granted two proforma promotions as Trackman- II in the scale of Rs. 800-1150/- wef 01.6.89 and as Senior Trackman Gr-I in the scale of Rs. 2750-4400/- wef 16.6.2000 on par with his immediate junior. The applicant is claiming financial upgradation in the pay scale of supervisor (Works)/ Works Mistry in the pay scale of Rs. 4500-7000, which is in no way connected with his parent cadre of Trackman. The applicant is therefore not entitled to any financial upgradation to the pay scale of Rs. 4500-7000/. The applicant is aware that he belongs to Gangman cadre, therefore, he applied for selection to the post of Supervisor/Permanent Way against 25% Limited Departmental Competitive Examination quota from among those Gangman and Keyman. In the year 2000, the posts of Ballast Train Checker were treated as ex-cadre, as per Annexure-A8 circular. The applicant has already enjoyed the

higher pay benefit by virtue of his promotion to the post of Ballast Train Checker in the pay scale of Rs.3050-4590, whereas employees senior to him in Gangman cadre are still in lower grades in the pay scale of Rs. 2750-4400. He is now seeking financial upgradation to the pay scale of Rs. 4500-7000/- which is five grades above his recruitment grade.

3] We have heard Mr TC Govindaswamy, learned counsel for the appociant and Mrs. Sunil Jose for the respondents. We have also perused the papers available on record. The counsel for the applicant relied on a decision of this Tribunal in OA 687/06.

4] The issue for consideration in this OA is whether the applicant is entitled to get second financial upgradation and if so to which grade? Admittedly the applicant joined as casual labour and he got the temporary status in the year 1975. He was absorbed as Gangman in the year 1984. While working as Gangman he applied for the post of Ballast Train Checker and was selected. He has been working as such since May 1986. In the order at Annexure-A2 dated 25.2.88 it is clearly stated that the applicant was selected for the post of Ballast Train Checker and accordingly he was promoted as Ballast Train Checker. This order however, does not mention that the post of Ballast Train Checker is an ex-cadre post. It does not say that the applicant has to maintain his lien in his parent cadre. The order dated 25.2.88(Annexure-A2) is extracted below:



"Southern Railway
Office order No.37/88/Cl.III/WP

The following Gangmen in scale Rs. 775-1025 who have been selected for the post of BT Checkers in scale Rs.950-1500, are promoted as BT Checkers in scale Rs. 950-1500 and posted to the stations noted against each:-

1. Sri P Thamilarasan (SC) Gangman/TN. .	B.T.Checker/MDU Under AEN/C/MDU.
2. Sri K Sivadasan, Gangman/TML(Adhoc)	BT Checker/TEN BTC/TEN under AEN/TEN

This has the approval of the competent authority.

Note:-

- 1) They will be on trial for a period of six months and their continuance in the higher grade will be subject to review at the end of the trial period.
- 2) Item No.1 is eligible for all transfer privileges and Item No.2 is not eligible for transfer privileges.
- 3) The date of relief/joining should be advised to this office and Sr. DEN.
- 4) The promotions ordered above are purely provisional subject to final disposal of Writ petition pending in the High Court of Madras.
- 5) The above promotions are subject to the condition that :
 - (a) They have no DR/SPE/Vigilance cases pending,
 - (b) They are not undergoing any penalty.
- 6) The above employees should vacate Railway Qrs. If any in occupation before their relief.

Sd/xx for D.P.O. "

5] Vide letter dated 12.10.2000 (A/8) the respondents decided to declare all Ballast Train Checker posts as Ex-cadre post. The existing Ballast Train Checkers were given option to be exercised as cadre or ex-cadre within the period of one month. The applicant has stated that he was never asked to exercise his option. The applicant has relied on the judgment of this Tribunal in OA 687/06. The issue involved in that case was however different, i.e. the repatriation of a BT Checker to his parent cadre with his original seniority thereby adversely affecting the employees in the parent cadre. In any case, the



applicant's prayer is not for a declaration that BT Checkers are cadre posts. He is seeking second financial upgradation under the ACP Scheme. The ACP Scheme aims at providing financial upgradation to the employees who are stagnating in a particular pay scale for 12 years or 24 years. Irrespective of the fact that whether the employee is working in a cadre post or ex-cadre post, he is entitled to financial up-gradation as per the provisions of the Scheme. Admittedly, the present applicant is working as Ballast Train Checker since 1986 i.e. for more than 20 years. It is also admitted that 50% of his service period to 1984 is also eligible to be counted for granting the benefit of the ACP Scheme. It is also on record that he has received only one promotion in his career as Ballast Train Checker from the post of Gangman. Therefore, no doubt he is clearly entitled for the second financial upgradation. According to the reply statement of the respondents, there is no higher grade in the post of Ballast Train Checker cadre. In such a situation, it is to be categorized as an isolated post and financial up-gradation should be given to the applicant accordingly.

6] The applicant is in the pay scale of Rs. 3050-4590/-(S-5) and the next standard higher pay scale is Rs. 3200-85-4900/-. As the applicant has completed 24 years of service after counting 50% of the temporary status as casual labourer he is clearly entitled to be considered for the next standard higher grade. Since there is no promotional post available in the Ballast



Train Checker he has to be considered for the second financial upgradation to the next higher grade in the standard pay scale.

7] For the reasons stated above, the OA is partly allowed. It is declared that the applicant is entitled to the second financial upgradation from the date he completed 24 years after adding 50% of the temporary status as casual labourer, to the next standard pay scale treating Ballast Train Checker post an isolated post. The respondents shall take necessary steps to grant the second financial up-gradation to the applicant as stated above and in accordance with the other eligibility conditions of the ACP Scheme, within a period of three months from the date of receipt of a copy of this order. No costs.



(Dr. KS Sugathan)
Member (Administrative)



(George Paracken)
Member (Judicial)

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