

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 492/2007

this the 19th day of February 2009

C O R A M

**HON'BLE GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

R. Ravindran Nair S/o Raghavan Nair
Asst. Station Master
Sasthamcotta Railway Station
residing at Sreevalsam
Kampalady, Poruvazhy PO
Kollam-690 520

Applicant

By Advocate Mr.M.P. Varkey

Vs.

1 Union of India represented by
General Manager,
Southern Railway
Chennai-600 003

2 Senior Divisional Personnel Officer
Southern Railway
Trivandrum-695 014

Respondents

By advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 30.1.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, an interdivisional transferee challenges Annexure R-1 fixation of pay on 1st financial upgradation under the ACP Scheme, as it is opposed to FR 22(l)(a)(1) and condition No. 9 and clarification No. 18 of the Scheme.

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2 The facts in brief are as follows: The applicant a direct recruit Station Master Grade-III in the scale of Rs. 5000-8000 working in the Palghat Division of Southern Railway, applied for an inter-divisional transfer to Trivandrum Division under Rule 226/229 of IREC Vol. I. During the pendency of the transfer he was granted 1st financial upgradation under ACP to the scale of Rs. 5500-9000 w.e.f. 11.3.2001 and his pay was fixed at Rs. 6900/- w.e.f. 1.7.2003 (A-1). The interdivisional transfer materialised in 2004 and he joined Trivandrum Division on 17.3.2004. He was absorbed in the lowest scale of Rs. 4500-7000 taking the last place in the seniority in terms of Para 312 of IREM Vol. I and pay fixed at Rs. 6750 from 1.3.2005 protecting his pay in the grade of Rs. 5000-8000 (A2). Under the ACP Scheme his service in Palghat Division in the grade of Rs. 5000-8000 shall count along with his service in Trivandrum Division in the lower grade of Rs. 4500-7000 as was done in the case of similarly situated employees. He was told that he would get such financial upgradation after two years residency period in the grade of Rs. 4500-7000 in Trivandrum Division. But this was denied to those who came on inter-divisional transfer from a higher to lower grade from 2005 onwards on the basis of some clarification issued by the Railway Board (A3). According to the applicant he was eligible for the first financial upgradation in terms of A-3. He submitted a representation on 12.11.2006(A4). Since there was no response he filed this application.

3 The main grounds raised by the applicant is that :

(i) According to Condition No. 14 of the ACP scheme and clarification on point No. 35 the applicant is entitled to be placed in grade Rs. 5000-8000 by way of first financial upgradation under the ACP Scheme w.e.f. 17.3.2004.

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(ii) The applicant was on regular service in grade Rs. 5000-8000 in Palghat Division from 9.7.1986 to 16.3.2004 and joined Trivandrum Division on request transfer in the regular grade of Rs. 4500-7000 on 17.3.2004. Therefore, he comes under the first case mentioned in A-3 letter. i.e. Persons initially recruited in a higher scale and who seek appointment to a lower post are eligible to count their past service for financial upgradation under ACP.

(iii) Similarly placed transferees were granted financial upgradation until A-3 clarification was issued.

(iv) Annexure R-1 is opposed to FR 22(i)(a)(1)

4 Hence, he filed this O.A mainly seeking :

(i) to set aside the pay fixed in favour of the applicant in grade Rs. 5000-8000 as on 1st March, 2005, 2006 and 2007 and condition No. 7 in Annexure R-1 order and

(ii) to declare that the applicant is entitled to opt and to have his pay fixed at Rs. 6950, 7100 and 7250 in grade Rs. 5000-9000 with effect from 1st March of 2005, 2006 and 2007 respectively, with consequential arrears and direct the respondents accordingly.

5 The respondents have filed reply statement to the O.A stating that the applicant's request for inter-divisional transfer on reversion as Assistant Station Master in the scale of Rs. 4500-7000 to Trivandrum Division has been agreed to and joined the Trivandrum Division on 18.3.2004. On joining Trivandrum Division as Assistant Station Master he was given protection of pay. They further submitted that the applicant's request for first financial upgradation under ACP Scheme in Trivandrum Division was considered and granted w.e.f. 18.3.2004 and his pay fixation was made under Rule 1314 of the IREM Vol.I. The applicant was originally appointed in the scale of Rs. 5000-8000 and the ACP now granted is also in the same

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grade. According to them clarification No. 18 is applicable in respect of the applicant. As regards grant of minimum financial benefit of Rs. 100/- they submitted that as there was no change in the scale of pay, he could not be granted the benefit. They have also produced Annexure R-2 letter dated 30.6.1993 to show that in respect of employees transferred from higher grade to lower grade on request, the pay to be fixed is not to exceed the pay he would have drawn in the same higher grade in the parent unit.

6 We have heard Shri M.P. Varkey for the applicant and Shri Thomas Matheaw Nellimoottil for respondents and perused the records.

7 The learned counsel for the applicant relied on **Condition No. 14** of ACP Scheme introduced by Railway Board letter dated 1.10.99 to buttress the point that in the case of transfer on request the regular service rendered by the applicant in the previous Division shall be counted along with his regular service in his new Division for the purpose of giving financial upgradation under the ACP scheme. The learned counsel also relied on **clarification No. 35** in support of his argument that in case of an employee appointed to a lower grade as a result of transfer on personal request the period of service rendered in the higher post count for the purpose of ACP. The counsel submitted that condition No.14 and clarification No 35 have not been amended or delete so far. The counsel further submitted that Annexure R-2 letter dated 21.12.1994 has already been cancelled vide order No.P(R)524/P/ Fixation/Vol.III dated 14.8.1997.

8 The learned counsel for the respondents on the other hand submitted that when the applicant completed 12 years regular service on

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11.3.2001 and that at that time he was drawing the scale of Rs. 5000-8000 in the post of Assistant Station Master, at Palghat Division, he was granted 1st ACP in the scale of Rs. 5500-9000. His pay was fixed at Rs. 6550 as on 11.3.2001 and 6900 w.e.f. 1.7.2003. On inter-divisional transfer he joined the Trivandrum Division as Assistant Station Master in the scale of Rs. 4500-7000 and his pay was fixed protecting the pay drawn by him in Rs. 5000-8000. He was granted ACP in the scale of pay of Rs. 5000-8000 w.e.f. 18.3.2004 his date of joining Trivandrum Division and his pay was fixed at Rs. 6650/- The learned counsel submitted that the pay has been fixed in accordance with the rules issued by the Railway Board.

9 The question that comes up for consideration is regarding fixation of pay on inter-divisional transfer from a higher post to a lower post. When the applicant joined the lower post in the new division, his pay was fixed at Rs. 6625/- plus 25 pp in the scale of Rs. 4500-7000 as on 18.3.2004 - the date of joining the new division. He was granted 1st ACP w.e.f. 18.3.2004 itself and fixed his pay at Rs. 6650/- in the pay scale of Rs. 5000-8000. According to the applicant this is wrong application of the rules and his pay should have been fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or Rs. 100/- only whichever is more. Accordingly, his pay should have been fixed at Rs. 6950/- in the scale of Rs. 5000-8000 under Rule 1313 (FR-22)(I) and that he should have been given an option.

10 We extract condition No.9 from ACPS for the Railway Servants No. PC -V/99/I/I/I dt, 1.10.1999 below:

"9. On upgradation under the ACP Scheme pay of an employee shall be fixed under the provisions of amended Rule 1313(1)(a)(i) of Indian Railway Establishment Code Vo.I II (1987 edition) FR 22 (1)(a)(1) subject to a minimum financial benefits of Rs. 100 as per Board's letter No. F(E)II/99/FR/1/1 dated 27.8.88 (S.No.PC-V/223, RBE NO. 244/99). The financial benefit allowed under the ACP Scheme shall be final and no pay fixation benefits shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade."

Clarification No. 18 is also extracted for convenience:

Points of Doubt	Clarification
18. On upgradation under ACPS, pay of an employee shall be fixed under the provision of FR 22(l)(a)(1). Whether an option for fixation of pay in the higher grade based on the date of increment may also be allowed?	Yes. The financial benefit allowed under ACPS shall be final and no pay fixation benefit shall accrue at the time of regular promotion. In other words, upgradation under ACPS shall be treated on par with regular promotion in so far as pay fixation is concerned. Therefore, the option of pay-fixation in the next higher grade based on the date of increment may be allowed.

11 In this view of the matter, the financial upgradation under ACP Scheme is to be treated as promotion and accordingly, the employee has a legal right to be given an opportunity for an option for fixation of pay.

12 Annexure R-2 letter dated 21.12.1994 regarding fixation of pay of employees on transfer to a new post on inter-railway/inter-departmental transfer at own request relied on by the respondents has already been cancelled vide order No.P(R)524/P/Fixation/Vol.III dated 14.8.1997.

13 In the light of the above discussion we are of the view that while granting 1st financial upgradation under the ACP scheme, the applicant has a legal right to opt for fixation of pay in the higher grade based on the date of increment. The respondents are therefore directed to obtain the option of the applicant on granting the 1st financial upgradation and fix his pay

accordingly in the scale of Rs. 5000-8000 in the light of clarification No.18 with all consequential arrears of pay and allowances. This shall be done within three months from the date of receipt of a copy of this order. No costs.

Dated 19-2-2009


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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