

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 50 OF 2008

Dated the 22nd September, 2008

CORAM:-

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

M.P. Sreedharan,
S/o KM Narayanan Namboodiri,
Pharmacist Grade-III,
Railway Hospital, Palghat,
Residing at 375-A, Railway Colony,
Kallekulangara, Olavakkode,
Palghat District.

.. Applicant

[By Advocate: Mr TC Govindaswami)

-Versus-

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai-3.
2. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town, PO, Chennai-3.
3. The Senior Divisional Personnel officer, Southern Railway, Palghat Division, Palghat.
4. The Chief Medical Director, Southern Railway, Moore Market Complex, Chennai.

.. Respondents

[By Advocates: Mr Varghese Johan for Thomas Mathew Nellimootttil)

This application having been heard on 16th September, 2008 the Tribunal delivered the following -

ORDER

(Hon'ble Dr. KS Sugathan, AM)

The applicant is working as Pharmacist Grade-III in the Railways. He is an Ex-serviceman. He joined the Railway service on 29.05.1994 as a Pharmacist and completed 12 years of regular service as on 28.05.2006. He is eligible to be granted the first financial upgradation under ACP Scheme with effect from the date he completed 12 years of service. The applicant is aggrieved by the method of selection adopted by the respondents in considering his upgradation to the next higher grade. It is contended that to be eligible for grant of the first financial upgradation one must qualify in the selection. According to the Executive Instructions issued by the Railway Board (Annexures-A2 to A6) 50% of the questions should be objective type. There should be a question bank prepared and supplied to the employees and the candidates should be allowed to take the question papers with them after the examination is over. None of the aforesaid Instructions were followed in the present case. The applicant is therefore aggrieved that he was denied ACP benefit on the basis of an examination, which was not conducted in the manner in which it should be conducted. He has prayed for the following reliefs:

- i) Call for the records leading to the issue of Annexure-A11 and quash the same to the extent it relates to the applicant;
- ii) Direct the respondents to consider the applicant afresh strictly in terms of Annexure-A1 to A6 orders of Railway Board and grant him the benefit of the first financial upgradation in the scale of

Rs.5000-8000 wef 29.05.2006, with all consequential arrears of pay and allowances arising there from;

- iii) Award costs of and incidental to this Application'
- iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2] Respondents have contested the OA and filed reply statement. It is admitted by the Respondent that the post carrying next higher grade is Rs.5000-8000 to which the applicant is to be considered under the ACP Scheme. However such financial upgradation can be extended to the applicant after qualifying in the selection test conducted by the Committee nominated for the purpose. For this, the applicant has to secure 60% in the written examination separately and 60% in the aggregate together with the assessment of suitability based on service records including Annual Confidential Report (ACR). The guidelines relied on by the applicant at Annexure-A2 to A6 are recommendatory and not mandatory. The relevant syllabus is notified to the candidates in advance. Non supply of question bank does not invalidate the selection process. The applicant has chosen to rake up these issues only after having participated in the selection and after he failed to secure the minimum qualifying marks. If he had genuine grievance about the examination he should have represented immediately after the examination and not after result were known.

3] We have heard Mr. TC Govindaswamy, learned counsel for the applicant and Mr Varghese John for Thomas Mathew Nellimoottil and have also perused the documents.

4] The issues for consideration in this OA are (1) whether the selection process conducted by the respondents can be legally sustained in view of the failure of the respondents to follow the executive instructions regarding conduct of written examination as contained in Annexure-A2 to A6; and (2) whether the failure to hold the selection process in time in accordance with the ACP Scheme has resulted denial of benefit admissible to the applicant under the ACP scheme.

5] The counsel for the applicant has relied on the following citations:

(1) AIR 1958 SC 300, (2) AIR 1969 SC 118 (3) AIR 1969 SC 212; (4) 2008(1) SCC L & S 399 and (5) AIR 1978 SC 284.

6] On the first issue, the respondents do not dispute that the executive instructions regarding inclusion of objective type of questions, allowing the employees to take away the question papers, and preparation of the question bank do exist. But it is their perception that these instructions are recommendatory and not mandatory.

7] In *General Manager, North West Railway & Ors, (2008) 1 SCC (L&S) 399*, the Hon'ble Supreme Court has held that - "In absence of any statutory rules framed, executive instructions can be issued in relation to the matter governed by the constitutional provisions. In *Khem Chand* [AIR 1958 SC 300] this Court had noticed the relevant constitutional provisions and opined that the Railways Manual was an amalgam of various circulars issued from time to time. Such executive instructions or rules framed would be statutory in nature."

8] In another matter between *Railway Board & Ors-v- PR Subramaniyam & Ors, AIR 1978 SC 284* the, the Apex Court has held that - "In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Art. 309 of the Constitution. Contained in the said Code is the well-known R. 157 which authorizes the Railway Board, as permissible under Art. 309 to have "full powers to make rules of general application to non-gazetted railway servants under their control." The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Art. 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servant or to a class of them."

9] In view of the aforesaid pronouncements of the Hon'ble Supreme Court, we are unable to accept the contention of the respondents that the instructions issued by the Railway Board as contained in Annexures-A2 to A6 are merely recommendatory and not mandatory. However, on this ground we do not consider it expedient to quash the examination because it would cause hardship to those candidates who have passed the examination and also because the applicant has already participated in it without demur.

10] We shall now take up the next issue, viz., the failure of the respondents to hold the selection process in time. As per the condition No. 6 of the ACP Scheme notified by the Railway Board on 01.10.99 (Annexure-A1), the Departmental Screening Committees at appropriate levels shall be constituted for the purpose of

processing the cases for grant of benefits under the ACP Scheme. It is also provided that this Screening Committee shall follow time-schedule and meet twice in a financial year - preferably in the first week of January and July for advance processing of the cases. Cases maturing during the first half of a particular year for grant of benefits under ACP scheme shall be taken up for consideration in the first week of January of the previous financial year. The relevant portions of the RBE No.233/99 dated 01.10.99 are extracted below:

"6. Screening Committee.

6.1. Departmental Screening Committees at appropriate levels shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

6.2. The composition of the Screening Committees shall be the same as that of the Departmental Promotional Committee (DPC) prescribed under the relevant Recruitment/Promotion Rules for regular promotion to the higher grade to which financial up-gradation is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the concerned Member of Railway Board. In respect of isolated posts, the composition of the Screening Committee (with modification as noted above, if required) shall be the same as that of the DPC for promotion to analogous grade in that Department.

6.3 In order to prevent operation of ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committees shall follow time-schedule and meet twice in a financial year - preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first-half (April-September) of a particular financial year for grant of benefits under

the ACP Scheme shall be taken up for consideration by the Screening Committees meeting in the first week of January of the previous financial year. Similarly, the Screening Committees meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committees in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committees meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31, 2000.

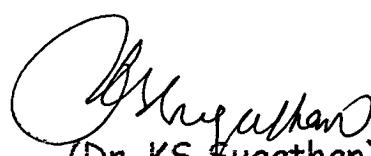
6.4 To make the Scheme operational, the Cadre Controlling Authorities shall constitute the initial lot of Screening Committees of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing up to March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committees shall be constituted as per the time-schedule suggested above."

11] The aforesaid provisions in the scheme envisages that the Screening Committee shall follow the time schedule and conduct the selection process to ensure that the cases of the employees, which are mature for consideration do not get delayed. In the present case, it is seen that the stipulated time schedule has not been adhered to. The applicant became eligible for consideration in May 2006. However, no selection process was conducted in the year 2006. It was organized in the later part of 2007. Thereafter in the first part of 2008 also no further selection process was conducted. The applicant is due to retire on superannuation on 30th November, 2008. It can be justifiably argued on behalf of the applicant that

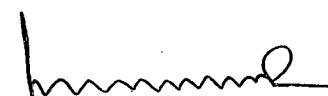


had the respondents conducted the selection process in time in the year 2006 at periodical intervals, the applicant could have tried his luck in more than one examination. There is therefore, denial of justice as he has been prevented from establishing his suitability for upgradation in the manner in which it is provided in the Scheme. We are therefore of the considered view that this is a fit case to give a direction to the respondents to conduct a selection process including the written examination before 31st October, 2008 to facilitate the participation of the applicant and other employees who are similarly placed.

12] For the reasons stated above, the OA is disposed of with a direction to the respondents to conduct the selection process for ascertaining the suitability of the applicant for the first Financial Up-gradation under the ACP Scheme in accordance with the instructions contained in Annexures-A2 to A6 before 31st October, 2008. If the applicant succeeds in the selection process he shall be given the first ACP with effect from the date he is eligible on completion of 12 years of service. In the circumstances there shall be no order as to costs.



(Dr. KS Sugathan)
Member (Administrative)



(George Paracken)
Member (Judicial)