

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.504/2005
wednesday, this the *25th* day of *April*, 2007.

CORAM:

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

Joseph Thekkan, S/o Mathai Thekkan (Late),
Upper Division Clerk,
O/o Registrar of Companies, Kerala,
Company Law Bhavan, BMC Road,
Thrikkakkara, Kochi 682 021,
residing at Jomini Nivas, H.No.662,
Panangamadam, Kamoth Janatha Road,
Panangad P.O., Ernakulam 682 506.

Applicant

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India, represented by the
Secretary to Government of India,
Ministry of Company Affairs,
5th Floor, A Wing, Shastri Bhavan,
Dr.Rajendra Prasad Road, New Delhi-110001.
2. Regional Director, Southern Region.
Department of Company Affairs,
Shastri Bhavan, Vth Floor, Block 1,
26, Haddows Road, Chennai-600 006.
3. Registrar of Companies, Kerala,
Company Law Bhavan, BMC Road,
Thrikkakkara.
4. Pay and Accounts Officer,
Department of Company Affairs,
Regional Office, Chennai.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 16.4.2007,
the Tribunal on 25-04-07, delivered the following:

ORDER

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The short question involved in this case is whether an employee who had, at

his request, been transferred from one department from a higher post (after one promotion) to a lower post in another department, is entitled to 2 ACPs on completion of 24 years of service reckoned from his initial date of employment in the earlier department (i.e. the second higher scale in the hierarchy of the new department) or should be deemed to have availed of one promotion and hence entitled only to one ACP (i.e. the first higher scale in the hierarchy of the new post.)?

2. Brief history of the case is given as under:

The applicant commenced service as a Clerk-cum-Typist (LDC) in the Food and Nutrition Board on 11.11.1974. He was promoted to the post of Senior Clerk (UDC) in the said department in 1985. On being rendered surplus, he was reverted to the LDC cadre in 1986, but again promoted to UDC in 1987, and continued as such till 14.8.1995, when he joined the first respondent Ministry on his request on compassionate grounds, after being reverted as LDC. As per the ACP Scheme, employees are entitled to placements to the higher grades, on completion of 12 and 24 years of service. The applicant was not granted higher grades. Aggrieved, the applicant made a detailed Annexure A-2 representation dated 4.9.2000 to the first respondent. The applicant was granted the placement to the scale of Rs.4500-125-7000, i.e. the second ACP scale, with effect from 9.8.1999 vide Annexure A3 Order dated 11.12.2001. The applicant requested for grant of arrears of pay consequent to Annexure A-3, vide Annexure A-4 representation dated 26.2.2003. The arrear bill of the applicant was sent to the Pay and Accounts office who sought certain clarifications, regarding the fixations of pay granted to the applicant. One related to the pay revision granted to the applicant on 1.1.1986 in his erstwhile department. Second related to the grant of stagnation increments with effect from 1.7.1997. Third one was a clarification

from the first respondent with regard to the course to be adopted regarding the ACP placements of officers promoted earlier and reverted to the lower post vide Annexure A-5 order dated 6.5.2002. While the matter of payment of arrears was pending, Annexure A-3 was reviewed by another DPC, and with effect from 2.2.2001, the applicant and others similarly placed were granted revised pay scale of Rs.5000-150-8000 vide Annexure A-8. Independent of ACP, the applicant was promoted to the cadre of UDC, by Annexure A-10 order dated 22.9.2004. However, the fixation of pay pursuant to Annexure A-10 is also not done till date. By virtue of clarification No.39 in O.M.No.35034/1/97-Estt(D) Vol.IV dated 18.7.2001 of the Department of Personnel and Training, the upgradation granted is in order. Delay in making payment is grossly arbitrary and unjust. Due to this, the applicant's pensionary benefits will not be paid on time and his fixation of pension will be delayed. This is violative of his fundamental rights guaranteed under Article 14, 16 and 21 of the Constitution of India. Hence, this Original Application.

3. The respondents in their reply statement contended that the applicant retired from service due to superannuation on 30.6.2005. He was sanctioned the retirement benefits based on the basic pay of Rs.4590 + Rs.160/- (Stag. Increment) which he was drawing at the time of his retirement. With regard to the granting of Assured Career Progression (ACP) to the applicant, this matter was under dispute. In the additional reply they have contended that the ACP was granted in the pay scale of Rs.4500-125-7000 vide Regional Director's Letter No.11117/ACP-2001 dated 15.1.2002. As per the said order applicant's pay was fixed and arrear Bill No.17/2002 -03 dated 5.4.2002 sent to Pay and Accounts Office, Chennai for payment. The said Bill was returned by the PAO requesting to obtain clarificatory orders from the Ministry, whether an official who earlier


promoted and later reverted to lower post with pay protection is entitled for two financial upgradation. The matter was informed to Regional Director as per letter No.EStt/GF.145/3869/2002 dated 21.5.2002 along with the Service Book of the applicant. Subsequently Order No.1(133)/2004-ACP dated 29.9.2004 was received from Regional Director on 7.10.2004 revising the pay scale from Rs.4500-7000 to Rs.5000-8000 with effect from 2.2.2001 and the arrear bill was sent to Pay and Accounts Office, Chennai. The said bill was given again returned stating that he is eligible only for financial upgradation in the hierarchy of new post viz., LDC held by the official after joining the Ministry of Company Affairs. As per the Ministry's letter dated 17.1.2006 vide Annexure R-2, since the applicant was not promoted as UDC as on 9.8.1999 he is eligible for ACP only in the pay scale of Rs.4000-6000 with effect from 9.8.1999 as per the illustrative example given in the Government of India Railway Board letter No.PC.v/2004/ACP/1 dated 13.12.2004. The said order reads as under:-

G.I.Railway Board's Letter No.PC-V/2004/ACP/1, dated 13.12.2004

Financial Upgradation under the ACP Scheme

Please refer to Point No.35 of Board's letter No.PC-V/99/1/1/1. Dated 19.2.2002 (PC-V/331 and RBE No.24/2002) regarding the grant of financial upgradation under the ACP Scheme in case of on request transfer to a lower grade post.

NFIR has raised this item in the last PNM meeting with the Board that most of the Railways are dealing with such situations in different ways. In this regard, the matter has been examined in consultation with the Department of Personnel and Training and it is clarified that the cases of persons who were initially appointed in a higher scale and who seek appointment to lower post on own volition are distinct from cases of persons who earned a promotion in the parent organisation before seeking appointment to a lower post on own volition. In the former case the past service in the higher grade before appointment to a lower post is to be counted while considering the issue of grant of two financial upgradations under the ACPS with reference to the grade in which the employee is re-appointed on transfer on own volition. In the second case where the persons has been appointed to a lower post after earning one promotion in parent organisation, while the past service is to be counted, the employee would not be entitled to first financial upgradation, as the promotion earned before transfer would be offset against entitlement for the first



ACP in the new organisation. However, on completion of 24 years' service, one would be entitled to second financial upgradation if in the meantime the employee has not earned two regular promotions.

An illustrative example is given below so as to interpret such cases in an unequivocal manner.

Date of appointment (as Safaiwallah) 1-3-1989 2,550-3,200

Date of promotion (Senior Safaiwallah) 1.3.1993 2,610-3,540

Date of reversion to lower grade (R.2,550-3,200) as 'Peon' in a different cadre on account of own request transfer 18-1-1994 2,550-3,200

First financial upgradation in the hierarchy of the new post Not entitled

Second financial upgradation in the hierarchy of the new post due on 1-3-2013 2,610-3,540

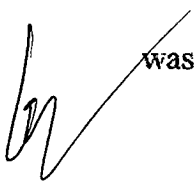
Past cases, decided otherwise, however, need not be reopened.

4. Counsel for the applicant has submitted that there is no question of the applicant having availed of any promotion to lose one ACP. In the previous department he was no doubt promoted but he had taken up the lower post in the transferred department and this cannot be termed as one falling under the illustration given in the Railway Board's letter dated 13-12-2004. The applicant relied upon the following judgments:-

- (a) Union of India vs M. Mathivanan (2006) SCC (L&S) 1271.
- (b) Dwijen Chandra Sarkar vs Union of India 1999 (2) SCC 119
- (c) Order dated 27-02-2007 in OA No. 809 of 2005 of this Tribunal.

5. Counsel for the respondents however contended that the case is covered under the order dated 13-12-2004 and hence no interference is called for.

6. Arguments were heard and documents perused. The applicant was initially appointed in 1974 to the post of LDC in the Food and Nutrition Board and later was promoted in 1985 as Sr. Clerk (UDC) in the said Department. On being



rendered surplus, in 1986 he was reverted to the cadre of LDC and was again promoted as UDC in 1987. It was thereafter in 1995 that the applicant was transferred to the Department of Company Affairs as LDC on compassionate grounds in which post he is still continuing. The question is as to how to apply the benefit of ACP to the applicant. The transfer of the applicant to the post of LDC is one that comes under F.R. 15 and the said F.R. provides for unilateral transfer at own request to a post carrying lower pay scale than the one an individual is holding.

7. Clause 14 of Annexure I to order dated 09-08-1999 (the main notification on ACP) provides as under:-

"14. In case of an employee declared surplus in his/her organization and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the Scheme."

8. In the clarification issued by the DOPT vide order No. 35034/1/97-Estt (D) dated 10-02-2000, the following point has been clarified.

<i>Sl No.</i>	<i>Point</i>	<i>Clarification</i>
	An employee is appointed to a lower grade as a result of unilateral transfer on personal request in terms of FR 15(2). Will the period of service rendered in the higher post count for the purposes of ACPs?	Condition No. 14 of the ACPs (DoP&T O.M. Dated 9-8-1999) inter alia, states that in case of transfer including unilateral transfer on request, regular service rendered in previous organization shall be counted along with regular service in the new organization for the purposes of getting financial upgradation under the Scheme. This condition covers cases where a unilateral transfer is to a lower post. However, financial upgradations under the ACPs shall be allowed in the hierarchy of the new post.

9. Taking into account the total service of the applicant from 1974, the applicant, as on 09-08-1999 stands completed 24 years. Condition No. 15 of the conditions for grant of ACP, vide Annexure I to the order dated 09-08-1999 stipulates as under:-

Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further in order to rationalize unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one-time measure. In other words, in respect of employees who have already rendered more than 12 years service but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation, and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme."

(Condition No. 4 referred to above reads, "The first financial upgradation under the ACP scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of financial upgradation subject to the fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc., this would have consequential effect on the second upgradation which would also get deferred accordingly.")

10. The case of the applicant shall be viewed with the above rule position. On his own request, when the applicant was transferred to Department of Company Affairs in 1995, all that the applicant would have lost is his seniority in the transferred department and his pay scale in the promoted post of UDC in the previous department. This is the price he pays for his request transfer. He is treated as the junior most in the grade in which he gets transferred in the new department as on the date of his transfer. However, his past service is reckoned for the purpose of promotion to the post of UDC in the new Department. His past service also counts as qualifying service for the purposes of working out terminal benefits. In other words, the service rendered in the previous department is counted for all other purposes. And, as per the clarification as extracted above,

Condition No. 14 of the ACPs (DoP&T O.M. Dated 9-8-1999) inter alia, states

that in case of transfer including unilateral transfer on request, regular service rendered in previous organization shall be counted along with regular service in the new organization for the purposes of getting financial upgradation under the Scheme. This condition covers cases where a unilateral transfer is to a lower post. However, financial upgradations under the ACPs shall be allowed in the hierarchy of the new post. His second financial upgradation in the hierarchy of the new post is Rs. 4,500 – 7,000/- (This is stated to have undergone upward revision to Rs 5,000 – 8000). Applying the condition No.15 extracted above, it is this pay scale that is applicable to the applicant.

11. The Respondents however, apply the illustration as given in the Railway Board's circular dated 13-12-2004. The illustration reads as under:-

Date of appointment (as Safaiwallah)	1-3-1989	Rs 2,550 – 3,200
Date of Promotion (Sr. Safaiwallah)	1-3-1993	Rs 2,610 – 3,540
Date of reversion to lower grade (Rs 2,550 – 3,200) as 'peon' in a different cadre on account of own request transfer	18-1-1994	Rs 2,550 – 3,200
First Financial Upgradation in their hierarchy of the new post		Not entitled
Second financial upgradations in the hierarchy of the new post due on 3,540	1-3-2013	Rs 2,610 –

(Past cases decided, however, need not be reopened.)

12. Admittedly, in the instant case, vide Annexure A-3 orders had been passed whereby the applicant had been afforded the financial upgradation in the grade of Rs 4,500 – 7,000/- and since the said scale underwent an upward revision, vide Annexure A-8 order dated 29-09-2004, the applicant had been placed at Rs 5,000 – 8000/-. However, the amount has not been paid to the applicant due to a query raised by the Senior Accounts Officer, vide Annexure A-5. Sanction order still

stands. In one way, this case should be treated as one of "past case decided" and thus, order dated 13-12-2004 should not be made applicable. Even otherwise, as the applicant is now eligible for the second financial upgradation in the hierarchy of the new post, vide clarification given at serial No. 39 as extracted above, the second financial upgradation in the new department (i.e. Department of Company Affairs) is 4,500 – 7000 (since revised to Rs 5,000 – 8000/-) (i.e. first higher scale being Rs 4,000 – 6,000) to which the applicant is entitled.

13. Now, a look at the illustration given in the Railway Board's circular, which is sought to be applied to in the case of the Applicant. In the illustration, it was by 01-03-1993 that the individual got himself posted as peon in the scale of Rs 2,550 – 3,200 (got reverted from the scale of Rs 2,610 – 3,540). He completed 12 years of service at 2001 (reckoned from 1989). But the Board has stated that his entitlement is only to Rs 2,610 – 3,540/- which is only one scale higher than that of a peon. The fallacy is that the said individual reckon his seniority in the grade as of 01-03-93 and those who would have joined subsequently, say in April 1993 would have their regular services from that date. And such later entrants would be eligible for first ACP in 2005 itself, in the scale of Rs 4,000 – 6,000/-, whereas in the case of the transferee the same is available only in 2013. This does not appeal to any logic. Of course, we are not examining the validity of the said order but only point out the anomaly, to hold that this order does not apply to the case in hand.

14. The case of the applicant thus falls squarely under clarification No. 39 and according to the same the applicant shall be entitled to 2nd financial upgradation in the hierarchy of the new post after completion of 24 years of service reckoned from his earlier posting as LDC in the Food and Nutrition Department. Since the

second financial upgradation would mean two scales above the initial scale of Rs 3,540 – 4,950 in the said new department is Rs 4,500 – 7000 which stands revised to Rs 5,000 – 8,000/- it is declared that the applicant is entitled to the same, as correctly afforded vide Annexure A-8 order. Hence, Annexure A-12 order is liable to be quashed and set aside.

15. The OA is **allowed**. Respondents are directed to act on the basis of Annexure A-3 read with Annexure A-8 order in so far as ACP applicable to the applicant is concerned ^{and} release the amount due to the applicant. Consequential refixation of pension and other terminal benefits are also available to the applicant. This drill shall be performed within a period of 3 months from the date of communication of this order. No costs.

Dated the 25th April, 2007.


Dr. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN