

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. NO. 518/2008

Dated this the 22nd day of July, 2010

C O R A M

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

1 T.V. Balan, Helper Grade-I(Bridges)
Section Engineer/Bridges/O/QLN
Southern Railway, Trivandrum Division
residing at Thazhathu Veetttil House
P.O. Vallikunnu North
Via Kadalundi Nagaram
Malappuram District-673 314

2 S. Rajendran, Helper Grade-I
Section Engineer/Bridges/O/QLN
Southern Railway,
Pattazhi thekkethil, Perumon PO
Kollam District-691 601

3 T. Yesudas, Helper Grade-I(Bridges)
Section Engineer/Bridges/O/Quilon,
Southern Railway
Chirakkaraputhenveedu, Kannanalloor PO
Kollam District.

Applicants

By Advocate Mr. K. Premchand

Vs

1 The General Manager,
Southern Railway,
Headquarters Office, Park Town PO
Chennai-3

2 The Divisional Railway Manager,
Southern Railway
Trivandrum Division
Trivandrum

3 The Senior Divisional Personnel Officer
Divisional Office, Southern Railway,
Trivandrum. Respondents

By Advocate Mr.K.M. Anthru

The Application having been heard on 15.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants who were initially appointed as Mapila Khalasis in the year 1980, were later absorbed as Helper Grade-I in the scale of Rs. 2650-4000 on 5.7.2004, almost simultaneously were granted the 1st financial upgradation to the scale of Rs. 2750-4400 under the ACP Scheme w.e.f. 7.7.2004 (A-2). The grievance of the applicants is that in the Bridges organisation, the next higher grade in the existing hierarchy of Helpers is the posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith, etc in the scale of pay of Rs. 3050-4590, as such, they are entitled to be granted the scale of Rs. 3050-4590 instead of Rs. 2750-4400/- In Madurai and Palghat Divisions, similarly situated Helpers like the applicant, on 1st financial upgradation, were granted the scale of Rs. 3050-4590/-. They have relied on the case of one Shri Ponnappan, Helper Grade-I in support of their case (Annexure A-6). Since the representations submitted by the applicants at Annexure A-7 to A-9 were not considered so far, they filed this O.A seeking financial upgradation to the scale of Rs. 3050-4590 w.e.f. 7.7.2004.

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2 The respondents filed reply statement stating that the O.A is hit by limitation as the order granting 1st financial upgradation under the ACP Scheme are by orders dated 5.7.2004, 9.6.2005 and 2.6.2005 respectively (Annexure A1 to A-3) which are challenged only on 1.9.2008.

3 On merit, they submitted that the applicants were engaged as Mapila Khalasis - Casual Labourers during 1980, granted temporary status w.e.f. 5.7.1980, 1.8.1980 and 5.7.1980 respectively and that they continued to be treated as Casual Labourers entitling them certain benefits like Leave, Pass, Pay, Annual increments etc. Orders were issued empanelling them in Group-D post as Gangman against the vacancies existed as on 30.6.1988/31.12.1988. However, they did not join the post offered but approached the Tribunal against their empanellment as Gangmen expressing their desire to continue as Casual Labourer Mapila Khalasis. They were finally absorbed as Helper Grade-I in the pay scale of Rs. 2650-4000 on regular basis vide office order dated 5.7.2004. They stated that 50% of the casual service rendered by them were taken for counting service for the grant of 1st upgradation under ACP Scheme. (A-2). They further submitted that the the next higher grade post above Rs. 2650-4000 is the post in scale Rs. 2750-4400 and that scale has been granted to them under ACP Scheme. As regards the submission of the applicants on the grant of the scale of Rs. 3050-4590 to similarly situated persons in other Divisions, they submitted that the employees therein were granted the 2nd financial upgradtion on completion of 24 years of service. They have filed affidavit in support of their averments. They submitted that the posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith etc are being filled up by calling volunteers from Helpers/Trolleymen and conducting

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trade test.

4 The applicants filed reply to the affidavit filed by the respondents to the effect that they were engaged in skilled work and regularised in Helper Grade-I, as such they were eligible to be granted the scale of Rs. 3050-4590/- They further stated that four persons including the applicants were trade tested and even though there were 4 clear vacancies and the fourth person was appointed, the applicants were not appointed.

5 The respondents filed second additional affidavit stating that the trade test conducted for the applicants was an inadvertent mistake without proper regard to their seniority, the senior employees submitted representation against conduct of trade test for junior persons like the applicants They denied the averment of the applicants that the four vacancies against which the applicants were allegedly trade tested, were filled with eligible seniors of the applicants. As regards the allegation of grant of the scale of pay of Rs..3050-4590 to similarly situated persons in other divisions,they submitted that it is verified and found that they were granted the 2nd ACP on completion of 24 years of service. The applicants are yet to complete 24 years of service . They have also drew our attention to the MACP implemented on the recommendation of the VI CPC the applicants would be eligible for the second financial upgradation w.e.f. 2012.

6 The applicants filed Annexure A-11 order granting upgradation to one E. Pushparaj, Helper Grade-I in the scale of Rs. 2650-4000 who was allowed to undergo trade test as Technician Gr. III for financial

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upgradation under the ACP Scheme.

7 The learned counsel for the applicants argued that they are entitled to get the scale of pay of Rs. 3050-4590 on grant of 1st financial upgradation under the ACP Scheme. They have also relied on the benefit granted to similarly situated persons in other Divisions.

8 The learned counsel for the respondents argued that the applicants were CPC Mapila Khalasis in the scale of Rs. 2650-4000 as such they were eligible to the next scale of pay of Rs.2750-4400. As regards the reliance of the applicants on the employees in other divisions getting the scale of Rs. 3050-4590 on financial upgradation they submitted that they got the scale while they were granted the 2nd financial upgradation under the ACP Scheme. The counsel further argued that orders were issued empanelling the applicants in Group-D post of Gangman in the scale of Rs. 2610-3540, however, they did not join the post and decided to continue as Casual Labourer .

9 The applicants while working in the post of Mapila Khalasis in the scale of pay of Rs. 2650-4000, were granted 1st financial upgradation w.e.f. 7.7.2004 on completion of 12 years of service, vide order dated 11.5.2000(A-2). The applicants have accepted the same without any objection. This O.A seeking a modification of the order filed only on 1.9.2008 is hit by delay and latches.

10 On merits, we notice that the channel of promotion of Helpers in Bridge Organisation is as under:

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Helper/Grade-I	Rs. 2650-4000
Trolleyman/Grade-II	Rs. 2650-4000
Trolleyman/Grade-I	Rs. 2750-4400

The posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith etc. in scale of Rs. 3050-4590 are being filled up by calling volunteers from Helpers/Trolleymen and further trade testing them in the trade concerned. The contention of the respondents is that as far as Helper Grade-I is concerned, the next post in the hierarchy is that of Trolleyman/Grade-I having the scale of pay of Rs. 2750-4400. As per the terms of the ACP Scheme, the applicants are entitled to only the next post in the hierarchy having the scale of pay of Rs. 2750-4400.

11 The applicants are seeking to modify the same based on orders granting the same to similarly situated persons in other Divisions. The orders produced by the applicants themselves would show that the Helper Grade-I drawing the scale of pay of Rs. 2650-4000 in Palght Division were granted the scale of Rs. 3050-4590 on completion of 24 years of service i.e on grant of 2nd financial upgradation. Therefore, the argument of the applicants relying on the ground of granting the higher scale of pay to similarly situated persons in other Divisions fails.

12 According to the respondents the trade test conducted was an error and on receipt of the representation from the seniors, it was reviewed and the same was cancelled. The contention of the respondents have to be accepted in the light of the averments at para 15 of the reply statement and Annexure R-1 produced by them.

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13 As regards the appointment of Sri Ponnappan, Helper Grade-I who according to the applicant is similarly situated, was granted benefit of ACP Scheme in the scale of Rs. 3050-4000 vide office order dated 3.8.2007. They have submitted that Sri Ponnappan had been granted the 2nd financial upgradation under the ACP Scheme. It is very clear from the perusal of the office order itself at A-6 that he was granted the 2nd financial upgradation under the ACP Scheme and not the 1st one as contended by the applicants..

14 The learned counsel for the applicant strenuously argued the case of the applicants to get the scale of Rs. 3050-4590 on first ACP and based on his averments, the respondents filed two more affidavits answering specific queries raised by the Tribunal. The fact matrix shows that the Mapila Khalasis are placed in a peculiar situation of having continued to remain as temporary status casual labourer for a long time from 1980 to 2004, since they declined to accept the post of Gangman which was offered to them in 1988. One reason may be the scale was lower. They were in the scale of Rs. 210-270/- in 1980 while the scale offered to them as Gangman was Rs. 200-250/- It is quite possible that they preferred to continue to do the skilled work for which they were engaged. Unfortunately, in the Bridge organisation, their absorption in a permanent post took 24 years, with the result that they had to be absorbed in Helper Grade-I directly. The respondents have submitted that the posts of Welder, Rivetter in the scale of Rs. 3050-4590 are in the hierarchy of promotion for Helper grade-I and Trolleyman Grade-I. The latter two categories are the feeder category but the scale of Trolleyman Grade-I is Rs. 2750-4400/- Therefore, Trolleyman Grade-II gets 1st ACP in the scale of Rs. 2750-4400/- if

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they are not promoted to Trolleyman Grade-I in 12 years. Annexure R-1 shows that there are 15 seniors to the applicants who are yet to be granted the ACP to the scale of Rs. 3050-4590/- So, it shall definitely create an anomalous situation if the applicants who are the juniormost are considered for the scale of Rs. 3050-4590/-

15 In the result, none of the grounds raised by the applicants are sustainable. The O.A is accordingly dismissed. There shall be no order as to costs.

Dated 22nd July, 2010.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 518 /2008

Tuesday, this the 21st day of February, 2012.

CORAM

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

1. T.V.Balan, Helper Grade-I(Bridges),
Section Engineer/Bridges/O/QLN,
Southern Railway, Trivandrum Division,
Residing at: Thazhathu Veettil House.P.O.
Vallikunnu North, via Kadalundi Nagaram,
Malappuram Dist. 673 314.
2. S.Rajendran, Helper Grade-I (Bridges)
Section Engineer/Bridges/O/QLN,
Southern Railway, Trivandrum Division,
Residing at: Pattazhithekkethil, Perumon.P.O.,
Kollam Dist. 691 601.
3. T.Yesudas, Helper Grade-I (Bridges),
Section Engineer/Bridges/O/QLN,
Southern Railway, Trivandrum Division,
Residing at: Chirakkaraputhenveedu,
Kannanaloor.P.O., Kollam Dist. - Applicants

(By Advocate Mr R.Premchand)

v.

1. The General Manager,
Southern Railway, Headquarters Office,
Park Town.P.O., Chennai-3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.
3. The Senior Divisional Personnel Officer,
Divisional Office, Southern Railway,
Trivandrum.Respondents

(By Advocate Mr K.M.Anthru)

*This application having been finally heard on 09.02.2012, the Tribunal on 21.02.2012
delivered the following:*

ORDER

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

The applicants who were initially appointed as Mapila Khalasis in the year 1980, were later absorbed as Helper Grade-I in the scale of Rs. 2650-4000 on 5.7.2004, almost simultaneously were granted the 1st financial upgradation to the scale of Rs. 2750-4400 under the ACP Scheme w.e.f. 7.7.2004 (A-2). The grievance of the applicants is that in the Bridges organisation, the next higher grade in the existing hierarchy of Helpers is the posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith, etc in the scale of pay of Rs. 3050-4590, as such, they are entitled to be granted the scale of Rs. 3050-4590 instead of Rs. 2750-4400/- In Madurai and Palghat Divisions, similarly situated Helpers like the applicant, on 1st financial upgradation, were granted the scale of Rs. 3050-4590/-. They have relied on the case of one Shri Ponnappan, Helper Grade-I in support of their case (Annexure A-6). Since the representations submitted by the applicants at Annexure A-7 to A-9 were not considered so far, they filed this O.A seeking financial upgradation to the scale of Rs. 3050-4590 w.e.f. 7.7.2004.

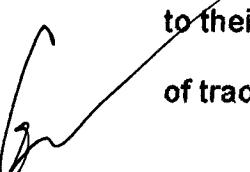
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3 On merit, they submitted that the applicants were engaged as Mapila Khalasis - Casual Labourers during 1980, granted temporary status w.e.f. 5.7.1980, 1.8.1980 and 5.7.1980 respectively and that they continued to be treated as Casual Labourers entitling them certain benefits like Leave, Pass, Pay, Annual increments etc. Orders were issued empanelling them in Group-D

post as Gangman against the vacancies existed as on 30.6.1988/31.12.1988. However, they did not join the post offered but approached the Tribunal against their empanelment as Gangmen expressing their desire to continue as Casual Labourer Mapila Khalasis. They were finally absorbed as Helper Grade-I in the pay scale of Rs. 2650-4000 on regular basis vide office order dated 5.7.2004. They stated that 50% of the casual service rendered by them were taken for counting service for the grant of 1st upgradation under ACP Scheme. (A-2). They further submitted that the the next higher grade post above Rs. 2650-4000 is the post in scale Rs. 2750-4400 and that scale has been granted to them under ACP Scheme. As regards the submission of the applicants on the grant of the scale of Rs. 3050-4590 to similarly situated persons in other Divisions, they submitted that the employees therein were granted the 2nd financial upgradtion on completion of 24 years of service. They have filed affidavit in support of their averments. They submitted that the posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith etc are being filled up by calling volunteers from Helpers/Trolleymen and conducting trade test.

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9. This OA was in fact, dismissed vide order dated 22-07-2010. However, on a review filed by the applicant, the Review application was allowed, vide order dated 26-09-2011 and the OA re heard. Of course, the contentions made by the parties are as stated earlier.

10. As regards limitation, the subject matter is fixation of pay/financial upgradation. In view of the decision of the Apex Court in the case of M.R. Gupta vs Union of India (1995) 5 SCC 628 wherein the Apex Court has held as under:-

"The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished."

11. While holding so, the Apex Court has also held that in so far as drawal of arrears is concerned, limitation would apply. And in so far as arrears, the extent of arrears that would not be affected by the law of limitation is three years prior to the filing of the OA as held by the Apex Court in the case of *Jai Dev Gupta v. State of H.P.*, (1997) 11 SCC 13 wherein the Apex Court has held as under:-

"2. Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In Administrator of Union Territory of Daman and Diu v. R.D. Valand this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making

representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.

3. In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs."

(b) Shiv Dass v Union of India (2007) 9 SCC 274 and ultimately held as under:-

"7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequent relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

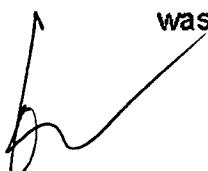
12. The above view was echoed in the subsequent decision in the case of **Union of India v. Tarsem Singh, (2008) 8 SCC 648.**

13. Thus, in so far as limitation aspect in matters of pay fixation is concerned, it is settled law that pay fixation being a recurring action, limitation does not

apply. It however applies in respect of claim of arrears of pay and allowances. Again, if the claim affected settled rights of third parties, the same would not be allowed.

14. In the instant case, since the matter relates only to ACP and does not affect the rights of any third party limitation may not apply in so far as pay fixation is concerned, though for working out arrears of pay and allowances, if admissible to the applicant, limitation would be considered.

15. The contention of the counsel for the applicant is that the applicants were initially appointed as Mapila Khalasis in 1980 and were absorbed as Helpers Grade I Bridges in the scale of 2650 – 4000. This is not disputed. This pay scale continued from the initial date of engagement and vide order dated 05-07-2004 at Annexure A-1, the said scale remained on the date of absorption as well. In view of absorption from 05-07-2004, the period from initial date of engagement in 1980 till 07-07-2004 constituted 24 years of casual labour service and thus, the half the said span of service was counted as regular service. This enabled the applicants to be eligible for first financial upgradation, which was granted to the applicants, vide order dated 09-06-2005, in the scale of pay of Rs 2750 – 4440. While this was pay scale of helpers in the Trivandrum Division, in Palghat and Madurai Division the pay scale on first ACP to helpers was given at Rs 3050 – 4590 vide Annexure A-3 order dated 02-06-2005 and A-5 order dated 12-12-2005 in respect of Palghat Division and Annexure A-4 order dated 27-06-2005 in respect of Madurai Division. Even in Trivandrum Division, one Shri Ponnappan Helper Grade I (Retired) who was initially appointed as Khalasi in the grade of 2550 – 3200 and later he was promoted as Helper Grade I in the grade of Rs 2650 – 4000. Subsequently he was given the benefit of ACP Scheme in the scale of 3050-4590 as the second



financial upgradation vide Annexure A-6.

16. On the strength of the above, the applicants moved representations on 03-07-2008 vide Annexure A-7 to 9, requesting the respondents to modify their order dated 07-07-2004 on A.C.P. Raising the pay scale to Rs 3050 – 4590. As the same was not considered by the respondents, the applicants have moved this OA seeking the following reliefs:-

- (i) To issue a direction to the respondents to modify Annexure A-2 by granting financial upgradation by revising the pay scale of the applicants and fixing the same in the scale of 3050-4590 with effect from 7.7.2004.
- (ii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

17. Respondents have contested the O.A. As a preliminary objection, they have raised the issue of limitation, stating that the order of 07-7-2004 is sought to be revised in 2008 and there is no explanation for filing the OA belatedly. As regards merits, the respondents contended that they were initially offered the post of Gangman (Group D) in the scale of Rs 200 – 250 (Rs 2610 – 3540 w.e.f. 01-01-1996) as early as on 30-06-1988/31-12-1988, but they had declined to accept the same and continued to function as Casual Labourer Mapila Khalasis, even with the risk of facing retrenchment. They were finally absorbed against the post of Helper Grade I in the scale of Rs 2650 – 4000 on regular basis as per order dated 05-07-2004. **They were so absorbed, skipping the initial grade of Rs 2610 – 3540 and thus were deemed to have obtained one promotion on such absorption.** As regards the first financial upgradation in the scale of pay of Rs 2750 – 4400, the respondents contended that the next higher grade post above Rs 2650 -4000 in the Bridge Organization was only the

aforesaid grade of Rs 2750 – 4400. (In a latter additional counter filed, the respondents have given the following as the channel of promotion in the Bridge Organization):-

Helper/Grade II	Rs 2550 – 3200
Helper/Grade I	Rs 2650 – 4000
Trolleyman/Grade II	Rs 2650 – 4000
Trolleyman /Grade I	Rs 2750 – 4400

The posts of Welder, Rivetter, Tindal Bridge Erector, Blacksmith etc., in the scale of Rs 3050 – 4590 are being filled up by calling volunteers from Helpers/Trolleymen and further trade-testing them in the trade concerned. The applicants claim that they have been trade tested but the trade test arranged was found to be incorrect.

18. As regards the representation, vide Annexure A-7 to A-9, the respondents have stated that the same had not been received. In their additional reply, the respondents contended that **both in Palghat and Madurai Division, the pay scale of Rs 3050 – 4590 granted was as the second ACP and that too after their passing the requisite trade test, unlike the case of the applicants, who were paid only the first ACP.**

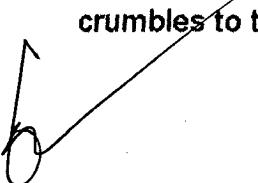
19. Counsel for the applicants submitted that admittedly, the pay scale of Rs 2650 – 4000 had been there right from the initial engagement of the applicants and the applicants were all helpers Grade I. As in the case of Palghat and Madurai Division and even as per Annexure A-6, the financial upgradation beyond the helper's scale of pay of Rs 2650 – 4000 is only Rs 3,050 – 4590 and the applicants are entitled to the same.

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20. Counsel for the respondents on the other hand submitted that ~~bg~~ it Palghat Division, or Madurai Division, and even in respect of Ponnappan of Trivandrum Division, the individuals were granted the second financial upgradation after 24 years of service and since the applicants had put in only 12 years of service as of 2004 they have to wait further to derive the benefit of next financial upgradation.

21. Arguments were heard and documents perused. The contention of the applicants is that their initial pay scale being 2650 – 4000 and they holding the post of Helper I, their entitlement cannot be different from others who were granted the financial upgradation in the scale of Rs 3050 – 4590 vide Annexure A-4, A-5 and A-6. A perusal of these Annexures would go to show that the pay scales fixed on the grant of financial upgradation was Rs 3050 – 4590. The individuals at that point of time were in the pay scale of Rs 2650 – 4590. In other words, the pay scale of Rs 3050 – 4590 happens to be the next grade to Rs 2650 – 4000 (Helper Grade I). Thus, the applicants are right in their contention that they should be granted the upgradation in the scale of Rs 3050 – 4590.

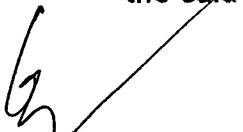
22. To view the case of the respondents now: First their contention is that the applicants were deemed to have been granted one promotion in the scale of Rs 2610 – 3500. Penultimate sentence of para 4 of the reply filed by them refers. If this were true, there cannot be the possibility of their being granted first financial upgradation on 07-07-2004. Thus, the contention of 'deemed promotion' crumbles to the ground.



23. Next one is that vide Annexure A-3 to A-6, the beneficiaries in those cases have been granted the second financial upgradation. Para 8 of the reply refers. It is seen from Annexure A-3 in all the cases where the individuals were functioning as Helper Gr. I in the grade of Rs 2650 – 4000, the financial upgradation granted was Rs 3,050 – 4590/- . Nowhere was it Rs 2750 – 4400/- as in the case of the applicants. If according to the respondents, after 2650 – 4000, the next higher pay scale is Rs 2750 – 4400 (which had been granted to the applicants), then be it the first or second financial upgradation, in Madurai or Palghat Division, after the scale of Rs 2650 – 4400 (Helper I) the respondents ought to have given only the scale of Rs 2750 – 4400. Instead what was given to the Helpers in the Palghat and Madurai Division is Rs 3,050 – 4590. Thus, the contention that in other divisions it was the second financial upgradation sinks into oblivion.

24. In the ultimate analysis, the applicants' initial pay scale at the entry grade was Rs 2650 – 4400 and as in the case of Palghat Division or Madurai Division, (why even in Trivandrum Division, vide Annexure A-6), the pay scale on upgradation from the above pay scale cannot be anything save Rs 3,050 = 4590/-.

25. The applicants have thus, made out a cast iron case in their favour. In view of the above, the application fully succeeds. Respondents are directed to modify Annexure A-2 order, by upgrading the pay scale of the applicants (Helper Grade I) from 2750 – 4400 to Rs 3,050 – 4590, w.e.f. 07-07-2004 and arrears arising out of them shall also be paid to them. While paying the arrears, the limitation as held in Jaidev Gupta supra may be kept in view, i.e. three years prior to the date of filing of the O.A. i.e. August, 2008. Fixation of pay prior to the said date should be only notional.



26. This order shall be complied with, within a period of six months from the date of communication of this order. No cost.



K.NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S.RAJAN
JUDICIAL MEMBER

trs