

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 438 of 2008
with
O.A. Nos. 519/08, 578/08, 646/08 & 626/2008

Thursday, this the 20th day of August, 2009

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 438/2008

K.P. Madhusoodanan,
S/o. Purushothaman Kartha,
(Assistant Station Master,
Southern Railway, Ernakulam Town),
Residing at "Gayathri", Thodupuzha,
Idukki District : 686 584 ... Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai.
2. Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum : 686 014 ... Respondents.

(By Advocate Mr. K.M. Anthru)

2. O.A. No. 519/2008

1. E.P. Chandran,
S/o. Kunhiraman Nair,
Station Master Grade III,
Southern Railway/Charvattur,
Residing at Ayikomath,
Kandamkali P.O., Kannur : 670 333
2. K.B. Muralidharan,
S/o. Balakrishna Panicker,
Station Master, Grade III,
Southern Railway/Shoranur,
Residing at Kolananickal,
Cheruthuruthy P.O., Trichur : 679531
3. N.S. Vijayakumar,
S/o. Thankappan Nair,
Station Master, Grade III,
Southern Railway / Parli,
Residing at Pranavam,
Edathara P.O., Palakkad – 678 611 ... Applicants.

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Park Town, Chennai : 600 003
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palakkad : 600 003
3. Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palakkad : 678 002

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

3. O.A. No. 578/2008

1. Biju .C,
S/o. Chandrasekhara Panicker,
Assistant Station Master,
Southern Railway, Ernakulam Jn.,
Residing at Panachikkal House,
Poonjar P.O., Kottayam : 686 501
2. S. Biju,
S/o. Sivasankaran Nair,
Assistant Station Master,
Southern Railway, Trivandrum Cenmtral,
Residing at "Panchami", Eanikkara,
Karakkulum P.O., Trivandrum : 695 564

... Apppllicants.

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Park Town, Chennai : 600 003
2. Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum : 695 014

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

4. O.A. No. 626/2008

1. M.P. Harinarayanan,
Station Master, Tikkoti,
Residing at 19/364,
Chelapuram, Calicut – 673 002.

2. Augustine Joseph,
Station Master, Pattambi,
Residing at Plassanal House,
Anthinadu P.O., Kollappally,
Kottayam Dist.

3. M. Haridas,
Station Master, Shoranur,
Residing at 'Haripriya',
Kizhur P.O., Palghat.

4. K.P. Anil Kumar,
Station Master, Kumbla,
Residing at No.110,
Dwarakangar, Kumbla,
Kasargode.

5. P.T. Balachandran,
Station Master, Pattambi,
Residing at Ponnam thodiyil,
Pang South P.O., Kalathur,
Malappuram.

6. V.M. Sathis,
Station Master, Pallipuram,
Residing at 'Chaithanya',
P.G. Road, Palluruthy P.O.,
Kochi.

7. K.V. Balagopalan,
Station Master, Ullal,
Residing at 'Pushpanjali'
Padinhettumkozhuval,
Malleswar.

8. N. Hariprasad,
Station Master, Palghat Divn,
temporarily working at Alleppey,
Residing at 'Saradalayam',
Pazhaveedu P.O., Alappuzha. Applicants

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Park Town, Chennai-600003.

2. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palakkad. Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

5. O.A. No. 646 OF 2008

1. Peethambaran P.P.,
Station Master/III/Calicut,

Southern Railway, Residing at
1121/KSHB, East Hill Apartments,
P.O. West Hill, Kozhikode – 673005.

2. C. Vijayan,
Station Master/III/Ferok Railway
Station, Residing at Thanal,
Ariyallur P.O., Malappuram-676312.
3. N.K. Gopinath,
Station Master/III/Quilandi Railway
Station, Residing at Ramanilayam,
Iringal P.O., Vadagara,
Kozhikode-673521.
4. Chandrasekharan. E.,
Station Master/III/Kannapuram
Railway Station, Residing at
'Lakshmi Krishna', Nadapuram P.O.,
Kozhikode-673504. Applicants

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Park Town, Chennai-600003.
2. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palakkad. Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Applications having been heard on 14.08.09, this Tribunal on ~~25/8~~
Aug. 2009 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As the legal issue to be decided in these O.A.s is one and the same, these are dealt with in this common order. The issue is whether those railway servants who are transferred from one Zone/Division to another Zone/Division in a post lower than the one which they were holding at the time of transfer should be afforded ACP benefits or not.

2. The undermentioned tabular column provided by the counsel for the applicant, which has not been rebutted by the respondents, would suffice to have a hang of the case of the applicants.

" SERVICE PARTICULARS OF THE APPLICANTS:

SR : Southern Railway SCR: South Central Railway
 MAS : Madras Division MDU : Madurai Division
 TPJ : Tiruchchirapali Divn. PGT : Palghat Division
 SBC: Bangalore Divn. TVC : Trivandrum Division
 UBL: Hubli Division GTL : Guntakal Division
 SC : Secunderabad Divn. IRT : Inter Railway Transfer
 IDT : Inter Divisional Transfer

SCALES OF PAY AND DESIGNATIONS:

Rs. 330-560/1200-2040/4500-7000 (V.P.C.) : ASM

Rs. 425-640/1400-2300/5000-8000 " : SM/III
455-700

Rs. 550-750/1600-2660/5500-9000 " : SM/II

Rs. 700-900/2000-3200/6500-10500 " : SM/I

1	2	3	4	5	6	7	8	9	10	11	12
Sl. No.	O.A. No.	Applicant No.	Appointed ASM scale Rs. 4500-7000 in Rly/Dn.	Appointed for IRT/ IDT to Rly./ Divn. In	Promoted SM/ III scale Rs. 5000-8000 in	Transferred to Rly/ Dn. & absorbed as ASM 4500-7000 in	Promoted SM/ III scale Rs. 5000-8000 in	Transferred to Dn. & absorbed ASM scale 5000-8000 in	Promoted SM/ III scale 5000-8000 in	Length of service 12 th year	24 th year
1	438/08	-	1982 SCR/ UBL	1983 SR/ TVC	1985	1992 SR/ PGT	1996	2004 SR/ TVC	-	1994	2006
2	519/08	1	1980 SCR/ GTL	1981 SR/ TVC	1982	1984 SR/ SBC	1987	1994 SR/ PGT	1998	1992	2004
		2	1978 SCR/ UBL	1979 SR/ PGT	1982	1993 SR / TPJ	--	1994 SR/ PGT	1998	1990	2002
		3	1978 SCR/ UBL	1979 SR/ PGT	1982	1993 SR / TPJ	--	1994 SR/ PGT	1998	1990	2002
3	578/08	1	1991 SR/ PGT	1992 SR / TVC	1994	2004 SR/ TVC	--	--	--	2003	--
		2	1991 SR/ PGT	1992 SR / TVC	1994	2004 SR/ TVC	--	--	--	2003	--
4	626/08	1	1983 SR/ MDU	1984 SR/ PGT	1985	1991 SR/ PGT	1992	--	--	1995	2007
		2	1980 SCR/ UBL	1981 SR/ PGT	1987	1993 SR/ PGT	1999	--	--	1992	2004

1	2	3	4	5	6	7	8	9	10	11	12
		3	1982 SR/ TPJ	1983 SR/ PGT	1985	1990 SR/ PGT	1992	--	--	1994 2006	
		4	1983 SR/ TPJ	1984 SR/ PGT	1986	1991 SR/ PGT	1993	--	--	1995 2007	
		5	1983 SR/ TPJ	1984 SR/ PGT	1986	1990 SR/ PGT	1993	--	--	1995 2007	
		6	1982 SR/ UBL	1983 SR/ PGT	1984	1993 SR/ PGT	1994	--	--	1994 2006	
		7	1983 SR/ TPJ	1984 SR/ PGT	1985	1990 SR/ PGT	1993	--	--	1995 2007	
		8	1982 SR/ UBL	1983 SR/ PGT	1988	1996 SR/ PGT	2001	--	--	1994 2006	
5	646/08	1	1983 SR/ TPJ	1984 SR/ PGT	1985	1990 SR/ PGT	1993	--	--	1995 2007	
		2	1981 SCR/ SC	1982 SR/ PGT	1982	1990 SR/ SBC	Mutual transfer in 5000 - 8000	1994 SR/ PGT	1998	1993 2005	
		3	1983 SR/ TPJ	1984 SR/ PGT	---	1990 SR/ MAS	1986	1996 SR/ PGT	2003	1995 2007	
		4	1976 SR/ UBL	1977 SR/ PGT	1984	1988 SR/ TPJ	1991	1991 SR/ PGT	1994	1988 2000	

3. For the purpose of analysis of the entitlement to the ACP benefits, the cases could be divided as hereunder:

(a) **One promotion in the previous division and no promotion in the present division:** Applicant No. 1 and 2 in OA No. 578/08 their pay drawn before their transfer to the present division has been protected. (2 Nos)

(b) **Two promotions in the previous division(s) and no promotion in the present Division -** Applicant in OA No. 438/2008, who had been granted promotion in the grade of Rs 5000 - 8000 first in UBL (SCR) in 1985 and then in PGT(SR) in 1996. His pay has been protected when he moved to

Trivandrum Division. . (1 No)

(c) One promotion in the previous Division and one promotion in the present Division: Applicants No. 2 and 3 in OA No. 519/08, Applicants Nos. 1 to 8 in OA No. 626/08, Applicants Nos. 1 and 3 in OA 646/08. (12 Nos)

(d) Two promotions in the previous Division and one promotion in the present Division: Applicant No. 1 in OA 519/08 and Applicant Nos. 2 and 4 in OA No. 646/08. (3 Nos)

4. For the purpose of reference, the pleadings as contained in OA No. 438/2008 are taken into account.

5. The Assured Career Progression scheme was introduced by the Railways vide Annexure A-1 order dated 01-10-1999. As to the applicability of the same, a few contingencies have been referred to and one of them is contained in para 14 of the Scheme, which reads as under:-

"In case of an employee declared surplus in his/her cadre and in case of transfers including 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."

6. Thus, in so far as transfer is concerned, though the individuals so transferred would be in a higher grade at the time of transfer but on transfer they are posted to a lower grade, according to the above order the regular services of the previous organization shall be counted for the purpose of giving financial upgradation under the scheme. Vide clarification at Annexure A-2, the same had been reaffirmed. The said clarification reads as under:-

Sl. No.	Points of Doubt	Clarification
35	<p>An employee is appointed to a lower grade as a result of unilateral transfer on personal request in terms of FR 15 (a). Will the period of service rendered in the higher post count for the purpose of ACPs?</p>	<p>Condition No.14 of ACPs (Ministry of Railways letter dated 1.10.99) inter alia states that in case of transfer on request, regular service rendered in previous organization shall be counted along with regular service in the new organization for the purpose 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.</p>

7. However, a different situation has been dealt with in Annexure A-3 order which reads as under:-

“Sub: Financial upgradation under the ACP Scheme - Clarification regarding.

Please refer to Point No. 35 of Board's letter No. PC-V/99/I/1/1 dated 19.02.2002 (PC-V/331 & 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.

2. 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 & 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 organization 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 reappointed on transfer on own volition. In the second case, where the person has been appointed to a lower post after earning one promotion in parent organization, while the past service is to be counted, the employee would not be entitled to first financial upgradtion, as the promotion earned before transfer would be offset against entitlement for the first ACP in the new organization. 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.

3. An illustrative example is given below so as to

interpret such cases in an unequivocal manner.

Date of appointment (as Safaiwallah)	01.03.1989	2550-3200
Date of promotion (Senior Safaiwallah)	01.03.1993	2610-3540
Date of reversion to lower grade (Rs. 2550-3200) as 'Peon' in a different cadre on account of own request transfer	18.01.1994	2550-3200
First financial upgradation in the hierarchy of the new post	Not	Entitled
Second financial upgradation in the hierarchy of the new post due on	01.03.2013	2610-3540

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

5. Hindi version is enclosed."

8. The claim of the applicants who are functioning as Assistant Station Masters in the scale of pay of Rs 4,500 – 7000 or in the promotional post carrying pay scale of Rs 5000 – 8000 is that as per Annexure A-2, without taking into account the earlier promotion afforded to the applicants, which had been nullified by inter-divisional transfer(s) (save pay protection), their first and second financial upgradations should be at Rs 5,000 – 8000 and 5,500 – 9000 respectively, on completion of 12/24 years of service from the date of their initial appointment as the case may be.

9. The contention of the respondents is that the case of the applicants falls under the category illustrated in Annexure A-3 vide para 7 above and hence, they are not entitled to the claim for financial upgradation without taking into account their previous promotion. Para 8 of the counter in OA No. 438/08 reads as under:-

"8. Regarding the averments in paragraph 4(e) it is submitted that the applicant's case is covered in Annexure A-3 letter, as not eligible for the ACP. It is humbly submitted that in terms of Railway Board's letter No. PC V/2004/ACP/1 dated 13.12.2004 (Annexure A-3), where an employee has been appointed to a lower post, after earning one promotion in parent organization, 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 organization. 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. As he had earned two regular promotions and thereafter joined the new Division on reversion, he is not eligible for the ACP with effect from 15.11.2006. It is humbly submitted that the applicant himself accepts this when he says that when the Annexure A-3 came, his chances of seeking an upgradation to scale Rs. 5000-8000 was blocked. It is rather ironical that the applicant has no mind to challenge the Annexure A-3 letter. As long as he is seen not aggrieved of the Annexure A-3 letter, he is bound to be governed by the said letter and accordingly, he is not due to get an upgradation under the ACP Scheme. The Annexure A-3 letter does not suffer from any infirmities and it does not call for any supportive remarks in the absence of any challenge to the said letter. Further, the statement that the Annexure A-3 does not apply to the request transfers under Rule 229/226 of the IREC has no meaning going by the words "who seek appointment to lower post on volition", "seeking appointment to a lower post on volition", "the employee is re-appointed on transfer on own volition", etc. in Annexure A-3. The Annexure A-4 does not call for any further explanation in the background of the Annexures R1 and R2, it is humbly submitted."

10. In their rejoinder, the applicants asserted that their transfers on inter divisional basis cannot be construed to mean reversion for, when they had applied, they had applied for transfer to an equivalent grade, and it was by a fortuitous circumstance that at the time the transfer materialized, they were in a higher grade, but they had to join a lower grade. This in no way could be treated as reversion. Their pay is however, protected. As such the illustration given in Annexure A-3 would not be applicable.

11. In their additional reply to the rejoinder, the respondents have contended as under, vide para 8 thereof, which reads as under:-

"Regarding the averments in paragraph 8 of the rejoinder, it is humbly submitted that they are seen made to create an unnecessary complication. It is humbly submitted that the Annexure A-3 discusses the cases of transfer effected on two different circumstances, one a transfer of a person initially appointed in a higher grade and transferred to a lower post and the second, a transfer effected after earning a promotion. Annexure A-3 says that in the second case, the employee would not be entitled to 1st financial upgradation in the new unit as the promotion earned before transfer would be offset against the 1st ACP and that on completion of 24 years

service he would be entitled to 2nd ACP if he has not earned two regular promotions in the meanwhile. The applicant's case is like the 2nd case discussed herein and accordingly, the claim for 1st ACP is not permissible. The contrary averments made on the basis of the example cited are not maintainable. It is respectfully reiterated that the applicant has not challenged the Annexure A-3 and in the rejoinder also, he has not chosen to either to challenge or furnish cogent reasons for not challenging the same, if he is of the view that Annexure A-3 is irrelevant. It is also evident from paragraph 2 of A-3 that the clarification is issued in consultation with the Department of Personnel and Training which is the Nodal Department in such matters governing Central Government employees."

12. Counsel for the applicant argued that Annexure A-3 has no application to the facts of the case as the applicants requested for transfer in the same post though before the transfer was effected they would have got a promotion and this situation cannot be taken to mean that there is reversion and hence the provisions of Annexure A-3 would be applicable to them.

13. Counsel for the respondents, on the other hand, submitted that when inter-divisional transfer takes place and when the pay drawn prior to transfer is protected, if at the time of consideration of ACP benefits to the applicants their past promotion has not been taken into account there would be double benefit. Hence, Annexure A-3 is applicable to the facts of the case of the applicants.

14. Counsel for the applicant relied upon the decision of the Bench in OA No. 809 of 2005 where the Bench has held as under:-

"3. We have heard Advocate Shri M.P.Varkey for the applicants and Advocate Mr. K.M. Anthru, for the respondent Railways. In our considered opinion the reasoning given by the respondents in Annexure A4 series of replies dated 4.3.05 is not convincing. The fact is that the applicants were originally appointed as Diesel Assistants (now designated as Assistant Loco Pilots) in the Madras Division of Southern Railway during 1993 and they are working in the same position even today after 14 years in the Trivandrum Division. They sought for inter-divisional transfer in 1994-95 and it materialized only in 1998-99. During this period, they were promoted as Shunter/Sr.Diesel Assistants in the next higher grade. The applicants would have been more than happy and willing to be transferred to the Trivandrum Division on inter-divisional transfer basis as

Shunters/Sr.Diesel Assistants. However, in terms of the request for transfer made by the applicants as Diesel Assistants, the respondents reverted them from the post of Shunter/Sr.Diesel Assistants to their original post of Diesel Assistants before transferring to Trivandrum Division. Being an inter-divisional transfer on request, they were assigned the bottom seniority in the Trivandrum Division in the cadre of Diesel Assistants. Being the junior-most Diesel Assistants in Trivandrum Division, their prospect of getting further promotion is quite bleak. Had the applicants been transferred as Diesel Assistants before they got the promotion as Shunter/Sr.Diesel Assistants, they would have been covered by the Apex Court Judgment in the case of Dwijen Chandra Sarkar and V.N.Shat and Mathivarnan (supra). The promotion they got in 1998 which they did not enjoy for more than a year in Madras Division has come in their way for the first financial up-gradation under the ACP Scheme. The net result is that they lost promotion as well as the financial up-gradation under the ACP Scheme. The respondents have denied the benefit under the ACP Scheme on the basis of the Railway Board's letter dated 13.12.04 (A5). The said letter covers the cases of persons who earned promotion in the parent organization before seeking appointment to a lower post on their own volition. In the case of applicants, they have never sought appointment to a lower post on their own volition. In fact they had sought for inter-divisional transfer in the same capacity as Diesel Assistants. It was in the course of their appointment as Diesel Assistants in the Madras Division, they were promoted to the higher post of Shunter/Sr.Diesel Assistant. As observed earlier, the applicants would have been well satisfied, if they were allowed to be transferred to Trivandrum Division in the promoted capacity as Shunter/Sr.Diesel Assistant. It was the respondents themselves who have reverted them to the post of Diesel Assistants to accommodate their request for transfer to Trivandrum Division in the capacity as Diesel Assistant. Therefore, the promotion earned by them in Madras Division before their transfer could not have been offset against their entitlement for the first financial up-gradation benefit under the ACP Scheme in the Trivandrum Division as done by the respondents. The case of the applicants is not covered by the aforesaid Annexure.A5. clarification together with its illustration.

4. Looking at the issue from another point of view also, the request of the applicants for the first financial up-gradation on completion of 12 years from their respective dates of regular service cannot be denied to them. The very object of the Assured Career Progression Scheme as stated in the opening para of the Scheme itself is to provide a safety net to deal with problem of genuine stagnation and hardship faced by the employee due to lack of adequate promotional avenues. In Para 14 of the Scheme it has been clearly stated :

"In case of an employee declared surplus in his/her cadre and in case of transfers including 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 up gradation under the Scheme."

It has also been clarified vide Railway Board's letter dated 19.2.02 (A2) that in case of transfer on request, the regular service

rendered in previous organization shall be counted against the regular service in the new organization for the purpose of getting financial up-gradation under the Scheme and this condition covers the case where a unilateral transfer to a lower post.

5. In the above facts of the case and the legal position which has the stamp of the Apex Court, we do not consider that the respondents could have denied the first financial upgradation to the applicants on the basis of Annexure.A5 letter of the Railway Board dated 13.12.04 which has no application in the case of the applicants in the present case. We, therefore, quash and set aside the Annexure.A4 series of letters dated 4.3.05. Resultantly, we declare that the applicants are entitled for the benefit of first financial up-gradation under the Annexure.A1 ACP Scheme for the Railway servants dated 1.10.99 and the clarifications issued thereunder. The respondents shall grant all the applicants herein the first financial upgradation under the aforesaid Scheme on completion of 12 years regular service taking into account their aggregate service including the earlier period of service rendered by them under the Madras Division and they shall issue the necessary orders within a period of two months from the date of receipt of this order and the resultant financial benefits shall be paid to them within a period of one month thereafter.

6. With the aforesaid directions, the OA is allowed but without any order as to costs."

15. Arguments were heard and documents perused. Let the case of applicant in OA No. 438/08. is taken up for consideration. The applicant in that O.A. was appointed in 1982 at SCR/UBL in the scale 330 – 560/1200-204-/4500 – 7000. In 1983 he had been promoted to the next higher grade of Rs 425-640/1400-2300/5000 – 8000. At that time, he would have earned one notional increment at the lower post in accordance with the provisions of FR 22-C/22(1)(a)(i). At the time when he was transferred to PGT division and in the lower pay scale of Rs 4500 – 7000/- his pay prior to transfer (which included the notional increment drawn at the time of promotion to the higher grade in the previous division) had been protected. In Palghat division also, the applicant had earned the promotion in the grade of Rs 5000 – 8000 wherein also, in all probability, he would have earned another notional increment at the lower grade before his pay is fixed in the higher grade. This increment is also carried to upto the time he is transferred to Trivandrum Division, wherein though placed in the scale of pay of Rs 4,500 – 7000 he would have his pay protected. In other words, for two promotions two notional increments were added to his pay. Now, a comparison of an Asst. Station Master at Trivandrum Division appointed in 1982 who has no

promotion till 1999 with that of the applicant, would reveal a difference in pay drawn by the former and the applicant, the latter drawing more because of the two notional increments and difference in the rates of increments in the two scales, if any. Under these circumstances, if the ACP is given in the grade of 5000 – 8000 after completion of 12 years of service or the date of introduction of the ACP scheme whichever is later and the second ACP in the grade of Rs 5500 – 9000 on the basis of the pay drawn by him at the relevant dates, the same would be more than that which would have been drawn by the other individual who had been appointed at Trivandrum Division itself. It is exactly this kind of unintended benefit, which the counsel for the respondent had pointed out, of course, without specifically mentioning the above comparison. It is for this reason that the respondents contend that the applicants are not entitled to any financial benefits as they had already been given promotions when they were in the earlier divisions and Annexure A-3 illustration applies.

16. We are not able to subscribe to the views of the respondents in this regard that just because the applicants had been granted one or two notional increments earlier at the time of their promotion in the previous Division, they should be denied the benefit of ACP scheme, especially when clause 14 of the scheme extracted in para 5 above as well as clarification vide Annexure A-2 specifically provide for the grant of the benefits to such employees. In addition, order dated 27th February 2007 in OA No. 809/2005, relied upon by the learned counsel for the applicants, has clearly held that the applicants therein (who are similarly situated as those herein) are entitled to the ACP benefits. Denial of ACP for the reason contended by the respondents would be violative of the provisions of Art. 16 of the Constitution. To that extent we respectfully agree with the above order of the Tribunal and hold that the situation in which the applicants stand, would not disentitle them for the financial benefits available under the ACP scheme. We may supplement the reason that as on date they are in the same pay scale as they were at the time of their initial recruitment, though in the intermediate stages they would have been promoted. Their request for transfer

was at the time when they were in the same grade of Rs 4500 – 7000. But at the same time, care has to be taken that there is no unintended benefits that accrue to the applicants by fixing the pay of the applicants in the higher pay scale as they draw at the time of such upgradation. Their pay drawn as on date having the element of one or two notional increments granted to them at the time of their earlier promotion, fixing the pay without discounting the same would lead to a double benefit, as the respondents rightly contend. Thus, while the applicants should be declared as entitled to the benefits of ACP scheme, in so far as fixation of pay is concerned, the pay fixation should not take into account the notional increment allowed to them on their promotion in the previous divisions.

17. Thus, while granting the ACP benefits, the above discounting of the notional increment(s) earned would ensure that they are not given the unintended benefits

18. For working out the pay on 1st and 2nd ACP, therefore, the cases are to be divided as under:-

(a) **Where no promotion has been granted to the applicants in the new Division:**

For affording the first financial upgradation from the date of completion of 12 years reckoned from the date of initial appointment or 01-10-1999 whichever is later, their pay in the grade of Rs 330-560/ 1400-2300/4500-7000 from initial date of appointment till the date of the first ACP should be worked out and the same would be taken into account to fix their pay in accordance with the ACP Scheme in

the difference shall be treated as personal pay absorbable in future increments. With the annual increments attached to the pay scale of Rs. 5000 - 8000 added for subsequent years, grant of second ACP in the scale of Rs 5500 - 9000, shall be based on the pay as on completion of 24 years of service from the initial date of appointment and by any chance, if the pay so arrived happens to be less than the pay drawn on that date, then, the difference shall be treated as personal pay to be absorbed in the future increments.

(b) Where one promotion in the present division is granted:

The second ACP shall be from the date the applicants complete 24 years of service reckoned from the date of initial appointment. The pay that would be fixed should be -

(i) if in the past, notional increments at the lower stage had been already granted twice (or even more than two) then, there shall be no further notional increment under FR 22(1)(a)(i) at the time of fixation of pay in the scale of Rs 5,500 - 9000.

(ii) Where so far only one notional increment had been granted in the past, while fixing the pay at the time of second financial upgradation, one notional increment at the lower stage has to be granted.

19. All the O.As are allowed to the above extent. Respondents shall effect grant of first/second ACP admissible to the applicants on the basis of the above and work out the pay and allowances accordingly and pay the arrears arising out of the same.

20. As the drill involved in laborious, sufficient time is required to be granted. Hence, a period of six months from the date of communication of this order is calendared.

21. No costs.

(Dated, the 20th August, 2009)

 /
K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

 /
Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.