

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 554 OF 2007

Thursday, this the 8th day of January, 2009.

CORAM:

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

A.Sobha
Junior Clerk, Personnel Branch
Southern Railway/Trivandrum
Residing at "Devamrutham"
Plavarathalamale, Edacode, Nernamorn P.O.
Thiruvananthapuram - 8

... **Applicant**

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Park Town P.O
Chennai - 3
2. The Divisional Railway Manager (Personnel)
Guntakkal Division, South Central Railway
Guntakkal
3. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum - 14

... **Respondents**

(By Advocate Mr.Sunil Jose)

The application having been heard on 08.01.2009, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is presently working as a Junior Clerk in the scale
of Rs.3050-4590 in Southern Railway, Trivandrum Division . She was
initially appointed as an Office Clerk in the scale of Rs.950-1500 in the
Guntakkal Division of South Central Railway with effect from 31.03.1988.

According to her, in the same year itself, she applied for Inter-Railway /

Inter-Divisional transfer to the Trivandrum Division of Southern Railway. However, before her turn for transfer came, she was promoted as Senior Clerk in Guntakkal Division itself in the pre-revised scale of Rs. 1200-2040 (revised to 4500-7000) on ad-hoc basis with effect from 01.10.1990 and later on, on regular basis with effect from 12.11.1990. When her turn came in the year 2005, on the directions of the Chief Personnel Officer, Southern Railway vide Annexure A-7 letter dated 24.03.2005, the General Manager (P), South Central railway enquired from her whether she was still willing to go on Inter Divisional transfer to Trivandrum Division and she expressed her willingness vide Annexure A-9 letter dated 19.05.2005. Thereafter, by Annexure A-10 letter dated 24.08.2005, the DRM, South Central Railway transferred her to Trivandrum Division as Junior Clerk in the scale of Rs. 3050-4590, subject to the condition that she would accept the bottom seniority among all the permanent and the temporary Junior Clerks in the said Division. Later, she was relieved from the South Central Railway with effect from 31.08.2005, vide Annexure A-11 letter dated 31.08.2005 and she joined the Trivandrum Division on 05.09.2005.

2. After she has joined the Trivandrum Division as Junior Clerk, she made Annexure A-14 representation dated 15.05.2007 to the respondents stating that she has fulfilled the conditions regarding grant of first financial upgradation under Assured Career Progression (ACP for short) Scheme and requested for the grant of the same. The 3rd respondent rejected her request vide Annexure A-1 impugned letter dated 04.06.2007 on the ground that she had already earned one promotion while she was working in South Central Railway prior to her transfer to Trivandrum Division on her own volition and, therefore, the said promotion would offset against her

entitlement for the first financial upgradation under the ACP Scheme in terms of the Railway Board's letter No.PC/CV/2004/ACP/I dated 13.12.2004 (Annexure A-15) which reads as under :-

**"Government of India
Ministry of Railways
(Railway Board)"**

S.No.PC.V/438 RBE No.266/2004
No.PC.V/2004/ACP/1 New Delhi, dated 13.12.2004

**The General Manager/CAO(R)
All Indian Railways & PUs(As per mailing list)**

Sub:- Financial Upgradation under the ACP Scheme - Clarification regarding.

Please refer to Point No,35 of Board's letter No, PC- V /99/1/1 dated 19.2.2002 (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 cases of persons who were initially appointed in a higher scale and who seek appointment to a 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 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 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.

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

Date of appointment (as Safaiwala)	01/03/89	2550-3200
Date of promotion (Senior Safaiwala)	01/03/93	2610-3540
Date of reversion to lower grade (Rs.2550-3200) as peon on a different cadre on account of own request transfer	18/01/94	2550-3200

Date of appointment (as Safaiwala)	01/03/89	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	01/03/13	2610-3540

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

Sd/-
 P.K.Goel
 Director, Pay Commission
 Railway Board"

3. The applicant challenged the aforesaid Annexure A-1 letter of the 3rd Respondent in this Original Application on the ground that the refusal of the Respondent to consider her service rendered in Guntakkal Division of south Central Railway for the purpose of granting the benefits vide the ACP Scheme on the plea that she was once promoted while working in the said Division is without any substance and merit and opposed to the object of the said Scheme itself.

4. Shri TCG Swamy, learned counsel for the applicant has also relied upon the Annexure A-16 order of this Tribunal in OA 809/05- R.C.Unnikrishnan & Ors vs.Union of India & Anr. decided on 27.02.2007 in support of the Applicant's claim. This Tribunal has held in the said order as under:-

3. We have heard Advocate Shri M.P.Varkey for the applicants and Advocate Mr.K.M.Anthru, for the respondents Railways. In our considered opinion the reasoning given by the respondents in Annexure A-4 series of replies dated 04.03.05 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 as Shuners/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 .Bhat 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 organisation 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 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 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 up-gradation 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 A-4 series of letters dated 4.3.05. Resultantly, we declare that the applicants are entitled for the first financial up-gradation under the Annexure A-1 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."

5. The respondents have stated in the reply affidavit that her name was not registered with them as Junior Clerk and she requested for transfer only while she was working as Senior Clerk and it was registered on 05.01.1995. Since the appointment of Senior Clerks is by promotion and transfer could be made only against the 20% direct recruitment quota she was ordered to be transferred as Junior Clerk after reverting her from the post of Senior Clerk by the 2nd respondent after obtaining her consent. They have also submitted that the cases of persons who are initially appointed in a higher scale and seek transfer to a lower post on their own volition are distinct from those who earned a promotion in the

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parent organization before seeking appointment to a lower post on their own volition. While 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 ACP with reference to the grade in which the employee is re-appointed on transfer on his own volition, in the latter case, the employee would not be entitled to the 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, she would be entitled to second financial upgradation, if in the meantime, she has not earned two regular promotions. They have, therefore, stated that her case is not similar to the facts in OA 809/05 (supra).

6. We have heard Mr.TCG Swamy, Counsel for applicant and Mr.Sunil Jose, counsel for respondents. Under the ACP Scheme, the first financial upgradation is admissible to a government servant on completion of 12 years of regular service. Undisputedly, the Applicant was initially appointed as Office Clerk in the pre-revised scale of Rs.950-1500 (revised to Rs.3050-4590) with effect from 31.03.1988 under the Guntakkal Division of the South Central Railways. She got her first promotion as Senior Clerk under the same Division/Railways in the scale of Rs.4500-7000 with effect from 12.11.1990 itself. Had she not been granted a promotion to her before she had completed 12 years, she would have become entitled for the first financial upgradation in the next higher scale of Rs.4570-7000 with effect from 31.03.2000 subject to fulfillment of the prescribed condition. Irrespective of the fact whether she had applied for inter-divisional transfer while she was working in the lower post or on the promoted post, she was reverted to the lower post and scale with effect from 31.08.2005 and she

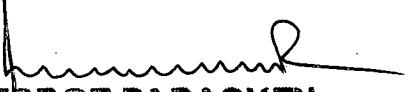


joined that post on 05.09.2005. As in the case of the Applicant in OA 809/05, the applicant herein was also granted inter-divisional transfer while she was working as Senior Clerk. On her own, she never wanted to be appointment to lower post. Going by the respondent's own submission, the applicant had registered her name for transfer to Trivandrum Division while she was working as Senior Clerk in scale Rs.4500-7000 in South Central Railway and since inter-divisional transfers are made only against direct recruitment quota, they transferred her to Trivandrum Division after reverting her to the lower post of Junior Clerk with bottom seniority. Now she has to wait again for her regular promotion as Senior Clerk in her turn. The Assured Career Progression (ACP) Scheme is a welfare measure for the government employees who have to wait for a minimum of 12 years for their first promotion. By the ACP Scheme, the employee gets an assurance that he/she would get the higher scale attached to the next promotional post after 12 years. For availing inter-divisional transfer accepting bottom seniority in the lower scaler and grade, the employee cannot be deprived of both the benefits of promotion as well as financial upgradation under the ACP Scheme. Respondents cannot, therefore, deny the ACP benefits to such employees only on the ground that he/she had already availed of the first promotion. Once the employee has been reverted to the lower post, the effect of promotion ceased to exist. The Applicant is, therefore, entitled to her first financial upgradation under the ACP Scheme in the scale of Rs.4500-7000 from the date she had completed 12 years service as Junior Clerk in the scale of Rs.3050-4590 or from the date she was reverted to that scale from the promoted post of Senior Clerk in the scale of Rs.4500-7000 whichever is later. Since the Applicant had actually worked/drawn salary in the higher scale with effect from 01.10.1990 to 04.09.2005, in the peculiar facts and circumstance of

the case, the Respondents shall treat the date of her granting the first ACP as shifted to 05.09.2005 and continue to treat her as in the scale of Rs.4500-7000. Accordingly, we allow this OA and quash and set aside Annexure A-1 order dated 04.06.2007. Respondents shall issue necessary orders in this regard within two months from the date of receipt of a copy of this order. The resultant financial benefits, if any, also shall be paid to the applicant within one month thereafter. There shall be no order as to costs.

Dated, the 8th January, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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