

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.131/2003.

Thursday, this the 11th day of December, 2003.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

A. Sreenivasan,
Marker, Southern Railway ,
Shornur -
Permanently residing at
Ozhavapadam House,
P.O. Chathamangalam (Via.),
Nenmara, Palghat District.

...Applicant.

[By Advocate Mr. T.C.Govindaswamy]

Versus

1. Union of India represented by
The General Manager,
Southern Railway,
Headquarters Office,
Chennai - 3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Chennai - 3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

...Respondents.

[By Advocate Mr.Thomas Mathew Nellimoottil]


O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, while working as a Marker in scale Rs. 2650-4000 at Shornur Railway Station, Palghat Division, is aggrieved by the order of the respondents denying to grant him the financial upgradation under the ACP Scheme. Therefore, he has filed this O.A. seeking the following reliefs:-


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- (a) Call for the records leading to issue of Annexure A7 and quash the same;
- (b) Declare that the applicant is entitled to be granted two financial upgradation in the scales of pay of Rs. 2750-4400 and 3050-4590 w.e.f. 1.10.1999.
- (c) Direct the respondents to grant all consequential benefits in terms of the declaration above, including the arrears of pay and allowance w.e.f. 1.10.1999.
- (d) Award costs of and incidental to this application.
- (e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant was initially appointed as "Rakshak" of the Railway Protection Force (RPF, for short) on 18.11.1964 in scale of Rs. 200-240 (III Central Pay Commission) and was promoted as a "Senior Rakshak" in the pay scale of Rs. 210-270 with effect from 27.2.1982. He was further promoted as Head Constable with effect from 29.2.1984 in the pay scale of Rs. 225-308. The normal replacement scale of pay under the IVth Central Pay Commission for the aforesaid scale are Rs. 775-1025, Rs.800-1150 and Rs. 825-1200 respectively. In the year 1985, RPF became an Armed Force of Union and the designations of the posts of Rakshak and Senior Rakshak came to be changed as "Constable" and "Naik" respectively. As Head Constable, the applicant was in the scale of Rs. 975-1660 with effect from 1.1.1986. While so, he was medically decategorised due to an injury sustained by him on duty and granted an alternate appointment as Marker with effect from 11.11.1990 in the pay scale of Rs. 800-1150, i.e., a scale of pay lower than that of his initial recruitment scale. In implementation of the recommendations of the Vth Central Pay Commission, the applicant was granted the replacement scale of Rs. 2650-4000 with effect from 1.1.1996 and since then, he is




continuing in that scale. The applicant submitted that as per new pay scale, his initial recruitment scale of pay as a Rakshak/Constable came to be Rs. 3050-4590 whereas the applicant was in the scale of Rs. 2650-4000 as a Marker. As per the recommendations of the Vth Central Pay Commission, Ministry of Railways introduced ACP Scheme for Railway servants with effect from 1.10.1999 vide Railway Board's order dated 1.10.1999 (Annexure A/2). Taking into consideration the years of service rendered by him, the applicant was entitled to be granted two financial upgradations, i.e., to the pay scale of Rs. 2750-4400 and Rs. 3050-4590. The applicant's representation in this regard did not yield any result. Vide another clarification order dated 11.5.2000 (Annexure A/3), the Railway Board has pointed out that as regards an RPF personnel, the promotion granted as Senior Rakshak/Naik has to be ignored and in that case, a person who became a Head Constable after having been promoted as Senior Rakshak/Naik is entitled to be granted one financial upgradation as on 1.10.1999. Even the applicant's erstwhile seniors in the RPF, who were promoted like the applicant, were granted the scale of pay of Rs. 4000-6000 with effect from 1.10.1999. For instance, he quoted the case of one Shri Vidhyasagaran, who was also promoted as Senior Rakshak and Head Constable prior to the applicant, was granted the pay scale of Rs. 4000-6000 with effect from 1.10.1999. The applicant submitted a representation dated 8.8.2000 (Annexure A/5) to the first respondent followed by another representation and reminder dated 24.1.2001 and 19.6.2001 (Annexure A/6) respectively. Finally, the representation dated 24.1.2001 was rejected vide Annexure A/7 order on the ground that the applicant was given two



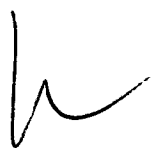
promotions, namely, as Senior Rakshak and Head Constable. According to the applicant, it is arbitrary and illegal and he filed another representation dated 8.8.2001 (Annexure A/8), but there was no response. Since the applicant is very near to his retirement, he has approached this Tribunal seeking the reliefs as aforesaid.

3. The respondents have filed a detailed reply statement contending that the applicant was initially appointed in the RPF as Rakshak in scale Rs. 70-85 (IIInd Central Pay Commission) on 18.11.1964 and thereafter, promoted as Senior Rakshak in scale Rs. 210-270 (III Central Pay Commission) on 27.2.1982 and again promoted as Head Constable on 29.2.1984 in the scale of Rs.225-308 (III Central Pay Commission), which was later on revised to Rs. 975-1660 (IVth Central Pay Commission). While working so, the applicant met with an accident on 24.9.1989 and hence the applicant was declared unfit for the job he was already performing, but fit for a sedentary job in the B-1 medical classification. On recommendation of the Committee, the applicant was absorbed and posted as 'Marker' in the scale of Rs. 800-1150, which was replaced to Rs. 2650-4000 in implementation of the IVth Central Pay Commission's recommendations. It is stated that having accepted the alternate employment, he ceased to be a member of the Railway Protection Force and has been working as a Marker. Having come over to a new post, without making any objection, though there was chance for the same and having enjoyed the benefit for more than 13 years, the applicant's case does not deserve any consideration. If the accident did not take place, the applicant would have received the scale of pay of Rs.3200-4900 applicable to Head Constable.



The applicant had been given pay protection at Rs. 1150 + Rs.30 in scale Rs.800-1150. As per the Railway Board's clarification dated 11.7.2001, the benefit of upgradation under Assured Career Promotion (ACP) Scheme is to be allowed in the existing hierarchy, the mobility under ACPs shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. In the case of the applicant, it is in the category of Marker. Since the applicant had relinquished the post of Head Constable in 1990 and took over the post of Marker, he is not eligible for the benefits granted to the hierarchy of Railway Protection Force, since the applicant ceased to be a member of RPF on 11.11.1990. Therefore, he cannot claim the benefits earned/given to such personnel. Had he continued as a Head Constable he would have himself found a place in Annexure A/4. The applicant is to seek promotion in the existing hierarchy and whatever benefits enjoyed by his erstwhile juniors in the Railway Protection Force cannot be extended to the applicant, so long as these were granted after his relinquishing of his cadre. There is no direct avenue for the post of Marker for promotion. The applicant did not volunteer for the post of Ticket Collector/ Train Clerk when applications were called for to appear for selection for promotion from Group 'D' to Group 'C' against 33 1/3 per cent. Therefore, the respondents would submit that there is no merit in the O.A. and that the same is liable to be dismissed.

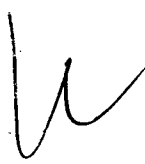
4. We have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel appeared on behalf of the respondents.



5. The learned counsel for the applicant argued that the applicant was appointed to the post of Marker (a post carrying the less pay scale than that of the Constable) on medical decategorisation and not voluntarily and he had been making representations to place him at the appropriate position, but his request was not acceded to by the department. ACP is a Scheme promulgated by the department to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The applicant submitted that had he not sustained an injury on duty he would have continued as a Head Clerk and the promotion granted as Senior Rakshak/Naik would have been ignored and he would be granted the second financial upgradation in the scale of Rs. 4000-6000 with effect from 1.10.1999. The refusal on the part of the respondents to grant the same is totally arbitrary and opposed to the very object of Annexures A2 and A3. The learned counsel for the respondents on the other hand persuasively argued that since the applicant was not in the Railway Protection Force, he cannot claim the benefit that has been granted to the members of such category.

6. We have given due consideration to the pleadings, evidence and the material placed on record as well as the arguments advanced by the contesting parties.

7. Admittedly, the RPF personnel who worked alongwith the applicant were given two financial upgradation in terms of ACP Scheme vide Memo No. JXP/608/ACP dated 16.2.2001 and had the applicant continued in the Railway Protection Force, he would have entitled and granted the said benefit. But due to an accident sustained while on duty and subsequent medical



decategorisation of the applicant, he lost the career in the Railway Protection Force. As per the recommendations of the Fifth Central Pay Commission, all Ministries/Departments of the Central Government introduced the Assured Career Progression (ACP) Scheme and accordingly, the Ministry of Railways has also extended the said benefit to its employees vide R.B.E. No. 2399 dated 1.10.1999. ACP Scheme has been introduced in the Railways with certain modifications to the recommendations made by the Fifth Central Pay Commission, as a "Safety Net" to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. It has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the staff side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of regular service respectively. It is the case of the applicant that he had the required regular service and his employment on medical decategorisation due to an accident, is also treated to be a regular service as defined under the Scheme. Such service is also eligible to be counted for regular promotion under the relevant recruitment rules. It is made clear in point 5.1 of the conditions for grant of benefits under the ACP Scheme that if an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme and in case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. Further, in the clarificatory letter No. R.B.E.No.87/2000 dated

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11.5.2000 (Annexure A/3), a point of doubt was raised that "prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs. 1200-1800 and Rs. 1320-2040 respectively, the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs. 4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?" The said query has been clarified as under:

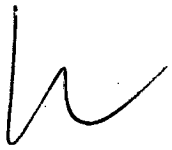
"An employee who got promoted from lower pay-scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPs ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

8. Regarding eligibility criteria, in point No.6 of the letter aforesaid dated 11.5.2000, it has been clarified that in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPs, as such transfers are within the same Organisation, ordered generally for administrative considerations and the service rendered in the earlier station counts as eligibility service for promotion. It is nobody's case that medical decategorisation of an employee and his subsequent employment in another department will disentitle that employee in getting the benefit under ACP Scheme. In the given case, during 1985, the Railway Protection Force became an Armed Force of the Union and the designations of the posts of 'Rakshak' and 'Senior Rakshak' came to be changed as 'Constable' and 'Naik' respectively. The applicant was in the pay scale of Rs.975-1660 as Head Constable and on medical decategorisation, he was appointed as Marker with effect from 1.11.1990 in the pay scale of Rs. 800-1150, i.e., to the scale of pay lower than

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that of his initial recruitment scale. Since the two posts were merged while he was working as head Constable as mentioned supra, that promotions be construed as not in existence. Therefore, the contention that while the applicant was in the RPF, he enjoyed two promotions may not be said to be correct in view of the rule position discussed in Annexure A/3 clarification, i.e., "an employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPs ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade. Therefore, the applicant had already enjoyed one promotion while he was in the RPF, but as per the Scheme, he is entitled to get another upgradation provided he has put in 24 years of regular service. Admittedly, the applicant has got 24 years of service, therefore, we will examine the eligibility of the applicant for the second upgradation.

9. As per point No.1 of the Annexure A/3 clarification, as regards an RPF personnel, the promotion of the applicant as 'Naik' has to be ignored and in that case, he is entitled to be granted one financial upgradation with effect from 1.10.1999 in the scale of Rs. 4000-6000. Accordingly, even the applicant's erstwhile seniors in the RPF who were promoted like the applicant were granted the financial upgradation in the scale of Rs. 4000-6000. In support of this, the applicant has filed Annexure A/4 order indicating that one Shri Vidhyasagaran who was promoted as Senior Rakshak and Head Constable prior to the applicant has been given such benefit. In all the representations, the applicant had been making the same claim, but all in vain.



Considering the entire aspects of the matter, we are of the view that the applicant stands stagnated from the date he was fixed in a lower scale and whatever promotions given to him earlier was also nullified. Therefore, the decision contained in Annexure A/7 order is not in accordance with the facts and the law. We have, therefore, no hesitation in directing the respondents to grant the second financial upgradation to the applicant considering his earlier promotions as one and the refusal to grant such benefit is faulted. Accordingly, we declare that the applicant is entitled to be granted the second financial upgradation in the appropriate scale in alternative employment, where he is now working, with all consequential benefits.

10. In the result, the Original Application is allowed to the extent as observed above. The respondents are directed to pass appropriate orders in granting the benefit of second upgradation to the applicant under the ACP Scheme with effect from 1.10.1999 in the appropriate scale in alternative employment. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs.

(Dated, the 11th December, 2003.)



(K.V.SACHIDANANDAN)
JUDICIAL MEMBER



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

CVR.