

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. NO.135/2009.

DATED THE 16TH DAY OF NOVEMBER, 2009.

CORAM:

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

T Antony,
Assistant Station Master,
Southern Railway, Kochuveli RS & PO,
Residing at: No.TC 3/245, Priyadarshini Lane,
Muttada, Thiruvananthapuram-25.

... Applicant

By Advocate Mr T C G Swamy

Vs

- 1 Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
- 2 The Divisional Personnel Officer,
Southern Railway, Tiruchirapalli Division,
Tiruchirapalli.
- 3 The Sr Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
- 4 The Chairman, Railway Board,
Rail Bhavan, New Delhi

... Respondents

By Advocate Ms P K Nandini

This application having been heard on 16.11.2009 the Tribunal on the same day delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, aggrieved by Annexure A-6 show cause notice dated 3.2.2009, challenges Annexure A-8 Railway Board's order No. 256/2004 dated 13.12.2004.

2 The applicant was appointed as Assistant Station Master on 12.10.1978 and he had completed 30 years and four months service. On completion of 24 years of service he was given 2nd ACP w.e.f. 1.7.2003 but the respondents are now quoting the Railway Board's letter dated 13.12.2004 and propose to withdraw the financial upgradation already granted to him. He has therefore stated that such withdrawal of order on ACP i.e about one and half years before the issue of the Railway Board's order is unjust. The applicant has therefore, challenged the Railway Board's order dated 13.12.2004 (Annexure A-8).

3 The respondents have stated that vide Office Order No.T.58/2008/ACP dated 27.11.2008 (Annexure A-5), he was granted financial upgradation under the ACP Scheme in the hierarchy of his post in Trivandrum Division. Further, on perusal of applicant's record, shows that he had earned promotion in his parent Division before joining Trivandrum Division and as such he was not eligible for the financial upgradation under ACP as per instructions contained in Railway Board's letter No.PC.V/2004/ACP/I dated 13.12.2004 (Annexure A-8). By Annexure A-5 Office Order dated 27.11.2008, the respondents in terms of Railway Board's letter No.PC-V/99/1/1/1 dated 1.10.1999 (Annexure A-1), the applicant and the others who were working as Assistant Station Masters in the scale of pay of Rs.4500-7000 were placed in the higher scale of pay under the ACP Scheme. In the case of the applicant, he was granted the 2nd ACP in the

scale of Rs.5500-9000 w.e.f. 27.7.2003 (Annexure A-3) while he was under the control of the Tiruchirapalli. Division. Again, in Trivandrum Division he was granted the same scale w.e.f. 9.1.2004 in other words, his ACP was effective from 27.7.2003 but it was admissible only from 9.1.2004 on his regular appointment in Trivandrum Division.

4 The impuned Order has been issued by the Railway Board in consultation with the DOP&T wherein it was clarified that the cases of the persons who were initially appointed in a higher scale and who seek appointment to lower post on own volition are distinct from cases of persons who earned a promotion in the parent organisation before seeking appointment to a lower post on own volition. In the former case, the past service in the higher grade before appointment to a lower post is to be counted while considering the issue of grant of two financial upgradations under the ACP Scheme 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 organisation, while the past service is to be counted, the employee would not be entitled to first financial upgradation, as the promotion earned before transfer would be offset against entitlement for the first ACP in the new organisation. However, on completion of 24 years service, one would be entitled to second financial upgradation if in the meantime the employee has not earned two regular promotions. In the said letter itself the Railway Board has clarified that the past cases decided otherwise need not be re-opened. In this case, the applicant while working as Station Master Grade III in the scale of Rs.5000-8000 and he had completed 24 years of regular service in the scale of Rs.4500-7000 and in the scale of Rs.5000-8000 have already been declared eligible for the 2nd ACP to the next higher scale of Rs.5500-9000 vide Annexure A-3 Office Order dated 10.10.2003. By the Annexure A-5 letter dated 27.11.2008, the respondents have only reiterated

the aforesaid position as already stated by them that it was issued in terms of the Railway Board's letter dated 1.10.1999 (Annexure A-1) circulated under CPO/MAS letter No.P(S)535/P/Promotion dated 19.11.1999. It has also been made clear in the Annexure A-8 letter dated 13.12.2004, that the past cases decided otherwise need not be re-opened. Since the applicant's case was decided by Annexure A-3 Office Order dated 10.10.2003, the respondents need not have raked up the same issue by the Annexure A-6 show cause notice to withdraw the financial upgradation already granted under the ACP scheme.

5 When the case came up for hearing today, the learned counsel for the applicant submitted that this case is covered by the order of this Tribunal in O.A. Nos. 438/2008 and connected cases dated 20.8.2009. In that order, the Tribunal held as follows:

"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 grade of Rs 5000 - 8000. In case, such a pay so fixed happens to be less than the pay actually drawn on that date, 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.

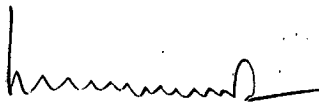
19. All the O.As are allowed to the above extent. Respondents shall effect grant of first/second ACP admissible to the applicants on the basis of the above and work out the pay and allowances accordingly and pay the arrears arising out of the same.

6 Accordingly, we follow the above orders relied on by the learned counsel for the applicant and allow the O.A. We quash and set aside Annexure A-8 and declare that the fixation of pay shall be done as stipulated under para 18(b) of the order quoted above.

7 The O.A. is allowed as above. No costs.

Dated 16th November, 2009.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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