

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 138 of 2009

Wednesday, this the 20th day of January, 2010

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

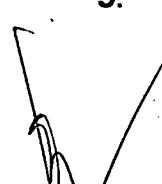
1. C. Nataraja Moorthy,
S/o. S. Chidambaram,
Assistant Station Master/
Parassala Railwa Station/SR,
Residing at : No. TC.21/497(2),
Pallithanam Road, Nedungad,
Karamana, Trivandrum – 2
2. M.S. Harilal,
S/o. K. Madhavan Pillai,
Assistant Station Master/
Kochuveli Railway Station/SR,
Residing at "Harishree", Ayanikkad
VII Stone, Karakulam P.O.,
Trivandrum District : 695 564
3. Samuel T. Joye,
S/o. T. Thomson,
Assistant Station Master,
Kadackavoor Railway Station/SR,
Residing at : T.I. House, Kattakkada,
Trivandrum District.

Applicants.

(By Advocate Mr. T.C. Govindaswamy)

versus

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 Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14



4. The Chairman,
Railway Board, Rail Bhavan,
New Delhi.

5. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. Respondents.

(By Advocate Ms. P.K. Nandini)

The Original Application having been heard on 08.01.2010, this Tribunal on 20.01.10 delivered the following :

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

The extent of the benefit of ACP Scheme introduced w.e.f. 01-10-1999 in the Railways available to the applicants herein is the core issue involved in this O.A. Identical issue has already been considered and decided in OA No. 135/2009 vide order dated 16th November, 2009, which in fact followed an earlier decision in OA 438/2008 and connected cases, decided on 20-08-2009. Again, OA 438/2008 took into account the ratio in the order dated 27th February 2007 in an yet earlier OA No. 809/2007. Thus, consistency being the hallmark of judicial system, when facts are similar this case also has to be decided on the basis of the ratio in the aforesaid cases.

2. Brief facts: The three applicants in this case are presently working as Assistant Station Masters in the Trivandrum Division of the Southern Railway. These were initially appointed as Asst. Station Masters in the erstwhile scale of Rs 1200 – 2040 (4,500-7000) (Applicant No. 1 in Tiruchirappalli Division on 13-07-1992 and applicants 2 and 3 in Palghat Division on 13-07-1992). Later on, these were promoted to the higher post of Asst. Station Master Gr. III in the scale of Rs 1400 – 2300 (Rs 5000 – 8000) in the above said divisions (the first applicant from June 1995 and the rest w.e.f. 09-07-1996). The first applicant was temporarily transferred in the above grade of Rs 5000 – 8000 to Trivandrum

Division on 09-07-1996 but later on his request transfer on regular basis, registered when he was in the previous grade of Rs 4,500 – 7,000/- having materialized he was deemed to have been so posted on inter-divisional transfer basis w.e.f. 20-03-2004 (on the strength of order in OA No. 826/2003 and connected cases). And, the other two applicants who had also registered for inter-divisional transfer to Trivandrum when they were in the previous scale of Rs 4500 – 7000 were posted to Trivandrum Division on 20-03-2004. All these were thus placed in the lower pay scale of Rs 4,500 – 7000/-, presumably, of course with their pay drawn in the previous divisions protected as per the extant rules on pay fixation on inter divisional transfer.

3. A scheme named as Assured Career Progression (ACP scheme for short) was introduced in the Railways w.e.f. 01-10-1999 according to which in the case of employees stagnating without any promotion for 12 years, there would be one financial upgradation and after 24 years of initial appointment, there would be the second financial upgradation. Clarifications were issued on various doubts in this regard by the Railways on subsequent dates. Annexure A-1 and A-2 refer. The applicants were, on the basis of the above scheme granted the first financial upgradation in the Trivandrum Division, vide Annexure A-3 order dated 27-11-2008 whereby they were placed in the pay scales with their pay fixed respectively as under:-

- (a) Applicant No. 1: Rs 5,000-8,000 w.e.f. 12-11-2004 fixed at Rs 6,350/-.
- (b) Applicant No. 2: Rs 5000- 8,000 w.e.f. 05-11-2004 fixed at Rs 6,200/-.
- (c) Applicant No. 3: Rs 5,000-8,000 w.e.f. 08-11-2004 fixed at Rs 6,200/-.
(Annexure A-3 refers.)

4. The applicants were satisfied with the above fixation of pay. However, when the Railway Board had issued a circular dated 13-12-2004 vide Annexure A-7, respondents issued, on the strength of the said Railway Board circular letter

dated 03-02-2009, a communication seeking to withdraw the above benefit on the ground that the applicants are not entitled to the same. The applicants had preferred Annexure A-5 and A-6 representations, asserting their entitlement, resisting the applicability of Annexure A-3 order and justifying the fixation of pay as mentioned in Annexure A-3. As their representations were not accepted, the applicants have moved this OA praying for quashing of Annexure A-7 and for a declaration that the applicants are entitled to the pay fixed as per Annexure A-3 orders.

5. Respondents have contested the OA stating that the applicants are not entitled to the benefits claimed.

6. Rejoinder has also been filed. In addition, certain inadvertent errors crept in the OA were also permitted to be suitably amended.

7. At the time of hearing, the counsel for the applicant stated that the issue is no longer res-integra and invited the attention of the Tribunal to the order dated 16th November, 2009 in OA No. 135/2009 and certain earlier OAs. The similarity in the legal issue involved has not been denied by the counsel for the respondents who, however, submitted that the said order has been challenged before the High Court and the same stands stayed. But, no stay has been granted to the earlier order dated 20th August, 2009 in OA No. 438/2009, on the basis of which the above order dated 16th November, 2009 was passed.

8. In OA No. 438/2008, this Tribunal has held as under:-

"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

payscale 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.

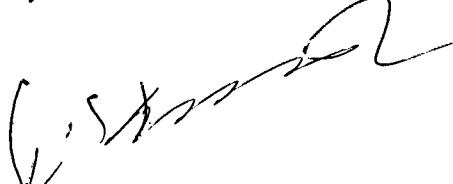
19. All the OAs are allowed to the above extent. Respondents shall effect grant of first/second ACP admissible to the applicants on the basis of the above and work out the pay and allowances accordingly and pay the arrears arising out of the same."

9. In view of the above decision, with which we respectfully agree, this OA is allowed. Impugned order dated 13-12-2004 vide Annexure A-7 is quashed and set aside. It is declared that the pay fixed vide Annexure A-3 in respect of the applicants is proper (save for clerical errors, if any). As such, respondents are disentitled to act further upon Annexure A-4.

10. No costs.

(Dated, 20th January, 2010)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.