

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.17/06

Wednesday this the 11th day of April 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

Prasad S,
S/o.K.Sukumaran,
Working as Section Controller, Palakkad Division.
Residing at 253/B, Railway Quarters,
Railway Colony, Hemabika Nagar, Palakkad – 678 009.Applicant

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the Secretary to
Government of India, Ministry of Railways, New Delhi.
2. The Railway Board,
represented by its Secretary, New Delhi.
3. The General Manager,
Southern Railway, Chennai.
4. The Chief Personnel Officer,
Southern Railway,Chennai.
5. The Divisional Railway Manager,
Palakkad Division, Palakkad Divisional Office,
Palakkad.
6. The Sr. Divisional Personnel Officer,
Palakkad Division, Palakkad Divisional Office,
Palakkad.Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 11th April 2007 the Tribunal on
the same day delivered the following :-

O R D E R

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

Applicant is aggrieved by the order No.J/P 535/VII/SMs/ACP dated
28.11.2005 issued by the 5th respondent by which the request of the

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applicant for grant of ACP Scheme is rejected stating that the applicant had already earned one promotion as Dy. Chief Controller prior to his transfer, and also aggrieved by the order No.P(R) 535/P/Promotion/Vol.IV dated 30.12.2004 of the 2nd respondent by which the impugned order is passed.

2. Briefly the facts are :- The applicant entered the service of the respondents as Traffic Apprentice on 30.10.1991 in Solapur Division of the Central Railway and was posted as Section Controller in January 1994 in the scale of Rs.1600-2660/- (revised Rs.5500-9000/-). The applicant was promoted as Deputy Chief Controller in the Grade of Rs.2000-3200 (pre revised) by order dated 18.3.1996. The applicant requested for a unilateral transfer to Palakkad Division and was transferred to Palakkad Division on reversion as Section Controller in the grade of Rs.5500-9000/- as per order dated 5.2.2004 and he joined the Palakkad Division on 9.2.2004 (Annexure A-3). The applicant submitted a representation dated 7.3.2005 before the 5th respondent to grant him the benefits under the ACP Scheme relying on the Annexure A-4 order of the Railway Board dated 22.7.2002. He submitted a reminder to the representation and the respondents rejected his request by Annexure A-6 order stating that since the applicant had already earned 1st promotion prior to the transfer to the present Division his request cannot be considered. Since the applicant was put to financial loss and hardship he has approached this Tribunal for the following reliefs :-

1. *To quash Annexure A-6 and Annexure A-7.*
2. *To direct the respondents to consider the applicant for grant of upgradation under the Assured Career Progression Scheme and to grant him all consequential benefits.*

3. Per contra, respondents had averred that the applicant's challenge to Annexure A-7 order of the Railway Board dated 13.12.2004 and the reply given to him based on the extant instructions in Annexure A-6 are not maintainable in law or facts. In the case of persons like the applicant who have come on inter Railway/inter Divisional transfers to lower grade on reversion at request are not entitled for ACP if prior to transfer they have already got one promotion and not completed 24 years. They have also referred to the Rules regarding inter Railway transfers and stated that once the request of the applicant is considered against the rules and he has been granted the transfer to a lower post resulting in loss of seniority, he cannot claim that the promotion already availed of should not be taken into account in considering his entitlement under the ACP Scheme. The Railway Board at Annexure A-7 order has specifically stated "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 promotion earned before transfer would be offset against entitlement for the first ACP in the new organisation." Therefore, respondents claim that they have rejected the applicant's request on the basis of the statutory provisions of the Railway Board's order which are applicable to all categories of employees and hence cannot be claimed as causing prejudice to a particular employee like the applicant. He has availed of transfer to suit his personal requirement and not for any administrative reasons and hence the question of hardship is not material.

4. We have heard Shri.P.A.Kumaran for the applicant and Shri.K.M.Anthru for the respondents. Counsel for the applicant brought to our notice the order of Ernakulam Bench in O.A.809/05 dated 27.2.2007 in

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an identical matter and argued that the ratio of the judgment is applicable in this case also. Counsel for the respondents also agreed that the subject matter of both the cases is identical and the challenge in both the O.As is against the provisions of the Railway Board order dated 13.12.2004 at Annexure A-7.

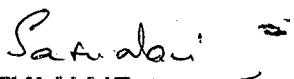
5. We find that the respondents had taken the same stand in O.A.809/05 also. This Tribunal after looking into various pronouncements of the Hon'ble Supreme Court on the applicability of ACP Scheme and also the conditions in Para 14 of the ACP Scheme and the clarification issued in Railway Board letter dated 19.2.2002 held that the cases of persons like the applicant herein who have come on request transfers are not covered by the clarification of the Railway Board at Annexure A-7 dated 13.12.2004 as they have not sought appointment to a lower post on their own volition and it was the respondents themselves who have reverted them to the lower post and they cannot be made to lose a promotion as well as the benefits of financial upgradation under the ACP Scheme. Since the applicant herein is also similarly placed, following the same ratio in the judgment above mentioned in O.A.809/05, this O.A is allowed. Annexure A-6 is quashed. Respondents are directed to consider the request of the applicant for grant of financial upgradation under the ACP Scheme and to grant him all consequential benefits. No costs.

(Dated this the 11th day of April 2007)



K.B.S.RAJAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN