

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 4001/2014

Reserved on: 18.10.2016
Pronounced on: 25.10.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. S.N. Pandey, Aged 58 years
S/o Late Shri R.S. Pandey
Working as Lab. Assistant in the office
of Chief Works Manager, Locomotive Workshop
Charbagh, Lucknow (UP)
R/o Type-II, 73 F, Alambagh
S.G. Colony, Lucknow (UP)
2. P.K. Srivastava, Aged 59 years
S/o Shri Hira Lal Srivastava
Working as Lab. Assistant in the office
of Chief Works Manager, Locomotive Workshop
Charbagh, Lucknow (UP)
R/o 554/60, Pawan Puri,
Alambagh, Lucknow (UP)
3. Anil Kumar, Aged 54 years
S/o Shri Suraj Prasad
Working as Lab. Assistant in the office
of Chief Works Manager, Locomotive Workshop
Charbagh, Lucknow (UP)
R/o Vill. Pravar Pachim, Post Mohan Lal Ganj
Lucknow (UP)
4. Ashok Kumar Sharma, Aged 62 years
S/o Shri Ram Pd. Sharma
Retired from the post of Lab. Assistant
from the office of Chief Works Manager,
Locomotive Workshop
Charbagh, Lucknow (UP)
R/o Vill&PO Duha Dihara
Distt. Balia (UP)
5. Kashi Nath Singh, Aged 62 years
S/o Shri Raghu Nath Singh
Retired from the post of Lab. Assistant
from the office of Chief Works Manager,
Locomotive Workshop
Charbagh, Lucknow (UP)
R/o Vill Ramdasapur, Post Bhimapar

Distt. Ghazipur

... Applicants

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through
The General Manager
Northern Railway, Baroda House,
New Delhi
2. The Chief Works Manager
Northern Railway, Loco Workshop
Charbagh, Lucknow

... Respondents

(Through Shri A.K. Srivastava, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicants were initially appointed as Group 'D' employees in the railways and subsequently transferred to the post of Lab. Khalasi in the same pay scale of Rs.196-232. They were temporarily appointed on ad hoc basis for a period of three months in the scale of Rs.210-270 but were regularly promoted to the post of Lab. Assistant as per the channel of promotion and their date of appointment as Lab. Assistant. In para 10 of their reply, the respondents have placed the position of five applicants as follows:

Sr.No.	Names/	D.O. App.	1 st Promotion	II Promotion
1.	S.N. Panday	01.03.77 Gr. Rs. 196-232	12.08.77 Lab. Kh. Helper Gr.Rs. 800-1150	31.05.94 Lab. Asstt. in Gr. Rs.975-1540
2.	Anil Kumar	25.8.82 Gr. Rs.196-232	25.10.82 Kh./ Helper 210-290	04.09.93 Lab. Asstt. Gr.Rs.975-1540
3.	Kashi Nath Retd. 31.10.12	10.09.71 Gr.Rs. 70-85	05.10.80 Lab. Attendant Gr. Rs.210-270	05.07.81 Lab. Asstt. Gr. Rs..260-430
4.	P.K. Srivastava	03.04.73 Lab. Kh. Gr. Rs.196-232	16.08.78 Lab. Attendant Gr. Rs.210-270	25.01.91 Lab. Asstt. Gr. Rs.975-1540

5.	Ashok Kumar Sharma	05.10.76 Gr. Rs.196-232	05.07.80 Lab. Attendant Gr.Rs.210-270	25.01.91 Lab. Asstt. Gr. Rs.975-1540

2. One contention of the respondents is that since the applicants have received two promotions namely as Lab. Khalasi and as Lab. Assistant before completion of 12 years of service, they are not eligible for upgradation after 12 years and 24 years of service as per Assured Career Progression (ACP) Scheme.

3. Secondly, it is stated that the applicants were placed in the revised scale of Rs.3200-4900 (Rs.975-1540 pre-revised) with effect from 1.01.1996 and with effect from 1.08.1998, Lab. Assistants were divided into three grades as follows:

“a) Lab. Asstt, Gr. I Rs.4500-7000

- 10% Non Selection

b) Lab. Assistant Gr.II Rs.4000-6000

- 20% Non Selection

c) Lab. Asstt. Gr.III Rs.3050-4590

- 70% new grade”

4. It is thus argued that the next promotional post in the hierarchy of the post of Lab. Assistant who were in the pay scale of Rs.3050-4590 was in the scale of Rs.4000-6000 as Lab. Assistant Gr.II and thereafter in the pay scale of Rs.4500-7000 as Lab. Assistant Gr.I. Above this was the post of JCMA in the scale of Rs.5000-8000.

5. The respondents have filed letter dated 28.01.2008 issued by the Ministry of Railways addressed to the General Manager, Northern Railway, clarifying as follows:

"With reference to the above referred letter it is stated that Lab Assistants in the grade Rs.975-1540/Rs.3200-4900 would be granted regular promotion and the benefit of financial upgradation under the ACPS in the grade Rs.4000-6000 and Rs.4500-7000. However, in terms of Board's letter dated 17.8.98, all such Lab. Assistants who were in the scale of Rs.975-1540 as on 31.12.95 are eligible for promotion to the post of JCMA (selection post) in the scale of Rs.5000-8000 subject to the fulfillment of the requisite terms and conditions associated with the post."

Thus, the case of the respondents is that upgradation under ACP has to be in the grades of Rs.4000-6000 and Rs.4500-7000 and there is no question of granting ACP in the scale of Rs.5000-8000.

6. The contentions of the learned counsel for the applicants are as follows:

- (i) The transfer of the applicants from the scale of Rs.196-232 to Rs.210-270 cannot be considered as promotion. In this regard, the learned counsel relied on the order of this Tribunal in OA 182/2005, **Bachan Singh and others Vs. Union of India and another**. In the said OA, vide order dated 17.02.2006, the Tribunal held that mere fitment in the new scale of pay due to reclassification of Khalasi cannot be treated as promotion;

- (ii) It is argued that next promotion for the applicants who were Lab. Assistants was to the post of JCMA in the pay scale of Rs.5000-8000 and according to ACP Scheme, the upgradation has to be in the scale attached to the next promotional post in the hierarchy of promotion. Therefore, the upgradation under ACP Scheme should be in the pay scale of Rs.5000-8000 as second upgradation as promotion to the post of Lab. Assistant would be set off against the first upgradation under ACP;
- (iii) The applicants relied on the order of the Tribunal in OA 2750/2004, **S.K. Gupta and others Vs. Union of India** in which similarly situated persons have already been granted upgradation in the pay scale of Rs.5000-8000. Similarly, in OA 725/2008, vide order dated 21.10.2008, similar relief was granted based on order in S.K. Gupta (supra); and
- (iv) From the order dated 28.01.2008 cited by the respondents, it is clear that all Lab. Assistants who were in the pay scale of Rs.975-1540 (Rs.3200-4900 revised) as on 31.12.1995 were eligible for promotion to the post of JCMA (selection post) in the scale of Rs.5000-8000 subject to fulfillment of the requisite terms and conditions associated with the post. Therefore, it is contended that since the applicants belong to this category, they should be treated as eligible for promotion in the scale of

Rs.5000-8000 and hence financial upgradation should be in this scale and not Rs.4000-6000. It is argued that the Lab. Assistants in the grade of Rs.975-1540 (Rs.3200-4900 revised), who come after 31.12.1995, would be granted regular promotion and benefit of financial upgradation in the scale of Rs.5000-8000. It is stated that if that were not so, then in letter dated 28.01.2008, it would have been simply stated that Lab. Assistants should be granted financial upgradation in the grades of Rs.4000-6000 and Rs.4500-7000 and there was no need to mention at all that such Lab. Assistants who were in the scale of Rs.975-1540 as on 31.12.1995 were eligible for promotion to the post of JCMA in the scale of Rs.5000-8000.

7. In view of the Tribunal's order in Bachan Singh (supra), it is clear that placement of the applicants in the pay scale of Rs.210-270 cannot be treated as promotion. Therefore, the applicants have received one promotion namely as Lab. Assistant. Hence, they are entitled to second upgradation under ACP Scheme on completion of 24 years of service. Since all the applicants have completed 24 years of service, they are all entitled to second upgradation under ACP Scheme.

8. The question to be decided now is whether second upgradation under ACP would be in the pay scale of Rs.4000-6000 or Rs.5000-8000. The wordings of letter dated 28.01.2008

make it clear that those Lab. Assistants in the erstwhile pay scale of Rs.975-1540 before 31.12.1995, would be entitled to promotion as JCMA in the pay scale of Rs.5000-8000.

9. Rs.5000-8000, thus being the scale in the next promotional hierarchy for those Lab. Assistants who were in the scale of Rs.975-1540 before 31.12.1995, the applicants are entitled to second financial upgradation under ACP Scheme in that scale. Those who became Lab. Assistant in the pay scale of Rs.975-1540 on 1.01.1996 or thereafter, will get their promotion as well as upgradation in the pay scales of Rs.4000-6000 and Rs.4500-7000. Moreover, in the case of S.K. Gupta (supra), for similarly situated persons, the Tribunal has already granted financial upgradation under ACP in the pay scale of Rs.5000-8000.

10. The OA is thus allowed with a direction to the respondents to grant applicants second financial upgradation under ACP Scheme in the pay scale of Rs.5000-8000 with effect from the date they completed 24 years of service. We fix a time frame of 90 days from receipt of a copy of this order for implementation of our direction. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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