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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ERNAKULAM BENCH**

**Original Application No.180/00078/2015**

Friday, this the 20<sup>th</sup> day of July, 2018

**C O R A M :**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. N.Chandralal,  
S/o.Nanukuttan,  
Junior Clerk,  
Office of the Chief Crew Controller/  
Southern Railway/Trivandrum Central.  
Residing at Lal Bhavan, Pouikuzhy,  
Ochira P.O., Kollam District – 690 526.
2. B.Sudheer Kumar,  
S/o.Bhaskaran Pillai,  
Junior Clerk,  
Office of the Section Engineer/  
Carriage & Wagon/Southern Railway/  
Kochuveli Railway Station/Trivandrum Division.  
Permanent Address : Pournami, Near KPHS,  
Kalluvathukka P.O., Kollam District – 691 578. ....Applicants

**(By Advocate – Mr.T.C.Govindaswamy)**

**V e r s u s**

1. Union of India  
represented by the General Manager,  
Southern Railway, Headquarters Office,  
Park Town P.O., Chennai – 600 003.
2. The Divisional Railway Manager,  
Southern Railway, Trivandrum Division,  
Thiruvananthapuram – 695 014.
3. The Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Thiruvananthapuram – 695 014. ....Respondents

**(By Advocate – Mr.Sunil Jacob Jose)**

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This Original Application having been heard on 17<sup>th</sup> July 2018, the Tribunal on 20<sup>th</sup> July 2018 delivered the following :

**ORDER**

**Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

O.A.No.180/78/2015 is filed by Shri.N.Chandralal and Shri.B.Sudheer Kumar both Junior Clerks working in Thiruvananthapuram Division under the Southern Railway claiming grant of first financial upgradation under the ACP Scheme on the ground that they are similarly placed as the petitioners in **Union of India & Ors. v. R.C.Unnikrishnan & Ors.** in **S.L.P.No.5415-5420/2013** (Annexure A-1). The relief sought in the O.A are as follows :

1. Declare that the applicants are entitled to the benefit of Annexure A-1 judgment of the Hon'ble Apex Court and be granted the benefit of the 1<sup>st</sup> financial upgradation under the ACP Scheme in scale Rs.4000-6000 (PB-1 + GP Rs.2400/-) with effect from 25.7.2006 and direct the respondents accordingly.
2. Direct the respondents to grant the applicants the benefit of the 1<sup>st</sup> financial upgradation in PB-1 + GP Rs.2400/- with effect from 25.7.2006 and direct further to grant all the consequential benefits arising therefrom.
3. Award costs of and incidental to this application.
4. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicants were initially appointed as Assistant Loco Pilots in April/May 1993 in the Chennai Division of Southern Railway. On completion of training both were appointed against working posts with effect from 25.7.1994. They gained promotion as Loco Pilots (Shunting) and were subsequently transferred to Trivandrum

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Division on request as Assistant Loco Pilots in PB-1 + GP Rs.1900/- (Rs.3050-4590 - 5<sup>th</sup> CPC) and they joined Trivandrum Division on 22.1.2001 and 30.3.2001 respectively. Both the applicants were entitled to be granted the benefit of first financial upgradation under the ACP Scheme with effect from 25.7.2006 as they had completed 12 years of regular service on that date.

3. Unfortunately, the 1<sup>st</sup> applicant was medically decategorized on account of an accident with effect from 20.8.2004 and was retained in a supernumerary post from that date. The 2<sup>nd</sup> applicant was also decategorized and declared medically unfit with effect from 28.12.2001 and also accommodated against a supernumerary post. They were finally accommodated as Junior Clerks in Trivandrum Division in the Mechanical Branch of Southern Railway in January 2011. In so far as the request for ACP benefits upgradation is concerned, they were denied the same one the ground that they had obtained one promotion as Loco Pilots (Shunting). The fact that they had suffered a reversion on request transfer was not considered. Certain others similarly placed, however approached this Tribunal by filing O.A.No.809/2005 praying for grant of benefit of first financial upgradation under the ACP Scheme. That O.A was allowed and subsequent challenge before the Hon'ble High Court in W.P.(C) No.34884/2007 and connected cases were dismissed by a common judgment dated 28<sup>th</sup> March 2012. Finally the SLP filed by the respondents before the Hon'ble Supreme Court of India was also dismissed by order dated

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24.1.2013, a true copy of the order being produced as Annexure A-1. Although as per the judgment in Annexure A-1 the concerned applicants were given the benefits, the applicants in this O.A, though similarly placed, continued to have their claims negated.

4. By way of reply statement the respondents contend that the applicants cannot be given the benefit of the judgment of the Apex Court at Annexure A-1 as they were not parties to the case. They take the support of Railway Board Letter No.PC.V/2004/ACP/1 dated 13.12.2004 indicating that in the cases of employees who earned a promotion in the parent organization before seeking appointment to a lower post on their own volition, while the past service is to be counted, the employee would not be entitled to 1<sup>st</sup> financial upgradation, as the one earned before transfer would be offset against entitlement for the 1<sup>st</sup> ACP in the new organization. However, on completion of 24 years of service the employee will be entitled to 2<sup>nd</sup> financial upgradation if he has not earned two regular promotions. This line has been followed by the respondents and the 1<sup>st</sup> applicant has already been granted the 2<sup>nd</sup> financial upgradation under the ACP Scheme and 2<sup>nd</sup> applicant has also been accommodated against Grade Pay of Rs.2000/-.

5. The applicant has filed a rejoinder where they have reiterated the contention made in the O.A. We have heard Shri.T.C.Govindaswamy on behalf of the applicants and the Standing Counsel for the Railways for the

respondents. The issue to be considered in this O.A lies in a narrow compass. The applicants forfeited the promotion which they had earned in their erstwhile division when they were accommodated, at their own request, in a lower post in Trivandrum Division. As per the then existing orders of the Railway Board this denial was authorized. However this Tribunal in O.A.No.138/2009 by order dated 20.1.2010 (Annexure A-8) had quashed the impugned direction contained in the order of the Railway Board Circular dated 13.12.2004. The order of the Tribunal had been confirmed by the Hon'ble High Court as per its order dated 20.3.2012 at Annexure A-9 and the law has been finally laid down by the Hon'ble Supreme Court in Annexure A-1 judgment. To take a view that this benefit gained through the legal orders would be only available to the contesting applicants and not to similarly placed persons is a narrow and unsatisfactory interpretation.

6. The issue had gone through the Tribunal, Hon'ble High Court and Hon'ble Supreme Court before the principle involved has been crystalized. It would be inappropriate for the respondents to plead the point that none other than the contestants in the litigation would get the benefit. It would be an unfortunate way of looking at such issues and would necessarily lead to an unhappy situation of everyone being required to rush to court. No case has been made out on the side of the respondents that the applicants are in any way dissimilar to the litigants in Annexure A-1 judgment. This being so, there is no reason whatsoever that the applicants in this O.A should be deprived of their rightful claim.

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7. We conclude that the O.A has merit on its side and rule in favour of the applicants. The respondents are directed to grant the benefit sought for in full within a period of 30 days of receipt of a copy of this order. The O.A stands disposed of. No order as to costs.

(Dated this the 20<sup>th</sup> day of July 2018)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A.No.180/00078/2015**

- 1. Annexure A-1** – A true copy of the Hon'ble Supreme Court rendered in SLP(C) No.5415-5420/2013 dated 24.1.2013.
- 2. Annexure A-2** – A true copy of the Memorandum bearing No.V/P.524/VI/Rg/Fixation/Vol.VII dated 2.5.2013, issued by the 3<sup>rd</sup> respondent.
- 3. Annexure A-3** – A true copy of the representation dated 11.6.2013 addressed to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> applicant.
- 4. Annexure A-4** – A true copy of the representation dated 20.6.2013, addressed to the 2<sup>nd</sup> respondent, by the 2<sup>nd</sup> applicant.
- 5. Annexure A-5** – A true copy of the Office Order bearing No.73/2013/PG dated 9.10.2013, issued by the 3<sup>rd</sup> respondent.
- 6. Annexure A-6** – A true copy of the Memorandum bearing No.V/P.524/VI/Rg/Fixation/Vol.VII dated 8.8.2013, issued by the 3<sup>rd</sup> respondent.
- 7. Annexure A-7** – A true copy of the communication bearing No.V/P.Co-ord/RTI/2013/1543/PB dated 17.12.2013, issued by the 3<sup>rd</sup> respondent.
- 8. Annexure A-8** – A true extract of order dated 20.1.2010 in O.A.No.138/2009 rendered by this Hon'ble Tribunal.
- 8. Annexure A-9** – A true copy of the judgment dated 20.3.2012 in W.P. (C)No.17795/2010 and connected cases rendered by the Hon'ble High Court of Kerala.
- 9. Annexure R-1** – A true extract of the Office Order No.09/2015/C&W(M) issued under No.V/P.535/I/C&W/MACPS dated 6.4.2015.
- 10. Annexure R-2** – True copy of the letter No.V/P.50/RTI/3048/145/2015/PB dated 15.6.2015.

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