

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

LIBRARY

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. P.K. Basu, Administrative Member

Dated: 4.03.2016

No. O.A. 539 of 2015

Durgapada Sasmal,  
Son of Late Aswini Kumar Sasmal,  
Aged about 50 years,  
Residing at Vidyasagar Sarani,  
West Despara,  
Post Office - Sonarpur,  
Police Station-Sonarpur,  
Kolkata - 700 150 and  
Presently working in the post of  
Accounts Assistant under the control and  
Authority of  
Financial Advisor & Chief Accounts Officer,  
South Eastern Railway,  
11, Garden Reach Road,  
Kolkata - 700 043.

& 35 ors.

O.A. 1072 of 2015

Angshuman Chakraborty,  
Son of Late Anil Kumar Chakraborty,  
Aged about 53 years,  
Residing at 1/6, Nakar Para Lane,  
Kolkata - 700 031 and  
Presently working the post of  
Accounts Assistant under  
Financial Advisor & Chief Accounts Officer,  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700 043.

& 11 ors.

O.A. 350/00623/2015

Subhas Chandra Das,  
Son of Late Hari Mohan Das,  
Aged about 57 years,  
Residing at 147, East Tentulberia,  
Giribala School Road, Garia,  
Post Office - Panchpota,  
Police Station - Sonarpur,  
District - South 24- Parganas,  
Kolkata - 700 152 and presently  
Working in the post of Accounts Assistant  
Under the Control and authority of  
Financial Advisor and Chief Accounts Officer,

Metro Railway, 'Metro Rail Bhawan',  
33/1, Chowringhee Road,  
Kolkata - 700 071.

& 55 ors.

.. Applicants

- VERSUS -

1. Union of India,  
Service through the Secretary,  
Ministry of Railway,  
Government of India,  
Rail Bhawan, Rafi Marg,  
New Delhi - 110 001.
2. The General Manager,  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700 043.
3. The General Manager,  
Metro Railway,  
'Metro Rail Bhawan',  
33/1, Chowringhee Road,  
Kolkata - 700 071.
4. The Financial Advisor & Chief Accounts Officer,  
Metro Railway,  
'Metro Rail Bhawan',  
33/1, Chowringhee Road,  
Kolkata - 700 071.

.. Respondents

For the Applicants

: Mr. P.C. Das, Counsel  
Ms. T. Maity, Counsel  
(in O.A. No. 539 of 2015,  
O.A. No. 350/01072/2015 &  
O.A. No. 350/00623/2015)

For the Respondents

: Mr. L.K. Chatterjee, Counsel  
Mr. B.L. Gangopadhyay, Counsel  
(in O.A. No. 539 of 2015)

Mr. M.K. Bandyopadhyay, Counsel  
Mr. S.K. Ghosh, Counsel

(in O.A. No. 350/01072/2015)

Mr. M.K. Bandyopadhyay, Counsel  
(in O.A. No. 350/00623/2015)

Order dated:

**ORDER**

**Per Mr. P.K. Basu, Administrative Member:**

Since O.A. No. 539 of 2015, O.A. No. 350/01072/2015 and O.A. No. 623 of 2015 raise the same issue for adjudication we hear them together and pass a common order. However, we take the facts from O.A. No. 539 of 2015.

2. The applicants were appointed initially in 1984 as Junior Accounts Assistant in the pay scale of Rs. 1200-2040/-. Currently they are posted as Accounts Assistant. Some of them have retired since then.

3. In 1987 the Railways restructured the accounts cadre and it was decided that the ratio of number of posts in higher and lower scale in the Accounts cadre will be as follows:-

(1) Section Officers (A/Cs), Inspector of Stores Accounts (ISA), Inspector of Station Accounts (TIA)	Rs. 2000-60-2300-EB-75-3200	80%
	Rs. 1640-60-2600-EB-75-2900	20%
(1) Clerks Grade I (including existing Sub-Heads)	Rs. 1400-40-1600-50-2300-EB-60-2600	80%
	Rs. 1200-30-1560-EB-40-2040	20%

4. The rules in this regard provide as follows [Annexure R-1]:-

(5) The posts in the grade of Accounts Asstt. In scale Rs.

1400-2600/- will be filled by promotion of Junior Accounts Assistants in scale Rs. 1200-2040/- after they have completed three years service in the grade and passed Appendix II examination. Provided that the condition of passing the Appendix II Examination will not be applicable to those Junior Accounts Assistant, who were promoted as such against un-qualified senior suitable quota as per clause 3 (ii) above."

5. The respondents have not granted the applicants first ACP on the ground that their movement from the scale of Rs. 1200-2040/- to Rs. 1400-2600/- from Junior Accounts Assistant to Accounts Assistant would be treated as promotion and, therefore, as per ACP guidelines they are not eligible for first upgradation. The contention of the applicants is that this cannot be treated as a promotion as it was merely an upgradation. In this regard, they relied on an order dated 26.8.2008 of the Central Administrative Tribunal, Madras Bench in O.A. No. 335 of 2007 (V. Venkataraman v. Union of India & ors.) in which the same issue came up for adjudication and the O.A. was allowed granting first financial upgradation under ACP Scheme to the applicant. This order was challenged in WP No. 21112 of 2009 and vide order dated 19.10.2010 the Hon'ble High Court of Madras upheld the order of Central Administrative Tribunal. The Special Leave Petition filed by the Union of India before the Hon'ble Supreme Court was also dismissed vide order dated 4.1.2012.

6. It is also contended that in O.A. No. 3606 of 2013 and M.A. No. 2735 of 2013 again the similar issue had come up before the Principal Bench and vide order dated 9.10.2014 the O.A. was allowed primarily relying on the order of the Madras Bench in O.A. No. 335 of 2007. Further it is stated

that in O.A. No. 238 of 2015 this Bench of the Tribunal had also heard a similar matter and directed the respondents to pass a speaking order on the pending representation after taking note of Madras Bench's order passed in O.A. No. 335 of 2007 and Central Administrative Tribunal, Principal Bench order passed in O.A. No. 3606 of 2013 and M.A. No. 2735 of 2013 decided on 9.10.2014. The case of the Ld. Counsel for the applicant, therefore, is that since the present case is squarely covered by the order passed in O.A. No. 335 of 2007 as upheld by the Hon'ble High Court at Madras and the Hon'ble Supreme Court as well as consequent orders of the Principal Bench, the O.A. should be allowed and relief granted to the applicants.

7. The Ld. Counsel for the respondents argued that in the very notification of restructuring of Accounts cadre, it is mentioned that the posts in the grade of Accounts Assistant in the grade of Rs. 1400-2600/- will be filled by way of promotion of Jr. Accounts Assistant in the scale of Rs. 1200-2040/- after they have completed three years service in the grade and passed Appendix II examination. It is stated that this itself makes it abundantly clear that this is a promotion. The respondents have also pointed out in their reply that the order passed by the Principal Bench in O.A. No. 3606 of 2013 and M.A. No. 2735 is now under challenge and subjudice before the Hon'ble High Court of Delhi with a stay order.

8. Secondly, the Ld. Counsel stated that recruitment and promotion of Accounts Staff is governed by Para 171 of IREM Vol. I and as per Para 171 (5) the posts in the grade of Junior Accounts Assistant form feeder posts for promotion to the post of Accounts Assistant and as pointed out above, the JAA has to complete three years of service and pass Appendix II examination.

9. Moreover, it is stated that the pay on promotion on appointment as Accounts Assistant is fixed as per FR 22C, as admissible in the case of regular promotion to the post having higher duties and responsibilities. The Railway Board's circular dated 18.6.1987 was also placed before us which is regarding restructuring of Accounts staff in which it is again reiterated that staffs in grade of Rs. 1200-2040/- will be eligible for promotion to Rs. 1400-2600/- after minimum three years of service in scale of pay of Rs. 1200-2040/- and provided they have passed Appendix II examination.

10. The Ld. Counsel also referred to order dated 11.3.2015 passed by the Madras Bench of Central Administrative Tribunal in O.A. No. 383 of 2013 and O.A. No. 384 of 2013. The issue involved in both these O.A.s and current O.A. is the same. In that O.A. the Madras Bench took note of the earlier order passed in O.A. No. 335 of 2007 as well as the order of the Hon'ble High Court of Madras confirming the Tribunal's order and dismissal order of the SLP by the Hon'ble Supreme Court. The Bench also noted the provisions of Para 171 of IREM Vol. I as referred to above, pay fixation under FR22C and the 1987 instructions of the Board, which we have already referred to above. The Tribunal came to the conclusion that the case of V. Venkataraman in O.A. No. 335 of 2007 and WP No. 21112 of 2009 cannot be relied upon as a precedent being a decision per-incuriam and the order in that O.A. can only be considered as judgment in-personam. This argument was relied upon by the Ld. Counsel for the respondents in this case as well. The Tribunal, in O.A. 383 & 384 / 2013 had also considered the order dated 15.10.2014 of the Principal Bench passed in O.A. No. 3606 of 2013 and M.A. No. 2735 which has been referred to by the Ld. Counsel for the applicant in the present case.

11. Additionally, the Ld. Counsel also raised the issue that in accordance with *Kunhayammed & ors. v. State of Kerala & anr.* [(2000) 6 SCC 359] and *V.M. Salgaokar & Bros. (P) Ltd. v. CIT* [(2000) 5 SCC 373], the mere fact of dismissal of an SLP under Article 136 of the Constitution does not amount to upholding of the order from which leave to appeal is sought. Similarly, the Ld. Counsel relied on the Hon'ble Supreme Court ruling in *P.R. Subramaniam* (SCC 1978 Vol. 1 page 158) holding that orders issued by the Railway Board which have general application to Non-Gazetted Railway servants are treated as rules having force of provisions of Article 309 of the Constitution of India.

12. In this regard the Ld. Counsel drew our attention to para 3 of the judgment in *P.R. Subramaniam* (supra) which is as follows:-

"Para 3

In the Indian Railway Establishment Code Vol. I are the Rules framed by the President of India under Art. 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorizes the Railway Board, as permissible under Art. 309 to have

"full powers to make rules of general application to non-gazetted railway servants under their control."

The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Art. 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them."

13. The Tribunal, in O.A. 383 & 384 of 2013 also took note of the order of Full Bench of this Tribunal at Lucknow dated 4.12.2014 in O.A. Nos. 94/2006 and 391/2009, in para 18 of which the Tribunal observed as follows:-

“18. Therefore, whether upgradation or grant of higher pay scale amounts to promotion or not depends upon the facts of each case. Where it is found that such upgradation or promotion has an element of selection and involves creation of any new posts, certainly it would amount to promotion.....”

14. Taking into account all these factors mentioned above, the Tribunal dismissed the O.A.

15. Heard the Id. Counsel and also perused the pleading and relevant judgment cited by both sides.

16. The contention of the applicant is that his case is fully covered by the judgment of the Madras Bench of this Tribunal in O.A. No. 335 of 2007 which has been upheld by the Hon'ble High Court at Madras and the SLP filed was also dismissed by the Hon'ble Supreme Court. The issue was before the Principal Bench in O.A. 3606 of 2013 and M.A. 2735 of 2013 and the Central Administrative Tribunal also relied on O.A. No. 335 of 2007 and allowed the O.A. and, therefore, there is no ground to reject the applicants' prayer.

17. Per contra, the respondents have pointed out that in O.A. No. 383 of 2013 and 384 of 2013 vide order dated 11.3.2015 the Tribunal has taken note of order dated 26.8.2008 of CAT, Madras Bench in O.A. No. 335 of 2007, the judgment of the Hon'ble Madras High Court in WP No. 21112

of 2009 dated 19.10.2010 and dismissal order of the Hon'ble Supreme Court passed on 4.1.2012. However, after examining in depth the concerned rules framed in this regard the Tribunal came to the conclusion that movement from Jr. Accounts Assistant to Accounts Assistant will be treated as promotion and not eligible for 1<sup>st</sup> upgradation under ACP noting the facts that Accounts Assistant is a promotional post of Jr. Accounts Assistant and they have to complete the tenure of three years and also pass an examination before they can be promoted; they have also referred to the same provisions reiterated in instructions of the year 1987; instructions also states that pay will be fixed as per FR22C which is done in case of promotion.

18. We are of the opinion that clearly O.A. No. 335 of 2007 and orders passed in O.A. 3606 of 2013 and M.A. 2735 of 2013, which was passed based on O.A. No. 335 of 2007, are per incuriam as they have not considered the rules which are framed by the Railways and are to be treated as rules having the force of Article 309 of the Constitution of India and also considering the judgment of the Hon'ble Supreme Court in Kunhayammed & ors. v. State of Kerala & anr. (supra) in which it was held that mere dismissal of the SLP does not amount to upholding of the order from which leave to appeal is sought. Therefore, we are to be guided by the latest decision of the coordinate Bench in O.A. No. 383 & 384/2013.

19. In view of the above, we do not find any merit in this O.A. and the O.A. is dismissed. There shall be no order as to costs.

  
(P.K. Basu)  
Administrative Member

  
(Bidisha Banerjee)  
Judicial Member