

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 548/2012

Reserved on: 14.10.2019
Pronounced on: 18.10.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Ghasi Lal Bairwa son of Shri Bhairu Lal Bairwa aged about 49 years, resident of 85/527, Pratap Nagar Housing Board, Sanganer, Jaipur and presently working as Junior Hindi Translator, Office of Director, Electronics Test & Development Centre (E.T.D.C.), Malviya Nagar Industrial Area, Jaipur.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Information Technology, Ministry of Communications and Information Technology, New Delhi-110001.
2. Director General, Directorate, Standardisation, Testing & Quality Certification, Department of Information Technology, 6, C.G.O. Complex, Lodhi Road, New Delhi.
3. Director, Electronics Test & Development Centre, (E.T.D.C.), Malviya Nagar Industrial Area, Jaipur-302017.
4. Union of India through General Manager, North Western Zone, North Western Railway, Jawahar Circle, Near Jagatpura, Jaipur.
5. Deputy Chief Mechanical Engineer (Work Shop), North Western Railway, Jodhpur.

...Respondents.

(By Advocate: Shri N.C.Goyal for R-1 to R-3,
Shri Y.K.Sharma for R-4 and None for R-5).

ORDER

Per: A. Mukhopadhyaya, Member (A):

This Original Application, (OA), arises from the withdrawal of Assured Career Progression, (ACP), benefits to the applicant vide respondents' order of 06.08.2012 stating that these benefits were incorrectly given to him by considering his promotion from the post of Hindi Assistant, (HA), Grade-III to HA Grade-II as a grade revision and not as a promotion; (impugned order at Annexure A/1 refers). The applicant, who was appointed as HA Grade-III in the pay scale of Rs.1200-2040 in his erstwhile department of Railways vide order of 26.09.1988 and joined duties with that department on 18.10.1988, was thereafter **"promoted"**, (Annexure A/8), vide Northern Railway order of 05.05.1989 to HA Grade-II in the pay scale of Rs. 1400-2300. Later, he applied for a post notified by his present employer, the Electronic Test and Development Centre, (ETDC), Ministry of Communications, and was offered an appointment to the post of Junior Hindi Translator in the same pay scale of Rs.1400-2300, (Annexure A/9), and joined duties with his present employer. He was subsequently allowed the first financial upgradation under the ACP Scheme with effect from 18.10.2000, i.e. on completion of 12 years since his first joining service with the

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Railways; (Annexure A/2 dated 08.06.2007 refers). However, as detailed earlier, Respondent No.3, (his present employer), later withdrew the benefits of the ACP upgradation allowed to him vide the impugned order; (Annexure A/1). The applicant contends that his so called "**promotion**" vide respondent Railways' order of 05.05.1989, (Annexure A/8), is actually only a grade revision occasioned by the upgradation and redesignation of the post of HA Grade-III to HA Grade-II with effect from 01.04.1987; (Annexure A/7 refers). In further support of this contention, he cites Railways RBE No.250/87 dated 10/87, (Annexure A/4), which directs such upgradation along with redesignation with effect from 01.04.1987 and points out that the Northern Railway upgradation/redesignation of his post with effect from 01.04.1987, (Annexure A/8), followed as a consequence of this. The applicant contends that he has been deprived of his rightful claim to the first ACP upgradation with effect from 18.10.2000 correctly granted earlier by the respondent ETDC, (his present employer), vide their office order dated 08.06.2007, (Annexure A/2), on the mistaken premise that the order at Annexure A/8 dated 05.05.1989 which placed him as HA Grade II in the pay scale of Rs.1400-2300 represents a promotion vis-a-vis his earlier designation as HA Grade-III in the pay scale of Rs.1200-2040. Aggrieved

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by this, he has approached this Tribunal seeking the following relief:-

- (i) That the respondents be directed to produce record relating to the case and after perusal of the same respondents be directed to hold good with benefits order dated 08.06.2007 (Annexure A/2) in respect of applicant by quashing order dated 06.08.2012 (Annexure A/1) with all consequential benefits.**
- (ii) The respondents be further directed to not to treat the placement of applicant in the pay scale Rs.1400-2300 on revision of grades as promotion by quashing any order passed by them which never made available to the applicant, with the further direction to extend benefits of MACP Scheme with all consequential benefits.**
- (iii) Any other order, direction or relief be passed in favour of the applicant which is deemed fit, just and proper under the facts and circumstances of the case.**
- (iv) That the costs of this application be awarded.**

Interim relief

That the respondent No.3 be directed not to give effect order dated 06.08.2012 (Annexure A/1) by staying operation of the same.

2. On 17.08.2012, this Tribunal passed an interim order staying recoveries pursuant to the impugned order dated 06.08.2012.

3. The respondents, i.e. both his present employer ETDC, (respondents No.1 to 3), and his erstwhile employer the

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Railways, (respondents No.4 and 5), while confirming the abovementioned sequence of events, aver that initially when the applicant joined service with his present employer ETDC, he was allowed the benefits of the first ACP upgradation vide their order of 08.06.2007, (Annexure A/2), with effect from 18.10.2000 as his erstwhile employer the Railways vide their letter of 06.07.2001, (Annexure R/1), had indicated that his placement as HA Grade-II in the pay scale of Rs.1400-2300 was as a result of grade revision. Subsequently however, vide their letter of 20.09.2011, (Annexure R/2), the Vigilance Section of the respondent Railways informed the ETDC, (the applicant's present employer), that what was earlier reported to be a grade revision was actually a promotion of the applicant from the post of HA Grade-III, (pay scale of Rs.1200-2040), to HA Grade-II, (pay scale of Rs.1400-2300), with effect from 19.04.1989 vide their office order dated 05.05.1989; (Annexure A/8 refers). Thus, placing reliability on the contention of the respondent Railways vide Annexure R/2 that the information given to the respondent ETDC vide their earlier letter dated 06.07.2001, (Annexure R/1), was erroneous the present employers, (respondents No.1 to 3), have correctly withdrawn the ACP benefits incorrectly given to the applicant earlier and state further that the applicant would only be eligible for his second ACP after completion of 24 years of

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service as he was not entitled to the first ACP having been promoted during his first 12 years of service.

4. Learned counsel for the applicant and the learned counsels for the respondent ETDC as well as the respondent Railways were heard and the material available on record including the record produced by the respondents was perused.

5. In their respective arguments, opposing counsel reiterated the points detailed above as made in the OA as well as the replies to the same.

6. Both parties are agreed that in this case the essential question for determination by this Tribunal is whether in fact the office order of 05.05.1989, (Annexure A/8), issued by the applicant's erstwhile employer, the Railways, (Respondents No.4 and 5), represents a "**promotion**" of the applicant from the post of HA Grade-III to HA Grade-II or is merely reflective of an upgradation/grade revision of the erstwhile post of HA Grade III to HA Grade II. Here, it is noted that the respondents have not challenged their own RBE No.250/87 dated 10/87, (Annexure A/4), which specifically refers to the redesignation of posts of HA Grade-III to posts of HA Grade-II from 01.04.1987, with a

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resultant change in the pay scale from Rs.1200-2040 to Rs.1400-2300 vide Rail Ministry letter of 08.05.1987 amended vide letter of 29.06.1987. This RBE further stipulates that any further promotion in this cadre to the post of HA Grade-II in the pay scale of 1600-2660 requires a certain residency period. Thus a plain reading of this stipulation in para 5 of the RBE, when considered in harmonious conjunction with the rest of the RBE does appear to indicate that the respondent Railways upgraded all posts of HA Grade-III to HA Grade-II with effect from 01.04.1987. Letter dated 17.02.1988 from the Senior Divisional Personnel Officer, Jodhpur, Northern Railway, (Annexure A/7), also confirms this view.

7. From the foregoing considerations, the conclusion that emerges is that the office order dated 05.05.1989, (Annexure A/8), issued by the respondent Railways, though termed as a "**promotion**", is actually an upgradation/redesignation of the applicant's post in consonance with RBE No.250/87 dated 10/87; (Annexure A/4). Since this upgradation/redesignation took place with effect from 01.04.1987 itself, (Annexure A/4 refers), the inescapable logical conclusion is that on the date of issue of Annexure A/8, (i.e. 05.05.1989), there was no post of HA Grade-III in existence as all such posts had been converted to that of HA

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Grade-II vide respondent Railways' letter of 17.02.1988, (Annexure A/7), in furtherance of the provisions of RBE No.250/87; (Annexure A/4). As such therefore, the original communication dated 06.07.2001 from the respondent Railways to the applicant's present employer, (Annexure R/1), stating that his shift from the 1200-2040 pay scale to the 1400-2300 pay scale represented a grade revision, (and not a promotion, as indicated by the subsequent letter at Annexure R/2), was correct.

8. In the result, the OA succeeds and the impugned order of the applicant's present employer dated 06.08.2012, (Annexure A/1), is quashed and set aside while their earlier order of 08.06.2007, (Annexure A/2), is confirmed qua the applicant. Needless to say, the applicant would also, as a result, be entitled to the consequential benefits flowing from the confirmation and continuance in force of respondents' order dated 08.06.2007; (Annexure A/2).

9. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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