

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP (CAT) .No. 3292 of 2011 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 913/2010 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 14-03-2011)

PETITIONER(S)/PETITIONERS:

1. UNION OF INDIA AND OTHERS
REPRESENTED BY THE SECRETARY, RAILWAY BOARD
MINISTRY OF RAILWAY, NEW DELHI

2. THE FINANCIAL ADVISOR &
CHIEF ACCOUNTS OFFICER, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN P.O, CHENNAI 600 003.

3. THE SENIOR DIVISIONAL FINANCE MANAGER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM 695 014

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.C.S.DIAS,SC, RAILWAYS

RESPONDENT(S):

V.GOPALAKRISHNAN
ACCOUNTS ASSISTANT, OFFICE OF THE DIVISIONAL
FINANCE MANAGER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION
RESIDING AT "SREE VISHNU", NO.T.C.50/972(3), HSR-D-41
KALADI, KARAMANA, TRIVANDRUM 695 002.

BY ADV. SRI.T.C.GOVINDASWAMY
BY ADV. SRI.G.SHYAM RAJ
BY ADV. SMT.KALA T.GOPI

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 08-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1	COPY OF THE ORDER NO.RBE NO.233/1999
EXT.P2	COPY OF THE LETTER NO.PC V/99/1/1/1
EXT.P3	COPY OF THE LETTER NO.PC V/2004/ACP/1, ISSUED BY THE RAILWAY BOARD.
EXT.P4	COPY OF RELEVANT PAGE OF RAILWAY BOARD ORDER BEARING RBB NO.101/2009
EXT.P5	COPY OF ORDER NO.P.535/TVC/ADMN.
EXT.P6	COPY OF THE LETTER NO.P 535/HQA/MACPS/ADMN/2010/17 ISSUED BY THE 2ND PETITIONER.
EXT.P7	COPY OF THE OFFICE ORDER NO.G179/TVC/ADMN/2010/17 ISSUED BY THE 2ND PETITIONERS
EXT.P8	COPY OF OROGINAL APPLICATION IN O.A.NO.913/2010 ON THE FILES OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
EXT.P9	COPY OF RAILWAY BOARD ORDER RBE NO.54/2007
EXT.P10	COPY OF RAILWAY BOARD ORDER RBE NO.17/2008.
EXT. P11	COPY OF REPRESENTATION SUBMITTED BY THE RESPONDENT TO THE 2ND PETITIONER.
EXT. P12	COPY OF REPRESENTATION SUBMITTED BY THE RESPONDENT TO THE 2ND PETITIONER
EXT. P13	COPY OF LETTER NO.A.50/RTI/REP/227/2010-11
EXT. P14	COPY OF APPEAL SUBMITTED BY THE RESPONDENT TO THE ADDL. GENERAL MANAGER AND APPELLATE AUTHORITY.
EXT. P15	COPY OF LETTER NO. A.50/RTI/APPEAL/227/2010-11
EXT. P16	COPY OF SECOND APPEAL SUBMITTED BY THE RESPONDENT TO THE CENTRAL INFORMATION COMMISSIONER, NEW DELHI
EXT. P17	COPY OF THE REPLY STATEMENT IN O.A.No. 913/2010 OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
EXT. P18	COPY OF SENIORITY LIST OF THE ACCOUNTS ASSISTANT.
EXT. P19	COPY OF REJOINDER FILED BY THE RESPONDENT IN O.A. NO. 913 OF 2010

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EXT. P20 COPY OF ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONER
 IN OA.N.913/2010

EXT. P21 COPY OF FINAL ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE
 TRIBUNAL, ERNAKULAM BENCH IN O.A. 913 OF 2010

EXT. P22 COPY OF ORIGINAL APPLICATION O.A.No.913 of 2010 ON THE FILES
 OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM
 BENCH.

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
O.P.(CAT)No.3292 OF 2011
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Dated this the 8th June, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Ext.P21 order passed by the CAT, Ernakulam Bench in O.A.No.913 of 2010 upholding the stand of the department in cancelling the third upgradation benefit given to the respondent/V. Gopalakrishnan,(pursuant to the implementation of 'MACP Scheme' on completing the span of 30 years, ordered as per Annexure -A1); at the same time directing granting of the 2nd 'ACP benefit' payable on completion of 24 years of service is sought to be challenged by the Railways, pointing out that the respondent is not entitled to have the benefit of the ACP scheme by virtue of the mandate under Clause 5.1 of the Conditions for grant of benefits under the ACP Scheme, a copy of which has been produced as Ext.P1(4).

2. The short factual matrix reveals that the respondent

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was working as Temporary Clerk Grade I in the office of the second respondent at Perambur, where he joined on 19.01.1983. Subsequently, on the basis of his request, he was transferred to Golden Rock, Southern Railway near Trichy, with bottom seniority. Promotion was given to the respondent as Accounts Assistant on 01.04.1987. It is stated that the petitioner came back to Thiruvananthapuram on request, with loss of seniority and joined there on 18.03.1996. While so, Ext.P1 ACP Scheme was introduced w.e.f. 01.10.1999. The Scheme was given effect to by the Railways, considering the long standing grievance of the employees who were stagnated in various posts, providing for financial upgradation on completion of 12 years at the first level and on completion of 24 years at the second level. The Scheme also specifically stipulates that, if promotion was given within 12 years from the date of regular appointment, no benefit was liable to be extended under the Scheme, but for the fact that such persons will be given the

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benefit of financial upgradation on completion of 24 years.

3. In the course of time, the Railways introduced a new Scheme as 'MACP Scheme', which provides for granting of financial upgradation on completion of 10 years, 20 years and 30 years. The respondent was given the benefit of third financial upgradation as well, under the above scheme, which according to the petitioners herein was by way of mistake. It is pointed out that since the respondent had obtained regular promotion way back on 01.04.1987, i.e within four years after the original appointment, he was not entitled for the benefit of upgradation on completion of 12 years and it was in the said circumstance that further proceedings were taken to cancel the benefit which was given by way of mistake. However, by virtue of enabling orders to the effect that past cases need not be considered, no further proceedings were issued, except cancellation of the financial upgradation given at the third stage with regard to the MACP Scheme. Ext.P6 is the communication issued in this

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regard. Ext.P7 is the consequential order. The respondent sought to challenge Annexure-A1 (Ext.P6) before the Tribunal raising many a contention. After considering the rival contentions, the Tribunal observed that, withdrawal of the benefit as per Annexure-A1 was perfectly within the four walls of law, as the respondent, who was the applicant before the Tribunal would be eligible to have the third financial upgradation as per the MACP Scheme, only in the year 2013. The Tribunal however made it clear that the respondent was entitled to have the benefit of 2nd upgradation, on completion of 24 years, as per the original 'ACP' Scheme.

4. After hearing both the sides and also on going through the materials on record, this Court finds that Ext.P3 order specifically states that past cases need not be reconsidered. This being the position, even if the respondent was given the benefit of ACP Scheme on completion of 12 years, notwithstanding the promotion given to him on 01.04.1987, i.e.

within the initial period of 12 years, the benefit already given was not liable to be recalled, by virtue of Ext.P3. In the above circumstance, this Court finds that the direction given by the Tribunal to grant the benefit of 2nd financial upgradation on completion of 24 years under the ACP Scheme is perfectly within the four walls of law and the same does not require to be intercepted by this Court. There is no merit in the Original Petition and the same is dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**