

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND**

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No.9187 of 2010

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ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Petition, under Article 226 of the Constitution of India, is filed to call for the records relating to the order, dated 01.12.2009, in Original Application No.250 of 2009 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal') and quash the same.

2. Respondent No.1 herein/applicant was appointed as RPF Rakshak in the scale of Rs.200-240. He was promoted as Head Rakshak/Driver with effect from 01.06.1983 and subsequently, he was promoted as Naik with effect from 27.03.1986. He was further promoted as Head Constable/Driver in the grade of Rs.950-1500. While performing his duties as such, he was medically de-categorized for the said post and he was found fit for C1 category with sedentary job. Petitioner No.1 herein absorbed respondent No.1 as Junior Clerk in the scale of Rs.3050-4590 in Engineering Department.

3. It is not in dispute before this Court that respondent No.1 was granted two financial up-gradations i.e., 1) after completion of 12 years and 2) after completion of 24 years of service. Petitioner No.3 sought clarification from petitioner No.2, vide letter, dated 23.02.2007, raising a doubt with regard to eligibility of financial up-gradation in favour of respondent No.1. Petitioner No.2 gave a clarification based on Railway Board's letter, dated 09.05.2007, to the effect that respondent No.1 is entitled to the benefit of two Assured Career Progression Scheme (ACP Scheme) on completion of 12 years and 24 years of service as he was absorbed in the post of Junior Clerk foregoing his promotions in his parent department on medical de-categorisation. Contention of respondent No.1

is that as per Railway Board's clarification under Serial Circular No.276/1999 and Serial Circular No.112/2000, the employee who has been medically de-categorized and absorbed in the lower post is not entitled to the financial up-gradation under ACP Scheme.

4. Respondent No.1 herein/application filed the aforementioned Original Application aggrieved by the letter No.A/EN/Court Cases, dated 10.02.2009 of petitioner No.3 granting 1st Assured Career Progression in scale Rs.4500-7000 with pay of Rs.4590/- and 2nd Assured Career Progression in scale Rs.5000-8000 with pay of Rs.5000/- with effect from 16.06.2005 instead of with effect from 01.10.1999 and 15.06.2000 respectively. The Tribunal, upon considering the material on record, allowed the Original Application. Challenging the same, the Railways filed the present Writ Petition.

5. Learned counsel for the petitioners contended that though on ground of medically de-categorization respondent No.1 was posted as Junior Clerk in the pay scale of Rs.3050-4590 with effect from 16.06.2005, his pay was protected by fixing his pay at Rs.4590 +410 (PP); that as respondent No.1 was already granted two financial up-gradations, he is not entitled to the benefit of ACP Scheme and hence, he prays to set aside the impugned order.

6. On the other hand, learned counsel for respondent No.1 contended that in view of clarification issued by the Chief Personnel Officer, South Central Railway, Secunderabad, by its letter, dated 22.07.2004, though respondent No.1 was granted promotion /ACP and he has been subsequently transferred to lower post, he is entitled to financial up-gradations under ACP Scheme thereby taking into consideration his total length of service and therefore, the Tribunal did not commit any error and the findings are based upon the circular issued by the Railway Board from time to time and hence, he prays to dismiss the Writ Petition.

7. Facts are not in dispute. It is not in dispute before this Court that respondent No.1 was performing his duties as Head Constable/Driver in the pay scale of Rs.4000-6000. He was absorbed to the post of Junior Clerk, which is in the scale of Rs.3050-4590 on the ground that he was medically de-categorized. Though respondent No.1 was medically de-categorized and reduced in the lower pay scale, at the same time, his pay was duly protected by fixing his pay scale on par with the post he was discharging his duties prior to his medically de-categorization. It is not in dispute that prior to medically de-categorization, respondent No.1 was granted two financial up-gradations under the benefit of ACP Scheme. As per the Board's letter No.PC-V/2004/1, dated 09.05.2005, it is clear that while in the case of surplus employees, if the re-deployment is to a lower post, the last pay scale is protected as personal to the employee and, therefore, in terms of clarification No.36 of Board's letter No.PC-V/99/1/1/1, dated 19.02.2002, the two financial up-gradations are allowed in the hierarchy of a new organization with reference to the protected pay scale to the fulfilment of the promotional norms; in the case of de-categorized employees, there appears to be no provision for protection of pay scale in the event of transfer to a lower post. If so, in such cases, past service may also be counted towards ACP Scheme and the benefit of financial up-gradation is allowed as per the hierarchy of the redeployed posts. Even where a person had earned one financial up-gradation prior to medical de-categorization and was appointed to a lower post, since the transfer is not on his own volition, there is no objection to count past service including for the period he held a higher service on promotion, for deciding the two financial up-gradations as per the hierarchy of the new post. This aspect of the case has been clearly clarified by the Chief Personnel Officer, South Central Railway, Secunderabad, by its proceedings No.P (R) 535/IV 157835, dated 22.07.2004. Operative portion of the order reads as follows:

“Some more situations in which doubts persist in regard to applicability/implementation of ACP Scheme have been brought to the notice of this office and the same are clarified as under.

Point of doubt	Clarification
Whether financial benefit under ACPS is to be granted to an employee who has already got two regular promotions/ACP in his previous department and joins a lower grade post on request or on medical decategorisation?	Yes, in case of staff transferred to lower grade on personal request/or medical decategorization, the promotions availed by him will not be considered as he is no longer working in the promoted grade. Therefore, the employee who has earned two promotions/ACP and has been, subsequently, transferred to a lower post is entitled for the benefit of financial upgradation under the ACP scheme thereby taking into account his total length of service.
Whether financial benefit under ACPS can be granted to an employee whose pay has been protected consequent on his transfer to lower grade to another department at his request?	Yes. Protection of Pay is not the criteria. Since the employee loses his seniority and promotion earned in the intermediate grades, he/she may be granted financial upgradation in the new hierarchy taking into account his total service since appointment.

These issues with the approval of CPO”.

From the above clarification, it is clear that even when a person is medically de-categorized and his pay has been protected, still total length of service has to be taken into consideration for giving benefit of ACP Scheme. Considering this aspect, having completed 12 years' of service, first stage of ACP was given and after completion of 24 years' of service, second stage of ACP was given. This aspect of the case has been rightly resolved by the Tribunal. None of the finding is shown to be perverse or contrary to the circular instructions given by the Railways from time to time. As per Serial Circular No.92/2005, there is no objection for counting the past service including the services held in the higher grade for promotion for extending the financial up-gradation as per the hierarchy of the new post. Therefore, the impugned order in the Original Application No.250 of 2009, dated 10.02.2009, which is contrary to the circular orders was rightly set aside by the Tribunal and that order needs no interference

by this Court and there is no illegal or incorrect finding given by the Tribunal. Hence, the Writ Petition is devoid of merit and is liable to be dismissed.

8. Accordingly, the Writ Petition is dismissed, however, in the circumstances, without costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

JUNE 12, 2014

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**THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS**

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DATED: 12.06.2014

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