

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN  
AND  
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.3292 of 2019**

**ORDER:** *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned counsel for the petitioners – South Central Railway, hereinafter referred to as 'the establishment' in this writ petition under Article 227 of the Constitution of India challenging the decision of the Central Administrative Tribunal, Hyderabad Bench, in Original Application No.1116 of 2013 instituted by the respondents.

2. The aforesaid Original Application was allowed by the Tribunal and the establishment was directed to grant the applicants 3<sup>rd</sup> financial upgradation from the date on which they fulfilled the eligibility criteria with consequential benefits thereof. Implementation period of three months was also fixed as per the order of the Tribunal. This is under challenge.

3. The learned counsel for the Railways argued that the factual foundation on which the Tribunal rested its decision is not acceptable inasmuch as the applicants before the Tribunal, who are the respondents herein, had enjoyed what is called promotion and not merely an upgradation not amounting to promotion and therefore, there is no question of their becoming eligible for 3<sup>rd</sup> financial upgradation in terms of the Modified Assured Career Progression Scheme. Relying on the earlier round of litigation in different matters on which reference is also made by the Tribunal in the order, the

learned counsel for the Railways argued that though the Madras High Court had interfered in the earlier round at the instance of the employees, currently the matter rests for further consideration by the Hon'ble Supreme Court of India in a Civil Appeal.

4. Insofar as the case in hand is concerned, the facts lie in a very narrow matrix. The applicants before the Tribunal joined the establishment as Clerks Grade-II. They were promoted as Clerks Grade-I. On restructuring of the cadres, Clerk Grade-I posts were upgraded as Accounts Assistant. Before restructuring in 1987, the hierarchy of the cadre, in the ascending order, was Clerk Grade-II, Clerk Grade-I, Sub Head and Section Officer. As a part of restructuring in 1987, 80% of Clerk Grade-I posts were upgraded as Sub Head and the grade of Accounts Assistant was introduced. Adverting to the materials before it, the Tribunal held that the fact remains that there was revision of the scale and which benefit when extended cannot be considered as a promotion. The applicants were working in the pay scale of Rs.1200-2400 which on restructuring was revised to Rs.1400-2600. Therefore, there is no vertical movement to be treated as a promotion, as rightly held by the learned Tribunal. We are in agreement with the Tribunal that the change occurred because of restructuring and not because of promoting the officials concerned. The difference between the promotion and upgradation on restructuring is the crux of the issue. This is

how the Tribunal focused on the issue raised in the writ petition.

5. Keeping aside the decision of the Madras High Court referred to by the learned Tribunal, we may notice that it is trite that upgradation does not involve appointment, either by promotion or otherwise. Upgradation involves conferment of financial benefits by providing a higher scale of pay. If there is mere upgradation of posts, as contrasted from promotion, the reservation provisions would not apply. The identifying criteria in the instant case is fundamentally clear to the effect that it is an upgradation simplicitor and no process of promotion or any other mode of appointment to a higher grade category or class comes into being. This view is supported by the principles of law deducible from the different judicial precedents law laid down by the Hon'ble Supreme Court, including **All India Non-SC/ST Employees' Association (Railway) v. V.K. Agarwal**<sup>1</sup> and **Union of India v. V.K. Sirothia**<sup>2</sup>, as explained and applied in **Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy and others**<sup>3</sup>.

6. For the aforesaid reasons, we do not see that there is any promotion on account of the upgradation, which would resultantly deprive the applicants before the Tribunal from their eligibility for 3<sup>rd</sup> financial upgradation in accordance with the Modified Assured Career Progression Scheme.

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<sup>1</sup> (2001) 10 SCC 165

<sup>2</sup> (2008) 9 SCC 283

<sup>3</sup> (2011) 9 SCC 510

We, therefore, do not find any jurisdictional infirmity, illegality or irregularity in the appreciation of materials or exercise of jurisdiction by the learned Tribunal.

7. This Writ Petition, under Article 227 of the Constitution of India, therefore, fails and hence, the same is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

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**THOTTATHIL B. RADHAKRISHNAN, CJ**

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**A.RAJASHEKER REDDY, J**

Date: 26.02.2019  
Va/pln

