

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01784/2018
DATED THIS THE 17th DAY OF JANUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Radhakrishnan Edakkattil, aged 51 years
S/o Velayudhan E
Chief Loco Inspector, Office of the Divisional
Electrical Engineer/TRO/SBC
Divisional Manager's Office, South Western Railway
Bengaluru-560 023.
Residing at: No.15, "Thulaseedalam"
Green Garden Road, Horemavu P.O.
Bangalore-560 113.

....Applicant

(By Advocate Sri T.C.Govinda Swamy)

Vs.

1. Union of India
Represented by the General Manager
South Western Railway
Headquarters Office
Hubli-580 020, Dharwar Dt., Karnataka.
2. The Chief Personnel Officer
South Western Railway
Headquarters Office
Hubli Division
Hubli-580 020, Dharwar Dt., Karnataka.
3. The Senior Divisional Personnel Officer
South Western Railway
Headquarters Office
Bangalore Division, Bengaluru-560 023.
4. The Secretary to the Government of India
Ministry of Railways (Railway Board)
Rail Bhavan, New Delhi-110 001.
5. Shri T.Prahalada
Working as LI
SBC Division
S.W.Railway, Bangalore-73.

...Respondents

(By Advocate Sri N.Amaresh for R1 to 4)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he is presently working as Chief Loco Inspector in Level-7 of the Pay Matrix in the Bangalore Division of South Western Railway. He is aggrieved by the refusal by the respondents to step up his pay on par with his junior Sri T.Prahalada who is also working as Chief Loco Inspector in the Bangalore Division of SWR. He produced a chart giving his details and Sri T.Prahalada at Annexure-A1 wherein while the applicant was appointed during the year 1988, Sri T.Prahalada was appointed in September 1992. The applicant was promoted as LP(G), LP(P) and LP(M) well ahead of Sri T.Prahalada. The applicant was promoted to the present post of Chief Loco Inspector on 23.11.2011. All along he was drawing basic pay much more than Sri T.Prahalada and there was no single occasion when Sri T.Prahalada could draw more pay than the applicant[Annexure-A2(1) and (2)]. As per 7th CPC recommendations implemented w.e.f.1.1.2016, his pay as Chief Loco Inspector was fixed at a stage higher than that of Sri T.Prahalada who was working as a Loco Pilot(Mail). While so, Sri T.Prahalada was promoted as Loco Inspector w.e.f. 7.10.2016 and upon such promotion his basic pay was fixed at Rs.1,02,800/-(Level-7 of the Pay Matrix) w.e.f. 7.10.2016. In the result, Sri T.Prahalada started drawing pay much more than the applicant. There is a great disparity in the matter of fixation of the applicant's pay vis-à-vis his junior Sri T.Prahalada. In the circumstances, he submitted representation to the Sr.Divisional Personnel Officer, SW Rly., Bangalore praying for stepping up of his pay on par with his junior Sri T.Prahalada(Annexure-A3) which was forwarded to the DPO/Bangalore as per letter dtd.24.7.2017(Annexure-A4). The same was rejected by the 3rd respondent by a common order dtd.5.7.2018(Annexure-A5) which is arbitrary, discriminatory

and unconstitutional. The various reasons stated in order dtd.5.7.2018 are totally unsustainable. The contention made in the order dtd.5.7.2018 that the applicant was seeking stepping of up on par with a person who was holding the post of Loco Pilot is misleading and incorrect. He is seeking stepping up of pay on par with a person who has since been promoted as Chief Loco Inspector and on par with the pay fixed to the junior in the cadre of Chief Loco Inspector. He fulfils all the four conditions mentioned in para 2 of the order dtd.5.7.2018. The applicant and Shri T.Prahalada at the time of their respective promotion as Chief Loco Inspector were working as LP(M). The promotion posts were also identical being the post of Chief Loco Inspector in the same Division in Level-7 of the Pay Matrix. The scales of pay of the lower and higher posts were identical. This anomaly is a direct result of the application of rules, i.e. FR.22(I)(a)(1) fixation rules provided in the Revised Pay Rules. The junior was never drawing more pay than the senior i.e. the applicant. The contention that the applicant does not fulfil the conditions for stepping up of pay is devoid of merit and substance. The fact that a reference has been made to the Chief Personnel Officer itself indicates that the 3rd respondent was not clear in his mind about the method of fixation of pay under such circumstances. Therefore, the denial of stepping up of pay on par with his junior Shri T.Prahalada is for invalid reasons and by virtue of Sub-Rule 10 of Rule 7 of the revised rules, he fulfils all the conditions stipulated therein and therefore he is entitled to have his pay fixed at the stage of Rs.1,02,800/- w.e.f. 8.10.2016 the date from which Shri T.Prahalada was promoted as Chief Loco Inspector. Refusal on the part of the respondents to fix the applicant's pay accordingly is arbitrary, discriminatory and hence violative of the constitutional guarantees enshrined in Articles 14 and 16. Therefore, he filed the present OA

seeking the following relief:

- i. *Call for the records leading to the issue of Annexure A5 common order bearing No.B/P.535/V/Mech/Rng/VII PC dated 05.07.2018 issued by the 3rd respondent and quash the same.*
- ii. *Declare that the applicant is entitled to have his pay stepped up on par with their junior Shri T.Prahalada with effect from 08.10.2016, the date of promotion of Shri T.Prahalada as Chief Loco Inspector.*
- iii. *Direct the respondents to step up the pay of the applicant to the level of Rs.1,02,800/- with effect from 08.10.2016 at par with his junior Shri T.Prahalada, with all consequential benefits arising there from.*
- iv. *Award costs of and incidental to this application.*
- v. *Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.*

2. The respondents, on the other hand, have submitted in their reply statement that the post of Loco Inspector in Pay Band -2 with Grade Pay Rs.4600 in Mechanical Department of SBC Division is a division controlled post and to be filled by positive act of selection comprising of written test. This is a post involving safety. To fill up 8 posts with reservation break up being UR-4, SC-2 & ST-2, a notification was issued vide letter dtd.20.11.2009 calling for volunteers from among Loco Pilot(Mail, Express, Pass), Loco Pilot(Goods). On scrutiny of the applications received, eligibility list was published vide letter dtd.24.8.2011. The competent authority viz. ADRM constituted a Selection Committee. The candidates who volunteered and found eligible were advised vide letter dtd.6.9.2011 to attend for the written examination to be held in 3 batches as per the advice of Sr.DME/SBC vide his letter dtd.29.8.2011. Written exam result was declared vide memo dtd.19.10.2011 and panel dtd.9.11.2011 was released. On the representation dtd.27.1.2012 of Shri Ambatipudi Charles, LP/Goods, proceedings for amendment of panel for inclusion of his name duly revising ROS(2) from 6 marks to 9 marks with the approval of DRM on 2.3.2012 was

considered. The name of Sri Ambatipudi Charles was included in the amended panel against UR post at SI.No.3 above Sri Radhakrishnan Edakkattil, duly charging Lakhan Lal Dongre, LP/Mail (SC) against SC post who was earlier considered against UR. Thus the number of posts filled were 7 leaving 1 ST post vacant. Sri Bhagwat Prasad, LP/Mail also represented vide letter dtd.25.1.2012 and 1.3.2012 to consider him for empanelment to the post of LI based on the awards granted to him. For want of entries in the employee's SR, the committee did not grant marks. Hence, Sri Bhagwath Prasad filed OA.No.762/2012 which was disposed of by this Tribunal with a direction to consider his case within a time frame of 2 months. Accordingly, DRM approved to revise the panel and accordingly the case was referred to HQ seeking order for amendment of panel duly reverting the junior most or to wait for the decision of the medical board in case of Sri K.Narasimhamurthy who is in the 2nd position of the panel and who has been declared medically de-categorised. Office order dtd.21.11.2013 was issued restoring K.Narasimhamurthy in the panel. On approval of competent authority from Hqrs. Sri Bhagwath Prasad was included in the panel against UR vacancy duly issuing show cause notice to Sri Radhakrishna Edakkattil for reversion. On disposal of representation against the show cause submitted by Sri Radhakrishna Edakkattil, panel was revised vide Note dtd.6.4.2015. Then Sri Radhakrishna Edakkattil filed OA.No.359/2015 before this Tribunal which passed interim order dtd.24.4.2015 and in compliance of which Office Order dtd.23.4.2015 was kept in abeyance until further orders vide Office Order dtd.4.6.2015. Further the name of Sri T.Prahalada (ST), LP/Mail was included in the provisional amended panel dtd.4.10.2016 subject to outcome of SLP based on orders passed by this Tribunal in OA.No.135/2014 and approval of Hqrs.

However, the SLP was rejected at the time of filing itself. Based on the orders passed in OA.No.359/2015 by this Tribunal in the case of Sri Radhakrishna Edakkattil advising to consider preceding three years service record and APARs on the date of notification, the selection committee met and assessed the suitability of the candidates by perusal of the written examination marks, APARs and service registers in the preceding three years i.e., 2006-2007, 2007-2008 and 2008-2009. The awards and punishments prior to 1.4.2006 and after 1.4.2009 are not taken into account. The suitability of candidates was adjudged under the heading 'record of service' as per the instructions of Railway Board vide RBE Bo.35/2006 dtd.23.3.2006. In terms of PCPO/SWR/UBL letter dtd.24.2.2011 the norms adopted for assessment of 'record of service' is 15 marks for APAR (i.e. 5 marks for 'outstanding', 4 for 'very good', 3 for 'good', 2 for 'average' and 1 mark for 'below average') and 10 marks for service register (i.e. 6 marks for SR without any adverse entry, -1 marks for each minor penalty for the preceding three years, -2 marks for each major penalty for the preceding three years, 2 marks for each divisional/unit level individual cash award, 3 marks for each HOD level individual cash award and 4 marks for each GM/Board level individual cash award). Being a safety category one has to secure 60% marks in professional ability and 60% in aggregate to be placed in the panel. Accordingly, the Selection Committee after perusing the marks obtained in written examination and on assessing the suitability based on APARs and service register recommends to place the 8 employees namely Narasimha Murthy, P.G.Rajan, Radhakrishnan, Ambatipudi Charles, Lakham Lal Dongre, Thangaraj T., T.Prahalada and Katta Narasimha Rao. The Tribunal in OA.No.135/2014 had directed the Railways to reconsider the case of T.Prahalada for promotion to the

post of Loco Inspector pursuant to the employment notification dtd.20.11.2009, taking into account his ACRs for the period ending 31.3.2009 and the service records of the corresponding periods which are not disputed. The Writ Petition filed by the Railways before the Hon'ble High Court was dismissed and the SLP filed before the Hon'ble Apex Court was also rejected. Accordingly, they followed the order of this Tribunal by holding review DPC and have issued Memorandum dtd.9.11.2018 and Office Order dtd.17.12.2018.

3. The respondents submit that the applicant's pay as on 1.1.2016 was Rs.37430 which is inclusive of 30% of his basic while promoted as Loco Inspector, whereas Sri T.Prahalada's pay as on 1.1.2016 is Rs.24,590 in which 30% of his basic pay was not included. This was due to the fact that the applicant was appointed as Chief Loco Inspector before 1.1.2016 and it is a non running category but in the case of Sri T.Prahalada, he was Loco Pilot(Mail) which is a running category and his pay as LP/Mail was fixed as per RBE-93/2016 and RBE-99/2017(Annexures-R1 & 2). The respondents have given the details of pay scales of both the applicant and Sri T.Prahalada wherein the pay of the applicant is fixed at Rs.1,02,800 and the pay of Sri T.Prahalada was reduced to Rs.86,100/- which is less than the applicant and hence the claim of the applicant has become infructuous. They further submit that for consideration of stepping up of pay, the principles enunciated in 10(i)(a) i.e. 'both the junior and the senior Government servants belong to the same cadre and the posts in which they have been promoted are identical in the same cadre'. The applicant was holding the post of CLI which is non-running cadre as on 1.1.2016 and Sri T.Prahalada was holding the post of Loco Pilot(Mail) who belongs to running cadre. Both were working in different categories of different streams. Hence, the principles of stepping up of

pay is not squarely applicable in the case of the applicant. This is as per IREM chapter IX para 901(Annexure-R3) and as per RBE letter dtd.13.11.2017(Annexure-R4). The applicant has not fulfilled the conditions for grant of stepping up of pay. Hence, he is not eligible for stepping up of pay as claimed by him. Accordingly, the action of the respondents is neither arbitrary, discriminatory nor violative of the constitutional guarantees enshrined in article 14 & 16. Hence, the OA is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the submission made in the OA and submits that there is a conscious attempt to create an air of confusion and for this purpose, the respondents have irrelevantly narrated the past history of the different cases which are immaterial and they have not answered the averments made by the applicant. The pay of Sri T.Prahalada was initially fixed at the stage of Rs.1,02,800 w.e.f.8.10.2016 in compliance with the directions of this Tribunal in OA.No.135/2014 dtd.22.4.2015(Annexure-A5) wherein it was specifically directed to reconsider the case of Sri T.Prahalada without interfering with the order of promotion issued to the 7 empanelled candidates. The same was confirmed by the Hon'ble High Court and Apex Court. And in the light of the directions of this Tribunal in OA.No.359/2015 filed by Sri Radhakrishnan Edikattil, modification of the panel was necessitated and accordingly the respondents published the revised panel on 9.11.2018(Annexure-A6) that is only after filing of this OA in the month of October 2018 only to defeat his case. Upon such modification, Sri T.Prahalada was placed above Katta Narasimha Rao and consequently his pay was re-fixed to a lower stage of Rs.86,100. Then Sri T.Prahalada has filed an OA.31/2019 and there is a stay of the panel/reduction in pay. The respondents have placed Sri T.Prahalada above the last person in the

panel only to provide him a notional pay with retrospective effect under the pretext of granting him the benefit of promotion from the date of promotion of the junior in the panel. In fact when Sri T.Prahalada was promoted after placing him in the panel at the bottom most position, he was rightly granted the benefit of promotion only from the actual date of his promotion and not prior to that. It means the decision in OA.359/2015 can have no application as far as Sri T.Prahalada is concerned and moreover he was not a party to the same. At any case, since the panel and the reduction of pay of Sri T.Prahalada has already been stayed by this Tribunal in OA.No.31/2019, the contention of the respondents no longer remains. The contention of the respondents in para-11 of their reply is devoid of merit since both the applicant and Sri T.Prahalada belong to the same cadre of Loco Pilots(Mail) at the time of promotion as Loco Inspectors/Chief Loco Inspectors. He fulfilled all the requisite norms for grant of stepping up of pay on par with his junior Sri T.Prahalada.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. Both the parties have adopted the written argument notes filed in OA.No.31/2019. In view of disposal of OA.No.31/2019 where we have allowed the OA with a direction to the respondents to issue necessary orders within a period of two(2) months from the date of issue of the order, this OA is also allowed. No costs.

(C.V.SANKAR)
MEMBER (A)
/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/01784/2018

Annexure-A1: A true copy of chart showing details of the applicants
Annexure-A2(1) & (2): A true copy of promotional orders of the applicant and Prahalada
as Loco Inspectors dtd.14.11.2001

Annexure-A3: A true copy of representation addressed to the Sr.Divisional Personnel Officer, South Western Railway, Bangalore dtd: 3.7.2017

Annexure-A4: True copy of the Sr.DPO/Bangalore letter bearing No.B/M.135/LRS/10/2017 dtd.24.7.2017 forwarding the representations

Annexure-A5: A true copy of Common order bearing No.B/P.535/V/Mech/Rng/VII PC dated 05.07.2018, issued by the 3rd respondent

Annexures with reply statement:

Annexure-R1: RBE No.93/2016

Annexure-R2: RBE No.99/2017

Annexure-R3: Para 901 of Chapter-XI of IREM

Annexure-R4: Rly. Board's letter No.E(P&A)II-2015/RS-25 of 13.11.2017

Annexures with rejoinder:

Annexure-A5: True copy of the order in OA.No.135/2014 dtd.22.4.2015 filed by Shri T.Prahalada

Annexure-A6: True copy of the Memorandum bearing No.B/P608/V/Mech/Rng/LI/Vol.7 dtd.09.11.2018, facing Prahalada above the last person in the panel
