

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00031/2019

DATED THIS THE 17th DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

T.Prahalada, aged 47 years
S/o Thopiah
Loco Inspector/ Office of the
Divisional Electrical Engineer/
Traction Rolling Operations/
South Western Railway/Bangalore Division
Bangalore-560 023.
Residing at: 24/7, Sree Varadadri
Gopalappa Layout
Pappareddi Palaya
Nagara Bhavi II Stage
Bangalore-560 072.

.....Applicant

(By Advocate Sri.T.C.Govinda Swamy)

Vs.

1. Union of India represented by
The General Manager
South Western Railway HQ
Hubli P.O.
Dharwar District
Karnataka, PIN: 580 020.
2. The Chief Personnel Officer
South Western Railway HQ, Hubli P.O.,
Dharwar District
Karnataka, PIN: 580 020.
3. The Sr.Divisional Personnel Officer
South Western Railway
Bangalore Division
Bangalore-560 023.
4. Shri Katta Narsimha Rao
Loco Inspector, Office of the
Divisional Electrical Engineer/
Traction Rolling Operations/
South Western Railway/Bangalore Division

Bangalore-560 023.

....Respondents

(By Advocate Shri N.Amaresh for R1 to 3)

O R D E R

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

The brief facts of the case are as follows:

The applicant who is presently working as Loco Inspector in Level-7 of the Pay Matrix in the Bangalore Division of South Western Railway is aggrieved by the orders having the impact of reducing his pay with retrospective effect and also which will have the effect of recovering a substantial amount by way of alleged over-payment. He is also aggrieved by the reduction of his pay from the stage of Rs.109100/- to Rs.94100/- from the salary for the month of December 2018(Annexures-A1, A2 & A3). Earlier he filed OA.No.135/2014 on the ground of his non-selection to the cadre of Loco Inspector by promotion through a competitive mode of selection vide notification dtd.20.11.2009(Annexure-A4) whereby 4 vacancies for UR, 2 for SC and 2 for ST i.e. total 8 vacancies were notified. In the panel of selected candidates published vide Office Order dtd.14.11.2011(Annexure-A5), one Sri Katta Narasimha Rao(4th respondent) was empanelled against ST vacancy and another ST vacancy remained unfilled. In the revised panel of selected candidates issued vide Memorandum dtd.12.3.2012(Annexure-A6), the applicant's name was not included. Aggrieved by the same, he filed representation which was rejected by DRM/SBC vide order dated 24.12.2013. Then he filed OA.135/2014 which was allowed on 22.4.2015(Annexure-A7) by this Tribunal with a direction to reconsider his case taking into account his ACRs up to 31.3.2009 and the service records for the corresponding periods. When the respondents filed WP.No.55436/2015(S-CAT), the Hon'ble High Court of Karnataka had dismissed the same vide order

dtd.3.6.2016(Annexure-A8). The Hon'ble Apex Court also dismissed the SLP filed by the respondents against the order of the Hon'ble High Court. Consequently, the Divisional Personnel Officer (Co-ord), SWR, Bangalore vide order dtd.7.10.2016(Annexure-A9) empanelled and promoted the applicant as Loco Inspector with effect from the date of shouldering higher responsibilities i.e. 8.10.2016 fixing his pay at the stage of Rs.88,700 vide order dtd.2.12.2016(Annexure-A10). Since fixation of pay at Annexure-A10 was erroneous, the applicant submitted representation dtd.26.12.2016(Annexure-A11) for re-fixation of his pay which was agreed to by the authorities and a revised pay fixation order was issued fixing his pay at the stage of Rs.102800/- w.e.f.8.10.2016 vide order dtd.17.5.2017(Annexure-A12). While so, the 3rd respondent issued orders at Annexure-A1 & A2 publishing one more revised panel placing the applicant at SI.No.7 and the 4th respondent Shri Katta Narasimha Rao at SI.No.8 which are not in good faith but out of ulterior motives and illegal considerations. There is absolutely no reason why he should be placed above Sri Katta Narasimha Rao who was senior to him in the cadre and said Narasimha Rao had scored more marks than the applicant. In the earlier OA, he had specifically given up any right over Sri Katta Narasimha Rao in the matter of promotion and empanelment. The applicant submits that earlier on account of the intervening event of the revision of pay scales w.e.f. 1.1.2016, his pay as Loco Inspector had to be fixed with reference to the pay he had drawn as Loco Pilot(Mail) in the 7th CPC Pay Matrix. As a consequence, some of the applicant's seniors, whose pay happened to be lower than that of the applicant, had requested for stepping up of pay and some others had also approached the Tribunal in various OAs. According to the applicant, it is only to overcome the requirement of stepping up of pay of the

seniors at par with him and with a calculated and nefarious intention that his promotion had been ante-dated to 21.11.2011 under the pretext of promoting him at par with his so-called junior Sri Katta Narasimha Rao. In so far as the applicant had taken over the higher responsibilities of the post only w.e.f. 8.10.2016, there is no reason to fix his pay w.e.f. 21.11.2011. It is only with the sole intention of defeating the various OAs filed by the applicant's seniors, he has been placed above the 4th respondent despite the specific direction of this Tribunal in earlier OA.No.135/2014 that the applicant had no grievance against the promotion of 7 persons earlier empanelled which included the 4th respondent Sri Katta Narasimha Rao. Hence, issuing Annexures-A1 & A2 is contrary to law and hence violative of the constitutional guarantees enshrined in Articles 14 & 16. The applicant then immediately submitted a representation dtd.20.12.2018(Annexure-A13) to the 3rd respondent requesting not to revise his pay with retrospective effect on account of the alleged placement above Sri Katta Narasimha Rao. While so, vide pay slip for the month of December 2018(Annexure-A3) his basic pay has been reduced from Rs.109100/- to Rs.94100/- i.e. a reduction of Rs.15000/- in the basic pay itself. He submits that there is a threat of recovery of the alleged over-payment which would be above Rs.5 lakhs for the period from 8.10.2016 till November 2018. If the respondents reduce his pay with retrospective effect from 8.10.2016, he would be subjected to substantial prejudice, irreparable injury and recurring monthly losses. Reduction of his basic pay is without authority of law and hence unconstitutional. Therefore, he filed the present OA seeking the following relief:

- i. *Call for the records leading to the issue of Annexure-A1 memorandum bearing No.B/P.608/V/Mech/Rng/LI/ Vol.VII dated 09.11.2018, issued by the 3rd respondent and Annexure-A2 Office Order bearing No.1610/12/2018/V/Mech/Rng/LI/105 dated 17.12.2018 issued by the 3rd respondent and quash the same to*

the extent they place the applicant above the 4th respondent Shri Katta Narasimha Rao.

- ii. *Direct the respondents to place the applicant at Sl.No.8 in Annexures A1 and A2 with the benefit of promotion with effect from 08.10.2016, the date of shouldering higher responsibilities of the post of Loco Inspector as directed in A9 and direct further to continue to grant the consequential benefits arising there from.*
- iii. *Call for the records leading to the issue of Annexure-A3 pay slip of the applicant for the month of December, 2018, issued from the office of the 3rd respondent, to the extent it fixes the applicant's pay at the stage of Rs.94100/- as against the requirement of drawing the applicant's basic at the rate of Rs.1,09,100/- as evidenced by Annexure-A14 and to grant the consequential benefits of the reliefs prayed for in para (ii) above.*
- 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. Per contra, the respondents 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)(Record of Service) 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 Sl.No.3 above Sri Radhakrishnan Edakkatil, 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 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'(ROS) 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'), 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) and 5 marks for educational qualification(Academic/Technical)(i.e. 3 marks for prescribed educational qualification & 2 marks for additional educational/technical qualifications). 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 recommended to place the 8 employees namely K.Narasimha Murthy, P.G.Rajan, Radhakrishnan, Ambatipudi Charles, Lakhram Lal Dongre, Thangaraj T., T.Prahala and Katta Narasimha Rao. The Tribunal in OA.No.135/2014 had directed the Railways to reconsider the case of T.Prahala 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. Since the panel is revised and the applicant is placed above the 4th respondent, the applicant was deemed treated as promoted as Loco Inspector from the date of his junior i.e. on 21.11.2011 on proforma basis and would be eligible for actual monetary benefit from 8.10.2016. Accordingly, his pay had been revised vide Office Order dtd.19.12.2018(Annexure-R1) i.e. before his representation fixing his pay at Rs.86100/- in Level 7. And in that order it is mentioned that the over payment involved if any need not be recovered. Hence, the averments made by the applicant in para 4 is denied as false. The action of the respondents in issuing Annexures-A1 & A2 is as per the directions of this Tribunal and it is neither discriminatory nor violative of Articles 14 & 16 of the Constitution.

3. The respondents submit that para 228 of IREM, Vol-I deals with erroneous promotions according to which if a person has not been promoted at all because of administrative error or if a person has been promoted but not on the date from which he would have been promoted but for the administrative error, then each

such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts. Hence, the averments of the applicant in this regard are denied as false. Therefore, the OA is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the submission made in the OA and submits that the averments made by the respondents would clearly indicate how haphazardly the selection was conducted requiring frequent revision and amendment of the selection panel. Sri Bhagwat Prasad was not entitled to be included in the panel by attempting to oust Sri Radhakrishnan Edakkattil which gave rise to another round of litigation, which was also decided against the respondents. The OA.762/2012 filed by Sri Bhagwat Prasad was disposed of with a direction only to consider the representation but not to consider his case. The panel dtd.4.10.2016(Annexure-A15) was treated as provisional only subject to the outcome of the SLP which was proposed to be filed against the judgment of the Hon'ble High Court in WP.No.55436/2015 but for which the panel was final. In OA.No.359/2015, there was no direction to recast the panel as a whole. It is observed that 'if any revision of the panel is to be undertaken by the respondents, it should be clearly on the consideration of APARs and Service Record for a period of three years prior to 31.3.2009 and not beyond'. It is very much clear from the directions that the liberty given is only as regards the applicant Sri Radhakrishnan Edakkattil and the respondents therein viz., Sri Ambatipudi Charles and Sri

Bhagwat Prasad and not as regards who were not parties to the above OA. The applicant was not a party in OA.No.359/2015. In the applicant's case in OA.No.135/2014, there is a clear direction that the empanelment of the applicant should be 'without interfering with the order of promotion issued to the 7 empanelled candidates'. It is not known that when and why the Selection Committee met at a later point of time. It is also not known under whose directions the Selection Committee met for reconsidering and evaluation of every candidate considering the service registers for the period from 2006 to 2009 when there was no such direction by this Tribunal. No letter or orders of any of the competent authority is also seen referred to which means that the entire action for recasting the panel as in Annexure-A1 & A2 was without authority of law and hence, unconstitutional. The original selection committee which was initially constituted for conducting the selection notified in the year 2009, was never in existence in 2018 when the impugned orders were issued. At any case, the panel position suggested by the respondents at Annexure-A1 is legally unsustainable and contrary to the directions given by this Tribunal in OAs.No.135/2014 & 359/2015. Therefore, the contention of the respondents that they have followed the orders of this Tribunal while issuing Annexures-A1 & A2 is factually untrue and hence denied. Moreover, there is no concept of review DPC in Railway parlance and there are no orders of the Railway Board in this regard, when the selection is competitive in character. The respondents are attempting to create an air of confusion by indicating how the reduced figure was arrived at which is not the issue at all. The question is not the method of fixation of pay but whether at all fixation of pay with retrospective effect was warranted at all. As sustained by the legal position, no re-fixation of pay with retrospective effect is warranted. A person is always promoted only with

prospective effect and pay fixed from the date of shouldering higher responsibility even in the event of empanelment from an anterior panel. It is only when the seniors have approached this Tribunal in OAs.No.1783/2018 and connected cases which are still pending, seeking stepping up of pay at par with the applicant, the impugned orders were passed in his case with the sole intention of defeating their cases. It is made clear that the exercise of power was not bonafide but actuated by mala fide and ulterior reasons. The way the respondents react and the extent to which they would perpetuate illegalities is self evident in the narration of facts by the respondents which clearly indicates the repeated variation of panel for a selection to fill up just eight vacancies. Annexure-R1 was never communicated to the applicant. Without communicating the same, the respondents reduced the applicant's pay as per pay slip at Annexure-A3. Paragraph 228 of IREM Manual has no relevance to the issues involved in the present case. Therefore, the applicant prays to reject the contentions of the respondents made in their reply and allow the OA.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. Both the parties have filed their written arguments note and additional written arguments note. The main issue to be decided in this case relates to the positioning of the applicant vis-à-vis the 4th respondent Sri Katta Narasimha Rao in the select list. This select list has seen several rounds of litigations before this Tribunal and it is a sad commentary regarding the manner in which the respondents have handled this select list as, at every point of time, this Tribunal had intervened on behalf of one person or the other and yet the issue seems to be still unsettled after several years. The short point to be decided in this application relates to placing the 4th respondent below the applicant vide Annexure-

A1 and the subsequent promotions ordered vide Annexure-A2. The respondents have sought to modify the promotions given w.e.f. 21.11.2011 the date on which the 4th respondent was promoted as Loco Inspector. We have gone through the files relating to the promotions as well as the detailed written arguments submitted on behalf of both the applicant and the respondents in detail. From the records, it is clear that the 4th respondent Sri Katta Narasimha Rao has always been above the applicant in the selection. The applicant after several rounds of litigations had secured 48.75 marks whereas Sri Katta Narasimha Rao who was originally given 50.5 marks was brought down by 2 marks finally for two reasons; first by stating that the minimum educational qualifications required for the selection to the post of Assistant Loco Pilot was ITI passed and since Sri Katta Narasimha Rao was ITI passed, he should have been given only minimum of 3 marks whereas he was wrongly given 4 marks. Therefore, the respondents would state in their additional written arguments note filed on 12.10.2019 that the total marks of Sri Katta Narasimha Rao had become 48.5 i.e. 0.25 marks below that of the applicant. Therefore, he had been placed below the applicant in the panel. Subsequently, in their further additional arguments note filed on 23.10.2019, the respondents would state that based on the orders of this Tribunal in OA.No.135/2014, they had to reduce 1 mark from the marks given for record of service to the 4th respondent i.e. Sri Katta Narasimha Rao since he was imposed with the minor penalty of withholding one set of privilege passes on 10.12.2007. Therefore, his marks under the record of service had become 19 whereas earlier it was 20. The point regarding the minor penalty was challenged by the 4th respondent Sri Katta Narasimha Rao. In the written arguments note submitted by the Counsel for the applicant, vide para-7, it was mentioned that the withholding of one set of privilege

passes on 10.12.2007 was cancelled on appeal during the year 2008 and therefore, deducting one mark for the same is not in order. In their latest additional written arguments note furnished on 29.12.2019, the respondents have stated that there is no entry regarding the cancellation of this penalty in the service register of the 4th respondent Sri Katta Narasimha Rao. They have also enclosed the entire service register. However, the respondents are not able to produce the DAR file stating that the same has been disposed of. The meaning of this statement is not clear to us since it is not clear whether the DAR file has been destroyed or not. However, we see from the service records produced by the respondents themselves that the educational qualification of Sri Katta Narasimha Rao has been mentioned as PUC and ITI from the beginning and therefore, the contention of the respondents that they reduced one mark from his qualification which was additionally and wrongly given earlier is patently wrong. This shows that the marks that should have been awarded to Sri Katta Narasimha Rao is actually 49.5 which is above the marks secured by the applicant i.e. 48.75. Even though we would not like to comment directly stating that the entire action on behalf of the respondents appears to be intended only to defeat the case of other applicants relating to their original applications seeking stepping up of pay on par with the applicant, the case of the respondents falls flat on the basis of their own submissions even without considering the fact of the punishment meted out to the 4th respondent being cancelled in appeal during the year 2008 for which the respondents would claim that there is no entry in the service register while at the same time claiming that the DAR file in this behalf has been disposed of and therefore they are not able to produce the same.

6. From the whole proceedings that have been going on before this Tribunal on several occasions, this is a fit case for imposing heavy cost on the respondents. However, we refrain from doing so and allow the OA directing the respondents to issue necessary orders within a period of two(2) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexure-A1: A true copy of Memorandum bearing
No.B/P.608/V/Mech/Rng/LI/Vol.VIII dated 09.11.2018, issued by the
3rd respondent

Annexure-A2: A true copy of Office Order bearing
No.1610/12/2018/V/Mech/Rng/LI/105 dated 17.12.2018, issued by
the 3rd respondent

Annexure-A3: A true copy of Pay slip of the applicant for the month of December
2018, issued from the office of the 3rd respondent

Annexure-A4: A true copy of Notification dtd.20.11.2009 issued from the office of
the 3rd respondent

Annexure-A5: A true copy of Office Order bearing No.951/11/2011/Mech/Rng/51
dtd.14.11.2011, issued from the office of the 3rd respondent

Annexure-A6: A true copy of Memorandum bearing
No.B/P.608/V/Mech/Rng/LI/Vol.V dtd.12.03.2012, issued from the
office of the 3rd respondent

Annexure-A7: A true copy of order in OA No.135/14 dtd.22.04.2015 rendered by
this Hon'ble Tribunal

Annexure-A8: A true copy of judgment dtd.03.06.2016 in WP No.55436/2015(S-
CAT) rendered by the Hon'ble High Court of Karnataka at Bangalore

Annexure-A9: A true copy of Office order bearing No.887/10/2016/Mech/Rng/10
dtd.7.10.2016, issued by the Divisional Personnel Officer (Co-ord),
South Western Railway, Bangalore

Annexure-A10: A true copy of Office order bearing
No.932/121/2016/Mech/Rng/LI/62 dtd.2.12.2016, issued from the
office of the 3rd respondent

Annexure-A11: A true copy of representation dtd.26.12.2016 addressed to the 3rd
respondent

Annexure-A12: A true copy of Office Order bearing
No.591/05/2017/Mech/Rng/LI/28 dtd.17.5.2017 issued from the
office of the 3rd respondent

Annexure-A13: A true copy of representation dtd.20.12.2018 submitted to the 3rd
respondent

Annexure-A14: A true copy of Pay Slip of the applicant for the month of November
2018

Annexures with reply statement:

Annexure-R1: Office Order dtd.19.12.2018

Annexures with rejoinder:

Annexure-A15: A true copy of panel published under Memorandum
No.B/P.608/V/Mech/Rng/LI/Vol.VII dtd.04.10.2016 by the 3rd
respondent Divisional Personnel Officer

Annexure-A16: A true copy of order in OA No.170/00359/2015 dtd.30.1.2017
rendered by this Hon'ble Tribunal

