

**Central Administrative Tribunal
Madras Bench**

OA/310/00136/2015

Dated Wednesday the 17th day of February Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

Chakradhar Nayak
Section Controller,
O/o the Chief Controller,
Salem Division, Southern Railway,
Salem. / .. Applicant

By Advocate M/s.R.Pandian & Saravana Prakash.S

Vs.

1. Union of India, rep by
The General Manager,
Southern Railway,
Park Town,
Chennai 600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600 003.
3. The Divisional Personnel Officer,
Salem Division,
Southern Railway, Salem. .. Respondents

By Advocate Mr.R.Krsihnamurthy

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The facts of the case as stated by the applicant are that while he was working as Station Master in PB-2 with Grade Pay Rs.4200/-, he was subjected to departmental selection for promotion as Section Controller in the same pay band and grade pay and subsequently promoted as Section Controller. However, the respondents failed to fix his pay in terms of Rule 1313 (FR22)(I)(a)(1) of the Indian Railway Establishment Code. As absorption in the post of Section Controller was done pursuant to a positive act of selection, he should have been given the benefit of higher fixation of pay. The applicant made a representation dated 12.8.2012 to the 3rd respondent requesting to grant higher fixation of pay on promotion and shouldering higher responsibility. His claim was rejected by order dated 18.9.2012 stating that both the lower post as well as the promotional post were in the same Grade Pay.

2. It is submitted that in a similar matter in OA 717/2006, this Tribunal allowed the OA holding that promotion from the post of Station Master to the post of Section Controller is promotion with higher responsibility. Against the said order, the respondents filed WP 30151/2007 before the Hon'ble Madras High Court, which dismissed the same by their order dated 25.2.2010 and directed the respondents to implement the order of this Tribunal in the said OA. The respondents preferred SLP (Civil) 12847/2010 before the Hon'ble Supreme Court

which was also dismissed on 30.8.2010. Thus the issue in this regard has attained finality.

3. The applicant gave another representation on 28.10.2013 to the 2nd respondent, a copy of which has been addressed to the 3rd respondent, requesting for higher fixation of pay on promotion and shouldering higher responsibility. The 3rd respondent rejected his claim. The applicant filed OA 1016/2014 challenging the rejection which was disposed of by this Tribunal by order dated 14.7.2014 directing the 2nd respondent to dispose of the representation as per rules. Thereafter, the 2nd respondent rejected the claim of the applicant by impugned order dated 17.12.2014 stating that the order in OA 717/2006 was complied with in personam only in favour of the applicant therein. Hence this OA, seeking to set aside the impugned order dated 17.12.2014 of the 2nd respondent and to direct the respondents to fix the basic pay of the applicant at Rs.16020/- (PB 11820 + GP 4200/-) from 06.7.2012.

4. The respondents in their reply statement contend that the movement from Station Master Gr.III to Section Controller which are both in identical grade pay does not figure in the list of such movements enumerated in Board's letter dated 12.9.2013 for the purpose of granting the benefit of higher pay fixation. The pay can only be fixed according to the relevant Rules in force. On a reference regarding the appointment as Section Controller from the post of Station Master II

in identical scale, Railway Board had clarified by letter dated 16.5.2007 (Annexure R2) as follows:-

“The situation of appointment of Station Master as Section Controller in identical scale has been examined by this Ministry keeping in view the relevant factors. The categories of Station Master and Section Controller belong to two different cadres having different grades in their own hierarchy. Keeping in view the pay scales allotted to both these categories in past and other relevant factors, the situation of appointment of Station Master II in scale Rs.5500-9000 as Section Controller in identical scale cannot be treated as a case of assumption of duties and responsibilities of greater importance. Accordingly this situation has not been considered suitable for grant of benefit of fixation of pay under Rule 1313 FR 22(I)(a)(1)R-II (erstwhile FR 22 C).”

It is evident from the above that pay cannot be fixed under Rule 1313 (FR 22)(1) (a)(1) R-II in all cases of selection/appointment and can be fixed only according to the relevant rules in force, contend the respondents.

5. Heard the learned counsel for the applicant and the respondents and perused the pleadings and material produced by the rival parties.

6. Learned counsel for the applicant points out that the case is fully covered by the order of this Tribunal in OA 717/2006 dated 22.6.2007 which was upheld by the Hon'ble High Court in WP 30151/2007 dated 25.2.2010 and by the Hon'ble Apex Court by order dated 30.8.2010 in SLP (Civil)...../2010 (CC 12847/2010).

The Hon'ble Supreme Court while dismissing the SLP has held as follows:-

“In our view, the Tribunal had rightly interpreted Rule 1313 of the Railway Establishment Code and directed that the pay of the respondent, who had been promoted from the post of Station

Master Grade-II to the post of Section Controller be refixed from the date he assumed higher responsibilities, i.e. 23.11.2003 and the High Court did not commit any error by refusing to interfere with the order of the Tribunal.”

It is also submitted that similar issue had been dealt with by this Tribunal in OA 135/2015 and the same was allowed by order dated 21.12.2015.

7. Learned counsel for the respondents on the other hand, draws attention to the provision of the rules to plead that the benefit of Rule 1313 could only be given where the Railway Establishment is satisfied that the post to which an employee is promoted carried higher duties and responsibilities. However, he agrees that it is a covered matter and it could be disposed of on the same lines.

8. I have carefully considered the facts of the case in terms of the settled law. It is clear that the applicant is squarely covered by the ratio of the aforesaid orders. As it has been held in similar cases that the post of Section Controller carried higher functional responsibilities than the post of Station Master, the OA succeeds. The impugned order dated 17.12.2014 of the 2nd respondent is set aside. The respondents are directed to issue necessary orders refixing the pay of the applicant with effect from the date he assumed higher responsibility i.e., from the date of promotion within a period of two months from the date of receipt of a copy of this order. No order as to costs.