

**Central Administrative Tribunal
Madras Bench**

OA/310/01367/2014

Dated Thursday 28th January Two Thousand Sixteen

P R E S E N T

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

S.Sornalakshmi
Chief Controller,
O/o the Chief Controller,
Madurai Division,
Southern Railway, Madurai. .. Applicant

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

Vs.

1. The General Manager,
Southern Railway,
Park Town,
Chennai 600 003.
2. The Senior Divisional Personnel Officer,
Madurai Division,
Southern Railway,
Madurai.
3. The Senior Divisional Personnel Officer,
Madurai Division,
Southern Railway, Madurai. .. Respondents

By Advocate Mr.K.Muthamilraja

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

The facts of the case as stated by the applicant are that while working as Traffic Inspector/FOIS (ex-cadre post of Station Master) in Pay Band-2 with Grade Pay Rs.4600/- on MACP (substantive GP 4200) she was subjected to a departmental selection for promotion as Section Controller in the same scale PB and GP and she was subsequently promoted as Section Controller. However, the respondents failed to fix her pay in terms of Rule 1313 (FR22)(I)(a)(1) of the Indian Railway Establishment Code according to which the movement from the post of Station Master to the post of Section Controller is a promotion. As absorption in the post of Section Controller was done pursuant to a positive act of selection as directed in Para 213 of the IREM she should have been given the benefit of higher fixation of pay on promotion for shouldering higher responsibility. The applicant's representations to the 2nd respondent and 3rd respondent on 05.3.2012 and 05.04.2013 requesting for higher fixation of pay on promotion in terms of Railway Board's latest order permitting fixation of higher pay when promoted to hold higher responsibility eventhough both the feeder and promotional cadres are in the same PB and GP were not responded to.

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 filed OA 897/2014 which this Tribunal disposed of by order dated 27.06.2014 directing the respondents to decide of the representation as per rules. Consequent to the said order of this Tribunal, the 3rd respondent by impugned order dated 04.08.2014 rejected the claim of the applicant holding that the order of the Tribunal in OA 717/2006 has been complied with in personam only in favour of the applicant therein. Hence, this OA seeking to set aside the impugned order dated 04.8.2014 of the 3rd respondent and to direct the respondents to fix the basic pay of the applicant at Rs.19700/- (PB + GP) from 03.11.2011 and thereafter to effect consequential re-fixation on her further promotion as per rules.

4. The respondents in their reply statement contend that the applicant was in the supervisory cadre of Station Master when she opted for the post of Section Controller, which is the lowest scale in that cadre and as such she is not entitled for the fixation of pay as claimed by her. The applicant in OA 717 of 2006 was working as a Station Master and he was promoted to the post of Section Controller, which post controlled many Station Masters working in a Section of the Railway. Whereas, in the case of the applicant it is not so and she was not

working directly under the control of a Section Controller and she was working in a supervisory post of Traffic Inspector and hence she cannot quote the order in OA 717/2006 in support of her claim. The Railway Board while issuing the letter dated 24.5.1999 had analysed the duties and responsibilities for the various posts for which the promotional opportunities were available and after due consultations listed the categories which are eligible for second fixation of pay in the same scale of pay when movement from one post to another was carried out. The post of the applicant which was not available in the said list of categories of posts and hence she is not entitled for fixation of pay as claimed by her as it was in accordance with the letter issued by the Railway Board.

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

6. Learned counsel for the applicant submits 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."

7. Learned counsel for the respondents, however, drew 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.

8. I have carefully considered the facts of the case in terms of the settled law. This Tribunal had dealt with similar issues in various OAs directing the respondents to refix the pay of the applicants therein at their respective dates and setting aside the impugned orders therein. It is clear that the applicant is squarely covered by the ratio of the aforesaid orders. It has been held in a similar case that the post of Section Controller carried higher functional responsibilities than the post of Station Master.

9. The respondents' contention that the fact that the applicant was not working as Station Master but as Traffic Inspector would make her ineligible to invoke the ratio of the order in OA 717/2006 is not valid. The respondents admit in para 8 of the reply statement that the 'applicant was moved from the same scale of her substantive cadre of Station Master to the lowest scale of Section Controller....' Hence she cannot be discriminated against vis-a-vis other Station Masters promoted Section Controllers. The rights of an employee flowing from her substantive status cannot be taken away for the only reason that she was working on an excadre post at the relevant time. Her appointment as Section Controller had nothing to do with her excadre occupation and her eligibility was determined

only with reference to her substantive post.

10. It is also seen that Annexure A2 appointment order states inter alia as follows:-

"The above promotion is ordered
subject to the following conditions:-

(1) The promotion will take effect from the date of assuming higher responsibility. The date of taking up the independent duty should be advised to this office immediately."

The use of the terms 'promotion' and 'assuming higher responsibility' puts the issue beyond a shadow of doubt and, therefore, the ratio of OA 717/2006 must be held to be applicable to the instant case.

11. In view of the above, the OA is allowed. The impugned order dated 04.08.2014 is set aside. The respondents are directed to issue necessary ordersrefixing the pay of the applicant with effect from the date she 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.