

**Central Administrative Tribunal
Madras Bench**

OA/310/01673/2014

Dated Thursday 28th January Two Thousand Sixteen

P R E S E N T

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

U.Shankar
Section Controller,
O/o the Chief Controller,
Tiruchchirappalli Division,
Southern Railway,
Tiruchchirappalli. .. 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,
Tiruchchirappalli Division,
Southern Railway,
Tiruchchirappalli.
3. The Senior Divisional Personnel Officer,
Tiruchchirappalli Division,
Southern Railway, Tiruchchirappalli. .. 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 Station Master in Pay Band-2 with Grade Pay Rs.4200/- on MACP (substantive GP 4200), consequent to his medical de-categorization, he was promoted/absorbed in the promotional post of Section Controller after conducting suitability test and giving extensive promotional training. 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 as directed in Para 213 of the IREM he should have been given the benefit of higher fixation of pay on promotion and shouldering higher responsibility. The applicant's representations to the 2nd respondent and 3rd respondent on 07.4.2013 and 05.09.2013, respectively, 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 even though 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 943/2014 which this Tribunal disposed of by order dated 02.07.2014 directing the respondents to decide of the representation as per rules. Consequent to the said order of this Tribunal, the 2nd respondent by impugned order dated 30.09.2014 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 30.9.2014 of the 2nd respondent and to direct the respondents to fix the basic pay of the applicant at Rs.19880/- (PB + GP) from 11.12.2012.

4. The respondents in their reply statement contend that the denial of pay fixation to the applicant on his absorption to the post of Section Controller is based on Railway Board letter dated 24.5.1999 (Annexure R1). The said letter does not specify the post of Station Master in the feeder category and the post of Section Controller in the promoted category. Therefore, the denial of benefit of pay fixation to the applicant on his promotion to the post of Section Controller in identical scale of pay is not in violation of Rule 1313(FR 22)(I)(a)(1) of IREC

5. Heard the learned counsel for the applicant and the respondents and perused the pleadings, rejoinder and other 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. It has been held in a similar case that the post of Section Controller carried higher functional responsibilities than the post of Station Master. This Tribunal had dealt with similar issues in various OAs and directed the respondents to refix the pay of the applicants therein after setting aside the relevant impugned orders. The case of

the applicant is squarely covered by the ratio of the aforesaid orders. The fact that the applicant herein was medically decategorised on the post of Station Master does not alter the situation as he could not have been appointed as Section Controller unless he had been subjected to the selection process and found fit for the post. The movement from Station Master to Section Controller having already been held to be 'promotion' to a post 'carrying higher responsibilities', it is not possible to single out the applicant to arrive at a different determination.

9. In view of the above, the OA is allowed. The impugned order dated 30.09.2014 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.