

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01064/2016

Monday, this the 5th day of October, 2020

C O R A M :

**HON'BLE Mr. P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

M.K.Sasikumar, aged 56 years,
S/o Late Krishna Pillai,
Private Secretary Grade II,
Office of the Chief Administrative Officer (Construction),
Southern Railways, Ernakulam, Cochin-682 016. ...Applicant

(Advocate : Mr.C.S.G.Nair)

v e r s u s

1. Union of India
represented by the General Manager,
Southern Railways, Chennai-600 003.
2. Chief Personnel Officer,
Southern Railways Chennai-600 003.
3. Divisional Personnel Officer,
Southern Railways, Tiruchirapally Division,
Tiruchirapally-620 001.
4. Chief Administrative Officer (Construction),
Southern Railways, Ernakulam, Cochin-682 016. ...Respondents

(Advocate : Mr.S.Radhakrishnan)

This OA having been heard together on 23rd September, 2020, the Tribunal on 5th October 2020 delivered the following :

O R D E R

By K.V.EAPEN, ADMINISTRATIVE MEMBER

The above O.A has been filed by the applicant for a declaration that he is entitled for pay protection on his transfer from Railway Claims Tribunal (RCT) Ernakulam to Tiruchirapally Division (in short TPJ Division) and to direct the

respondents to restore the pay which he was drawing on his transfer from the RCT to TPJ Division, with all consequential benefits including arrears of pay and allowances within a stipulated period.

2. The applicant joined service as a Stenographer in Baroda Division of Western Railway on 30.8.1985. He was promoted as Confidential Assistant (Senior Stenographer) on 22.12.1987. Later he sought a transfer to TPJ Division of Southern Railway and was transferred to the post of Junior Stenographer in a lower pay scale as per existing rules. However, his pay on transfer was protected although he had joined in a lower post than the post he had held in Baroda Division. Subsequently, in March 1991, he was promoted as a Senior Steno in TPJ Division. It is seen from the records provided by the respondents in another O.A filed by the same applicant, namely, O.A.No.180/1006/2016, that the applicant's pay was protected at Rs.1560/- when he was transferred to TPJ Division and posted as Junior Stenographer in the 4th CPC scale of pay of Rs.1200-2040/. This benefit of pay protection continued when he got promotion as Senior Steno in TPJ Division in the scale of pay of Rs.1400-2600/- on 26.3.1991. Subsequent annual increments earned by him were on the basis of this protected pay of Rs.1560/- as revealed in the additional statement provided by the respondents in O.A.No.180/1006/2016 at Annexure R-4(e).

3. In this connection, the respondents have made the point that employees are entitled to get the benefits of pay fixation under Rule 1313 of the Indian Railway Establishment Manual which corresponds to FR 22 (I) (a) (1) in a post only once. As he was given the benefit of pay fixation when he moved to TPJ Division, he was not entitled to a second pay fixation in the same post.

4. During 1996 the applicant submitted his willingness when volunteers were called for Stenographers in RCT, Ernakulam. He was then selected as a Senior Stenographer in the RCT. He joined the RCT as shown in Office Order dated 8.8.1996 (Annexure A-2) in this O.A. It was mentioned in this order that he was transferred and posted to RCT Ernakulam as Senior Stenographer on the same pay and scale with immediate effect, subject to the usual terms and conditions governing such transfers. **It was specifically indicated in the Order that his lien will be maintained by TPJ Division.** While working at the RCT for a few years, when a vacancy of a post of Senior PA arose, the applicant was selected. He was recommended for promotion as Senior PA in the scale of Rs.2000-3200/- (Rs.6500-10500 revised) in the vacancy. As per Annexure A-3 order and the proceedings of the Selection Committee to the post of Senior PA, the RCT had called for volunteers from among eligible Stenographers upto two grades below from different divisions of Southern Railway. Despite extending the last date for receipt of applications, only two valid applications were received and that too from serving Senior Stenographers at the RCT, Ernakulam. The Selection Committee consisting of the Member (Technical) and Member (Judicial) of the RCT examined the credentials of the two applicants and, based on inter-se seniority and records of service, the senior of them, Shri.M.K.Sasikumar (the applicant in this O.A) was recommended for promotion as Senior PA. It was also noted in the minutes that no other applications were received from Southern Railway Headquarters or from Trivandrum/Palghat Divisions of Southern Railway where the notification was sent. The Selection Committee specifically noted that volunteers were called from among Stenographers upto two grades below ie., Rs.1640-2900/- and Rs.1400-2600/- pre-revised. Accordingly, as per Annexure A-4, the applicant was promoted as Senior PA in the grade of Rs.2000-3200/- (revised Rs.6500-10500/-) in the RCT

Ernakulam Bench with effect from 23.4.1998. The applicant then continued in the post of Senior PA for a period of 14 years in RCT, Ernakulam Bench until he was relieved on 22.11.2012 vide RCT order at Annexure A-7. He was directed in the same order to report to Senior DPO, Southern Railway, TPJ Division for further posting.

5. The applicant had challenged the above repatriation order before this Tribunal in O.A.No.1070/2012. He has now claimed that during the course of argument when his counsel apprehended reduction in pay on his reversion to TPJ Division, the counsel for the Railways assured that pay would be protected and there would be no reduction in the same. The O.A.No.1070/2012 was not allowed and the applicant was repatriated. It was noted in the order that there was force in the contention of the respondents that excess staff cannot be retained and expenditure incurred in that respect, when work load has come down drastically (in reference to the RCT). It was also indicated that domestic problems of the applicant cannot take precedence over wasteful expenditure being incurred by the RCT and the applicants were recruited in other Divisions and cannot have a vested right to continue to work in RCT forever when tenure is fixed as five years. The applicant then filed O.P.(CAT)No.69/2013 against the orders in O.A.No.1070/2012. This was dismissed by the Hon'ble High Court of Kerala, concluding, inter-alia, that the continuation in the same place beyond five years was rightly found incorrect by this Tribunal and that the Tribunal was justified in saying that domestic problems of the applicant cannot take precedence over the expenditure that was incurred by the RCT, Ernakulam. A recourse was given to the applicant only to approach a higher or superior officer who could consider his case on a sympathetic ground and not by any legal action. It is to be noted that the orders of the Hon'ble

High Court of Kerala or of this Tribunal do not reveal any commitment made relating to the protection of the pay drawn by the applicant as Senior PA in the RCT in any future reverted post as has been claimed by him.

6. On reversion to TPJ Division, it appears that the applicant's pay was fixed at the level of his substantive pay in the Pay Band Rs.9300-34800/- at Rs.17940/- plus GP Rs.4600/-. Before this, he had been drawing his officiating pay as Senior PA in the RCT at Rs.19620/- plus GP Rs.4600/- in the Pay Band Rs.9300-34800/-. Annexure A-8 which is the Last Pay Certificate on his repatriation to TPJ Division, has clearly made this distinction between his substantive pay and officiating pay at Point No.12. The applicant has disputed this reduction in pay by Rs.1680/- per month in this O.A, as done without any notice and in violation of natural justice.

The main grounds that he makes are :

- (a) The reduction of pay is without notice which is a great injustice and violation of natural justice.
- (b) His promotion as Senior PA was after a due process of selection and should, thus be considered as a regular promotion as per Annexure A-5 and Annexure A-6.
- (c) The Railway Claims Tribunal is a part of the Indian Railways system and is a subordinate office under the control of the Railway Board. The applicant had responded to the request of the RCT and given his willingness to work there, upon which he was transferred to the RCT, Ernakulam from TPJ Division on the same pay scale that he was drawing. Subsequently, he was promoted as Senior PA and he continued for 14 years in the said post and that too on a regular basis.
- (d) His reduction in pay on reversion from RCT to TPJ Division is illegal and arbitrary nullifying the promotion and the work he had put in the higher grade, shouldering higher responsibility, for a long period of 14 years without any break.

7. The applicant thus claims that he is entitled for pay protection and he has prayed for a direction to restore his pay which he was drawing on his transfer from RCT to TPJ Division with all consequential benefits including arrears of pay within the stipulated period along with cost of this O.A.

8. The Respondents in their reply have indicated that RCTs have no permanent cadre. The requirement of staff is catered from the Zonal Railway in which the RCT is located. Since RCT, Ernakulam is located within the jurisdiction of Southern Railway, its requirement of staff is catered from the Southern Railway by way of deputation. Accordingly, applicant's request for posting in RCT, Ernakulam was considered and he was transferred and posted to RCT, Ernakulam on a deputation basis in the same scale of pay after maintaining his lien in TPJ Division. The order at Annexure A-2 clearly indicated that his seniority would be regulated as per the extant rules and regulations that may be issued from time to time and would also be governed by new conditions that are issued. While on deputation to RCT the applicant's promotion as Senior PA in grade Rs.6500-10500/- (RSRP) was purely on an adhoc basis, vide Annexure A-4 dated 11.5.1998. He had then made a representation on 31.8.2000 to Chairman, RCT Principal Bench, Delhi for regularization of his promotion in this scale. The same was considered by the RCT Principal Bench but was regretted vide letter dated 28.9.2000, a copy of which is provided at Annexure R-1. However, later the Additional Registrar, RCT, Ernakulam on the basis of an approval given by Member (Judicial), vide Office Order dated 17.9.2009 (Annexure A-5) ordered that the promotion of the applicant as Senior PA in the scale of pay of Rs.6500-10500/- with effect from 23.4.1998 should be treated as regular. This was immediately objected to by the Associate Accounts of RCT, Ernakulam vide their letter dated 15.12.2009 at

Annexure R-2. It was observed that regular promotion can only be given by the Cadre Controlling Authority and the schedule of powers of RCT does not empower the Member (Judicial) to order regular promotion of staff posted in the RCT.

9. The respondents have indicated that the post of Senior PA or Private Secretary Grade II is a headquarters controlled post and selection to the said post is to be done by Chief Personnel Officer, Southern Railway. To substantiate this, they have annexed a copy of the notification (at Annexure R-3) dated 13.6.2008 issued by the Chief Personnel Officer, Southern Railway for filling up 23 vacancies of Private Secretary (Grade II). This notification stipulates that there is a selection procedure for the said post which involves a written examination and viva voce to assess the professional ability of the candidates. The selection is on an All Railway basis.

10. After the objection raised by the Associate Accounts of RCT, Ernakulam, the Additional Registrar had ordered the cancellation of the regular promotion of the applicant in Annexure A-5. The copy of the said cancellation order (at Annexure R-4) was issued with the approval of the Member (Judicial), RCT, Ernakulam. (This was not produced or flagged by the applicant in the O.A). The applicant, thus, continued to hold the post of Senior PA on an adhoc basis till his final repatriation on 22.11.2012. After the implementation of the 6th CPC recommendations, the applicant's pay was fixed vide order dated 16.9.2010 (Annexure R-5) with effect from 1.1.2006 with reference to the substantive pay in the scale Rs.5000-8000/- (PB-2 with GP Rs.4200/-) as well as with reference to the officiating scale Rs.6500-10500/- (PB-2 with GP Rs.4600/-) under Rule 7(1) of Railway Services Revised Pay Rules, 2008. In the same order, the applicant was

also granted financial upgradation under MACP Scheme with effect from 1.9.2008 granting him GP of Rs.4600/- in Pay Band-II in his substantive pay. Thus, at the time of his repatriation back to TPJ Division, his substantive pay was Rs.17940/- with GP Rs.4600/- with grant of third financial upgradation under the MACP Scheme, while his officiating pay was Rs.19620/- with GP Rs.4600/- as shown at Annexure A-8.

11. The respondents observe that on repatriation, the applicant restarted drawing salary on the basis of substantive pay, which he did not challenge. The point made by the respondents is that the applicant's request for regularization was specifically rejected by the RCT Principal Bench at New Delhi. Further, the order of regularization vide Annexure A-5 was subsequently cancelled by RCT, Ernakulam vide Annexure R-2. In addition, Rule 7(1) of Railway Services Revised Pay Rules, 2008 allows such separate fixation in respect of substantive pay in the permanent post in which he holds a lien or would have held a lien and in respect of a pay in the officiating post. The respondents state that this distinction was maintained throughout his tenure in RCT as can be seen in Annexure R-5 order dated 16.9.2010, as well as, in the Last Pay Certificate dated 5.12.2012 at Annexure A-8.

12. Further, the respondents have observed that the RCTs have no cadre posts. All posts available in RCTs are ex-cadre. They are filled by the Zonal Railways on the basis of deputation only. RCTs also have no power to order regular promotion of staff posted in them. Since the post of Private Secretary Gr.II is centrally controlled by the Headquarters office, selection to the said post is done by the Chief Personnel Officer, Southern Railway. The Respondents state that the adhoc promotion of the applicant ordered by RCT, Ernakulam was never regularized and

was only done in the exigencies of service there. Neither this Tribunal in its order in O.A.No.1070/2012 or the Hon'ble High Court of Kerala in its judgment in O.P.(CAT) No.69/2013 had indicated that the applicant was to be given pay protection on his reversion. Thus, on repatriation to the parent division, the applicant was entitled for fixation of pay attached to his substantive post only and there is no illegality as alleged. The Hon'ble Supreme Court in C.A.No.5893/2007 and C.A.No.7292/2013 has held that an employee after his repatriation from the ex-cadre post outside the parent department has to come back to his parent department to occupy the same position in his parent department, unless, in the meanwhile, he has earned promotion in his parent department as per the Recruitment Rules.

13. We have examined all the records and documents provided. We have also heard Shri.C.S.G.Nair, learned counsel for the applicant and Shri.S.Radhakrishnan, learned counsel for the respondents in detail.

14. We note that it is not at all disputed that the applicant was serving in the RCT, when he got his promotion as Senior PA. The issue that is mainly to be considered by us is whether this transfer to the RCT was on a simple regular basis or was on deputation and also whether the promotion secured therein was regular or on an adhoc basis as this will impact the prayer for relief. On going through the documents provided and also after hearing the arguments, we note that the transfer of the applicant to the RCT was not specifically indicated as being on deputation; it was as a normal transfer and posting from his previous job to the RCT in the same grade. However, at the same time, it was clearly indicated that his lien would be maintained by the TPJ Division. Also it was indicated that his seniority would

be regulated as per extant rules and instructions that may be issued from time to time and also would be governed by any new conditions that may be issued. This appears to lend credence to a conclusion that while the posting of the applicant in the RCT was by means of a transfer, it was not considered as simple intra-cadre movement as it was mentioned that his lien will be maintained at the TPJ Division. Thus it appears to be a transfer out of his normal cadre.

15. It is also to be noted that RCTs were constituted as an independent organization under the Ministry of Railways. From a brief history of their evolution, it is clear that all Railway officials who were posted in it were sent on a basis which is clearly not to be seen as a simple transfer to one post to another. As per the instructions produced at Annexure R-9 dated 25.5.1993, it was specified no deputation allowance was allowed to the Railway staff and Railway officers posted in this Tribunal. Further, the respondents have produced another order dated 16.8.1996 which modified the Office Order dated 8.8.1996 transferring the applicant to the RCT. This order states that the applicant was transferred and posted at RCT, Ernakulam on a deputation basis and that he is eligible for all privileges on transfer account (Annexure R-10). From a reading of these diverse instructions, it appears to us that the RCTs have always had a special status even though they may be legally just a subordinate office of the Ministry of Railways. The officials deputed/transferred/selected for a posting there are clearly going to posts which appear to be outside their own cadre. Thus, we note the use of the phrase 'transfer on deputation basis' as evidenced in Annexure R-10. As such, if this premise is accepted, it is clear that any promotion given within the RCT, which does not have the approval or is not issued by the actual line of authority within the Railway Administration, has to be considered as purely temporary and adhoc.

However long the official might have got the benefit of this promotion he enjoys it for that period only. In the instant case, it is also clear that the Railway Authorities were throughout conscious of the fact that the promotion in the RCT was only adhoc and not regular. This is underlined by the fact that every time there was an effort by the applicant to regularize the promotion, it seems to have been objected to and removed on specific instructions of the Cadre Controlling Authority.

16. It should also be noted that the RCTs have been constituted under a separate legal provision, namely, the RCT Act of 1987, whereas the Railways are functioning under the Indian Railways Act of 1890, amended by the Railways Act of 1989. The Central Government under Section 30(1)(d) of the said RCT Act has the power to make Rules for the salaries and conditions of service of officers and other employees of the RCT. As such, it is clearly a different establishment and, thus, posting into the RCT from the Zonal Railways or otherwise cannot be considered as just a simple transfer.

17. Further, in relation to the claim of protection of pay of the applicant, it is clear that from Annexure R-5 dated 16.9.2010 fixing the pay after the 6th CPC, as well as from Annexure A-8 (the Last Pay Certificate) on his reversion back to TPJ Division that, there has been always a clear distinction drawn between his officiating pay in the RCT and his substantive pay. This distinction has been maintained throughout the period. The applicant was not considered or treated as someone who had left his cadre and joined another cadre permanently but as an official who retained his lien in his earlier cadre. Further, we note that persons senior to the applicant in the parent department in TPJ Division who remained there were not promoted due to the non availability of vacancies. For example, his

immediate senior Shri.T.N.Ananthapadmanabha Rao got promoted to the post having pay scale of Rs.6500-10500/- only on 18.9.2015. As such, we feel that the applicant cannot claim benefit of the adhoc promotion that he got in the RCT as a regular promotion in his cadre.

18. The applicant has made a special case relating to his repatriation by stating that the respondents have admitted that the applicant became surplus in the RCT and, as such, had to be repatriated. If this is the case, he states that the respondents have to be guided by Annexure A-13 order under which surplus employees are permitted to carry the current pay scale along with them to the lower post where they are redeployed. We have not seen any Order declaring the applicant as surplus and, therefore, covered by this instructions. On the contrary, he was repatriated back to his parent cadre and not to any other post. While it is true that this Tribunal in O.A.No.1070/2012 had observed that excess staff cannot be retained and expenditure incurred in that respect when workload has come down drastically, this does not amount to being treated as surplus in the RCT which calls for specific orders. Further, the concept of surplus generally relates to the cadre in which the person is borne and not to an organization where he is transferred on deputation. Hence, we do not view the repatriation of the officer back to TPJ Division from the RCT as anything but a return to the parent cadre from a period spent outside.

19. On balance, therefore, we do not find that a case can be made for continuation or protection of the applicant's pay at the level of Senior PA in the Pay Band Rs.9300-34800/- at Rs.19620/- plus GP Rs.4600/-. We find that his employee, the Railways, correctly refixed his pay on return to his cadre on the basis of his substantive pay. We find that this is also underlined by the decision of the

Hon'ble Apex Court in **Indu Shekhar Singh And Ors. v. State of U.P & Ors.** [(2006) 8 SCC 129] wherein the Hon'ble Apex Court held that there was no fundamental right in regard to counting of past services rendered in an autonomous body and that past services can be taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain such benefit of past service.

20. For all these reasons as articulated above, we do not allow the O.A to succeed. Accordingly, the reliefs as prayed for in the O.A are not granted and the O.A is dismissed. No costs.

(Dated this the 5th day of October 2020)

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

asp

List of Annexures in O.A.No.180/01064/2016

1. **Annexure A1** : True copy of the letter No.RCT/ERS/Selection/NG dt:2.8.1996.
2. **Annexure A2** : True copy of the Office Order No. M&G/111/96 dt:8.8.1996.
3. **Annexure A3** : True copy of the Letter No.RCT/ERS/Selection/9 dated 18.2.1998 issued by the Railways Claims Tribunal.
4. **Annexure A4** : True copy of the Office Order No.2/1998 dt:11.5.1998 issued by the Additional Registrar, Railway Claims Tribunal, Ernakulam.
5. **Annexure A5** : True copy the Office Order No.1/2009 dt:17.9.2009.
6. **Annexure A6** : True copy of the Office Note prepared in this regard with the Order of the Hon'ble Judicial Member RCT.
7. **Annexure A7** : True copy of the Office Order No.RCT/ERS/9/Vol.V dt:22.11.2012.
8. **Annexure A8** : True copy of the Last Pay Certificate issued by the Additional Registrar, RCT, Ernakulam Bench.
9. **Annexure A9** : True copy of the representation dt: 25.1.2013.
10. **Annexure A10** : True copy of the representation dt: 9.6.2016 submitted to the 2nd respondent.
11. **Annexure A11** : True copy of the representation dt: 15.7.2016 to the 1st respondent.
12. **Annexure A12** : True copy of the order dt: 17.12.2012 in O.A.No.1070/2012.
13. **Annexure A13** : True copy of the Communication PBC No.118/2017 dt : 4.8.2017 issued by the 2nd respondent.
14. **Annexure R1** : True copy of the RCT Principal Bench's letter dated 28.9.2000.
15. **Annexure R2** : True copy of the Associate Accounts, RCT Ernakulam's letter dated 15.12.2009.
16. **Annexure R3** : True copy of the Notification dated 13.6.2008 for selection to the post of Private Secretary Gr-II Rs.6500-10500/- in Southern Railway.
17. **Annexure R4** : True copy of the Addl. Registrar RCT Ernakulam's order dated 10.2.2010 cancelling the Annexure A-4 order.
18. **Annexure R5** : True copy the Memorandum dated 16.9.2010.

19. Annexure R6 : True copy of the Railway Board's Circular No.89/TC(RCT)/4/5 dated 5.7.1989.

20. Annexure R7 : True copy of the Railway Board's Circular No.89/TC(RCT)/4/5 dated 25.10.1989.

21. Annexure R8 : True copy of the letter No.89/TC(RCT)4-2 dated 7.8.1990.

22. Annexure R9 : True copy of the Railway Board's Circular No.E(P&A)II/91/Bonus/2 dated 25.5.1993.

23. Annexure R10 : True copy of the Office Order No.M&G/120/96 dated 16.8.1996.
