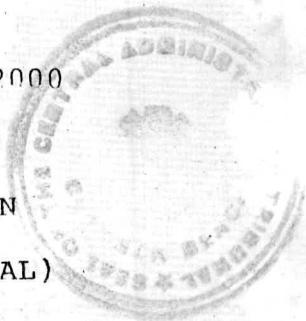


CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS. 604, 605 & 606 OF 1999
Cuttack, this the 23rd day of August, 2000



CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

In OA 604/99

1. Sri R.Gupteswar Patnaik, aged about 31 years, son of R.Bhaskar Rao Patnaik, At/PO-Nabarangpur, Vill-Bastabguda, Dist.Nawarangapur.
2. Ranjit Kumar Patnaik, aged about 31 years, At-Hanuman Mandir Street, Langipalli, Berhampur, Dist.Ganjam.
3. Saroj Kanta Swain, aged about 29 years, son of Bichitrananda Swain, At/PO-Balia, Bibhutipara, Via-Derabish, Dist.Kendrapara, Pin-754 289

All of them are now working as Junior Accounts Assistant in the office of the Senior Divisional Accounts Officer, South Eastern Railway, Khurda Road, At/PO/Dist.Khurda....

..... Applicants

In OA 605/99

Sri Simanchal Behera, aged about 31 years, son of Tabatia Behera, At/PO-Padamari, PS-Pattapur, Dist.Ganjam, at present working as Junior Accounts Assistant in the office of Senior Divisional Accounts Officer, South Eastern Railway, Khurda Road, At/PO/Dist.Khurda
..... Applicant

In OA 606/99

Venkata Prasad Das, aged about 32 years, son of Goura Gopal Das, At-First Tota Street, Bejjipur, PO-Hillapatna, Berhampur, Dist.Ganjam at present working as Accounts Assistant in the office of Senior Divisional Accounts Officer, South Eastern Railway, Khurda Road, At/PO/Dist.Khurda....
..... Applicant

Advocates for applicants - M/s S.Sarkar
S.Mishra

S.Sarkar
Vrs.

In OAs 604,605 & 606/99

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta-43 (WB)
2. Divisional Railway Manager, South Eastern Railway, Khurda Division, Khurda Road, At/PO/Dist.Khurda.

3. Senior Divisional Accounts Officer,
South Eastern Railway,
Khurda Division, Khurda Road,
At/PO/Dist.Khurda.

4. Accounts Officer (Traffic) CBL, office of the
Financial Advisor & Chief Accounts Officer (WST),
Mumbai (CST), Central Railway, Mumbai-400 001.

5. Financial Advisor-cum-Chief Accounts Officer (G),
South Eastern Railway, Garden Reach, Calcutta-43.

.....

Respondents

Advocates for respondents - M/s B.Pal
S.Roy
A.A.Khan
H.K.Swain

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three Original Applications have been heard separately, but the petitioners in all the three cases are almost similarly situated and have made identical prayers. Respondent Railway authorities have intheir counters in all these cases have taken identical stands opposing the prayers of the applicant. In view of this, one order will cover the threecases though the facts of the three cases are set out separately.

S. Som
2. Applicant in OANo.605 of 1999 has stated that he was originally appointed as Junior Accounts Assistant in order dated 7.10.1994 (Annexure-1) in Central Railway in the pay scale of Rs.1200-2040/- which was revised to Rs.4000-6000/- with effect from 1.1.1996. He joined as such on 7.10.1994. In order dated 13.1.1998 (Annexure-2) the applicant was promoted to the post of Accounts Assistant with effect from 7.10.1997, i.e., exactly on completion of three years of service as Junior Accounts Assistant. The scale of pay of Accounts Assistant was Rs.1400-2600/-(pre-revised) which was revised to Rs.5000-8000. The applicant made a

representation to transfer him to Khurda Road Division in terms of Rule 227(a)(2) of Indian Railway Establishment Code, Volume I and undertook to abide by the conditions stipulated therein. The applicant has stated that these conditions provide that inter-Divisional Railway transfer on own request the employee seeking the transfer will be placed at the bottom of the cadre and his pay will be protected. The applicant came on inter-Divisional Railway transfer and joined the office of Financial Advisor-cum-Chief Accounts Officer, S.E.Railway, Garden Reach (respondent no.5) on 7.9.1998. He is now working as Junior Accounts Assistant in the office of Senior Divisional Accounts Officer, S.E.Railway, Khurda Road. On his joining Khurda Road Division, his pay was fixed at Rs.4300/- in the scale of Rs.4000-6000/-. The applicant's grievance is that while fixing his pay, the pay drawn by him as Accounts Assistant in the Central Railway in the pay scale of Rs.5000-8000/- should have been protected in the lower scale of Rs.4000-6000/- and his pay should have been fixed at Rs.5000/- instead of Rs.4300/-. In view of this, he has prayed that fixation of his pay at Rs.4300/- in the pay scale of Rs.4000-6000/- should be declared illegal and respondent nos. 1 to 3 should be directed to allow the applicant basic pay of Rs.5000/- with effect from 1.8.1998 in the scale of Rs.4000-6000/- and pay him the salary with 18% interest.

3. The three applicants in OA No.604 of 1999 had joined as Junior Accounts Assistant in Central Railway on 1.6.1994, 28.5.1994 and 3.6.1994 in the scale of Rs.1200-2040/- and were promoted to the post of Accounts Assistant in the scale of Rs.1400-2600/- with effect from the dates they completed three years of

service. They came to Khurda Road Division on inter-Divisional Railway transfer on their own request and joined on 4.8.1998. Their grievance is that on joining at Khurda Road Division, their pay has been wrongly fixed at the level of Rs.4300/- in the pay scale of Rs.4000-6000/- and according to them, their pay should have been fixed in the scale of Rs.4000-6000/- at the level of Rs.5150/- with effect from 1.8.1998 and they have asked for such fixation and arrears along with 18% interest.

4. Applicant in OANo.606/99 joined as Junior Accounts Assistant in Central Railway on 20.5.1994 and was promoted to the post of Accounts Assistant with effect from 23.5.1997. He came on inter-Divisional Railway transfer to Khurda Road on his own request and joined on 31.10.1997 and his pay was fixed in the lower scale of Rs.4000-6000/- at the level of Rs.4200/-. The applicant wants that this pay fixation at Rs.4200/- should be declared illegal and his pay should be fixed at Rs.5000/- in the lower scale of Rs.4000-6000/- giving him arrears with 18% interest.

5. From the above it is noted that the case of the applicants in these three applications is exactly the same. Only the dates of their joining as Junior Accounts Assistant, promotion to the post of Accounts Assistant and joining in the lower grade of Junior Accounts Assistant in Khurda Road Division after inter-Divisional Railway transfer on their own request differ from case to case.

6. The respondents in their counter have not disputed the factual aspects of the applicants joining and their promotion in the parent Railway and

their transfer to Khurda Road Division on their own request. Their point is that in accordance with the rules and instructions, pay of the applicants had to be fixed in the lower scale of Rs.4000-6000/- and in that grade the pay of these applicants has been fixed correctly. The rules and instructions referred to by the respondents in their counter will be discussed while considering the submissions made by the learned counsel of both sides. The applicants in all these cases have filed rejoinder and the respondent have filed counter to the rejoinder. It is not necessary to refer to the averments made in these pleadings because these will be discussed later on.

7. We have heard Shri S.Mishra and Sri S.Sarkar, the learned counsel for the petitioners and Shri B.Pal, the learned Senior Panel Counsel (Railways) and Shri S.Roy, the learned Railway Advocate for the respondents and have also perused the records.

8. Under Rule 227 of the Indian Railway Establishment Code, Vol.I, a competent authority can transfer a railway servant from one post carrying higher scale of pay to a post carrying lower pay scale on written request of the railway servant. In these cases all the applicants have come on inter-Divisional and inter-Railway transfer admittedly on their own request and therefore we are not concerned with this rule in the present cases..

9. The respondents have stated in their counter that existing rules of inter-Railway transfer on own request envisage that employee seeking transfer has to be placed at the bottom of the cadre to which he is seeking transfer in the new unit and his pay in the new place of posting is to be protected if he satisfies

Clause 1 of Railway Board's letter dated 24.2.1995. This has been mentioned in paragraph 8 of counter of the respondents in OA No. 604/99 and this circular dated 24.2.1995 is at Annexure-R/1. Through this circular paragraph 604 of Indian Railway Establishment Manual, Volume I (1989 Edition) has been amended and a new sub-paragraph (a)(iii) has been inserted below sub-paragraph (a)(ii). As the present dispute hinges on a proper understanding of this sub-paragraph (a)(iii), the same is quoted below:

"When a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

When a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted.

When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227(a)(2)-RI (FR-15-A(2) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay, in accordance with FR 22(1)(a)(3)."

Before considering the above rule on which both the sides have placed reliance it is necessary to note one admitted position which is that the applicants were working in higher pay scale of Rs.5000-8000/- in the parent Railway as Accounts Assistant and they gave their option to come and join as Junior Accounts Assistant in the lower scale of Rs.4000-6000/- accepting bottom seniority even in that grade. The applicants' only grievance is that while

fixing their pay in the lower scale of Rs.4000-6000/- the pay drawn by them in the higher scale of Rs.5000-8000/- has not been protected which is required to be done under the rules.

10. The above amendment of Paragraph 604 of Indian Railway Establishment Manual, Vol.I came into force with effect from 24.2.1995 and all these applicants came on inter-Railway transfer/inter-Divisional transfer after this date. The first clause of sub-paragraph (a)(iii) of Paragraph 604 provides that when a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower, then the pay drawn in such higher post will be protected. The second clause provides that when a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted. The third clause deals with a situation where the pay drawn by the transferee in the higher scale was more than the maximum of the lower scale which is not the case here and therefore we need not refer to this clause. The respondents have stated that the applicants' pay could have been protected had they been holding the higher post in their parent Railway substantively on regular basis at the time of their transfer to Khurda Road Division. But according to the respondents they were not holding the higher post of Accounts Assistant substantively and therefore their pay could not be protected. It is not a matter of controversy that the applicants were promoted

14

to the post of Accounts Assistant in their parent Railway on regular basis. Each of them was promoted exactly on completion of three years of service as Junior Accounts Assistant. The respondents' point is that the applicants were not holding the higher post of Accounts Assistant in their parent Railway substantively because they had not completed 24 months of service as Accounts Assistant. They have pointed out that some of these applicants have completed 15 months and one has completed only 5 months of service as Accounts Assistant. In support of their contention that only after 24 months of service as Accounts Assistant, it could be said that they were holding the post of Accounts Assistant in their parent Railway substantively and the pay drawn by them as Accounts Assistant in the parent Railway was substantive pay which only could be protected on their inter-Divisional/inter-Railway transfer, the respondents have relied on the Railway Board's circular dated 20.1.1989, circulated as Establishment Serial No.54/89, 20.1.1989, as also the Railway Board's letter dated 20.8.1999. These two letters are at Annexures R/2 and R/3 of the counter to OA No.604/99. This is the crux of the present dispute and we have considered this submission carefully. So far as Establishment Serial No.54/89 is concerned, this Estt. Serial deals with simplification of confirmation procedure for non-gazetted staff-delinking of confirmation from the availability of permanent posts. It is not necessary to refer to the various instructions laid down in this circular, but some of the points laid down in the circular can be noted. For example, it has been provided that confirmation will be made only once in the service of a Railway servant which will be the entry grade. It is

J.S.M

also provided that confirmation is delinked from the availability of permanent posts in the grade. This circular provides separately for confirmation in the entry grade as also on promotion. For confirmation in the entry grade it is provided that the appointee should have satisfactorily completed the probation. On cases of promotion, it is laid down that where the Recruitment Rules do not provide for a probation, a Railway servant promoted on regular basis will have all the benefits that a person confirmed in that grade would have. It is further provided that where probation is prescribed, the appointing authority, on completion of the prescribed period of probation, will assess the work and conduct of the Railway servant and in case he is found fit, an order will have to be passed that the person concerned has satisfactorily completed the probation. It is also provided that since there will be no confirmation on promotion, before an official is declared to have completed the probation satisfactorily, a rigorous screening of his performance should be made. Lastly it is provided, and the respondents have based their entire case on this point, that where Recruitment Rules do or do not provide for a probation period on promotion, the benefit of confirmation in a promotion grade will follow only after a period of 24 months has elapsed from the date of promotion on regular basis. From the above it is clear that this period of 24 months is for the purpose of getting the benefit of a confirmed employee. In the instant case, apparently there is no period of probation prescribed for the Accounts Assistant because the promotion order at Annexure-2 in OA

No.604/99 does not mention anything about the persons who have been promoted to be on probation. The respondents have also relied on the circular dated 20.8.1999 (Annexure-R/3) to the counter in OA No.604/99 in which it is provided that when an employee holding higher post on regular basis has completed a minimum period of 24 months in that higher post and seeks transfer on his own request to a lower post, while fixing his pay in the lower post the pay drawn by him in the higher post will be protected ^{in future} by granting him personal pay to be absorbed. In a third circular dated 17.1.1997 at Annexure-R/4 to the counter in OA No.604/99 the Railway Board's letter dated 2.12.1996 has been circulated. In the Railway Board's letter dated 2.12.1996 it has been clarified that the provisions of second sub-paragraph of sub-para (a)(iii) of Paragraph 604 of the IREM, Vol.I can be invoked only when a person seeks transfer back to a lower post from which he had been promoted under the same seniority unit. In the case of a substantive holder of a higher post seeking voluntary transfer to a lower post to another seniority unit, when his pay drawn in the higher post is less than or equal to a maximum of the scale of pay of the lower post, his substantive pay is to be protected.

11. In the instant case the applicants have come from one seniority unit to another and therefore the second paragraph of sub-para (a)(iii) of Paragraph 604 of IREM, Vol.I, which has been quoted by us above, does not apply to their case. We have already noted that the third paragraph also is not applicable and therefore the case has to be considered only with reference to applicability of the first paragraph of sub-paragraph (a)(iii) of Paragraph 604 IREM, Vol.I. We

have already noted that the applicants have been promoted on regular basis. The twenty-four months rule only applies to benefits which would have accrued to them on confirmation. In any case Accounts Assistant being a promotional grade there would not have been any confirmation of the applicants in the post of Accounts Assistant, as confirmation is to be done only in the entry grade of Junior Accounts Assistant. The rule speaks of holding of the post substantively and on regular basis. As already noted, the applicants were holding the post of Accounts Assistant on regular basis. The respondents' case is that the applicants were not holding the post of Accounts Assistant substantively because they had not completed 24 months of service as Accounts Assistant. The term "substantive pay" has been defined in Rule 103(47) of Indian Railway Establishment Code, Vol.I, which provides that substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the President under Sub-rule 35(iii), to which a Railway servant is entitled on account of a post to which he has been appointed substantively or by reason of his substantive position in a cadre. It may be pointed out that this definition is in pari materia with FR 9(28). The applicants have been promoted to the post of Accounts Assistant on regular basis. They are also not required to be confirmed in the post of Accounts Assistant because according to the circular dated 20.1.1989 given by the respondents themselves, can be done only in the entry grade, which is Junior Accounts Assistant. Therefore, the 24 months of service in the post of Accounts Assistant, which is required for the purpose of considering satisfactory completion of their probation, can have

nothing to do with protecting their pay. The Railway Board's circular dated 2.12.1996 at Annexure-R/4 also provides that in the case of a substantive holder of a higher post seeking voluntary transfer to a lower post to another seniority unit, when his pay drawn in the higher post is less than or equal to the maximum of the scale of pay of the lower post, his substantive pay is to be protected. We have already noted the definition of "substantive pay". This definition does not speak of service for 24 months in the higher post. In view of this, it is clear that the pay drawn by these applicants as Accounts Assistant in their parent Railway will have to be protected in the post of Junior Accounts Assistant in the lower scale of Rs.4000-6000/- which they have joined on their own request. It is also to be noted, and it is not a matter of controversy, that the substantive pay drawn by these applicants as Accounts Assistant in their parent Railway was less than the maximum of the lower scale of Rs.4000-6000/-. It is, therefore, ordered that the substantive pay of the applicants drawn as Accounts Assistant in their parent Railway is to be protected in the lower scale of Rs.4000-6000/- in the rank of Junior Accounts Assistant.

12. The manner of protection of pay is also to be noted. The circular enclosed by the respondents at Annexure-R/3 lays down that in case there is no stage in the lower grade equal to the pay being drawn by the employee in the higher post, his pay will be fixed in the lower scale at the stage next below the pay being drawn in the higher post and the difference will be

paid as personal pay to be absorbed in future increments. While fixing the pay of the applicants in the lower scale of Junior Accounts Assistant, the respondents should follow the above guidelines and protect their pay being drawn in the higher post of Accounts Assistant. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

13. The applicants have asked for interest at 18% on the amounts claimed by them. In the circumstances of the case where there is a genuine misapplication of the instructions in the matter of providing pay protection to the applicants, we do not think that a case for interest is made out. This prayer is accordingly rejected.

14. In the result, therefore, the Original Applications are partly allowed but without any order as to costs.

Sd/- G.Narasimham
Member (J)

Sd/- Somnath Som.
Vice-Chairman.

VICE-CHAIRMAN

August 23, 2000/AN/PS