

12

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION NO.356 OF 2008**

Cuttack this the 29<sup>th</sup> day of August, 2011

Smt.U.Regina Rao...Applicant

-VERSUS-

Union of India & Others...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be referred to C.A.T., PB, New Delhi ? *Yes*

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(A.K. PATNAIK)  
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION NO.356 OF 2008**

Cuttack this the 29<sup>th</sup> day of August, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Smt.U.Regina Rao, aged about 41 years, W/o. U.M.Rao, At-Railway Quarter No.E/G/2, BDA Colony, Rail Vihar, Chandrasekharpur, Bhubaneswar, now roking as Junior Clerk, In the office of Chief Personnel Officer, Bhubaneswar

...Applicant

By the Advocates: M/s.A.K.Panda, S.S.Mishra & A.K.Sahu

-VERSUS-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda
3. The Deputy Chief Personnel Officer (Hq.1), Personal Branch, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda
4. Assistant Personnel Officer (HQ-I) Personal Branch, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate: Mr.M.K.Das,ASC

...  
**ORDER**

**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:**

1. Brief facts leading to filing this Original Application are that the applicant, while working as Technician, Gr.II in Kharagpur Division in the scale of Rs.4000-6000/- was transferred and posted at her own request on reversion as Junior Clerk to East Coast Railway, Bhubaneswar vide Annexure-A/3 dated 16.5.2006 in the scale of Rs.3050-4590/-. At the time of her transfer, the applicant was in receipt of basic pay of Rs.4100/- in the scale of Rs.4000-6000/-. According to applicant, as per the guidelines, her pay was fixed at Rs.4030 + 70 PP in the scale of Rs.3050-4590/- vide Annexure-A/9 dated 5.2.2007 by protecting her pay drawn at higher rate in the scale

NA

of Rs.4000-6000/-. While the matter stood thus, all on a sudden her pay was refixed to her disadvantage at Rs.3050/- in the scale of Rs.3050-4590/- on the ground that she **had not completed 24 months regular service in the grade as per SER Estt.Srl.No.92/2003 in the scale of Rs.4000-6000/-** in the grade of Technician, Gr.II in S.E.Railway. The representations preferred by the applicant for protection of her pay having been rejected by the authorities in the Railway vide Annexure-A/14 dated 18.1.2008, inter alia on the grounds, which are as under:

“Your representations dated 10.10.2007 & 18.11.2007 are examined. You have requested to protect your pay on your posting as Jr.Clerk on Inter railway own request transfer from S.E.Railway and change of category on reversion in terms of RBA No.231/98, 148/2001 & 60/2007. It is informed that aforesaid first two R.B.Establishment Nos. pertain to simplification of confirmation procedure. As such, these rules are not relevant in your case. However, your pay has been fixed correctly in terms of **RBA No.60/2007 and 188/99 which are relevant in your case.**

Your representation dt.06.11.2007 is examined. You have requested to protect your pay on your posting as Jr.Clerk in ECoR, Hqrs. Office on reversion as Jr.Clerk. The RBA No.148/2001 is not applicable in your case. However, while considering your promotion in ECoR, HQrs. as per your turn you will be exempted from appearing the tests and protection of pay shall be considered while fixing of your pay after getting promotion as Hd. Clerk”.

2. Hence, the applicant has moved this Tribunal in the present O.A. seeking the following relief:

- i) To quash/set aside the office order No.ECOR/Pers/02/Misc/Representation dt. 18.1.2008 (Annexure-14) passed by the respondent No.4.
- ii) To direct the respondents to grant pay protection to the applicant as per the Circular/Guidelines enacted by Railway and to refix the salary/scale of pay of the applicant as per order dt. 5.2.2007(Annexure-4).
- iii) To pass such other order/orders direction/directions as deemed fit and proper in the above mentioned facts and circumstances.

See

3. On being noticed the Respondents have filed their counter opposing the prayer of the applicant. The main thrust of the counter is that the applicant while working as Technician Grade II in scale of Rs.4000-6000/- (pre-revised) under S.E.Railway, Kharagpur, applied for own request inter railway transfer to East Coast Railway on change of category as Jr.Clerk-cum-Typist on acceptance of bottom seniority which was granted to her and accordingly she was transferred and posted in the scale of Rs.3050-4590/- (pre-revised) vide Annexure-3 to the O.A. The Respondents further contended that since the applicant had not completed minimum two years service as Technician (Mech) Grade-II in S.E.Railway, her pay was fixed in scale Rs.3050-4590/-RSRP (V.th PC) w.e.f. 17.5.2006 vide Annexure-9 dated 5.2.2007. According to the Respondents, as the Applicant's service records were not available at that point of time, in order to avoid hardship to the applicant her pay was fixed as stated under Annexure-9. After receipt of service records, according to Respondents, it was found that the applicant has joined in the lower post of Jr.Clerk-cum-Typist at her own request only after rendering about 1 year 3 months and 2 days service in the higher post i.e., in the grade of Tech.II and in effect, as she had not completed 24 months regular service in the higher grade of Tech.II(Rs.4000-6000/-) as on 17.5.2006, i.e., the date of joining the lower post, her pay of higher pay could not be protected in terms of **RBE No.188/99** and **RBE No.195/2002**. It has been further submitted that the applicant had not been confirmed in the post of Technician, Gr.II after 12 months in terms of instructions contained in **RBE No.148/2001**. The Respondents have submitted that in accordance with clarifications issued by the Railway Board vide letter dated 17.4.2007, i.e., **RBE No.60/2007**, it has been categorically stated that **on transfer to the lower post/scale under FR 15(a), the pay of a Govt. servant holding a post on regular basis will be fixed at a stage**

Ae

**equal to the pay drawn by him in the higher grade, provided the pay so drawn was less or equal to the maximum of the lower post.**

4. With these submissions, Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.
5. Applicant has filed rejoinder to the counter reiterating more or less the same averments as in the O.A.
6. We have heard Shri A.K.Panda, learned counsel for the applicant and Shri M.K.Das, learned Addl.Standing Counsel appearing on behalf of the Respondents-Railways and perused the materials on record.
7. By filing written note of submissions, the Respondents have added some new facts that the pay fixation of the applicant vide Annexure-A/9 was wrong as no service records were available then. It has been submitted that there is no slab of Rs.4100/- available in the scale of Rs.3050-4590/- meant for Jr.Clerk-cum-Typist. Accordingly, it has been submitted that the applicant is not entitled to pay protection.
8. We have considered the rival submissions and given our anxious consideration to the arguments advanced at the Bar.
9. Before focusing our attention to the terms of reference, it would be worthwhile to mention the factual error that the Respondents in Page-2 of their counter (sub-Para-7) have averred, which reads as under:

“Since the applicant had not completed minimum two years service as Technician (Mech) grade – II in S.E.Rly, her pay was fixed in scale Rs.3050-4590/- RSRP (Vth PC) w.e.f. 17.05.2006. The applicant requested for protection of pay, but it could not be feasible as per extant rules for which she has filed this O.A. for relief”.

10. It reveals from the record that in the first instance the pay of the applicant had been fixed vide Annexure-A/9 dated 5.2.2007 in the scale of Rs.3050-4590/- w.e.f. 17.5.2006 by granting her Rs.4030+70 PP, which having subsequently been refixed

16



to her disadvantage vide Annexure-A/10 dated 2.3.1007, the applicant preferred representation after representation and her representation having been turned down vide Annexure-A/14 18.1.2008, the present O.A. has been filed.

11. Secondly, in Par23 (Page-3) of the counter the Respondents have averred as under:

“As she had not completed 24 months regular service in the higher grade of Tech.II(Rs.4000-6000) on 17.05.2006, i.e, the date of joining the lower post, her pay of higher pay could not be protected in terms of RBE No.188/99 and RBE No.195/2002. Nor was the applicant confirmed in the post of Technician Gr.II after 12 months in terms of instructions contained in RBE No.148/2001 as is evident from the entries in applicant's service record”.

12. In this context it is to be noted that the aforesaid statement made by the Respondents are self contradictory inasmuch as they are not sure about the applicability of duration of completion of probation for the purpose of confirmation of the applicant upon her promotion in the formerly S.E.Railway. This apart, it is the categorical and consistent submission of the Respondents while disposing of the applicant's representation as well as in the counter that RBE No.148/2001 does not apply to the case of the applicant whereas, they have too placed reliance on the said RBE, conversely.

13. Be that as it may, the short point that emerges for our consideration is whether the pay fixation granted to the applicant vide Annexure-A/9 dated 5.2.2007 in the scale of Rs.3050-4590/- (Rs.4030+70 PP) is lawful or otherwise.

14. Since the entire matter hinges upon the interpretation and application of RBE Nos. issued from time to time by the Railway Board which will clinch the issue, we do not feel it proper to traverse into unnecessary facts as submitted by both the parties.

180

15. It is not in dispute that the applicant on attaining one year three months and so of the date of her promotion and probation in the grade of Technician, Gr.II in S.E.Railway came on inter railway transfer at her own request to E.Co. Railway on reversion as Junior Clerk Cum Typist, in consequence of which her pay was fixed and drawn at Rs.4030+70 PP carrying the scale of Rs.3050-4590/- in the grade of Junior Clerk cum Typist by protecting her last pay drawn at Rs.4100/- in the grade of Technician, Gr.II carrying the scale of Rs.4000-6000/- vide Annexure-A/9 dated 5.2.2007. With a view to determining the correctness or otherwise of the pay fixation as above, the instructions issued in the following RBEs are awe inspiring.

16. RBE No.148/2001 deals with simplification of confirmation procedure, which reads as under:

"In terms of Para 113, Section F, Chapter-I of Indian Railway Establishment Manual, Volume-I(1989) vide ACS No.58 circulated with this Ministry's letter of even number dated 12.10.1998 (Bahri's 231/98), P.252) probation period of twenty four months has been prescribed in each grade of promotion.

2. The matter has been reviewed and it has been **decided that henceforth, probation period of 12 months, instead of 24 months, should be prescribed in all grades of promotion. Cases of staff promoted on regular basis should be reviewed after completion of 12 months probation with a view to determine their suitability for retention in the grade. The review should be completed early and a decision to retain the employee in the higher post, or to revert to the lower grade, should be taken and implemented within a period of six months from the date of completion of the probation..**

3. The **Indian Railway Establishment Manual, Vol.-I, 1989** may, therefore, be amended accordingly, as in Advance Correction Slip No.124 enclosed.

**ADVANCE CORRCTION SLIP NO.124**

WAC

19 7

INDIAN RAILWAY ESTABLISHMENT MANUAL,  
VOLUME 1 (1989 Edition)

**Section 'F', Chapter-I, Regarding Confirmation**

**Substitute the following for the existing para-113**

**"113 Confirmation on Promotion.**

- i) A probation period of 12 months should be prescribed in all grades of promotion.
- ii) The Appointing Authority will, on completion of the said period of probation, himself assess the work and conduct of the Railway servant, and in case the Railway servant is found fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the probation. If the Appointing Authority considers that the work of the Railway servant has not been satisfactory or the same is needed to be watched for some more time, he may revert him to the post or grade from which he was promoted, or extend the period of probation, as the case may be.
- iii) 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 and there should be no hesitation to revert a person to the post of grade from which he was promoted, if his work during probation has not been satisfactory. The screening should be completed early and a decision to declare the employee as having completed the probation satisfactorily in the higher grade, or to revert him, should be taken and implemented within a period of 6 months of completion of probation".  
[Authority: Para 108 in Part I of this section and Ministry of Railway's letter No.E(NG)I-98/CN5/1, dated 2.8.2001]"

**"RBE NO.NIL**

**Estt.Srl.No.92/2003 Dated 11.07.03**

Sub: Pay protection to staff who joined in lower post on account of inter Railway Transfer at his own request

Ref: Your letter No.Admn/S.E.R/Court  
Case/3052 dated 3.11.2000

As the matter pertains to Personnel Department, it should have been referred for Board's consideration by CPO. Further, since the Railway has already decided to file appeal, the reference to the Board is hardly called for.

bale



However, in view of the importance of the matter and urgency involved, the matter has been examined in this Office and the position clarified as follow in the following paragraphs.

2. As per the extant provisions including ACS 19 circulated vide Board's letter No.F(E)II/91/Misc./2 dated 24.2.1995 and further clarified vide letters dated 02.12.1996 and 20.8.1999 (not 20.3.99), pay being drawn on the higher post held on regular basis for a minimum period of 24 months will be protected on appointment in the lower post on his own request subject to the maximum of the lower post not being exceeded. **The relevance of 24 month arises as that is the period of probation on promotion in terms of para 113 of Section F in Chapter-I of IREM, Vol.I 1989 as incorporated vide ACS No.58 issued vide this Ministry's letter No.E(NG)/98/CN-5/1 dated 12.10.98. A person cannot, therefore, be deemed to have held the higher post on substantive basis, as envisaged vide first sentence of sub-para (a) (iii) of Para 604 inserted as per ACS No.19 issued vide Board's letter No.F(E)-91/Misc/2 dated 24.2.1995, unless he has completed 24 months on promotion on regular basis so as to be eligible for protection of pay drawn in such higher post on transfer to a lower post on request".**

**"R.B.E.No.60/2007**

**Subject: Fixation of pay on transfer to a lower post at own request.**

**[No.F(E)II-2003/FOP/1 Misc. dated 17.4.2007]**

A number of references were received from various Railways regarding fixation of pay under FR 22(I)(a)(3) [i.e., Rule 1313(I)(a)(3) IREC-II] in cases of transfer to a lower post at own request under FR 15(a) (Rule 227 of IREC-I). The matter was referred to the DOP&T for clarification on different issues raised by the Railways.

2.A copy of the clarifications issued by the Department of Personnel & Training vide O.M. No.16/6/2001-Estt Pay I,

dated 14.2.2006 on the above subject is forwarded for information and guidance. Copy of Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, O.M.F.No.16/6/2001 Estt. Pay I, dated 14.2.2006.

**OFFICE MEMORANDUM**

**Subject: Fixation of pay in case of employees who seek transfer to a lower post under FR 15(a) - clarification regarding.**

The undersigned is directed to state that according to the existing provisions of FR 22 I(a)(3), a Government servant appointed/transferred to a lower post at his own request under FR 15(a), the maximum of the time-scale of which is less than the pay drawn by him in the higher post held regularly, shall draw that maximum as his initial pay. It has been brought to the notice of this Department that this provision is being interpreted differently by different Ministries/Departments. The Staff Side has also demanded that a clarification is issued in this regard to bring about a uniform interpretation of this Rule.

2. The demand of the Staff side has been examined in consultation with the Ministry of Finance and it is clarified that on transfer to the lower post/scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22(I)(a)(3).

6/2006

3. Where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions".

17. In order to decide the point in issue, it is indispensable to at first arrive at a just conclusion whether the applicant did complete her probation and/or confirmed in the former Railway in the capacity of Technician, Gr.II within the parameters of RBE as quoted above which determining factor for applicant's pay protection.

18. It is needless to mention that the Respondents have not provided RBE No.188/99 on which they have also placed reliance. Be that as it may, since the RBEs issued prospectively upon which the Respondents have placed reliance too are being taken into consideration as the criterion, we do not feel it so desirable and considerable.

19. On a reference being to RBE No.148/2001 it is quite clear that the prescribed period of probation which was earlier fixed to 24 months has come down to 12 months and accordingly, with the issuance of Advance Correction Slip No.124, Indian Railway Establishment Manual, Volume I(1989 Edition), the existing para 113 of Section F, Chapter-I regarding confirmation in all grades of promotion should have been substituted to 12 months. But this amendment, incorporation or substitution, as the case may be, has not at all been effected as it would reveal from **Estt.Srl.No.92/2003 Dated 11.07.03** regarding pay protection to staff who joined in lower post on account of inter Railway Transfer at his own request that the entire matter rests upon para 113 of Section F in Chapter-I of IREM, Vol.I 1989 as incorporated vide ACS No.58 issued vide this Ministry's letter No.E(NG)/98/CN-5/1 dated 12.10.98 and in effect, 24 months of probation period on promotion for the

6/11

purpose of confirmation as of date holds good based on which impugned re-fixation of pay of the applicant vide Annexure-A/10 dated 2.3.2007 could come to be issued.

20. Next, coming to the point of confirmation on promotion of the applicant in the grade of Technician-II, admittedly, there no adverse remarks against her is forthcoming during the period of probation on promotion. In other words, the question of retention in the promotional grade of the applicant has not at been questioned by the Respondents. It is also an admitted position that the applicant on completion of one year and three months had been transferred to E.Co.Railway accepting reversion. Going by RBE No.148/2001, it was the S.E.Railway, which should have taken the further follow up action within six months from the date of completion of probation, i.e. one year, as stipulated in RBE No.148/2001 for the purpose of retention or otherwise of the applicant on the promotional grade. However, it goes without saying that it was because of applicant's own request transfer to E.Co.Railway having been effected there may not be any scope left for the S.E.Railway with a view to assessing her performance on the promotional grade. But the fact remains, before the applicant could be transferred to E.Co.Railway, had already completed three months more than the required period of 12 months of probation on the promotional grade in compliance with the instructions issued in RBE No.148/2001 and at no point of time any adverse remarks appears to have been communicated to her in the time between.

21. With a view to considering that the applicant had been confirmed on the promotional grade on completion of one year probation period, we would like to refer what has been indicated by the Respondent-Railways under Estt.Srl.No.92/2003 Dated 11.07.03 (as quoted above) while replying to a case matter, for sake of clarity, the relevant portion of which is reiterated as under.

**“The relevance of 24 month arises as that is the period of probation on promotion in**

Alle



terms of para 113 of Section F in Chapter-I of IREM, Vol.I 1989 as incorporated vide ACS No.58 issued vide this Ministry's letter No.E(NG)/98/CN-5/1 dated 12.10.98. A person cannot, therefore, be deemed to have held the higher post on substantive basis, as envisaged vide first sentence of sub-para (a) (iii) of Para 604 inserted as per ACS No.19 issued vide Board's letter No.F(E)-91/Misc/2 dated 24.2.1995, unless he has completed 24 months on promotion on regular basis so as to be eligible for protection of pay drawn in such higher post on transfer to a lower post on request".

22. It is not in dispute that the applicant was holding on promotion the post of Technician, Gr.II on regular and substantive basis. It is also an admitted position that confirmation on the post is delinked with the availability of permanent post. It is also an admitted position that the applicant has completed more than three months of the required period of probation of one year. Having regard to the statement of the Respondents, as quoted, the logical inference that could only be drawn is that **the applicant can therefore, be deemed to have held the higher post on substantive basis having completed 12 months on promotion on regular basis so as to be eligible for protection of pay drawn in such higher post on transfer to a lower post on request.**

23. Finally, the point in issue to be decided whether the refixation of pay of the applicant vide Annexure-A/10 dated 2.3.2007 is correct or otherwise. In this connection, the decision of the DoP&T, as adhered to by the Railways and quoted above would decide the issue.

24. Admittedly, at the time the applicant was transferred to E.Co.Railway, she was in receipt of pay at Rs.4100/- in the grade of Technician, Gr.II carrying the scale of Rs.4000-6000/-. Since the applicant was holding the said post on regular basis, consequent upon transfer to lower post/scale under FR 15(a) her pay ought to have

lale



25

been fixed equal to the pay drawn by her in the higher grade and if no stage is available, the pay ought to have been fixed at the stage next below the pay drawn by her in the higher post and the difference should be granted as personal pay to be absorbed in future increments.

25. Accordingly, we answer that the pay fixation granted to the applicant vide Annexure-A/9 dated 5.2.2007 in the scale of Rs.3050-4590/- (Rs.4030+70 PP) is lawful and rightful.

26. For the reasons discussed above, we quash the impugned re-fixation of pay of the applicant vide Annexure-A/10 dated 2.3.2007 with direction to Respondents to draw and disburse the differential arrears salary, if any, accrued to the applicant by virtue of operation of Annexure-A/9 dated 5.2.2007, within a period of 120 days from the date of receipt of this order.

27. Last but not the least, we would like to reduce it to writing that since we are allowing this O.A. based on the interpretation of the rules on the subject, we have left aside the point regarding non-compliance of the principles of natural justice by the Respondent-Railways before impugned A/10 dated 2.3.2007 could be issued to the prejudice of the applicant.

In the result, the O.A. is allowed. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

BKS

  
(A.K. PATNAIK)  
JUDICIAL MEMBER