

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 427 of 2003

Dated, this the 12th day of December, 2005.

C O R A M :

**HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

R. Sunil Kumar,
S/o. S. Raghavan Pillai,
Junior Engineer II/Diesel Loco Shed,
Southern Railway, Ernakulam,
Residing at Nadannur Puthen Veedu,
Edakkidam P.O., Ezhukone,
Kollam District.

... **Applicant.**

(By Advocate Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum.
3. Senior Divisional Personnel Officer,
Central Railway, Jabalpur Division,
Jabalpur.
4. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3
5. The Senior Divisional Mechanical Engineer (Diesel),
(Central Railway, Jabalpur Division),
New Katni Junction, Katni.
6. The Deputy Chief Personnel Officer,
Southern Railway,
Southern Railway Central Workshop, Ponnmalai,
Thiruchirappalli, Tamil Nadu.

... **Respondents.**

(By Advocate Mrs. Sumathi Dandapani)



ORDER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was initially appointed as Chargeman 'B'/Junior Engineer Grade II in the scale of Rs. 1400-2300 (revised scale Rs. 5000-8000) on 1.5.1991 at the Diesel Loco Shed, New Kanchi Junction, Central Railway. Thereafter, the applicant was promoted on regular basis as Chargeman Grade 'A' / Junior Engineer Gr. I in scale Rs. 1600-2660 (Rs. 5500-9000) with effect from 19.12.96 vide order dated 21.12.96. The applicant exercised his option to have his pay fixed with reference to the date of increment in his lower post. Accordingly, his pay was fixed with effect from 1.5.97. The applicant was drawing a basic pay of Rs. 6025/- in scale of Rs. 5500-9000 with effect from 1.5.99. While so, the applicant was issued with a transfer order on mutual basis with one Manoj Kumar to Diesel Loco Shed Golden Rock, Southern Railway, Thiruchirappalli on 29.5.1999. The applicant was relieved on 29.5.99 to join the post at Thiruchirappally and he joined there on 1.6.99. In terms of Rule 1313 read with rule 227 of the Railway Establishment Code, the applicant's pay on transfer ought to have been fixed duly protecting the pay drawn earlier by the applicant. The applicant was also drawing the same pay. However, his pay was later fixed at a lower stage by memo dated 6.9.99 (A/1) issued by the 6th respondent stating that no protection has been allowed as the applicant has not completed 2 years of regular service as JE-1 on the date of his transfer. The applicant submitted a detailed representation (A/5) dated 5.10.1999 to the 6th respondent followed by another representation (A/6) dated 12.1.2000, which was rejected vide A/2 order dated 11.2.2000 stating that his adhoc promotion as JE-1 from 26.12.96 has



been regularised only with effect from 20.3.98 vide order dated 21.8.98. The applicant again submitted another representation to the 1st respondent dated 5.5.2000 (A/7) which was also rejected by the 6th respondent vide A3 order as per the instructions received from the Headquarters office, Madras. Since the rejection letter did not disclose as to whether his representation was considered by the lower authority or by the General Manager himself, he again submitted representation dated 29.3.2001 (A/8) followed by a reminder letter dated 26.4.2001 (A/9) to the 6th respondent requesting for the copy of the letter issued by the Headquarters office, Madras. Thereafter, a detailed representation (A/10) dated 27.1.2002 was sent to the General Manager, but there was no response. Meantime, the applicant was transferred to Diesel Loco Shed, Ernakulam, in December, 2002 and now he is working as Junior Engineer II, Diesel Loco Shed, Southern Railway, Ernakulam. The applicant is aggrieved by A/1 order fixing his pay at a lower stage and also by A/2 and A/3 rejecting his representations. Hence, he has filed this OA seeking the following main reliefs:

- "(a) Call for the records leading to the issue of Annexures A1, A2 and A3 and quash the same;
- (b) Call for the records leading to the issue of O.O. No. 30/98 dated 21.8.98 issued by the 6th respondent and quash the same;
- (c) Direct the respondents to fix the applicant's pay on transfer and posting to Southern Railway under Rule 1313 (a) (2) and (3) of the Railway Establishment Code, duly protecting the last pay drawn by the applicant at the time of his transfer to Southern Railway.
- (d) Direct the respondents to grant the consequential arrears of pay and allowances and all other incidental benefits within a time limit as may be found just and proper by this Tribunal."



2. The respondents have filed a detailed reply contending that the O.A. is not maintainable for want of jurisdiction and also barred by limitation. The applicant was initially appointed as Apprentice mechanic (Diploma Holder) on 1.5.1991 and on completion of 2 years training, he was absorbed as Junior Engineer Grade II with effect from 1.5.1993 in Central Railway, Katni Division and in the year 1998, he was promoted to Junior Engineer Grade I on regular basis by 3rd respondent after having worked in temporary and officiating capacity as a trial measure from 19.12.1996 as is evident from R1 & A4 order. The earlier adhoc promotion was made regular vide R2 order dated 21.8.98. The respondents stoutly refuted the statement of the applicant that he was promoted on regular basis as Chargeman 'A'/Junior Engineer Grade I by A4 order. His option for fixation of pay though not covered under the rules erroneously give, has been regularised when he was promoted on regular basis vide R/2 order. While he was working at Diesel Shed, New Katni Junction, Jabalpur Division, he was transferred to Central Workshop, Southern Railway, Ponmalai, Thiruchirappally at his request on Inter Railway Mutual Transfer with one Shri Manoj Kumar, Junior Engineer Grade II, Central Workshop, Ponmalai vide orders dated 2.10.1998 (R/3) and 3.6.1999 (R/4). The claim of that his pay on transfer ought to have been fixed duly protecting the earlier pay drawn is without any basis and untenable. His plea that he was drawing the same pay on transfer to the lower grade as Junior Engineer Gr. II is also not correct. His service records reveal that his pay was fixed on transfer on reversion only on 6.9.1999 by A/1 order indicating the reason and authority by which the pay was fixed. The applicant at the time of his transfer to Southern Railway had only less than 2 years of service in the higher grade and consequently, fixation of pay was made without the protection as contemplated in

the rules. It was wrong on the part of the applicant to say that his promotion as per R/1 order was not one on adhoc basis but on regular basis as he has conveniently and deliberately omitted to produce the full text of R/1 order before this Tribunal in order to hide the conditions stipulated in the said order. His claim for protection of pay is not covered by rules as such suitable replies were given in reply to his representations. The applicant has not approached this Tribunal with clean hands as he has suppressed the conditions of promotions mentioned in R/1 order at the time of filing the OA and also pleading ignorance of R/2 order dated 21.8.98 regularising his adhoc promotion given earlier. His attempt to invoke the sympathy and interference of this Tribunal are without any valid ground. His promotion on 19.12.96 was on temporary, officiating and on trial basis without any right for continuation in the higher grade. He was given regular promotion only by A/2 order and as such protection of pay envisaged under the rules cannot be granted to the applicant.

3. The applicant has filed a rejoinder contending that the averment of the respondents that he was promoted to the post of Junior Engineer Gr.I on regular basis in the year 1998 is misleading and not correct. In fact, he was promoted on regular basis with effect from 19.12.1996 vide A/4 order which was communicated by the 5th respondent. Further averment of the respondents that the R1/A4 order is to be treated as on adhoc basis is also factually not correct since the regular promotions are ordered initially on officiating/trial basis and completion of 2 years, the promotion becomes substantive in character on account of the deemed confirmation. R/1 and A/4 orders would show that the promotion of the applicant was one on regular basis. The applicant contended that R/2

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order was not issued at all. Neither R/2 order has been marked to the applicant nor the third respondent has communicated the same to him point of time. The averment of the respondents that "on his option for fixation of pay though not covered under rules erroneously given has been regularised when he was promoted on regular basis by Annexure R2 order" spill the beans. Admittedly, the applicant was given option for fixation of pay by R1/A4 orders and he opted and was also acted upon.

4. The respondents have filed additional reply statement reiterating the same contentions made in the earlier reply and further adding that the applicant did not include the following clause available on the overleaf of the orders (R/1) of the 3rd respondent in A/4 which has been correctly mentioned by 3rd respondent in his order (R/1) dated 16.12.96. The contention of the applicant that all regular promotions are ordered initially on officiating/trial basis and on completion of 2 years, the promotion becomes substantive in character on account of deemed confirmation is entirely wrong. Since such promotion is made in an officiating capacity, it will not automatically become substantive of completion of 2 years as submitted by the applicant. Confirmation is being ordered in initial recruitment grade only as per Rules in force and no provision is available in every stage of promotion on and after 1.1.1989 for confirmation in each promoted grade/stage. The applicant had not completed two years service on regular basis at the time of his transfer from New Katni Junction of Central Railway to Central Workshops, Ponmalai, Thiruchirappalli of the Southern Railway since his promotion was regularised only with effect from 20.3.1998.

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5. Mr. T.C. Govindaswamy, learned counsel appeared for the applicant and Mrs. Sumathi Dandapani, learned counsel appeared for the respondents.

6. Learned counsel appearing for the parties took us through various pleadings, evidence and the material placed on record. Learned counsel for the applicant would argue that the applicant

7. Learned counsel appearing for the parties took us through various pleadings, evidence and material placed on record. Learned counsel for the applicant would argue that the applicant had more than 2 years and 5 months in the higher grade at the time of transfer. The applicant was promoted on regular basis vide A/4 order. The said order was never recalled or cancelled nor his promotion was treated as adhoc. The order No. 30/98 dated 21.8.98 is not in existence nor operated upon. Even if the said order is in existence, is illegal and violative of Articles 14 and 16 of the Constitution. Learned counsel for the respondents on the other hand persuasively argued that his option for fixation of pay though not covered under the Rules erroneously given has been regularised when he was promoted on regular basis by A/2 order. It was further contended that the applicant had only less than 2 years of regular service in the higher grade and fixation of pay was made without the protection as contemplated in the rules. The pleading of the applicant that he was unaware of the order R/2 cannot be a valid ground for protection of pay. The order R/2 declaring his promotion from adhoc to regular can in no way be said to be illegal or violative Articles of 14 and 16 of the Constitution of India. Learned counsel for the respondents took us through RBE No. 188/99 reproducing Board's letter No. F(E)

II/91/Misc./2 dated 20.8.99, contending that the benefit of complete year in the higher post cannot be reckoned in the lower post. Increments in comparable scales are not mutually exchangeable, he argued. The aforesaid Railway Board's clarification dated 20.8.1999 reads as follows:

"In terms of the extant rules (including ACS No. 19 issued under Board's letter of even number dated 24th February, 1995) in the case of an employee holding a higher post on regular basis and has completed a minimum period of 24 months in the higher posts and seeks transfer on his own request to a lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. 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 in the lower grade will be fixed 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."

8. Learned counsel for the applicant invited our attention to the proviso to Rule 1313 (a) (2) and (3), the relevant portion of the same reads as follows:

(2) Provided further that in a case where the pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time scale of the new post.

(3) When appointment to the new new post is made on his own request under [Rule 227 (a) (2) – R1 (F-15A) (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"

9. The applicant has relied on A/4 order dated 21.12.1996 on the subject of filling up of vacancies of J/Eng. Chargeman 'A' Grade Rs. 1600-2600 (RPS) in R&M

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wing. The first and last portions are reproduced as under:

" In terms of DRM(P) JBP Office Order No. 46/1996 circulated vide letter No. JBP/P/558/M-S/D/Mech.Sup. dated 16.12.96 the following promotion orders are issued:

1.
2.
3.
4.

5. Shri R. Sunil Kumar, Jr. Engineer/Chargeman 'B' (Mech) Gr. Rs. 1400-2300 (RPS) of NKJ D/Shed is promoted and posted as Junior Engineer/Chargeman 'A' (Mech) Gr. Rs. 1600-2600 (RPS) at Trip Shed NKJ against vacancy.

The above employees are eligible for exercising an option within a period of one month for fixation of pay on promotion in the manner as laid down in Rly Bd's L.No. P(P&A) II-81/pp-4 dated 13.11.81. If no option is exercised within a period of one month from the date of promotion, pay shall be fixed under Rule 2018 (B) FR-22-C-X-II.

The promotion in this grade will be effected from 19.12.96."

10. From the above, it is very clear that there has been a reference of R/1 order and the applicant has been promoted as Jr. Engineer/Chargeman 'A' with the right of exercising option within a period of one month from the date of promotion which he opted for. The contention of the applicant is that this order has not been withdrawn, cancelled or modified in any manner. The strong reliance that has been placed by the respondents was R/2 order No. 30/98 dated 21.8.1998 issued by the DRM(P)'s office, Jabalpur, the relevant portion reads as under:

"The following JE-II (Mech. & Elect.) Gr. Rs. 5000-8000n (RSRP) working as JE-I (Mech. & Elec.) Gr. Rs. 5500-9000 (RSRP) on adhoc basis are now regularly promoted as JE-I Gr. Rs. 5500-9000 (RSRP) from the date shown against each.

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Sl.No.	Name	Design.	Stn.	Promoted as JE.I Gr. Rs.1600-2660 (RPS) Adhoc Regular
1.	Sh. R. Sunil Kumar	JE.I	T/Shed, NKJ	16.12.96 20.3.98 "

11. It is urged on behalf of the respondents that for the period from 16.12.96 to 19.3.1998 the applicant was working as JE.I purely on adhoc basis and he was regularly promoted on that post with effect from 20.3.1998 only. The case of the respondents is that the plea of the applicant that he was promoted on regular basis as JE.I vide A/4 is not correct. The applicant's case is that the so called R/2 order has never been communicated to him. On going through R/2 order, we find that the said order was not endorsed or marked to the applicant nor any acknowledgement showing that the applicant has received the said letter. Apart from that, it is the contention of the applicant that there was no mention about this order in the service record as well. Though there was a mention in the R1 order dated 16.12.96 that "the promotions are purely in an officiating capacity on trial and will not confer on them any prescriptive right for continued officiating in the grade." But R1/A4 order specifically gave a right to exercise option within a period of one month from the date of promotion in the manner as laid down in Railway Board's letter No. P(P&A)II-81/P)P-4 dated 13.11.81. It was further stated in the said order that if he fails to opt as above, his pay shall be fixed under Rule 2018(B) FR-22-C-X-II.

12. We have perused the Rules position on the subject and we find that only in a case of regular promotion, the right of option is granted to the employees. In the R1/A4 promotion order, it was clearly mentioned that the employees

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promoted therein are eligible for exercising an option. Therefore, it cannot be said that the promotion was not on regular basis. In fact, all those promotions were against clear vacancies. If A/4 was an erroneous order as contended by the respondents, they should have very well withdrawn/cancelled the same. But the respondents have not done so till date. Therefore, A/4 is still existence. Admittedly, when the applicant was transferred to Diesel Loco Shed/Golden Rock, he was drawing a basic pay of Rs. 6025/-.

13. In an identical case in OA No. 1045/2001, V. Gopalakrishnan vs. Union of India and Ors., this Tribunal vide its order dated 8.9.2004 relying on Rule 1313 (a) (2) of the Railway Establishment Code, has granted the reliefs by observing that "*the inherent principle is that there should not be any loss of pay on initial fixation. The proviso to Rule 1313 (a) (2) steps in to grant a further protection against the possible loss of incremental benefit when the initial pay is fixed at the same stage, but the unreckoned part of an incremental year in the old post is lost due to new appointment. When the initial pay in the new post is fixed at a higher stage, that loss is compensated and the next increment would accrue on completion of full 12 months in the new post. But if the stage is same, and there has been no gain on fixation, then the part of the unreckoned incremental year in the old post would be reckoned in the new post for allowing an early increment in the new post. It was further observed that the apparent gap in the rules, averred by the applicant and readily conceded by the respondents to justify the fixation done by them, is bridged when Rule 1313 is interpreted carefully keeping in view the very principle of protection on which the rule is based.*" This O.A was not challenged by the respondents. The

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applicant's counsel also took us thorough a judgement of Madras High Court in WP No. 16172/98, Union of India vs. S. Santhanam (with batch cases) decided on 8.7.2005 by which identical matters (OA No. 1341/94 and batch cases) decided by the Madras Bench of this Tribunal came to be upheld and all the petitions filed by the Railway Administration stand dismissed. In paras 12 and 13 of the said judgement, Hon'ble High Court has observed as under:

12. It is the case of the Railway Administration that the pay protection was denied to the applicants on the ground that they had not completed two years in the scale of Rs. 1400-2300 in parent Division. It was demonstrated before the Tribunal as well as before us that actual pay that the applicants were drawing in the higher scale of Rs. 1400-2300 at the time of transfer was protected and such payment is in consonance with the provisions of the Indian Railway Establishment Code and Manual as well as the conditions of transfer. As rightly stated, that may be the reason why the order transferring the applicants does not mention about the reduction in scale of pay as one of the conditions for transfer, but merely mentions about loss of seniority. It is relevant to point out that the completion of two years to gain the higher scale of pay was considered by the Ernakulam Bench. After considering the relevant Rule, viz., Rule 1313 (a) (3) of the Indian Railway Establishment Code Volume II, the Ernakulam Bench has concluded that it was enough to protect the claim of the employee and there was no justification for putting him in the lower pay scale. The Bench has observed that under the terms and conditions of transfer, the pay which the applicant was drawing in higher post was not required to be protected when he joined the lower post. While considering the said contention and taking note of the fact that as the Railway Administration is open of the largest employer of the Country, yardstick has to be uniformly applied with reference to the Rules ensuring fairness, equity and equality, the Tribunal accepted the claim of the applicants / Railway employees and rejected the stand taken by the Railway Administration.

13. Even prior to this order, the very same Ernakulam Bench while considering similar grievance of Railway employees against the orders of the Railway Administration putting them in a lower grade, quashed the same and declared that the applicants therein are entitled to have their pay protected in the scale of Rs. 1400-2300 prior to the transfer protected and allowed the applications on the above terms."

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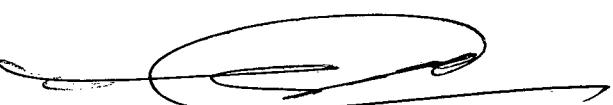
14. In the above judgement, Hon'ble Madras High Court also relied on the judgement of Hon'ble Supreme Court in the case of Union of India vs. V.N. Bhat reported in 2003 (8) SCC 714, wherein it was held that even on voluntary transfer, employee only loses seniority and not other benefits and cannot be deprived of his experience and eligibility for promotion.

15. From the observations made above and taking into factual aspects into consideration, we are of the considered view that the applicant has been promoted regularly and he is entitled to get his pay fixed, duly protecting the last pay drawn by him at the time of his transfer to Southern Railway. Any reduction in his earlier fixation without any notice vide A/1 Memorandum dated 6.9.99 is violative of Articles 14 and 16 of the Constitution. In the result, we quash Annexures A/1, A/2 and A/3 orders with a direction to grant all consequential benefits within a period of three months from the date of receipt of a copy of this order.

16. The O.A. is allowed as indicated above with no order as to costs.

(Dated, the 12th day of December, 2005)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER