

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 416 of 2009**

**Original Application No. 428 of 2009**

*Wednesday*, this the 12<sup>th</sup> day of December, 2012

**CORAM:**

**Hon'ble Mr. Justice P.R. Raman, Judicial Member**

**Hon'ble Mr. K. George Joseph, Administrative Member**

**1. Original Application No. 416 of 2009 :**

1. Margrette Reena Gabriel, W/o. R.A. Bangara, aged 55 years, Office Superintendent, SSE/C&W Office, Southern Railway, Mangalapuram, residing at Balmata, Mangalore.
2. Raheema, W/o. J. Basheer Ahamed, aged 56 years, Office Superintendent, SSE/C&W Office, Southern Railway, Palghat Junction, Palakkad, residing at Pl. No. 16, Darusalam, Rail Nagar, Olavakode, Palakkad. .... **Applicants**

**(By Advocates – Mr. M.R. Rajendran Nair, Sr.  
Mr. M.R. Hariraj)**

**V e r s u s**

1. Union of India, represented by the Secretary to Government of India, Ministry of Railways, New Delhi.
2. Railway Board, represented by the Secretary to Railway Board, New Delhi.
3. General Manager, Southern Railway, Madras.
4. Chief Personnel Officer, Southern Railway, Madras.
5. Divisional Personnel Officer, Palakkad Division, Southern Railway, Palakkad. .... **Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil)**

2. **Original Application No. 428 of 2009 :**

1. Smt. Kunjamma Jacob aged 58 years, D/o. Thomman Varkey,  
Office Superintendent Gr.II(Adhoc),  
Office of the Senior Divisional Personnel Officer,  
Southern Railway, Palghat, Residing at Kathaliparambil House,  
Poochira, Puduppariyaram, Palakkad-678 733.
2. Smt. V.K. Santhakumari, aged 53 years, W/o. P. Balachandran,  
Office Superintendent Gr. II (Adhoc), Office of the Senior  
Divisional Personnel Officer, Southern Railway, Palghat, Residing  
at "Dhanya", Puduppariyaram, Palakkad-678 733.
3. Smt. Vasumathy Radhakrishnan, aged 56 years, W/o. Radhakrishnan,  
Office Superintendent Gr.II (Adhoc), Office of the Senior Divisional  
Personnel Officer, Southern Railway, Palghat, Residing  
at Krishnanjaly, Kallekulangara, Palakkad-678 009.
4. Smt. Thankamony Oommen, aged 55 years, W/o. Oommen Thomas,  
Office Superintendent Gr.II(Adhoc), Office of the Senior Divisional  
Personnel Officer, Southern Railway, Palghat, Residing at Plot No. 39,  
Rail Nagar, Palakkad-2.
5. Smt. K. Hymavathy aged 59 years, W/o. V. Bhuvanadas,  
Office Superintendent Gr. II (Adhoc),  
Office of the Senior Divisional Personnel Officer,  
Southern Railway, Palghat, Residing at Pinchika, Ummini,  
Dhoni Post, Palakkad.
6. Smt. Chandrika Madathail, aged 48 yars, W/o. M. Venugopalan,  
Office Superintendent Gr.II(Adhoc), Office of the Senior Divisional  
Personnel Officer, Southern Railway, Palghat, Residing at Sopanam,  
Ramakrishna Nagar, Engg. College PO, Palakkad-678 008.
7. Sri Narayanan Kekadavan, aged 59 years, S/o. T.V. Kunhambu  
Maniyan, Office Superintendent Gr. II (Adhoc), Office of the Senior  
Divisional Personnel Officer, Southern Railway, Palghat, Residing at  
118-B, Railway Colony, Palakkad.
8. Smt. P.K. Syamala, aged 54 years, D/o. K.E. Krishnan Nambiar,  
Office Superintendent Gr. II (Adhoc), Office of the Senior Divisional  
Personnel Officer, Southern Railway, Palghat, Residing at Sangeetha,  
Near Railway Hospital, Palakkad-678 009.
9. Smt. T. Ruth Rufus, aged 56 years, W/o. Late Narayanan,  
Office Superintendent Gr. II (Adhoc), Office of the Senior Divisional  
Personnel Officer, Southern Railway, Palghat, Residing at Railway  
Quarter No. 252-A, Hemambika Nagar,  
Palghat-678009.

..... **Applicants**

(By Advocates – Mr. M.R. Rajendran Nair, Sr.  
Mr. Shafik M.A.)

**V e r s u s**

1. Union of India, represented by the Secretary,  
Ministry of Railways, New Delhi.
2. The Chief Personnel Officer, Southern Railway, Chennai.
3. The Senior Divisional Personnel Officer,  
Southern Railway, Palghat.
4. The General Manager, Southern Railway, Chennai.
5. Railway Board, represented by the Secretary  
to Railway Board, New Delhi.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

These applications having been heard on 20.11.2012, the Tribunal on  
12-12-12 delivered the following:

**ORDER**

**By Hon'ble Mr. K. George Joseph, Administrative Member-**

The applicants in OA No. 416/2009 who were Head Clerks in the pay scale of Rs. 5000-8000/- were promoted on ad hoc basis on 1.12.1999 and 2.7.2001 as Office Superintendent Grade-II in the pay scale of Rs. 5500-9000/-. The applicants in OA No. 428/2009 are Head Clerks officiating in the post of OS-II from 2004 onwards. The VIth CPC had recommended the merger of the above two pay scales in PB-3 Rs. 9300-34800/- with Grade Pay Rs. 4200/-. The pay of the applicants was revised reckoning their pay in the officiating post of O.S. Grade-II. As per Annexure A2 clarification their pay was re-fixed with reference to the pay they would have drawn had the ad hoc promotion not been granted.

2. Aggrieved the applicants have filed these OAs for the following reliefs:-

- i. to quash Annexure A1, and A2
- ii. quash para 10 of Annexure A3,
- iii. to declare that the applicants are entitled to have their pay revised with effect from 1.1.2006 with reference to the pay they drew on the post of Office Superintendent Grade II and to direct the respondents to continue payment of pay and allowances accordingly and not to recover any amount from the applicants with all consequential benefits;
- iv. to direct the respondents to pay to the applicants amounts if any recovered already from them and any difference of pay due to virtue of implementation of the impugned orders with interest @ 18% per annum;
- v. grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- vi. grant the costs of this Original Application.

3. The applicants contended that Annexure A2 clarification and Annexure A3 orders are directly in conflict with the statutory provisions of Railway Service (Revised Pay) Rules, 2008. Therefore, they are illegal. An executive instruction cannot override the statutory rules. As they have not been given any notice for reduction in pay and allowances and for recovery there is violation of principles of natural justice. If appropriate steps for regular promotion were taken at the right time following the correct seniority and actual vacancies for regular promotions, the applicants would have been regularly promoted as Office Superintendents. As the reversion of the applicants from the cadre of Office Superintendent is not possible on account

of the directions of this Tribunal the respondents are making an attempt to effect reversion in an arbitrary manner. After having extracted the work of the post of Office Superintendents the respondents cannot give the applicants wages for the lower post of Head Clerks.

4. The respondents in their reply statement submitted that they could not take any action to fill up the vacancies of OS-I on account of various OAs filed before this Tribunal. They are continuing as OS-II in view of the interim orders of this Tribunal in OA No. 388 of 2008. The post of OS-II was a selection post. The selection process consisted of a written test and empanelment by a selection committee. The applicants herein have not been subjected to any written test or empaneled by any selection committee for regular posting. They cannot be treated as regular employees for fixation of their pay with respect to the pay drawn in the scale of Rs. 5500-9000/-. The joint procedure order at Annexure A3 and fixation of pay of the applicants at Annexure A1 are legal and valid. Even in the joint procedure order dated 3.12.2008 it is indicated in paragraph 10 that when the Railway servant is holding the permanent post and is officiating in a higher post on ad hoc basis and if the scales applicable to these two posts are merged into one grade, the pay shall be fixed under Rule 7(1)(A) with reference to the substantive post only and not with reference to the post held on ad hoc basis. The substantive post of the applicants is Head Clerk. Their lien is maintained only in Head Clerk cadre. The Chief Personnel Officer, Madras as clarified that the pay drawn on ad hoc basis on 1.1.2006 in the merged grade has no relevance for fixation of pay. Most of the applicants appeared for selection to the post of

Office Superintendent in the year 1998 in which they did not qualify. While promoting them as OS-II on ad hoc basis it was clearly mentioned in the promotion order that the ad hoc promotion will not confer upon him them any claim for retention in the cadre, further promotion, confirmation, seniority etc. As per Note 5 in Rule 7(1) where a Railway servant is holding a permanent post and is officiating in a higher post on a regular basis and the scales applicable to these two posts are merged into one scale, the pay shall be fixed under this sub-rule with reference to the officiating post only and the pay so fixed shall be treated as substantive pay. The applicants are continuing as OS-II as an ad hoc measure and not on regular basis. They have not produced any documentary evidence to prove that they are holding the post of OS-II on regular basis. There is no necessity of issuance of notice to the applicants as there is no violation of principles of natural justice or any violation of any fundamental rights. The applicants alone are responsible for not filling up the vacancies of OS-II in time. It is true that prolonged adhocism should have been curtailed early but the applicants are only responsible for not filling up the vacancies in time. The applicants have not produced any documentary evidence to show that they have assumed higher responsibilities on ad hoc promotion as OS Grade-II.

5. We have heard the learned counsel for the parties and perused the records.
6. The issue in these OAs pertains to only 13 personnel branch staff under the respondents all of whom are applicants herein. They are Head

Clerks (Rs. 5000-8000/-) officiating as OS-II (Rs. 5500-9000/-). These pay scales were merged into the pay band of Rs.9300-34800/- plus grade pay of Rs. 4200/- with effect from 1.1.2006. The issue for adjudication is whether they are entitled to get their pay in the merged scale fixed on the basis of the pay drawn on ad hoc basis as on 1.1.2006 as per Railway Service (Revised Pay) Rules, 2008 or not. Note 5 under Rule 7(1) of the Revised Pay Rules which is relevant for adjudicating this case is reproduced as under:-

“Note 5 - Where a Railway servant is holding a permanent post and is officiating in a higher post on regular basis and the scales applicable to these two posts are merged into one scale, the pay shall be fixed under this sub-rule with reference to the officiating post only, and the pay so fixed shall be treated as substantive pay.”

(emphasis supplied)

7. Paragraph 10 of the Joint Procedure order is extracted as under:

“10. Where a Railway servant is holding a permanent post and is officiating in a higher post on adhoc basis and the scales applicable to these two posts are merged into one grade pay, the pay shall be fixed under Rule 7(1)(A) with reference to the substantive post only and not with reference to the post held on ad hoc basis.”

(emphasis supplied)

8. Annexure A2 order dated 4.6.2009 clarifies the stand of the Assistant Personnel Officer as approved by the Chief Personnel Officer. The same is extracted as under:-

“No. P(R)524

Headquarters Office  
Personnel Branch,  
Chennai-600 003  
Date:04/06/2009

Sr. DPO/PGT

Sub.: Fixation of pay in the revised scale.

Ref.: Your letter No. J/P.524/VI/Misc.IV, dated 12.05.09.

Reference to your letter cited above, it is advised that Rule 7(1)(A) of RS(RP) Rules, 2008 as mentioned in this office JPO may

please be read with the Note 5 under Rule 7 of RS(RP) Rules, 2008.

Further it is advised that the pay drawn on adhoc basis as on 01.01.2006 in the merged grades has no relevance for fixation of pay and drawal of salary. Hence their pay may be fixed in the RS(RP) rules, 2008 with reference to their substantive pay only.

This has the approval of CPO/Admn.

(M. Subramanian)  
Assistant Personnel Officer/Rules  
For Chief Personnel Officer"

(emphasis supplied)

9. Paragraph 10 of the joint procedure order and the advice that pay drawn on ad hoc basis as on 1.1.2006 in the merged grades has no relevance for fixation of pay and that pay should be fixed under RS(RP) Rules, 2008 with reference to substantive pay only are in direct conflict with Note 5 below Rule 7 of Revised pay Rules, 2008. It is specifically stated in note 5 that pay shall be fixed under RS (RP) Rules 2008 with reference to the officiating post only. The joint procedure order dated 3.12.2008 is an executive order regarding the procedure for correct fixation of pay in the revised pay structure as per RS (RP) Rules, 2008. So is the advice as per Annexure A2. To the extent they are contrary to the statutory rule under Article 309 they are null and void.

10. The applicants are holding the permanent post of Head Clerk and are officiating as OS-II. According to the respondents they are continuing as OS-II on ad hoc basis and not on regular basis. Therefore, their pay was fixed with reference to the substantive pay as Head Clerks. As they are not qualified to be promoted on the basis of the selection consisting of written

test and empanelment by a selection committee they cannot be treated as regular OS-II for fixation of pay. Most of them did not qualify in the year 1998 when they appeared for selection. They were promoted as OS-II on ad hoc basis with the approval of CPO, Madras. The respondents' attempt to fill up vacancies was stayed by an interim order of this Tribunal. But the respondents have not clarified what they mean by the clause "officiating in higher post on regular basis". The 1<sup>st</sup> applicant in OA No. 416 of 2009 was promoted on ad hoc basis to officiate as OS-Grade-II in a leave vacancy vide order dated 3.8.1999 and she continued as such. The seniority list of Head Clerks at Annexure A4 shows her as ad hoc OS-II from 1.12.1999 and she is still continuing as such. The 2<sup>nd</sup> applicant in OA No. 416 of 2009 was promoted as OS-II on ad hoc basis with effect from 23.7.2001 and is continuing as such. The ad hoc promotions did not confer on the applicants any claim for retention in the service, in the cadre, further confirmation, seniority etc. They were officiating as OS-II. They were given the pay of the officiating post. If they were promoted on a regular basis as OS-II, the question of officiating in a higher post would not have arisen. They would have held a lien on the post of OS-II. Officiating on regular basis would mean that the applicants were officiating in a post for which nobody had a lien. It does not mean that they should have been eligible for promotion on regular basis.

11. The applicants have no vested right for ad hoc promotion against regular vacancy. The respondents were aware that they were not qualified for promotion. Yet they voluntarily promoted the applicants on ad hoc basis as

OS-II and paid them the salary of the officiating post for many years. The 1<sup>st</sup> applicant in OA No. 416 of 2009 was officiating in the post of OS-II for more than 11 years and the 2<sup>nd</sup> applicant in the same OA for 9 years as on 1.1.2006. The promotion of the applicants was ad hoc but they were officiating in a higher post on regular basis. Except the benefit of reckoning of officiating pay for the purpose of pay fixation under the revised pay structure they do not ask for anything more. In fact that benefit was already given to them. However, on the basis of paragraph 10 in joint procedure order and clarification at Annexure A2, they have been deprived of the same.

12. Instead of advising that pay drawn on ad hoc basis as on 1.1.2006 in the merged grade has no relevance for fixing of pay which is contrary to Note-5 below Rule 7 of RS (RP) Rules, 2008, the competent authority should have clarified what is meant by officiating in a higher post on regular basis. What is relevant for pay fixation is not the ad hoc nature of promotion but officiation in a higher post on regular basis. In Union of India Vs. K.B. Rajoria – 2000 (3) SCC 562 the Apex Court held as under:-

“10. Finally, while considering the definition of the word “regular” in the Concise Oxford Dictionary, 9<sup>th</sup> Edn., the High Court noted that it meant:

“(1) conforming to a rule or principle; systematic. (2) harmonious, symmetrical. (3) acting or done or recurring uniformly or calculably in time or manner; habitual, constant, orderly. (4) conforming to a standard of etiquette or procedure; correct; according to convention. (5) properly constituted or qualified; not defective or amateur; pursuing an occupation as one's main pursuit.”

11. The word “regular” therefore does not mean “actual” and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or it was irregular in the sense that it was contrary to any principle of law.”

13. The ad hoc promotion of the applicants as OS-II was not irregular in the sense that it was contrary to any principle of law. There is no reason to hold that the applicants were not officiating in the higher post of OS-II on regular basis. The applicants are therefore, entitled to have their pay revised with effect from 1.1.2006 with reference to the pay they drawn on the post of OS-II.

14. In the light of the above discussion we allow the OA as under:-

Annexures A1 and A2 orders dated 8.6.2009 and 4.6.2009 respectively and paragraph 10 of Annexure A3 joint procedure order are quashed.

The respondents are directed to pay the applicants the amounts if any recovered already from them and to continue the payment of pay and allowances with reference to the pay they drew on the post of Office Superintendent Grade-II.

15. No order as to costs.

*sdl-*  
**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**

*sdl-*  
**(JUSTICE P.R. RAMAN)**  
**JUDICIAL MEMBER**