

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 431/2011

Friday, this the 6th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

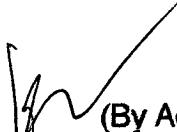
P.J.Joseph,
(Retired Adhoc Mate (Works)),
O/o the Deputy Chief Engineer(Construction),
Southern Railway, Trivandrum),
Residing at: Peedikathundiyl House,
Kallettumkara.P.O.
Near Irinjalakuda Railway Station,
Thrissur District.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. The Union of India represented by
the Secretary to Government of India,
Ministry of Railways,
New Delhi-110 001.
2. The General Manager,
Southern Railway, Headquarters Office,
Park Town.P.O, Chennai-600 003.
3. The Chief Engineer(Construction),
Southern Railway, Chennai-600 008.
4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-695 014.
5. The Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Trivandrum-695 014.
6. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-695 014.

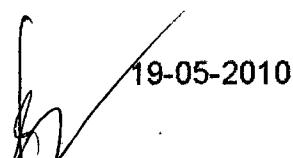
....Respondents


(By Advocate Ms. P.K.Radhika)

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

Certain date of events are required to appreciate the issue involved in this case and the same are as under:-

<u>Date</u>	<u>Event</u>
11-03-1974	Applicant's engagement as casual labourer in the Construction Organization
01-01-1981	Grant of Temporary status to the applicant
10-04-1997	Applicant's services regularized in Engineering Department/TVC Division and grant of lien as Gangman in scale of Rs 775-1025 in the Open line and allowed to continue in Construction Organization on ad hoc basis. Annexure A-2 refers. At the material point of time the applicant was performing the duties in a group C post in the pay scale of Rs 950- 1500.
30-08-2000	OA No. 1664/97 filed by the applicant and other connected OAs claiming the relief that regularization should be in Group C post and that there shall be no reduction in the pay scale attached to the post in the Construction Wing as long as the applicant was working therein had been allowed by the Tribunal. Annexure A-3 refers.
24-05-2006	OA 625/2003 along with connected OAs was disposed of holding that the action of the respondents in continuing the applicants in the scale of pay in Group C posts in the Construction Organization while maintaining their lien in the Group D posts in the open line cannot be held to be arbitrary or unconstitutional.
31-01-2010	Superannuation of the applicant. However, no pension etc was sanctioned.
19-05-2010	OA No. 786 of 2009 relating to processing of pension of the


 19-05-2010

applicant has been disposed by the Tribunal on the respondents' conceding by their Annexure A-5 and A-6 orders for the relief sought.

03-06-2010 PPO in respect of the applicant issued wherein the pay last drawn has been reflected as Rs 7800 in the scale of Rs 5200 – 20200 with G. Pay of Rs 1800/- and pension fixed accordingly at Rs 4,800 (Half of Rs 7800 + 1800 i.e. half of Rs 9600/-) The applicant was shown as having worked only as Trackman. Pension worked out was on the basis of the pay that the applicant would have drawn as a Trackman.

16-05-2011 Applicant moved this OA claiming his pension to be based on the actual last pay drawn in the construction wing i.e. Rs 8,800 + GP 1900.

09-06-2011 Railway Board clarifies the entitlement to pension of those whose lien was maintained in the Open line but whose services were obtained in the Construction Wing stating, *"basic pay drawn by an employee on ad hoc promotion in the Construction Organization shall be reckoned as pay in terms of clause (i) of Rule 1303 (F.R. 9)(21)(a)(i) of Indian Railways Establishment Code Vol II/1987 Edition for the purpose of reckoning of emoluments in terms of Rule 49 of the Railway Services Pension Rules 1993. "*

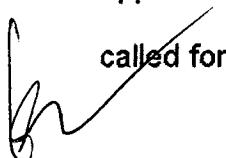
2. The applicant has filed this OA claiming the following reliefs:-

- (i) Call for the records leading to the issue of Annexure A-1 and quash the same to the extent it fixes the applicant's pension and other retirement benefits on the basis of a basic pay of Rs.7800/- + G.P.1800/-
- (ii) Declare that the applicant is entitled to have his pension and all other retirement benefits calculated on the basis of a basic pay Rs.8870/- + G.P. Rs.1900/- actually drawn by the applicant as on the date of his superannuation on 31.1.2010 and direct the respondents accordingly.
- (iii) Direct the respondents to grant the applicant arrears of pension and

other allowances and all other retirement benefits with interest at the rate of 9% per annum from the date from which the arrears of pension and other retirement benefits fell due month after month, upto the date of full and final settlement of the same.

3. Respondents have contested the OA by filing a reply, though belated. It was contended therein by them that the applicant was drawing a pay of Rs 8,870/- in the Pay Band of Rs 5,200 – 20,200 with Grade Pay of Rs 1,900 as Mate on ad hoc basis in the Construction Organization as on 31-01-2010 and the pay in the substantive position i.e. as Trackman was Rs 7,800/- with Grade Pay of Rs 1,800/-. His promotion in the Construction Wing was only on ad hoc basis, not having any bearing on his seniority in the cadre wherein his lien was maintained. The Ad hoc promotions granted by the Project Construction Organization were based on the local needs and not by following the provisions in the Indian Railway Manual Establishment Manual.

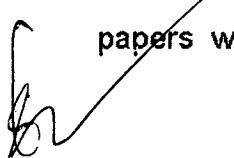
4. It was also contended by the respondents that the Railway Board as per their letter F(E)III/2007/PNI/4 dated 19-08-2010 have advised that the practice of sanctioning retirement/death benefits of non gazetted Railway Servants on the basis of higher amount of basic pay drawn by them in higher grade posts/ increments on ad hoc basis than the basic pay that would have been admissible had they been holding their cadre post is in gross violation of the principles laid down in the Board's letter No. E(ING)/70/SR/6/43 dated 13-03-1972 and is against the provisions governing 'emoluments' as contained in Railway Services (Pension) Rules, 1993. It is further stated that the Railway Board while withdrawing its letter dated 19-08-2010 by letter dated 09-06-2011 have ordered that the cases decided prior to 19-08-2010 need not be re-opened. As the applicant's settlement benefits were decided prior to 19-08-2010, no revision is called for.



5. Counsel for the applicant argued that the Railway Board's order dated 09.06.2011 is specific that the pay drawn in the Construction Wing should be the basis for calculation of pension and the restriction as contained in order dated 13.03.1972 does not apply to the ad hoc promotion granted to construction wing employees. There is no application of the order dated 19-08-2010 as the applicant's pension was fixed prior to the said date. The fact that the applicant had earlier filed OA No. 786 of 2009 and the respondents had conceded the relief sought for therein would go to show that the claim of the applicant was accepted by the respondents and his claim is for grant of pension based on the last pay drawn, as per the Pension Rules and in any event, the impediment as contained in order dated 19-08-2010 got removed by latest order dated 09-06-2011.

6. Respondents' contention as contained in the Reply, as reflected in one of the earlier paragraphs is that the Railway Board's clarification stipulates that cases decided prior to 19-08-2010 need not be reopened and that the case of the applicant was decided prior to the said date of 19-08-2010.

7. Arguments were heard and documents perused. The earlier OA No. 786 of 2009 was decided on the basis of the respondents' concession as contained in Annexure A-6. At that time the applicant would have been in the genuine belief that his pension would be based on the last pay drawn by him in the Construction Wing. Had there been any inkling that his pension would have been on the notional basis of the pay that the applicant would have been drawing had he not been sent to Construction Wing, he would have in the earlier case itself agitated against the same. Respondents had stated only to the extent that his pension papers were being processed, without disclosing as to the manner in which



pension was being worked out and the OA was thus closed on their conceding that the applicant was entitled to pension. The applicant, on receiving the pension payment order, agitated against the fixation of pension on the basis of pay which was less than his actual pay drawn last, by shooting out a lawyer notice. As there was no joy, he had filed the instant OA which is anterior to the date of issue of the clarification order of the Railway Board vide RBE circular No. 85/2011. This letter reads as under:-

**"GOVERNMENT OF India
MINISTRY OF RAILWAYS (RAIL MANTHRALAYA)
(RAILWAY BOARD)**

No.F(E),
111/2007/PNI/4
New Delhi, dated 09.06.2011

The GMs/FA & CAOs,
All Zonal Railway & Production Units,

Subject: Emoluments reckoned for calculating retirement/death benefits of staff working in the Construction Organizations – PNM/NFIR
Item No.3/2008 and PNM/AIRF Item No.72009

The Staff side, in the PNM forum has requested for withdrawal of the instructions contained in this office letter of even number dated 19.8.2010 regarding reckoning of emoluments for calculating retirement/death benefits of staff working in the Construction Organizations.

2. The matter has been reconsidered in detail by the Board and it has now been held that the instructions contained in para 1 of this office letter No.E(NG)I 70 SR 6/43 dated 13.3.1972 which provide that the benefit of one grade higher shall not be taken into consideration for pay purpose including eligibility for selection to Class II posts, is limited in its scope for selection to Class II posts, seniority benefits etc and does not have applicability to reckoning of emoluments for calculating retirement/death benefits of staff working in the construction organizations. As such, it has been decided by the Board that the basic pay drawn by an employee on ad hoc promotion in the construction Organizations shall be reckoned as pay in terms of clause (i) of Rule 1303 (F.R.9)(21)(a)(1) of Indian Railways Establishment Code Vol.II/1987 Edition for the purpose of reckoning of emoluments in terms of Rule 49 of the Railway Services (Pension) Rules, 1993,. Consequently, the instructions contained in this office letter of even number dated 19.8.2010 may be treated as withdrawn. Cases decided prior to 19.8.2010 need not be reopened.

3. Please acknowledge receipt.

Sd/-

(S.Sreeram)
Joint Director Finance (Estt)
Railway Board."

8. By the above said letter what has been clarified is that in so far as the restriction contained in the Board's earlier letter dated 13-03-1972, the same would not apply to the ad hoc promotions granted to those functioning in the Construction Wing. It could be seen from para 4 of the reply that the respondents have relied upon the earlier letter dated 13-03-1972 of the Railway Board. The stipulation in the letter dated 19-08-2010 was also made with a view to be in tandem with the aforesaid letter of 13-03-1972. The applicant superannuated in January, 2010 and at that time the letter dated 19-08-2010 did not come into existence. Fixation of pension in his case was, thus, based on 13-03-1972 order which had been held to be not applicable to construction wing employees, vide para 2 of the said Railway Board letter dated 09-06-2011. Thus, the applicant is entitled to the benefit of the Railway Board letter dated 09-06-2011. The only question is whether the stipulation that cases decided prior to 19-08-2010 be not reopened applies to the case of the applicant. The applicant has challenged the action on the part of the respondents in not treating his pay drawn in the construction wing for the purpose of reckoning his entitlement to pension well before the issue of the Railway Board letter dated 09-06-2011. His lawyer notice preceding the date of filing of the OA clearly meant that the applicant did not accept the pension sanctioned to him without protest. Again, the dated 19-08-2010 cannot be held to sacrosanct to discriminate the applicant from others in so far as pension is concerned. It would be curious to note that the Board's letter dated 09-06-2011 states that cases decided prior to 19-08-2010 need not be reopened. Assuming that on the same date i.e. 31-01-2010 which is the date of superannuation of the applicant one more individual like the applicant retired and there being some delay in finalization of the pension, say, on administrative grounds or otherwise, his case came to be decided posterior

to 19-08-2010. In that event, his pension would be more than that of the applicant. If so, would it not mean that the extent of pension admissible to a person depends not on the date of his superannuation or the services rendered or pay drawn but upon the vagaries of the department in finalization of his pensionary benefits? Should such a situation be permitted which would directly infringe upon the equality clause enshrined in Fundamental Rights of the Constitution? Certainly not. It is understandable if there be any such cut-off dates on the basis of date of superannuation, which date is prescribed in the statute; but certainly not on the basis of the date of finalization of the case which depends upon the efficiency/lethargy of the officials concerned.

9. In view of the above, the OA deserves to be fully allowed. Ordered accordingly. It is declared that the applicant is entitled to have his pension fixed on the basis of the pay drawn by him in the Construction Wing i.e. Rs 8870/- plus grade pay of Rs 1900 which was actually drawn by him at the time of superannuation.

10. Respondents shall work out the difference in the pension and other terminal benefits and pay the same with simple interest @ 7.5% per annum. This order shall be complied with, within a period of four months from the date of its communication.

11. Parties to bear their own respective costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER