

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.437/98

Wednesday, this the 13th day of December, 2000.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.A.Antony,
S/o Achamma,
Mason, O/o the Executive Engineer/
Construction,
Southern Railway,
Ernakulam. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Madras-3.
2. The Chief Engineer,
Construction,
Southern Railway,
Egmore, Chennai-8.
3. The Executive Engineer,
Construction,
Southern Railway,
Ernakulam.
4. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14. - Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 13.12.2000, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant initially engaged as a Casual Labourer Mason with effect from 15.1.81 was treated as temporary with effect from 1.1.84 in the scale of Rs.260-400(Rs.950-1500). While the applicant was continuing as a temporary status Mason, he was empanelled as Gangman in scale Rs.775-1025(Rs.2610-3540) in the month of March, 1997. However, instead of posting the applicant as a Gangman, he was allowed to continue in the Construction Organisation as a Mason in the scale of Rs.950-1500 by order dated 22.5.97 A-3. The pay of the applicant was fixed according to the scale recommended by the IVth Central Pay Commission at Rs.1250/- in the scale of Rs.950-1500 with effect from 10.3.97. The applicant thereafter was granted periodical increment and he was getting a basic pay of Rs.3875/- as revised, on acceptance of the Vth Central Pay Commission report issued in the month of February, 1998. The present grievance of the applicant is that all of a sudden the respondents have, without notice, issued A-1 order refixing the pay of the applicant and other similarly situated persons reducing the applicant's pay to Rs.3125/- with effect from 10.3.97. Apprehending that the pay of the applicant would be unjustifiably reduced and huge amount would be recovered from him, the applicant has filed this application seeking the following reliefs:


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"(a) Call for the records leading to the issue of Annexure A-1 and quash the same to the extent it relates to the applicant.

(b) Declare that the applicant is entitled to have his pay drawn in the scale of pay of Rs.950-1500/Rs.3050-4590 protected upon his appointment on ad hoc basis with effect from 10.3.97 in the same scale of pay of Rs.950-1500/Rs.3050-4590 and direct the respondents accordingly."

2. When the application came up for hearing on admission, by an interim order dated 6.4.98, the respondents were directed not to reduce the pay of the applicant from Rs.3875/- until further orders.

3. The respondents in their reply statement contend that the applicant having been empanelled as Gangman and having only allowed to officiate on ad hoc basis as a Mason, his pay has to be fixed in accordance with the instruction contained in Railway Board's letter dated 5.11.76(R-1) and the impugned order refixing the pay of the applicant was issued rightly in accordance with the guidelines contained in the said order. Respondents contend that the applicant does not have a legitimate grievance and the application has got to be dismissed.



4. We have heard the learned counsel on either side. The question which is identical to this case was considered by this Tribunal in O.A.No.905/97 and connected cases and disposed of by a common order dated 30th August, 2000. Justifying the refixation and reduction of the pay of the applicant in those cases, respondents relied on the Railway Board letter dated 5.11.76 R-1 in this case, the Bench while considering the Railway Board's circular held as follows:

"6. Regarding the reduction in the scale of pay of the applicants while they were retained in the Construction Organisation on the self same work they were performing just for the reason that they were regularised as Gangman is not covered by any rule or instruction. The Railway Board's order dated 5.11.76 (Annexure R-1 in O.A.54/98) reads as follows:

"With reference to this Ministry's letter No.E(NG)64/CL/25 dated 4.9.65, it is clarified that the pay of casual labour with temporary status when absorbed in regular Class-IV posts will be fixed as follows:-

- i) those who have hitherto been drawing pay in identical grades, will have their pay fixed with reference to the last pay drawn and
- ii) those who have been working in semi-skilled and skilled grades but are

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absorbed in regular Class IV unskilled grades will have the pay fixed by granting increments in the unskilled grade with reference to their earlier service as casual labour in higher or equivalent grades.

(This disposes of SC Rly's letter No.P(R)407/III dated 14.6.76)

This issues in consultation with the Finance Directorate of the Ministry of Railways".

7. A careful scrutiny of the above order would show that their pay need be fixed only on a regular post according to the instructions. While the applicants are retained in the construction organisation for the self same work they were performing, we are of the considered view that the reduction is uncalled for and unjustified and will amount to violation of the principles of equal pay for equal work. Just because of the applicants' status changed from casual labour to regular employee they cannot be denied the wages for the work that they have been doing and are continuing to do. The impugned orders in these cases are, therefore, liable to be set aside."

5. As the facts and circumstances of this case is exactly identical, we do not find any reason to take a different view in the matter. In the result the impugned order to the extent

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it affects the applicant is set aside and the respondents are directed to continue to make payment to the applicant as if the impugned order has not been issued in his case. No costs.

Dated, the 13th of December, 2000.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the Order No.P.524/CN/ERS/Outdoor dated 11.3.98 issued by the 3rd respondent.
2. A-3: A True copy of the Order No.P.135/I/W.C.Sanctions/Absorption of Casual Labourers/CN dated 22.5.97 issued by the Chief Project, Manager, Madras.
3. R-1: True copy of letter No.E(NG)II/76/CL/79 dated 5.11.76 of Deputy Director, Establishment, Railway Board, New Delhi to the General Manager, All Indian Railways.