

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 438 OF 2007

Dated the 23rd October, 2008

CORAM:-

**HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)**

1. M. Srinivasan,
S/o Mahadeva Kurup,
Sr Assistant, Loco Pilot,
Southern Railway, Ernakulam,
Residing at Nambiath House,
Vadayampadi PO, Ernakulam.
2. B. Gireesh Kumar,
S/o V Balakrishna Pillai,
Sr. Asstt. Loco Pilot,
Southern Raiwlay, Kollam,
Residing at 'Latha Mandiram'
Kalampadu, Kadakkal PO, Kollam.

....Applicants

[By Advocate: Mr MP Varkey)


-Versus-

1. Union of India, represented by General Manager,
Southern Railway, Chennai-600n 003.
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.

...Respondents

[By Advocates: Mr. K.M. Anthru)

This application having been heard on 14th October, 2008 the Tribunal delivered the following -



ORDER

(Hon'ble Dr.KS Sugathan,AM)

There are two applicants in this OA. They initially joined the Madras Division of Southern Railway as Diesel Assistants in 1993. They sought inter-divisional transfer to Trivandrum Division. But before the inter-divisional transfer took place the applicants received two promotions in their parent division. Initially their pay drawn in the parent Division was not protected by the respondents in the Trivandrum Division. The OA filed by them for pay protection was allowed by this Tribunal and the directions of this Tribunal was implemented by the respondents and pay protection was granted. Subsequently vide order dated 15.2.2006 the applicants were promoted as Sr. Loco Pilots in the pay scale of Rs.4000-6000. While the pay of the other employees who got promotion vide order 15.2.2006 were fixed in the new scale, in respect of the applicants it was mentioned that they will draw the existing pay granted by the Tribunal (Annexure-A/3). Aggrieved by the denial of pay fixation in the new scale they filed this OA. During the pendency of the OA the respondents issued an order on 01.2.2008 fixing the pay of the applicants in the new scale of Rs.4000-6000 with effect from the date of promotion and also allowing the applicants to exercise their option for fixation of pay within one month (Annexure-R/1). However, seven days later a Corrigendum was issued on 7.2.2008 by which the right to exercise the option for pay fixation was deleted (Annexure-R/2). The applicants have thereafter modified their prayers in the OA. Their prayer now is restricted to quashing of R/2 by which their right to exercise the option was deleted. They are satisfied with Annexure-R/1 as it stood before the Corrigendum.

[2] The respondents have filed a reply. It is stated therein that the claim of the applicants has been under examination for some time and after examination the prayer has been allowed and the pay re-fixed in the scale of Rs.4000-6000 by order dated 1.2.2008 (R/1). However they are not

entitled to exercise the option for pay fixation on the ground that Annexure-A/3 has not indicated any pay fixation.

[3] We have heard the learned counsel Shri M.P.Varkey and the learned counsel for the respondents Shri K.M. Anthru. We have also carefully perused the records.

[4] The limited issue for consideration in this OA whether the applicants are entitled to exercise their option for pay fixation which is normally available to all employees on promotion. The said option envisages that a railway employee is entitled to initial pay fixation in the new scale at the stage above the pay in the lower grade, but it may be refixed on the date of the accrual of the next increment in the lower scale. The relevant extract of Rule 1313 (FR 22) (I) reads as follows:

"Rule 1313 (FR-22)(I)

The initial pay of a Railway servant who is appointed to a post on a time scale of pay is regulated as follows:

(a) (1) Where a Railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on adhoc basis, the Railway servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is



admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Railway servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty five, whichever is more. (emphasis added).

[5] It would be seen from the above extract that the proviso to the saving clause covers the cases in which the employees were drawing pay at the maximum of the lower pay scale. The applicants were drawing pay at the maximum of the lower pay scale. In the said proviso there is no specific provision for an option to get the initial pay fixed at the next stage and subsequently get it re-fixed on the date of accrual of the increment in the lower scale. But in the subsequent amendment introduced by RBE No.15/95 it has been clarified that employees who were drawing stagnation increments would also be entitled to exercise their option to get their initial pay fixed at the stage above the pay drawn in the lower post and get it re-fixed from the date of accrual of stagnation increment. The amendment introduced in 1995 reads as follows:

" RBE No. 15/95

Subject: Fixation of pay on promotion by taking into account stagnation increment.

[No.PC-IV/87/Increment/3 dated 9.2.95]

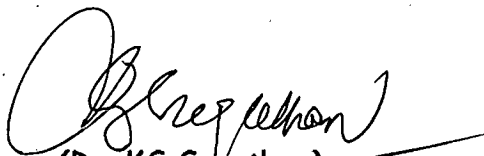
Kindly refer to Board's letter of even number dated 30.11.93 (See Bahri's RBO 1993-II P 323] according to which stagnation increment is to be taken into account for fixation of pay on promotion to higher post. As the stagnation increment has now been allowed to be taken into account for fixation of pay, clarifications have been sought as to whether an employee will have an option to get his pay fixed on promotion in terms of saving clause under FR 22(1)(a)(1).

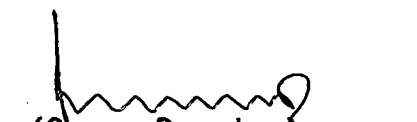
2. The matter has been examined in consultation with Ministry of Finance and Deptt. Of Personnel and it has been decided that the date of stagnation increment will be treated in the same manner as

normal increment. Accordingly, the Railway servants *on promotion will have the option to get their pay fixed as provided in the saving clause of FR 22(1) (a) (i). In other words the Railway servant shall have the option to have the pay fixed under FR 22(1) (a)(i) from the date of promotion itself or to have the pay fixed initially at the stage of time scale of the new post above the pay in the lower grade/post and get his pay refixed under FR 11(1)(a)(i) from the date of accrual of stagnation increment in the scale of pay of the lower grade/post.* (emphasis added)

The reason given by the respondents that the applicants are not entitled to exercise the option for pay fixation because no fixation is done in A/3 order cannot be sustained in the context of the specific provision in Rule 1313 (I) (a) (1) as amended in 1995.

[6] For the reasons stated above, the OA is allowed. The corrigendum dated 7.2.2008 (R/2) is quashed and set aside. The respondents shall extend the benefit of pay fixation to the applicants as per the order dated 1.2.2008 (R/1) along with the right to exercise option. Fresh time limit for exercise of the option shall be given to the employees within a period of three months from the date of receipt of copy of this order. No costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Parackal)
(Member (Judicial))