

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.48/95

Tuesday, this the 9th day of January, 1996

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

M Madhavan Nair, Retired Power Controller,
(Palghat Division of Southern Railway),
Manipuram House, Nanchappa Nagar,
Olavakkode, Palghat--678 002.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi.
2. The General Manager, Southern Railway,
Park Town, Madras--3.
3. The Chief Personnel Officer, Southern Railway,
Park Town, Madras--3.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

....Respondents

By Advocate Smt Sumathi Dandapani.

The application having been heard on 2nd January, 1996,
the Tribunal delivered the following on 9th January, 1996.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was a Driver Grade A in the Southern Railway. On 24.7.85 by order A3 dated 18.7.85, he was promoted as Power Controller Grade II on an ad hoc basis. On such ad hoc promotion, his pay was fixed in the higher scale of Rs.550-750, at Rs.750 per month under FR 22C taking into account 30% of the pay in the running post in addition to the basic pay according to rules. After

contd.

ad hoc promotion, applicant worked continuously as Power Controller Grade II till he was regularly promoted with effect from 26.8.86 by Annexure A4 order dated 2.9.86. In the meanwhile, the revised pay scales came into effect on 1.1.86, and respondents by A6 order dated 13.9.91 fixed the pay of the applicant in the revised scale of Rs.2000-3200 at Rs.2180 per month under Rule 7(1) of the Railway Servants (Revised Pay) Rules, 1986 with his next increment on 1.7.86 taking into account the full incremental period from the date on which applicant reached the maximum of the pre-Fourth Pay Commission Scale of Rs.550-750. The grievance of applicant is that by following this method of fixing his pay on his regular promotion as Power Controller Grade II, his pay has been fixed at a point lower than what he is entitled to. The contention of applicant is that his regular promotion on 26.8.86 entitled him to fixation of his pay under FR 22C taking into account his pay in the lower post on 26.8.86 which itself should have been fixed in the revised scale in the lower post according to the Revised Pay Rules on 1.1.86. Had this procedure been adopted, instead of his pay being fixed at Rs.2240 per month with effect from 1.7.86, it would have been fixed at Rs.2600 per month. Applicant has retired on 31.5.87 and the lower pay fixed has affected his pension and other retirement benefits adversely. Applicant prays for a direction to quash Al order issued by respondents in reply to applicant's representation dated 26.5.92 in which respondents have justified the pay fixation adopted by them and for a direction to respondents to fix his pay under FR 22C on 26.8.86 (the date of his regular promotion) with reference to his substantive pay in the lower post on that date with consequential benefits including arrears of pension and other retiral benefits.

2. Applicant relies on para 2018-B of the Indian Railway Establishment Manual, Vol II which refers to FR 22C. According

contd.

to this para, notwithstanding anything contained in the rules, where a railway servant holding a post in a substantive capacity is promoted or appointed in a substantive capacity to another post carrying duties and responsibilities of greater importance, 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 by one increment at the stage at which such pay has accrued. Applicant contends and it is not disputed that on 26.8.86, he was holding a substantive post of Driver Grade A and he was promoted to a substantive post of Power Controller Grade II and, therefore, he contends that the provisions of para 2018-B applies. Respondents, however, contend that the pay of applicant had already been fixed under FR 22C when he was promoted on ad hoc basis as Power Controller Grade II and therefore, he is not entitled for a further fixation under FR 22C at the time of regularisation on 26.8.86. The impugned order A1 states that since ad hoc promotion of applicant was followed by regularisation without his being reverted to the lower running post, his pay cannot be fixed under FR 22C on 26.8.86. This implies, as pointed out by applicant, that had applicant been reverted at any time prior to his regularisation, he would have been entitled to a pay fixation under FR 22C on regularisation. In our view, this clearly is an anomalous position since it would mean that if a person is reverted and then repromoted he would draw a higher pay than a person who has been continuously officiating in a higher post till his regularisation. Respondents would contend that the posting of applicant as Power Controller is strictly not a promotion because the vacancy was filled by calling for volunteers from running staff. This contention, however, does not materially affect the position since FR 22C applies not only to promotion, but also to appointment as emphasised above. Respondents further contend that volunteers who have opted and were selected and who have joined

contd.

the supervisory posts were not liable to be reverted to the running posts and, therefore, the question of refixation of pay on regularisation does not arise. This contention, however, is not acceptable in view of the plain statement in the order A3 by which applicant was promoted as Power Controller Grade II on ad hoc basis and where it is clearly stated that applicant will have no claim for continuance in the post, confirmation etc and will be reverted when selected candidates are appointed in his place. Therefore, after ad hoc promotion, reversion of applicant was quite possible and it was fortuitous that applicant continued without break in the post of Power Controller till regularisation. A further argument advanced by respondents is that regularisation on 26.8.86 does not involve assumption of higher responsibilities since on that date applicant has already been discharging the duties of Power Controller Grade II. This contention is also not acceptable since on 26.8.86 applicant was appointed regularly to the substantive post of Power Controller Grade II and on that date he has been holding substantively the post of Driver Grade A, thus attracting the provisions of para 2018-B.

3. Finally, respondents contend that according to Railway Board's letter dated 13.11.81, applicant should have exercised an option within one month from the date of promotion for fixing his pay under FR 22C on the date of his promotion or on the date of accrual of next increment in the scale of pay of the lower post. According to respondents, failure of applicant in not having exercised the option in time disabled him from claiming the benefits of such an option at this stage. This statement is misleading. The option referred to in the Railway Board's letter of 13.11.81 is an option either to get his pay fixed after arriving at the notional pay in the lower post (obtained by adding one increment) or to get his pay fixed at a point in the higher time scale next

above his pay in the lower post on promotion and then at the time of next increment in the lower post get the pay refixed on the basis of FR 22C, i.e. on the basis of the notional pay at the time of accrual of the increment in the lower post. But that is not the grievance of applicant at all and his exercising option in terms of Railway Board's letter dated 13.11.81 is not the issue before us. The grievance of applicant is that on regular promotion on 26.8.86, he is entitled to get his pay fixed in accordance with para 2018-B (FR 22C) and that this was not done. All the contentions raised by respondents, therefore, are not acceptable.

4. Applicant relies on DG, Employees' State Insurance Corporation and Another vs B Raghava Shetty and Others, 1995 SCC (L&S) 1014. The facts of that case are totally different and related to counting of previous service in a post held substantively or in an officiating capacity in the same post or same time scale in accordance with the proviso to FR 22 (para 2017). Applicant here is not aggrieved by the non-application of the proviso to FR 22. Applicant also relies on the decision of the Tribunal in OA 497/92 of the Ernakulam Bench. That was a case where the word 'regular' promotion was interpreted. That is not the issue before us at all. These decisions are not of any assistance to applicant.

5. Applicant also brought to our notice para 15 at page 179 of Railway Establishment Rules and Labour Laws by BS Maine. That paragraph states:

"Appointment to substantive post:- A railway servant when appointed to a post substantively while officiating in it is entitled to have his pay fixed afresh with reference to his substantive pay at the time in respect of his old permanent post."

contd.

This squarely indicates the practice followed in cases like that of applicant. However, unfortunately, the book does not make a reference to the corresponding order of the Railway Board on which it is based, though it is noticed that similar references have been given for all other paragraphs. Applicant contends that this book is followed by the Railway authorities in day to day transaction in their offices. However, we will not be able to rely on the above statement for the purpose of deciding the issue before us.

6. The short question is whether an employee who gets an ad hoc promotion and a pay fixation under FR 22C at the time of ad hoc promotion can get his pay refixed under FR 22C when he is regularly promoted after continuous officiation in an ad hoc capacity without any break. FR 22C does not place any restriction on the number of times it is to be applied. Every time there is a promotion or an appointment of a person holding a post in a substantive, temporary or officiating capacity to a post carrying duties and responsibilities of greater importance in a substantive, temporary or officiating capacity, his pay will be fixed under FR 22C. The contention of respondents that because the applicant's pay was fixed under FR 22C at the time of ad hoc promotion, his pay cannot be refixed again at the time of regular promotion just because he has been continuing after his ad hoc promotion without break in the higher post till his regularisation, is not supported by any rule. Under normal circumstances, perhaps, this would not have made much of a difference and, in fact, applicant himself states in his rejoinder that he had no reason to seek a similar claim for fixation of pay with effect from 24.7.85 because that would make no difference. However, in this case, revision of scales based on the recommendations of Fourth Pay Commission having intervened, the method of fixation of pay makes a substantial difference. We

contd.

are further strengthened in our view by an instruction found in Appendix XXX of the Indian Railway Establishment Code, Vol II, Fifth Reprint at pages 152-153. This refers to an instruction dated 11th September, 1934 and it reads as follows:-

"Fixation of pay on substantive appointment to a post while officiating in it--In the case of a Government servant appointed substantively to a post in which he had previously officiated and whose present substantive pay is the same as the pay which he drew when last officiating, old FR 22(b) laid down that he should draw an initial pay equal to that pay and count for increment in that stage the period during which he was drawing that pay. But the position has been altered deliberately in the revised FR 22 (2017) under which the initial pay of such a Government servant substantively appointed to a post should be fixed with reference to his substantive pay in respect of the old post. It has, therefore, been held that a Government servant when appointed to a post substantively while officiating in it, is entitled to have his pay fixed anew under the revised FR 22 (2017) with re-reference to his substantive pay at the time in respect of his old permanent post."

This principle has not undergone any change in the last six decades.

7. As pointed out, FR 22C does not place any restriction that it can be applied only once to an individual on promotion. In the case of applicant, there has been an ad hoc promotion and subsequently a regular promotion. Though there is continuity of service in the sense that there was no break in ad hoc service before regularisation, applicant is entitled to have his pay fixed under FR 22C on both occasions. The only option (and that option is not relevant in the issue before us) is that he can have the fixation under FR 22C from the date when his next increment in lower scale accrued, in which case, his pay would be fixed on

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the date of his promotion under FR 22(a)(1) and then, subsequently refixed under FR 22C on the date of accrual of such increment on the lower scale. As seen from the revised version of FR 22C, i.e. FR 22(I)(a)(1), if an ad hoc promotion is followed by regular appointment, then such an option would be admissible either from the date of initial appointment or from the date of promotion. Inasmuch as FR 22 (I)(a)(1) is only a rationalisation and simplification of the old rules, the position would not be different prior to the amendment to FR 22C and its replacement by the new version.

8. In the light of our discussion above, we find that applicant is entitled to have his pay fixed on the revised scale of the lower post on 1.1.86 and consequently, entitled to have his pay fixed in the higher post under para 2018-B (FR 22C) of Indian Railway Establishment Manual on regular promotion with effect from 26.8.86 with reference to applicant's substantive pay in the lower post. Annexure A1 is accordingly quashed. We direct respondents to fix the pay of applicant on 26.8.86 with reference to the substantive pay in his lower post in the revised pay scale for the lower post under para 2018-B (FR 22C) of Indian Railway Establishment Manual, Vol II. We also direct respondents to refix applicant's pension and other retirement benefits in accordance with the pay so fixed in terms of the above direction. This shall be done within four months from today and consequential arrears shall be paid within three months of such fixation of pay/pension and other retirement benefits.

9. Application is allowed as aforesaid. No costs.

Dated the 9th January, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexures:

1. Annexure A1: A true copy of letter No.P.(S)524/IV/LRS(pt) dated 29/4/94 issued by the 3rd respondent rejecting the applicant's grievances.
2. Annexure A3: A true copy of the order No.J/MM 24/85 of 18/7/85 issued by the Divisional Rly. Manager, Palghat promoting the applicant on adhoc basis as power controller.
3. Annexure A4: A true copy of the order No.J/P608/V/2/3 Vo.2 dated 2/9/86 promoting the applicant as power controller issued by the Divisional Mechanical Engineer Palghat.
4. Annexure A6: A true copy of the order bearing No.J/P 524/PC M.Cell dated 13/9/91 issued by the fourth respondent.