

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 49 OF 2011

Wednesday, this the 12th day of September, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Sunil K Jose
Loco Pilot Goods
Southern Railway, Ernakulam
Residing at Kollamparambil Lane
3H, L.M.Paily Cross road
Vyttila, Kochio - 19

... Applicant

(By Advocate Mr. M.P.Varkey)

versus

1. Union of India represented
by the General Manager
Southern Railway
Chennai - 600 001
2. Senior Divisional Personnel Officer
Southern Railway
Trivandrum - 695 014

... Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 12.09.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant was appointed as Diesel Assistant in the scale of Rs.950-1500 / 3050-4590 in Palghat Division on 08.07.1991. Subsequently in 1993 he was transferred to Madras Division. While working so, he applied for inter divisional transfer to Trivandrum Division. However, the inter divisional transfer materialized only in 1999. Meanwhile, he got promoted as Shunter on regular basis on 28.08.1998. Subsequently, on inter divisional transfer he was relieved from Madras



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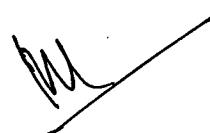
Division and he joined Trivandrum Division on 12.02.1999. As per Annexure A-1 dated 03.08.1999 issued by the Divisional Office, Trivandrum, the pay of the applicant who was transferred on request from Madras Division to Trivandrum Division on reversion as Diesel assistant in the scale of Rs.3050-4590 was re-fixed at Rs.3950/- . The next date of increment was ordered as 01.07.1999. At the relevant time of transfer he was drawing the pay of Rs. 4100/- which was thus reduced to Rs.3950/- According to the applicant, he is entitled for protection of his pay on inter divisional transfer at Rs. 4030/- plus 70/- as Personal pay. However, the respondents took the stand that the applicant having been completed two years in the promoted cadre in the Madras Division, he is not entitled for protection of pay. According to the applicant, as per Railway Board's Circular enclosing Railway Board's letter dated 30.06.2008 on the subject fixation of pay on transfer to a lower post at own request, it has been made clear that the applicant is entitled for the benefits he claimed. In Annexure A-2 dated 30.06.2008 of the Railway Board's order it is mentioned that " from DOPT O.M dated 14.02.2006 it appears that the benefit can be allowed in respect of those Railway servants who were holding the higher post on regular basis without insisting on the two years service condition stipulated in letter No.F(E)/II/81/Misc/2 dated 20.01.1989". It also shows that the condition of probation period was introduced at the time when confirmation rule was introduced. But as per letter dated 20.01.1989 referred to in Annexure A-2, " in both the cases referred to above, where Recruitment Rules do or do not provide for probation period on promotion, the benefit of confirmation in a promotion grade will follow only after a period of 24 months has lapsed from the date of promotion on regular basis." This period has since been reduced to 12 months in terms



of E(NG)'s letter dated 02.08.2001. As per DOPT O.M dated 14.02.2006, where the pay of a Railway servant is fixed at a stage equal to the pay drawn to the higher grade (or next below, if no such stage is available) it is not clear as to when the next increment is to be allowed. It is of the view that in such cases the next increment is to be allowed from the date when they would have earned their next increment in the old post and not necessarily, after 12 months from the date of re fixation of pay.

2. In the reply statement filed the stand taken by the respondents is that the benefit of protection of pay can be allowed only in cases of employees who have completed the requisite period of probation in the higher grade or post before transfer to the lower grade or post, that the probation period of 24 months prescribed in each grades of promotion as per Railway Board's letter dated 12.10.1998 has subsequently been reduced to 12 months as per Railway Board's letter dated 02.08.2001 and that the employees transferred on their volition from higher grade to lower grade prior to 02.08.2001 have to complete two years period in the higher grade and the employees transferred after 02.08.2001 have to complete one year period and then only they are eligible for protection of pay.

3. Heard the counsel for both sides. The question as to whether the applicant was entitled for protection of pay when he was transferred from one Division to another on request from a higher grade to a reverted post at Trivandrum Division has come up for consideration before this Tribunal in OA 892/10 and OA 933/10. In OA 892/10 this Tribunal held that after referring to Rule 1313 (a) (3) of the IREC Vol.II and the decision in OA 512/09 as follows:-



9. " In the light of the above decision, the applicants are entitled to be fixed in the maximum of the scale of Rs.3050-4590 at Rs.4590 on the respective dates on which they joined the service at Trivandrum Division. However, according to the respondents the arrears may be confined to three years prior to the date of filing of the OA. In both the OAs, no such restriction was placed. Besides, the applicant became eligible for arrears as per the new Circular of the Railways contained in Annexure A-2 dated 30.06.2008 which is circular issued as per No.F(E)-II/2003/FOP/1(Misc) dated 30.06.2008. The subject mentioned there in is "Fixation of pay on transfer to a lower post at own request." The clarification is made applicable with effect from 12.12.1991. Letter dated 01.11.2007 is a corrigendum to their letter dated 17.04.2007 and both these letters are mere adoptions of DOPT's OMs dated 14.02.2006 & 04.01.2007 on the subject. As far as past cases are concerned, the present form of FR 22 came into effect with effect from 12.12.1991 no clarification to the modified rule can have effect from the date of introduction of the rule i.e 12.12.1991. Since the applicants were transferred only subsequently they are entitled to have the benefit including arrears from 12.12.1991, the date on which they joined at Trivandrum Division which is much after 12.12.1991. In this regard, we may refer to Annexure A-4 (a) (i) which is dated 17.04.007 enclosing a clarification issued by the Railways. The clarification issued is Annexure A-4 (a) (2) as per which it is clarified vide O.M dated 14.02.2006 that staff of the Railways are demanding for uniform interpretation of the rule in the matter of FR 22 (1) (a) (3). On examination of such request, Ministry of Finance clarified that on transfer to the lower post / scale under FR 15 (a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22 (1) (a) (3). Even though as per Clause 5, it was stated that past cases already decided need not be re-opened. Subsequently, vide letter No.F(E) II/2003/FOP/1/ Misc dated 01.11.2007 (Annexure A-4 (b) it was clarified that in partial modification of the Department's O.M dated 14.02.2006, Annexure A-4 (a) (2) it was decided that the sentence will stand deleted by virtue of this order. We have no hesitation to say that the applicants are entitled to have their pay fixed in the scale of Rs.3050-



4590 at Rs.4590 from the respective dates they joined service at Trivandrum Division, and to draw stagnation increments as per rules in that regard with consequential arrears as the case may be. This shall be done as early as possible, at any rate, within four months from the date of receipt of a copy of this order."

4. In OA 933/10 also following the decision in OA 892/10 and OA 893/10 this Tribunal declared that the applicants are entitled for refixation of their pay in the scale of Rs.3050-4590 with effect from the dates they joined Trivandrum Division under Rule 1313 (FR 22) (1) (a) (2) of IREC. They are also entitled to have their annual increments on the same dates on which they would have earned the same in the parent Division in the scale of Rs.4000-6000 with all consequential benefits.

5. Yet in another OA 1064/2010, the question as to whether the employees should have completed two years probationary period so as to have his protection of pay was considered and held that the prescription of two years service in the old post to qualify for the benefit granted by other provisions is not to be applied. We have followed the decisions in OA 1041/95, OA 893/97 as also in OA 403/97.

6. In view of the settled legal position as above, the application is liable to be allowed declaring that the applicant is entitled for similar benefits as was granted in OA 893/10, i.e to say that the applicant is entitled for re fixation of his pay in the scale of Rs.3050-4590 with effect from the date he joined Trivandrum Division under Rule 1313 (FR 22) (1) (a) (2) of IREC. He is also entitled to have his annual increments on the same dates on which he would have earned the same in the parent Division in the scale of Rs.4000-6000 with all consequential benefits. This

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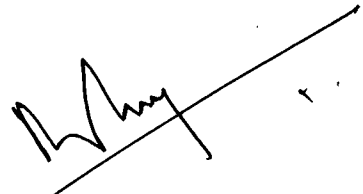
shall be done as early as possible, at any rate, within four months from the date of receipt of a copy of this order.

7. OA is thus **allowed** as above. No costs.

Dated, the 12th September, 2012.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

VS