

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.477 of 2009

.....FRIDAY....., this the 16th day of July, 2010.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.S.Rajendrakumar,
S/o. D. Sukumaran,
Senior Loco Inspector,
Southern Railway, Divisional Office,
Trivandrum-14, Residing at "Sreeragam",
House No.ARA-257, Mughakkad Road,
Anayara P.O., Trivandrum-29.
 2. J.Krishnankutty,
S/o. R. Janardhanan Pillai,
Senior Loco Inspector,
Southern Railway, Office of the
Area Superintendent, Quilon,
Residing at: Attur House, Padinjattinkara,
Kottarakkara, Quilon District.
 3. S.Kulathu Iyer,
S/o. Karumpan Madhavan,
Senior Loco Inspector,
Southern Railway, Divisional Office,
Trivandrum-14, Residing at: Sreesailam,
Kaimanam P.O., Trivandrum - 18
 4. K.M.Dasappan,
S/o. Karumpan Madhavan,
Loco Inspector, Assistant Divisional
Mechanical Engineer's Office,
Southern Railway, Ernakulam Junction,
Ernakulam, Residing at: Koyippurathu Veedu,
Meenadom P.O., Pampady, Kottayam.
- Applicants

(By Advocate Shri.TC Govindaswamy)

VERSUS

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.



2. Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park town P.O., Chennai-3.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.

..... Respondents

(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 09th July, 2010,
the Tribunal on 16.09.2010 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the cancellation of the order of stepping up of pay at par with their junior, the applicants have filed this O.A. with a prayer to quash the order of cancellation and for a direction to the respondents to continue to grant the applicants the stepped up pay.

2. The applicants and their junior, Shri S. Seran, were initially appointed as Assistant Loco Pilot in Palghat Division of Southern Railway. The 1st and 2nd applicants were appointed as Diesel Assistant on 06.11.1984 and the 3rd and 4th applicants were appointed as Diesel Assistant on 02.01.1985. They were promoted as Goods Driver on 31.12.1990 and further promoted as Loco Running Supervisor on 12.02.1994 and 01.03.1994 respectively. Shri Seran was appointed as Assistant Loco Pilot on 05.08.1986, promoted as Goods Driver in 1992 and was later promoted as Loco Running Supervisor on 12.03.1997, In the common seniority list of the Loco Running Supervisor of

Southern Railway maintained for the purpose of promotion as Senior Loco Inspector published on 01.06.2002, the applicants were at serial No. 39 to 42 respectively and Shri Seran was at serial No. 75. The applicants were drawing the basic pay of Rs. 6900/- in the scale of Rs. 6500-10500 as on 01.03.1997. When Shri Seran was promoted to the same scale on 12.03.1997, his pay was fixed at Rs. 7500/-. This anomaly had occurred only for the reason that, for the purpose of fixation of pay, 30% of the revised pay in the in the running cadre according to the V CPC, was taken into account in the case of Shri Seran. The applicants had filed O.A. No. 683 of 2006 which was closed on 15.07.2008 taking judicial notice of memorandum dated 12.06.2008 whereby the applicants' pay has been stepped up at par with their junior, Shri Seran. But subsequently vide order dated 23.06.2009, the respondents cancelled the aforesaid memorandum. Hence this O.A.

3. The applicants submit that Annexure A/1 order cancelling the stepping up of their pay is totally non-speaking and, therefore, arbitrary and illegal. The contentions raised by the applicants in their representation were not answered. As regards the identical case of Shri Selvakumar, it was stated in the order of cancellation that the matter has been referred to the Chief personnel Officer. It means that the respondents had not waited for a clarification from the CPO, who is the head of the personnel branch in Southern Railway. The applicants and their junior Shri Seran belong to Palghat Division prior to their promotion to the Loco Running Supervisor cadre (LRS cadre). The applicants' junior was not drawing more pay than that of the applicants at any point of time prior to his promotion to the LRS cadre. The higher pay drawn by Shri Seran is on account of 30% addition of basic pay in the revised pay scale. The Railway Board



orders at Annexures A-5 and A-6 squarely cover the situation. Therefore, the applicants are entitled to the benefit of stepping up of their pay as was originally granted.

4. The respondents contested the O.A. It was submitted that the disparity in respect of the pay of the applicants and their junior arose from two contributory factors, viz. the promotion of junior from the post of Diesel Assistant to Goods Driver and Senior Goods Driver respectively and consequent fixation in the V CPC scale of pay taking into account 30% running allowance. The decision of this Tribunal in O.A. No. 135/2008 which is identical to the present O.A. is binding. Further, they relied on the decisions of Apex Court in C.A. No. 8852 of 1996 dated 14.07.1997 and in C.A. No. 1022 of 2001 dated 13.01.2005. The applicants and their junior are in different seniority units prior to joining LRS cadre. Hence no comparison can be made. Comparison of pay of between persons is permissible only if the junior and senior are in the same seniority unit/post/scale in the lower and higher post/scale. Shri S.Seran was appointed to LRS cadre only after decentralization of initial grade in the cadre whereas the applicants were promoted to the LRS cadre before the decentralization. The case of Shri Selvakumar was referred to the 2nd respondent as the Annexure A-8 order stepping up of his pay has been issued by that respondent, for further action. After the postings in LRS cadre, the applicants and their junior belong to different seniority units and hence, the pay while working in the different units, is not liable to be compared simply for the reason that before decentralization the employees were in the same seniority units. The case of the applicants does not depict any anomaly in their pay with reference to the posts worked within the same seniority unit. It was further submitted that Annexure A/2 order



stepping up the pay of the applicants was issued inadvertently without properly understanding the rules and without appreciating the stand taken in the reply statement in O.A. No. 683/2006. For the above reason, the O.A. should be dismissed.

5. We have heard the learned counsel for the parties and perused the documents.

6. The respondent No. 3 in Annexure A-9 had advised the applicants about the proposed cancellation of the stepping up order and representation, if any, against the proposal should be submitted to his office. The relevant part of Annexure A-9 letter is reproduced hereunder :

"xxxxxx As seen from records, you were selected as LRS and joined the LI cadre in 1994, i.e. before decentralization of the cadre of LIs w.e.f. 12.2.94, 1.3.94, 12.2.94, 1.3.94 respectively and allotted to TVC Division based on your option. The junior Shri Seran LRS working in PGT Division (another unit) was selected subsequently, i.e. in March 1997, on Divisional basis after the decentralization of the LRS cadre in scale Rs. 6500-10500. You have joined the LRS cadre in 1994 much after the introduction of the selection grade of Senior Goods Driver in the cadre of Running staff. Under the circumstances mentioned above, you have no claim for stepping up of pay with an employee of another seniority unit.

As per Codal provisions and according to the Note 9 of RSRP Rule 7, the benefit of stepping up of pay will be given only if,

1. both of your juniors and yourself belong to the same cadre and the post promoted is identical in the same cadre;
2. Pre-revised and revised scale of pay of the lower and higher posts entitled to draw the pay is identical to your juniors and yourself;
3. You were drawing more pay than your juniors at the time of promotion.

In your case, you are comparing with an employee, Shri S. Seran, who belongs to PGT Division seniority unit, while you belong to TVC



Divisional seniority unit. Hence it is proposed to cancel the pay fixation ordered vide memorandum No. V/P.524/VI/ Fixation/ RG/Vol.V. dt. 12.6.08 granting stepping up of pay on par with Shri S. Seran. The amount paid as arrears based on this memorandum is also proposed to be recovered in 25 instalments commencing from March 2009.

You are hereby advised of the proposed action and representation, if any, against the proposal may be submitted to this office within ten days from the date of receipt of this letter. If no reply is received, it will be presumed that you have nothing to represent and appropriate action will be taken.

Also note that you don't have any claim of stepping up of pay on par with another LI by name Shri V. Radhakrishnan, in terms of Note 9 (b) below Rule 7 of RSRP Rules 1997, as he has earned two advance increments for having qualified AMIE during 1991."

Although the codal provisions for stepping up were quoted, it was not shown how the applicants were not eligible for the benefit of the stepping up in accordance with the codal provisions. The first condition in the codal provisions stipulates that the senior and junior should belong to the same cadre, and not the same seniority unit. But the reason for the proposed cancellation of the order of stepping up is shown as that Shri Seran and the applicants belong to different seniority units, namely Palghat Division and Trivandrum Division. The stand taken by the respondent No.3 is apparently quite illogical. The applicants had given detailed representation as at Annexure A-12. They pointed out that Sri Seran and the applicants belong to the LRS cadre of Palghat Division. Shri Seran was their junior all along and he was shown much lower in the seniority list of LRS, i.e. at serial No. 75, whereas the applicants were at serial Nos. 39 to 42. It was submitted that the anomaly had occurred only for the reason that for the purpose of fixation in the stationary post, 30% of the revised pay in the running cadre was taken into consideration. Before introduction of revised pay scale as per the recommendation of V CPC, there was no anomaly at all. The anomaly had occurred only because of the



fixation in the revised scale with effect from 12.03.1997 in respect of Shri Seran. This anomaly is peculiar to those who were promoted to LRS cadre prior to 01.01.1996. In order to undo the injustice in such cases, the Railway Board passed orders No. RBE No. 158/04 dated 20.07.2004 and RBE No. 69/07 dated 01.05.2007. Applying the principles involved in those orders, the pay of several persons working in Palghat Division, Mysore Division and Trichy Division was fixed vis-a-vis their juniors. In the case of Shri Selvakumar, the order stepping up of his pay was issued by the Chief personnel officer vide memorandum No. P (S)524/IV/LRS/V.PC/Vol.III dated 21.06.2005. Shri Selvakumar was in Palghat Division like the applicants. He was appointed as Diesel Assistant and later as Assistant Loco Running Supervisor alongwith the applicants. Shri Selvakumar and the applicants were representing simultaneously for the benefit of stepping up of pay at par with their junior Shri Seran. However, these points were not countered in Annexure A/1 dated 23.06.2009 cancelling the order of stepping up. It shows that the points raised by the applicants were not considered. Non consideration of representation is against the principles of natural justice. The impugned order is not a reasoned order. These infirmities vitiate the order in question.

7. The only point based on which stepping up was cancelled, was that the applicants and their junior belong to different seniority units which is not relevant for stepping up in accordance with Annexures A-5 order R.B.E. No. 158/2004 dated 20.07.2004 and A-6 order R.B.E. No. 69/2007 dated 01.05.2007 of the Railway Board. The relevant extracts are reproduced as under :

Annexure A-5 :

"xxxxxx It has been decided that the anomaly be resolved by granting stepping up of pay to the seniors at par with the juniors in



terms of Note 9 below Rule 7 of RSRP Rules, 1997.

The benefit of stepping up of pay will be subject to the following conditions:-

- (a) The stepping up of pay will be allowed to running staff only appointed as loco supervisors in whose cases 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non-running staff of Mechanical Deptt. appointed as Loco running supervisors as in their cases the question of pay element in the running allowance does not arise;
- (b) If even in the lower post, revised or pre-revised, the junior was drawing more pay than the senior by virtue of advance increments granted to him or otherwise, stepping up will not be permissible;
- (c) Stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged;"

Annexure A-6 :

"xxxxx 3.1 In order to remove the above anomaly, it has been decided that in such cases the pay of the senior employee in the higher grade may be stepped up to make it equal to the pay of the junior person, subject to the fulfillment of the following conditions :-

- (i) The scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.
- (ii) The senior employee should have been eligible for appointment to Selection Grade (introduced later) but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.
- (iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding Selection Grade at the time of his promotion to the higher post.



3.2 The stepping up should be done effect from the date of promotion of the junior employee to the higher grade. Fixation of pay would be done in accordance with the above provisions and next increment of the senior employee would accrue on completion of twelve months from the date of refixation of pay.

4. This has the approval of the Finance Directorate of the Ministry of Railways.

5. This disposes off Southern Railway's letter No. P(S) 524/IV/LRS/V PC/Vol. II, dated 3.7.2006."

The aforesaid orders were issued to meet the anomalies arising out of pay fixation in accordance with the V CPC. The respondents have not shown how the applicants are not eligible for the benefit of stepping up in accordance with the above orders.

8. The respondents relied on the order of this Tribunal in O.A. No. 135/2008 dated 4th November, 2009. There is another decision of Madras Bench of this Tribunal in OA Nos. 935 and 936 of 2003 dated 15.03.2005, which is identical to the present O.A. The relevant extract from the aforesaid order is as follows:

"8. Learned counsel on both sides were heard. The actual details and the dates of promotion and scales of pay, etc., are not denied and admitted by both the parties, the respondents have also granted similar benefit of stepping up of pay to Loco Running Supervisors who were promoted from the feeder cadre of Goods Driver in the same Division on par with his junior Shri Radha Krishnan, vide orders dated 9.3.99, the only reason put forth by the respondents to deny the claim of the applicants is that with the decentralisation of the cadre of Loco Running Supervisors, the applicant had opted for Madurai Division and hence he cannot claim parity with those working in another Division, as different seniority lists are maintained for each division. The respondents were, therefore directed to produce the division-wise seniority list, as the applicants' side had also contended that there are no such lists maintained by the respondents. The respondents' side reported after verifying the fact that there are no division wise seniority list. The only seniority list produced before us dated 18.6.93 is a provisional seniority list of Loco Running Supervisors as on 1.6.93. From this list, we find that the applicants are at serial nos. 81 & 83. Thiru I. Ramsingh and Thiru M. Thiyagarajan whom the applicants have compared themselves with and who have been extended similar



benefits are at serial nos. 79 & 82. When the respondents are maintaining a common seniority list in the promoted category, there is no reason why the benefit granted to those who were promoted along with the applicants should be denied to the applicants, only on the ground that they chose to remain in Tiruchirappalli Division when the applicants had been transferred to Madurai Division. It is evident from the absence of division-wise seniority list that the common cadre and common seniority list continue to prevail in respect of the posts of Loco Running Supervisors. The feeder cadres as stated earlier, belong to three categories namely, Goods Driver, Passenger Driver and Mail Driver who may belong to different seniority units and on that ground it cannot be argued that they belong to different cadres and therefore are not eligible for being considered for stepping up of pay. Moreover, the applicants were promoted much before the decentralisation took place. The three conditions which the respondents have enumerated for stepping up of pay are satisfied in this case as there is no condition that the junior and senior should belong to the same seniority unit. It only speaks of "same cadre and not seniority unit". The applicants herein and the junior belong to the same cadre in the feeder category and in the promoted category. It is also not correct to say that the anomaly is not due to application of FR 22. The recommendations of the Vth Pay Commission were also implemented by way of application of FR 23 with regard to pay fixation. Further, the Headquarters office has considered the matter in its entirety and come to the conclusion that there is an anomaly due to giving the benefit of the element of the Running allowance to the juniors in the revised scale whereas the same benefit of the senior is of lesser value as the same has been calculated on a pre-revised pay scale. Hence, it has been decided that the stepping up of pay will be granted to seniors subject to the conditions prescribed in their letter dated 20.7.04. We also find from the records produced before us by the applicants in their rejoinder that similar benefit has been granted to all Loco Inspectors of Palghat Division on par with their junior one Shri P. Sashidharan. It is also mentioned by the applicants that one Shri K.V. Sunderesan has already been granted this benefit on par with Mr. V. Radha Krishnan even though he belongs to Palghat Division. However, no such orders have been produced before us. The respondents have not denied this.

9. Considering the above facts and circumstances, we are of the view that there is merit in the prayer of the applicants. Accordingly the respondents are directed to step up the pay of the applicants on par with Thiru V. Radha Krishnan presently working as Loco Inspector, Headquarters Madras and in the light of the decision of the Railway Board in the Circular dated 20.7.04. Accordingly, the OAs are allowed. No costs."

9. It appears that the order of C.A.T., Madras Bench, was not brought to the notice of this Tribunal while hearing the O.A. No. 135 of 2008. The relevant extract from the judgement dated 04.11.2009 in O.A. No. 135/2008 of this Tribunal is reproduced as under :



"18. The applicant has produced Memorandum dated 26.3.1999 issued by Tiruchirappalli Division of the Southern Railway stepping up pay of S/Shri K.V. Sundaresan, Ramsingh and Thiagarajan on par with Sri V. Radhakrishnan (Annexure A-2) and argued that the applicant is eligible for stepping up of pay. We notice that all the three referred to above are working in Tiruchirappalli Division. Therefore, there is no question of denial of stepping up of pay to the senior in the same cadre and division. In the case on hand, the applicant has not been able to show that he and the alleged juniors are working in the same cadre and that there is senior junior relationship. Hence, in the light of the extant rules on the subject, the applicant is not eligible for stepping up of on par with the alleged juniors.

19. In this view of the matter, we do not find any merit in the grounds raised by the applicant. The O.A. is accordingly dismissed. No costs."

As the order in O.A. No. 135 of 2008 was delivered without taking notice of the order of a coordinate Bench in O.A. Nos. 935 & 936/2003, the order of this Tribunal became an order per in curium. We declare it so. The Madras Bench rendered the finding that for the benefit of stepping up the senior and junior should belong to the same cadre and not seniority unit. Its decision squarely covers the present O.A. as the applicants and their junior belong to the same cadre of LRS.

10. In the judgement of Hon'ble Supreme Court in ***Union of India and others vs. O.P. Saxena*** (C.A. No. 8852 of 1996 and other cases), it was held that stepping up of senior's pay with reference to junior's pay will not be applicable where the seniors were promoted from Driver Grade-C to Loco Supervisor while junior was promoted from Driver Grade-A to Loco Supervisor. This judgement is not applicable to the present O.A. wherein the anomaly had arisen on account of the revision of the pay scale, not on account of promotion from Driver Grade-A to Loco Supervisor.



11. The applicants who joined the service in Palghat Division and were promoted as Loco Running Supervisor earlier to Shri Seran, are definitely senior to him. They are in the same LRS cadre. In accordance with the orders of the Railway Board, the applicants are eligible to get the benefit of stepping up of their pay at par with their junior, Shri S. Seran. The fact that Shri Selvakumar who was similarly placed as the applicants, but for his posting at Headquarter, was also given the benefit of stepping up of pay shows that decentralization of the initial grade of LR is not material for the purpose of granting the stepping up benefit in accordance with the orders of the Railway Board issued in the wake of implementation of revised pay scales from 01.01.1996. The orders of Railway Board are uniformly applicable all over India, irrespective of Divisions and seniority units. The incidence of posting in a particular Division is not a valid reason to deny the legitimate claim of the applicants for the benefit of stepping up. The respondents could have got clarification from the Divisional Headquarter as to the line of action to be taken in case they had any doubt about the benefit of stepping up given to them one year ago. The fact that judicial notice was taken while granting the benefit of stepping up of pay, was not also considered by the respondents.

12. Considering the above facts and circumstances, the O.A. is allowed. The Annexure A/1 order dated 23.06.2009 cancelling memorandum No. V/P.524/VI/ Fixation/RG/Vol.5 dated 12.06.2008 is hereby quashed and set aside, The respondents are directed to continue to grant the applicants the benefit of Annexure A/2 order No. V/P.524/VI/ Fixation/RG/Vol.5 dated 12.06.2008. and to issue appropriate order in this regard within a period of 30 days from the date of receipt of a copy of this order.




13. No order as to costs.

(Dated, the 16th July, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARECKEN)
JUDICIAL MEMBER

cvr.