

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 479 of 2008

MONDAY, this the 23rd day of November, 2009.

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. S. Sankaran Nair,
S/o. Kesavan Nair,
Assistant Loco Pilot,
Southern Railway, Shoranur,
Residing at Quarter No. 129-C,
Ganeshgiri, Shoranur **Applicant.**

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
The General Manager,
Southern Railway, Park Town P.O.,
Chennai – 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat. **Respondents.**

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 16.11.09, this Tribunal
on 23-11-09 delivered the following :

OR D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant commenced his official career as a substitute Loco
Khalasi on 02-02-1973 at Palakkad, and on his having been rendered surplus,
he was transferred to Coonoor, where he had undergone diesel conversion
course and on being successful in that course, he was ordered to work as Diesel
Assistant in which post he had become regular w.e.f. 28.04.1993. While prior to

regular promotion as Diesel Assistant, the applicant was in the pay scale of Rs 800 – 1150 drawing pay of Rs 1070/-, on regular promotion as Diesel Assistant in April, 1993, he was placed in the stage of Rs 1110/- in the scale of pay of Rs 950 – 1500 and was granted the next increment raising his pay at Rs 1130/- w.e.f. 01-04-1994. However, later on the pay of the applicant was reduced from Rs 1110/- to 1070 in the scale of Rs 950 – 1500 and as on 01-10-1994 the pay fixed at Rs 1090/-, i.e., reduced from 1130/-, which the applicant was drawing w.e.f. 01-04-1994. The above reduction was stated to be as a consequence of the applicant having been afforded officiating post of Diesel Assistant w.e.f. 15-10-1991. And, many juniors to the applicant have been placed in higher pay than the applicant. Hence, the applicant had submitted representation to the authorities for proper placement of his pay as drawn earlier, vide Annexure A-5. As the same was not considered by the respondents, he moved OA No. 680/2007, which was disposed of with a direction to the respondents to consider and decide the aforesaid representation. Annexure A-6 refers. In pursuance of the aforesaid order of the Tribunal, the respondents had issued the impugned Annexure A-7 order explaining the fixation of pay and the reason for the juniors drawing more pay. As the applicant is aggrieved by the said Annexure A-7, he has filed this OA.

2. Respondents have contested the O.A. According to them, while the above narration of facts as to the applicant's having become diesel assistant on regular basis w.e.f. 28-04-1993 and fixation of pay at Rs 1110/- in the scale of Rs. 950 – 1500 was admitted, it was submitted that in the wake of restructuring that took place from 01-01-1984, the applicant was fitted against a reclassified post of Loco Khalasi Helper with retrospective effect from 01-01-1984 in the erstwhile scale of pay of Rs 210-290/800 – 1150 and his pay was fixed accordingly and the said pay as on 01-01-1991 was Rs 995/- which was

incremented to Rs 1030/- on 15-10-1991. With the grant of annual increment for the subsequent period, his pay was raised to Rs 1110/- as on 01-10-1995 in the said scale of Rs 950/- -1500/- and with the introduction of replacement scale of Rs 3050 – 4590 in the place of Rs. 950 – 1500/- the pay of the applicant was fixed at Rs 3950/- as on 01.01.1996 and 4030/- w.e.f.01-10-1996, which reached at Rs 4270/- w.e.f. 01-10-1999. The applicant was then promoted as Senior Diesel Assistant w.e.f. 01.01.2000 in the scale of Rs 4000 – 6000 and his pay was fixed at Rs. 4,500/-. As on 01-11-2007 his pay has been increased to Rs 5200/- and thus, there is no depletion in his pay. As regards his juniors, on their having been rendered surplus due to closure of Steam Sheds, they were transferred to Diesel/Electrical Unit as Khalasi during 1982 where they had been promoted to the Skilled Grade III and II, and thereby, they got two more promotions/ fixation/increment in that grade before becoming Diesel Assistant. Thus, their drawing higher pay being due to their having changed the channel, their pay cannot be compared for stepping up of pay of the applicant as Rule 1316 (Annexure R-1) and Rule 9(ii) of Indian Railway Establishment Code (IREC) (Annexure R-2) provide for certain conditions, for stepping up of pay which are not fulfilled in the instant case.

3. The applicant has filed his rejoinder wherein he has asserted that when the applicant was stated to have been fitted in the reclassified post of loco Khalasi Helper with retrospective effect from 01-01-1984, which has resulted in the depletion of pay, he was not asked any option. Thus, reduction in the emoluments was without giving any intimation/notice. According to the applicant, the reduction was due to wrong fixation of pay, reducing the pay from Rs 1110/- to 1070/- As regards the juniors, they were, on being rendered surplus sent to other units, while seniors like the applicant were retained in the same units and later on, these juniors were re-transferred to the same unit where

the seniors were serving. They continue to be juniors to the applicant and other seniors but at the same time, they draw more pay and as such the pay of the applicant should be protected.

4. The respondents have filed their additional reply to the rejoinder, stating that due to reclassification w.e.f. 01-01-1984, when the applicant's pay was refixed, he was paid arrears @ Rs 12/- per month subject to a ceiling of Rs 200/- which he received and in so far as option is concerned, there being no such provision in the Rules, no option was obtained from any individual. Again, the respondents have contended that the applicant, if aggrieved over the depletion in pay, ought to have agitated at the relevant point of time and hence, his case suffers from limitation as well. Claim for protection of pay at par with junior was also resisted in the additional reply.

5. The applicant denied the payment of arrears of Rs 200/- and contended that Annexure R-5 which relate to such payment of arrears was not served upon the applicant and such a contention cannot be true as they would then be contradictory to Annexure A-3 and A-4, which were the pay slips at the relevant point of time. As regards time bar, the applicant states that he had penned many representations and since he could not get any response, he had moved the Tribunal which was first disposed of vide Annexure A-7. Thus, limitation does not come in the way of the applicant's claim.

6. Counsel for the applicant argued that the act on the part of the respondents is *ex facie* illegal, as no reduction could entail due to advancing the date of promotion due to reclassification of posts.

7. Counsel for the respondents submitted that the pay of the applicant

had been correctly fixed.

8. Arguments were heard and documents perused. It is not disputed that prior to 28-04-1993, the applicant's pay was fixed at Rs 1070/- in the post of Loco Khalasi Helper, which the applicant had been holding w.e.f. 01.04.1988. Para 3 and 4 of the counter refers. And as per the version of the respondents, this promotion was subsequently advanced to 01-01-1984 in terms of Board's letter dated 10th July 1985 due to reclassification. Prior to such reclassification, in the erstwhile situation, the applicant was drawing two stagnation increments – one w.e.f. 01-04-1984 and the other w.e.f. 01.04.1986 which resulted in a higher pay in the replacement pay scale effective from 01-01-1986, and according to the respondents these two stagnation increments were not available when the reclassification took place and it is this situation that has resulted in reduction in pay at Rs 1070/- instead of Rs1110/- as on 28-04-1993. This kind of explanation does not appeal to logic, for, it is trite law that no revision of pay scale or advancement of promotion etc., could be allowed which would be disadvantageous to any individual. In such cases, there should be provision for protection of pay as in the case of **Dharam Chand vs Haryana Agricultural University (2004) 9 SCC 77** and in any event, without notice, reduction in pay cannot be permitted. In this regard, the decision in the case of **Bhagwan Shukla vs Union of India (1994) 6 SCC 154** is relevant, wherein, the Apex Court has held as under:-

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following

any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. **Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter.** Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18-12-1970. (Emphasis supplied)

9. Again, whenever, for any reason, the revision of pay or retrospective promotion ends in such a depletion of pay, the same warrants, certain adjustment, called, 'equitable adjustment of old pay' as termed in the decision in the case of **V.K. Rama Rao v. NABARD, 1990 (Supp) SCC 100**, wherein the Apex Court approved such an adjustment to ensure that the pay of old employees does not go less than that of those subsequently appointed. The Apex Court in that case held as under:-

"7. As will be obvious from what we have stated earlier, the whole basis of the petitioners' case is misconceived. It proceeds on wrong presumptions and unwarranted premises. The present is not a case of discrimination between employees belonging to the same class or of granting different scales of pay to them. The present is a case of adjusting and fitting the salaries of the old employees belonging to the same class into the new scales of pay which are made available to both the new and old employees. If in effecting such adjustments, it becomes necessary to give fitment increments to the old employees, it is to work out the equities and to do justice to them. Their past service in fact merits it. To deny them such adjustments is to treat them unequally by ignoring their past service and placing them on par with the new entrants. For this purpose, however limited it may be, the old employees in the present case stand in a different class from that of the new. The classification for the purpose is not only justified but necessary. The revision of pay scales is always effected with a particular date prospectively or retrospectively. Whatever the date from which it is effected, it necessarily involves fitment of

the salaries of the existing employees in the new scales. A retrospective operation in the new scales therefore involves, for the same purpose, a classification of employees into two categories, viz. those who were in service prior to the retrospective date and those who entered the service thereafter. If the benefit of the revised pay scales is to be conferred equitably on the old and the new employees, the fitment of salaries is inevitable. To avoid it is to deny the equal benefit of the revised scales to the employees in service prior to the date from which the new scales come into effect. The service jurisprudence, therefore, makes it imperative to grant such fitments in the emoluments of the old employees. The fitment/adjustment in the new scales further, as stated above, has to be done by revising the salaries upward. This sometimes necessarily involves fitment in a higher stage in the pay scale than what the employee would be entitled to by a strict application of the stage to stage adjustment. The provision is also, therefore, sometimes made to treat the additional benefit as a personal pay till it gets merged in the next higher increment. This is a known practice of equitable adjustment of the old pay scales to the new pay scales. There is no other way of effecting the just and required adjustment. Thus, it is not a case of giving undue benefits to one section of the employees belonging to the same class, but is a case of conferring equitable benefits on the old employees and effecting a just adjustment between the salaries of the old and new employees, as necessitated by the new pay scales."

10. The spirit behind the above decision is that there shall be no depletion in the emoluments drawn, much less seniors getting less emoluments than the juniors.
11. In view of the above, reduction of pay from 1110/- to 1070 w.e.f. 1993 is illegal.
12. As regards stepping up of pay at par with junior, the applicant has no case as the juniors' higher pay was due to their having got promotion in the skilled and highly skilled grades. That they are back to the same unit maintaining lower seniority would not in any way substitute the relevant conditions to be fulfilled for grant of concession of stepping up of pay in accordance with Rule 1316 or Rule 9(ii) of IREC.

13. Coming to the technical objection of time bar, it is settled law that when there is a recurring cause of action as for example, wrong fixation of pay, limitation does not apply. In this regard, decision by the Apex Court in the case of **Union of India v. Tarsem Singh, (2008) 8 SCC 648**, refers, wherein it has been held as under:-

"5. In M.R. Gupta v. Union of India the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:

"5. ... The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this ~~ex~~ limited extent of proper pay fixation, the application cannot be treated as time-barred...."

6. In Shiv Dass v. Union of India this Court held:

"8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy

because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

* * *

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/ successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief

relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

14. In view of the above, it could be safely held that the instant case does not suffer from limitation.

15. Thus, the OA is allowed. It is declared that the applicant's pay on the date of his regular promotion as Diesel Assistant in the grade of Rs 950-1500 shall be fixed keeping his pay at Rs 1070/- in the scale of Rs 800 – 1150 in the feeder grade, as originally fixed. Respondents are directed to refix the pay accordingly from 1993 till date. However, arrears of pay would be available to the applicant only w.e.f. June, 2007 when he had filed the representation, which was directed to be disposed of vide Annexure A-7 order of this Tribunal.

16. Fixation of pay would be completed within a period of 3 months from the date of communication of this order and pay for the future months would be regulated accordingly while payment of arrears may be made within a further period of four months thereafter, as the same would involve calculation of arrears on each month.

17. No costs.

(Dated, the 23rd November, 2009)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER