

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.49/2007

Wednesday, the 14th day of November, 2007.

CORAM :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE:MR.GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 P.N.Anil Kumar
Sr.Assistant Loco Pilot,
Southern Railway, Quilon
Residing at "Ashtami",
Kaitha South,
Chettikulangara P.O.,
Mavelikkara, Alleppey Dist.
- 2 S.Nizarudeen
Sr.Assistant Loco Pilot,
Southern Railway, Quilon
Residing at "Rukku Dale",
Kuttichira, Peroor,
Kollam Dist.
- 3 Anto Kuriakose
Assistant Loco Pilot,
Southern Railway, Ernakulam.
Residing at 144-E, Ernakulam South,
Kochi.
- 4 K.P.Sethumadhavan
Senior Assistant Loco Pilot,
Southern Railway, Ernakulam
Residing at Kulampurathu,
Nhamanghat P.O.,
Trichur.
- 5 P.K.Gopakumar
Senior Assistant Loco Pilot,
Southern Railway, Ernakulam,
Residing at "ANIZHAM"
Charamangalam, S.N.Puram PO,
Cherthala, Alappuzha.

6 G.Ajith,
Senior Assistant Loco Pilot,
Southern Railway,
Residing at Kamukumpallil House,
Puliyannoor P.O.,
Kottayam Dist. ... Applicants

By Advocate Mr.M.P.Varkey

V/s.

1 Union of India represented by
General Manager,
Southern Railway, Chennai-600003.

2 Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

This application having been heard on 23.10.2007 the Tribunal delivered the following on 14.11.2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

1 The dispute in this OA is regarding the fixation of pay of the applicants who were working in Madras Division as Shunters in the scale of pay of Rs.4000-6000 at the time of their Inter Divisional Transfer to Trivandrum as Diesel Assistant in the scale of pay of Rs.3050-4590.

2 The brief facts of the case are that applicants 1 to 6 were appointed as Diesel Assistants in the scale of Rs.950-1500 (presently Assistant Loco Pilot in scale Rs.3050-4590) in Madras Division on 29/5/1993, 7/6/1993, 10/5/1993, 20/10/1993, 20/10/1993 and 20/10/1993 respectively. Soon after their appointments, they applied for Inter

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Divisional Transfer to Trivandrum Division in terms of Rule 226/229 of IREC read with para 313 of IREM.. Before their transfers were materialised, they were promoted as Shunters in scale Rs.4000-6000 on regular basis with effect from 31/8/1998 and, their pay was fixed at the minimum of the scale Rs.4000/- from the date of their promotion. Finally, when their turns for transfer came during 1998-1999, they were reverted to the post of Diesel Assistant and transferred to Trivandrum Division and accordingly they joined there on 16/6/1999, 1/7/1999, 24/6/1999, 1/9/1998 and 1/9/1998 respectively. Thereafter, respondents vide Annexure A-1 and A-2 memoranda dated 16/8/1999 and 7/2/2000 respectively fixed their pay. While fixing their pay, the respondents have taken into consideration of the fact that the applicants were reverted from the post of Shunter to that of Diesel Assistant in the scale of pay of Rs.3050-4590. For example, in the case of the first applicant, Shri P.N.Anilkumar, he was appointed as Diesel Assistant w.e.f. 29/5/1993 in the scale of pay of Rs.3050-4590 and on the date of his promotion as Shunter in the scale of pay of Rs.4000-6000 on 29/8/1998 his pay was fixed in the said scale at the minimum of the scale at Rs.4000/-. He was reverted as Diesel Assistant and joined in that capacity at Trivandrum Division on 16/6/1999. During 29/8/1998 to 15/6/1999 he was paid in the scale of pay of Rs.4000-6000 with Rs.4000/- as basic pay. On his reversion, his pay in the scale of pay of Rs.3050-4590 was fixed at Rs.3875/- after granting him the notional increment which he would have drawn in the lower scale and continued to grant the increments in the same scale. Similar fixations at lower stage have been

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done in the case of other applicants also.

3 The applicants have made several representations to the respondents against the aforesaid fixation of their pay but finally the second respondent vide Annexure A-4 letter No.V/P.524/V/RG/Fixation/Vol.IV (Pilot) dated 31/10/2006 upheld the pay fixation made vide Annexure A-1 and A-2 Memorandums and the applicants were informed that since they were working as Shunters in the pay of Rs.4000-6000 in Madras Division and transferred to Trivandrum as Diesel Assistant in the payscale of Rs.3050-4590 on Inter Divisional one way Transfer, the pay as entitled to them were fixed in accordance with the Railway Boards letter F(E)II/2002/FOP/8 dated 29/10/2002(Annexure A-3). It was also clarified that since their transfer on reversion to the post of Diesel Assistant/Assistant Loco Pilot, in the scale of pay of Rs.3050-4590 was on their request from which they were promoted, their pay have to be fixed at a stage at which they would have drawn, had they not been promoted.

4 According to the applicants, the aforesaid fixation of their pay in the scale of pay of Rs.3050-4590 in the post of Diesel Assistant at a lower stage than the stage at which they have already been drawing their salary in the scale of pay of Rs.4000-6000 as Shunter is against the clarificatory letter No.F(E)II/2002/FOP/8 dated 29/10/2002(supra) which is as under:-



**Deletion of ACS 19 from para 604 of IREM Vol.I
(1989 Edition)clarifications regarding:**

Many queries are being received from different quarters regarding the reasons for deletion of ACS 10. Presumably there is a misunderstanding that the protection of pay provided for under para 604 (a)(iii) included in the Indian railway establishment Manual, by ACS 10, has now been withdrawn. That certainly is not the case and no benefit has been withdrawn. Rule 1313(1)(a) (3) brought into force by ACS 14 issued vide Board's letter No.F(E)11/89/FRM dated 12.12.91, already provided for protection of pay, ACS 19 only brought into force what was already in existence in the form of FR 22 adopted as Rule 1313 vide ACS 14 issued on 12.12.91.

In order to have a very clear view, the provisions contained in the erstwhile ACS 19 and those already existing under FR 22 i.e. Rule 132 of R-11 are shown below in juxtaposition.

Provision of erstwhile para 604(a)(111) inserted in IREM Vol.I (1989) by ACS 19	Rules under which the provision already existed in F.Rs.
i) When a govt. Servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.	FR 22(1)(a)(2) of R 11 (incorporated vide ACS-14)
ii) When a govt.servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, has he not been promoted.	FR 22 22(1)(b) i.e. Rule 1313(1)(b) of R-11 (incorporated vide ACS-14).
iii) When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227(a)(2)R-1 (FR 15-A (2)) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay, in accordance with FR 22(1)(a)(3).	FR 22(1)(a)(3) i.e. Rule 1313(1)(a)(3) of Rule 11 (incorporated vide ACS -14).

It may be seen that cancellation of ACS 19 has not resulted in any kind of withdrawal of any benefits. Railways should continue regulating pay fixation in accordance with the provisions already contained in Rule 1313 of R-II without any apprehension."

5 They have also relied upon the Annexure A-5 Railway Board Order No.R.B.E. No.198/91 issued as an amendment to Rule 1313(FR-22) 1316(FR-22C), 1325(FR-30) & 1326 (FR-31) of the Indian Railway

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Establishment Code Vol.II (Sixth Edition-1987). According to the said Rules:-

"The existing Rule 1313(FR-22) of the Indian Railway Establishment Code, volume-II (Sixth Edition 1987) shall be substituted by the following:-

(3) When appointment to the new post is made on his own request under {Rule 227(a)(2)-R1(F-15A)(2)} and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw the maximum as his initial pay.
(b) If the conditions prescribed in clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time scale.

Provided that, both in cases covered by clause (a) and in cases, other than the cases of reemployment after resignation or removal or dismissal from the public services, covered by clause (b), if he;

(1) has previously held substantively or officiated in-

- (i) the same post, or
- (ii) a permanent or temporary post on the same time scale; or
- (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale; or

(2) is appointed subject to the fulfilment of eligibility conditions as prescribed in the relevant recruitment rules to a tenure post on a time scale identical with that of another tenure post which he has previously held on regular basis: then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1) (iii) be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under {Rule 1303(iii)-R11 (FR-9(21)(a)(iii))} which he drew on the last occasion, and he shall count the period during which any previous occasions for increment in the stage of the time scale equivalent to that pay. If, however, the pay last drawn by the Railway servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this

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proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (i) (iii) shall, on reversion to the parent cadre, count towards initial fixation of pay, to the extent and subject to the conditions indicated below:-

- (a) The Railway servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;
- (b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in the higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and
- (c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Railway servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post."

6 The respondents have contested the case on the ground of limitation as well as on merits. Their contention is that there was an abnormal delay in filing the present OA as the impugned orders were issued in 1999 and 2000 whereas this OA has been instituted only in 2007. On merit, they have submitted that their pay have been correctly fixed in terms of Rule 1313(FR-22), 1316(FR-22C) 1325(FR-20) & 1326 (FR – 31) of the IREC as clarified in (ii) of Annexure A-3 letter(supra).

7 We have heard Advocate Mr.M.P.Varkey for the applicant and Advocate Mr.Varghese John for Mr.Thomas Mathew Nellimoottil for the respondents respectively. Undisputedly, this is a case of anomolous situation which has occurred while fixing of the pay of the Railway Servants on Inter Divisional Transfer. Before their transfer to the Trivandrum

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Division, the Applicants were Diesel Assistant in the scale of pay of Rs.950-1500. They sought transfer in the same capacity. Had they been transferred immediately after their request for transfer, they would have joined the Trivandrum Division as Diesel Assistants with bottom seniority but with protection of their pay in the said capacity at the scales at which they have been drawing their pay in the Madras Division. But in this case, since there was delay in getting their transfers, they got their to the higher cadre of Shunters in due course in Madras Division. When their turn came for transfer, the Respondents reverted them as Diesel Assistant and posted them in Trivandrum Division after refixing their pay in the lower scale of Diesel Assistant by giving notional increments in the said scale in the scale of pay of Rs.4000-60000 and accordingly their pay has also been fixed in the higher scale.

8 The aforesaid position has already been considered by this Tribunal in OA-459/04 and connected cases relied upon by the applicant's counsel which is a binding precedent. The facts in those cases were quite identical with the facts in this case. The aforesaid OA was disposed of with the following detailed order:-

"15 For determination of this case therefore we go by the Rule 1313 as it stands amended by Annexure A-4. In dealing with the rival contentions according to the respondents the case of the applicants fall under (ii) of Annexure A-2 by the above clarification they would provided be covered under Rule 1313(1)(b), whereas according to the applicants they would be covered under Rule 1313(1)(a)(2). The juxtaposition of these two provisions as seen from Annexure A-2 will show that FR 22(1)(a)(2) and corresponding provision of Rule 1313 (1)(a)



(2) deal with transfer from a higher post to a lower post on request and cases under FR 22 and Rule 1313 1(b) are cases of unilateral transfers when a Government servant seeks specific transfer back to the post from which he was promoted. The judgment of the Apex Court in Farid Sattar's case evidently applies to the latter category which has been made clear by the Hon'ble Apex Court wherein it was observed that when an employee seeks a transfer to a lower post, he is required to tender a technical resignation from the post with a view to join the lower post as a direct recruit and accepting such conditions as ranking junior to the juniormost employee and in such a situation the pay has to be fixed with reference to the lower pay scale only. The applicants have requested for transfer when they were holding the post of Diesel Assistant in the Madras Division to the grade and it cannot be said that just because the transfer materialised at a later stage that their request was for a transfer which falls under the latter category and would amount to reversion. It is true that before the transfer materialised all the applicants came to be promoted to a higher post on a substantive basis and by virtue of the rules regarding inter-divisional transfers in the Railway, such transfers can be effected only to a lower post and therefore a situation arose that they could be transferred only ton against a lower post. In such a situation, if the provisions of Rule 1313 corresponds to FR 22 is to be applied, it can only be done under sub rule (2) of the rule according to which if the appointment to the new post does not involve assignment of duties and responsibilities of greater importance the pay has to be fixed in the stage of the timescale in the lower pay scale which is equal to the pay in the lower scale and if there is no stage the stage next above the stage, or under sub rule (3) thereof. But sub rule (3)cannot apply in this case as the maximum pay in the time scale of the post of Diesel Assistant which is in time scale of Rs. 3050-4590 is not lower than the pay in the higher post held by the applicants in the scale of Rs. 4000-6000. Hence Rule 1313 1(a)(2) only is applicable to the applicants in these OAs and the

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objection of the respondents to the effect that they have sought a transfer to a lower post and have to be treated as posted on reversion and also the argument that they were not holding the higher post on regular basis have no force. The decision in O.A. 956/2000 is also be distinguished as it was rendered on the basis of the instructions of the Railway Board dated 29.4.1994 which was withdrawn and the judgment of the Apex Court in Farid Sattar's case which we have already dealt with supra.

16 Besides, the first para of the Annexure A-2 letter dated 20.10.2002 of the Railway Board makes it obvious that such pay protection was available under the erstwhile provisions in Para 604(a)(ii) and states "that no benefit has been withdrawn" by deletion of the same. Therefore the intention is clearly to continue the benefits and not to negate the same.

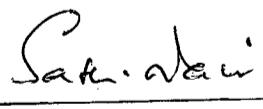
9 Accordingly, this OA is allowed. The impugned Annexure A-1 order No.V/P 524/Fixation/Vol.II dated 16/8/1998 is quashed and set aside and it is declared that the applicants are entitled to have their pay fixed in scale Rs.3050-4590 in terms of Rule 1313(FR-22)(1)(a)(2) of IREC. Voll at Annexure A-5 with effect from the respective dates they had joined Trivandrum Division on interdivisional transfer, with all consequential benefits and, direct the respondents accordingly. The respondents shall issue necessary orders in implementation of the aforesaid direction and disburse the arrears within a period of three months of receipt of this order.

There shall be no orders as to costs.

Dated, 14th November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN