

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 490 of 2006

Wednesday, this the 25th day of April, 2007

C O R A M:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

J. Jayaprakash,
Assistant Loco Pilot,
Southern Railway, Quilon,
Residing at Puthenmadom,
Avanavancherry P.O.,
Attingal, Trivandrum : 696 103 ... **Applicant.**

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai : 600 003.
2. Divisional Personnel Officer,
Southern Railway, Trivandrum : 695 014 ... Respondents.

(By Advocate Mr. K.M. Anthru)

The Original Application having been heard on 17.2.07, this Tribunal on 25.04.07 delivered the following :

O R D E R

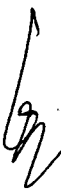
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question involved in this case is as to which of the provision as contained in the Railway Board order No. F (E)/II/2002/FOP/8 dated 29-10/2002 (Annexure A-6) would apply to the case of the applicant. The provisions are as under:-

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Provision of erstwhile para 604 (a) (iii) inserted in IREM Vol.1 (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 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 (I) (a) (2) i.e., Rule 1313 (I) (a)(2) of R-II, (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(I)(b) i.e., Rule 1313(I) (b) of R-II (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-I (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 FR22 (I) (a) (3).	FR 22(I)(a)(3) i.e. Rule 1313(I) (a) (3) of R-II (Incorporated vide ACS-14)

2. The Facts capsule: The applicant was appointed as Diesel Assistant In Madras Division of the Southern Railway In the scale of Rs 3050 - 4590 In June, 1997 and In August, 1997 he had applied for transfer to Trivandrum Division. He was promoted as Senior Diesel Assistant In the scale of Rs 4000 - 6000 against cadre restructuring In September, 2002 and It was only In November, 2002 that the applicant's transfer to Trivandrum Division materialized and he joined the Trivandrum Division on Inter-divisional transfer as Diesel Assistant In the grade of Rs 3050 - 4590 with his pay duly protected. However, In June, 2006, the respondents have abruptly reduced the pay of the applicant from Rs 4,350 /- to Rs 3,650. Hence, this OA with the following reliefs :-



(I) Call for the records leading to the issuance of A-3 and R-1 and set aside the same.

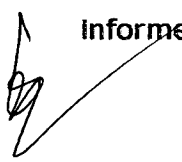
(II) Declare that R-1 is non est, illegal, without jurisdiction and unenforced.

(III) Declare that A-3 is unjust, illegal, without jurisdiction and opposed to the principles of natural justice in so far as it reduced the applicant's pay from Rs. 4340/- to Rs. 3650/- and DP+DA+HRA from Rs. 5233/- to Rs. 4615/-.

(IV) Declare that the applicant is entitled to have his pay fixed at Rs. 4110/- in scale Rs. 3050-4590 with effect from 27.11.2002 in terms of Rule 1313 (FR 22) (I) (a) (2) of A-5 rules and to have his pay raised to Rs. 4190/- from 1.7.2003, Rs. 4270/- from 1.7.2004, Rs. 4350/- from 1.7.2005 and so on in the said scale with consequential arrears and direct the respondents accordingly.

(V) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

3. Respondents have contested that OA. According to them, at the time of transfer to Trivandrum Division, the pay of the applicant was Rs 4,100/- and the same was continued, not on account of 'protection of pay' as the applicant claimed, but on account of the fact that LPC was not received. After receipt of the service records, the pay of the applicant was fixed in the scale of Rs 3,050 - 4590 in Trivandrum Division as permitted in Clause (II) of Railway Board's letter No. F(E)/II2002/FOP/8 dated 29-10-2002 (Annexure A-6) and necessary orders (Annexure R-1) dated 18-02-2003 passed. A copy of this order was forwarded to the applicant also and hence, it is wrong to state that the applicant was not informed of the refixation of pay.



4. Applicant filed his rejoinder, in which he has questioned the very issue of Annexure R-1 order as according to him, had the same been issued as early as in 2003 as alleged, there was no question of his pay having been fixed at Rs 4,180/-, Rs 4,260/- and Rs 4,340/- respectively in the years 2003, 2004, 2005. Annexure R-1 order is seen by the applicant only with the counter and not earlier. The applicant's case falls under the provisions of Rule 1313 (FR 22(I)(a) (2) at Annexure A-5. It is the case of the applicant that his request was for "inter divisional transfer" and not for 'reversion'.

5. In their additional reply, the respondents denied that the applicant's transfer was not for reversion. They have stated that in the Running Staff Cadre, transfer between different seniority units is permissible in the category of Diesel Assistant, as only in that category, the element of direct recruitment is available. This is as provided for in para 312 of the IREM. Since at the time of transfer the applicant was senior Assistant Driver and thus, in his taking over as Diesel Assistant in Trivandrum Division, reversion has been effected. Annexure R-2 order dated 8-11-2002, Annexure R-3 relieving order dated 25-11-2002, Annexure R-4 joining report and Annexure R-5 order dated 19-12-2002 of posting order with the stipulation that such transferees are placed at the bottom most in the seniority list of Diesel Assistant in the Trivandrum Division have all been annexed to the additional reply.

6. Counsel for the applicant submitted that earlier two cases were of identical nature and these OAs had been allowed. In this regard, he had made



available copies of orders dated 22-08-2006 in OA No 459/2004 and connected matters and of 8-01-2007 in OA 659/2005. The respondents' counsel submitted that writ petition has been filed against the order dated 22-08-2006. Be that as it may, the counsel for the applicant submitted that the case of the applicant falls under the category of inter divisional transfer and not reversion and hence, clause (II) of Annexure A-6 cannot apply. His case, according to him would be covered under the provisions of Rule 1313(FR 22(I)(a)(2)) as well as clause (I) of Annexure A-6. He has also relied upon latest clarification issued by the DOPT vide Annexure A-7 wherein it has been clarified, "*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).*"

7. Counsel for the respondents argued that by virtue of the fact that the applicant while working as Asst. Driver accepted transfer to the post of Diesel Assistant in Trivandrum Division, the same amounts to reversion.

8. Arguments were heard and documents perused. The applicant applied for inter-divisional transfer when he was functioning as Diesel Assistant in the Madras Division. Such an inter-divisional transfer is at the cost of his losing the

seniority in the transferred division. In so far as the pay scale is concerned, it is the scale that is attached to the post to which he is transferred, i.e. Diesel Assistant. It has taken some time for the inter-divisional transfer to materialize and it is in the meantime that the applicant happened to get his promotion as Assistant Driver at Madras on the basis of his seniority in the post of Diesel Assistant at that Division. When he is now transferred, all that he has to lose is the seniority in the grade of diesel assistant as well as the higher pay scale. Save a drop in the seniority position, the appointment of the applicant in the transferred division is not one of 'fresh appointment'. Nor is his case one of 'reversion' as reversion to the post from which he is promoted would mean that the individual retains his seniority position in that post. In other words, if the applicant sought a transfer as diesel assistant in Madras Division itself, it would mean that he seeks reversion. Instead, when he seeks transfer to Trivandrum Division from Madras Division since he loses his seniority, his case does not come under the category of reversion. Thus, his case comes within the provisions of clause (i) of order dated 22-10-2002 (Annexure A-6) and accordingly, the applicant is entitled to the protection of pay. It appears that it is exactly on this interpretation that initially the pay of the applicant at Trivandrum Division was fixed at Rs 4,100/- in the scale of Rs 3050 - 4590, protecting his pay and subsequent increments also granted incrementing his pay at Rs 4,340/- as of 2006. Contention that fixation at Rs 4,100/- at the time of transfer was on account of non availability of LPC is untenable as the LPC and service records would have been received within a reasonable time since the date of transfer whereas in which event, the authorities would not have afforded

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the pay of Rs 4,180/-, 4,260/- and Rs 4,340/- respectively for 2004, 2005 and 2006.

9. In view of the above, the **OA is allowed**. Impugned order dated 18-02-2003 (Annexure R-1) and Annexure A-3 are hereby quashed and set aside. It is declared that the applicant is entitled to pay protection on his transfer from Madras Division to Trivandrum Division; that his pay had been rightly fixed at Rs 4,100/- on his transfer to Trivandrum Division in the scale of Rs 3,050/- - 4,590/- and his annual increments for 2004, 2005 and 2006 have been rightly given. There shall, therefore, be no reduction in the pay granted to the applicant. If the authorities had effected any reduction on the basis of Annexure A-3 or Annexure R-1 orders, the same shall be reviewed and the applicant shall be granted the pay as stated above.

10. Under the circumstances, there shall be no orders as to costs.

(Dated, the 25th April, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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