

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.51 of 2010

Wednesday, this the 17th day of August, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

Mr.V Joseph, S/o Varghese
 Station Master/III, Cherthala Railway Station
 Residing at 'Chrisdale'
 Thaneermukkom P.O
 Alapuzha District

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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. Sr.Divisional Personnel Officer
 Southern Railway
 Trivandrum – 695 014

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Respondents

(Bt advocate – Mr.K.M Anthru)

This Original Application having been heard on 09.08.2011, the Tribunal on 17.08.2011 delivered the following :

O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The grievance of the applicant is two folded but interlinked and the same is as under:-

(a) On inter-zonal transfer from Hubli Division of South Central Railway to Trivandrum Division of Southern Railway in 1999, his pay in Trivandrum Division though was fixed rightly, the date of next increment was deferred for



about 23 months. Subsequently the Railway had issued clarification that the increment should be given after completion of 12 months itself. This part was not done.

(b) While working out the ACP benefits as on 01.10.1999, the respondents have taken into consideration provisions of IREC Rule 1313(a)(2) instead of 1313(a)(1),

2. After filing of the counter and at the time of hearing the applicant has submitted that of the two claims as above, the first one has been redressed and as such it is only the claim relating to ACP benefits that is to be adjudicated through this Original Application.

3. Briefly stated, on the applicant's transfer from Hubli Division to Trivandrum Division, the applicant's pay scale is Assistant Station Master remained as same (Rs.4500-7000) and his pay fixed at the Trivandrum Division was Rs.5750 on joining the said Division on 24.02.1999. The scheme of ACP was introduced with effect from 01.10.1999 and the same contained certain provisions which include notional increment at lower scale of pay and fixation at that stage or above that stage, if there be no such stage.

4. Vide Annexure A-2, the respondents had fixed the pay of the applicant in the scale of Rs.5000-8000 with effect from 01.10.1999 and fixed the pay of the applicant at Rs.5900/- while his pay in the scale of Rs.4500-7000 prior to grant of ACP was Rs.5875/-. The above thus meant that all that the applicant was granted was only application of 1313(2) of IREC ie; the stage on the time scale which is equal to the pay in respect of the earlier pay scale or if there is no such stage, the stage next above his pay in the earlier pay scale. The claim of the applicant is that as per para 6 of the Annexure A-2 the pay is to be fixed under

Rule 1313(1)(a) equivalent to FR 22(l)(a)(i) subject to a minimum financial benefit of Rs.100/- as envisaged in Railway Board's letter dated 22.09.1999. This would mean a notional increment in the lower pay scale of Rs.4500-7000 and fixation at the said pay and in case the stage of pay in the higher pay scale is different, the next higher stage. Thus the claim of the applicant is that on Rs.5875/- the increment of Rs.125/-, shall be granted on notional basis and the same has to be brought to the next stage. This would be according to the applicant Rs.6050/- on 01.10.1999, Rs.6200/- on 01.10.2000 and so on till Rs.6950/- on 01.10.2005.

5. The respondents have contested the Original Application. They have clearly stated that the applicant's pay as on 01.03.1999 was fixed at Rs.5875/- as claimed by him in this O.A. And since no additional responsibility has been borne by him on grant of financial upgradation, his pay on Rs.5875/- has been fixed at Rs.5900/- which is the next stage available in this scale of Rs.5000-8000, with effect from 01.10.1999.

6. Counsel for the parties argued on the above lines in respect of their respective sides. Counsel for the applicant made available order dated 17.04.2007, 01.11.2007 and a copy of RBE No.198 of 1991 relating to amendment to Rule 1313.

7. Arguments were heard and documents perused. So far as provisions contained in orders dated 17.04.2007 and 01.11.2007 the same relating to grant of increment after 12 months, the grievance in respect of which already stands redressed, the same need not be considered. The only question to be considered is as to what should be the pay as on 01.10.1999 on application of ACP scheme to the applicant.

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8. The applicant's pay as on 30.09.1999 was admittedly Rs.5875/- Had there been no ACP scheme, his next increment would have fallen due on 01.03.2000 and his pay would have been Rs.6050/- from that date. With the grant of ACP which is in the higher pay scale the applicant's pay as on 01.10.1999 has been fixed at Rs.5900/- and it continued as on 01.03.2000 also which means that after financial upgradation the applicant was getting less pay than the pay he would have got, had there been no financial upgradation at all. This situation is certainly anomalous.

9. The scheme relating to ACP is specific as to the fixation of pay on the grant of financial upgradation. The Railways have simply adopted the ACP scheme as provided by the DOPT vide order dated 09.08.1999. The said scheme inter-alia provides as under:-

"On upgradation under ACP scheme pay of an employee shall be fixed under the provisions of FR 22(I)(a)(1) subject to a minimum of financial benefit of Rs.100/- as per the DOPT OM dated 05.07.1999. The financial benefits allowed under the ACP Scheme shall be final and no pay fixation benefits shall be accrued at the time of regular promotion ie; postings against the functional posts in the higher grade. "

10. It is exactly the above provision that has been incorporated in clause 6 of Annexure A-2. Admittedly at the time of grant of ACP the pay fixation of the applicant was not made keeping in view the above provisions. Thus the applicant has established his case ie; pay from Rs.5875 should be revised to Rs.6050/- on the date he was accorded the benefit of ACP, ie; 01.10.1999.

11. Provision exists for exercising option for deferring the benefit of ACP till the date of next increment. That being optional, in the absence of such an option the applicant may not be entitled to the benefit arising out of exercise of such option.

12. In the counter an attempt has been made about the delay involved in

seeking the claim. The matter of resjudicata was also raised therein. These technical objections are to be rejected in view of the fact that the respondents themselves were to apply the provisions of Railway Board's circular dated 01.11.2007 read with 17.04.2007 and thus the pay of the applicant has to undergo an upward revision in respect of his increment. The respondents have implemented the said order only recently. Since ACP is directly linked with the last pay drawn prior to grant of ACP and such last pay drawn underwent a change as late as in 2008, the application having been filed in 2010 after exhausted administrative remedies, no delay can be attributed to the applicant.

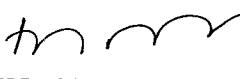
13. In view of the above, the original application is allowed to the following extent:-

- (a) The respondents shall afford the benefit of 1313(a)(i) of IREC [equivalent to FR 22(l)(a)(i)] to the applicant at the time of grant of first ACP and bring his pay to Rs.6050/- as on 01.10.1999 and increment of the same annually as on 01.10.2000 etc and fix the pay of the applicant under the 6th CPC recommendations with effect from 01.01.2006 and arrive at the correct pay payable to the applicant for all these months.
- (b) Arrears arising therefrom shall also be worked out and made available to the applicant.

14. Time calendared for implementation of this order, including payment of arrears to the applicant, is 4 months from the date of communication of this order.

15. No costs.

(Dated this the 17th day of Aug, 2011)


(Ms. K Noorjehan)
Administrative Member
sv


(Dr. K.B.S Rajan)
Judicial Member