

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.496/2008

Friday this, the // th day of December, 2009

CORAM:

HON'BLE SRI GEORGE PARACKEN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

G.Kaliya Perumal, aged 55 years,
S/o Govindan,
Gang No.8, Nanguneri, under Section Engineer/
Permanent Way/Nagercoil Junction/Southern Railway
Residing at: Panamkulam P.O., Tirunelveli District,
Tamil Nadu.


.. Applicant

By Advocate : Sri Mohankumar For Mr.T.C.G.Swamy

vs.

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. The Assistant Divisional Engineer,
Nagercoil Junction, Southern Railway,
Nagercoil.

... Respondents

 By Advocate: Mr. Rajesh R. for Mr. Sunil Jacob Jose, SCGSC

The application having been heard on 4.12.2009, the Tribunal on
delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):

The O.A. is filed with the following prayers:-

- “(i) Call for the records leading to the issue of Annexure A11 and quash the same;
- (ii) Declare that the applicant is entitled to have his pay fixed under Rule 1313 (1)(a) (1) of the Railway Establishment Code Vol.II upon his promotion from the post of Sr.Gangman Grade I to that of Keyman;
- (iii) Direct the respondents to grant all consequential benefits of the declaration in para 8(ii) above with consequential arrears emanating therefrom;
- (iv) Award costs of and incidental to this Application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant was working as Senior Gangman Grade I in the scale of Rs.825-1200. He was invited to appear for a trade-test. Having qualified in the test, he was promoted as Keyman which also was in the same pay scale of Rs.825-1200/-. He assumed the charge of Keyman on 22.7.96. His pay was fixed at the stage of Rs.1060/-. With effect from 1.8.96 his pay was fixed at the stage of Rs.1100/- on which date his increment in the lower post fell due. After 11 months or so the Divisional Authorities reduced his pay. He was informed vide letter dated 4.11.1998 that he was not eligible for any promotion benefits since the Senior Gangman Grade I and the Keyman involve no shouldering of higher responsibilities in the promoted grade. The representations of the applicant were rejected. The applicant approached this Tribunal by O.A. No.433/04 which was withdrawn with permission to take up the matter with the Railway Administration. The applicant received a communication dated 21.5.07 that he is not eligible for fixation benefit under Rule 1313 on promotion as Keyman. Hence this O.A.

3. The applicant submits that Annexure A11 order denying the benefit of pay fixation upon his promotion as Keyman is arbitrary, discriminatory, contrary to law and illegal. The duties and responsibilities of Keyman are much more than that of

Gangman irrespective of grade as per Annexure A8. Annexure A2 makes it clear that the duties and responsibilities of Senior Gangman in the scale of Rs.825-1200 continue to be the same as that of Gangman irrespective of the upgradation. The applicant's promotion involved fulfilling of all the conditions stipulated in Annexure A7 and the Railway Administration should have taken up the case suo motu and got the order the Railway Board, if necessary, for granting the benefit of pay fixation. Annexure A7 shows that those who are promoted from one post to another carrying identical scale of pay is treated as a common class provided the post from which the promotion is made forms feeder cadre to the post for which promotion is made. Such promotions are made after a process of selection involving written examination, viva voce, trade test, aptitude test etc. The promotion of Gangman Grade I to Keyman in the identical pay scale also belongs to the same class and therefore denying of equal benefit as granted in Annexure A7 to the applicant is arbitrary, discriminatory and unconstitutional. The Railway Board has now allowed the benefit of pay fixation to Senior Gangman promoted as Keyman under Rule 1313 (1)(a)(1) holding that such promotions involved promotions to posts having higher duties and responsibilities, but only with future effect. On the above grounds, the applicant prays that his O.A. may be allowed.

4. The respondents contested the O.A. At the very outset the O.A. deserves to be dismissed on the point of lack of jurisdiction as the subject matter involved is of policy nature and as the challenge against the impugned order is time barred. The applicant was a Gangman in the grade of Rs.775-1025 later promoted as Senior Gangman in the scale of Rs.800-1150 and thereafter Senior Gangman in the scale of Rs.825-1200 with effect from 1.3.93. On all promotions above he was given fixation of pay under Rule 1313 (i)(a)(i). It was submitted that the post in the scale Rs. 825-1200 is a Group-C post. Fixation under Rule 1313(i)(a)(i) is not given on promotion from the post of Senior Gangman to the post of Keyman as both the posts are in the same pay scale of Rs.825-1200. Promotion of the applicant to the post of Keyman was on the basis of suitability assessed in an aptitude test. The applicant had earlier officiated as Keyman in a higher grade while he was working as a Senior Gangman but had not claimed any officiating allowance. Annexure A6 letter was issued as it was noticed that the pay fixation under Rule 1313(i)(a)(i) given at the time of applicant's promotion as

4.

Keyman was wrong as it was not covered by any rule. It was submitted that the applicant was not entitled to pay fixation on his promotion as Keyman in accordance with Annexure A7 as the post of Keyman is not included in it, nor has he challenged Annexure A7 to the extent it does not include his promotion. The applicant had been given fixation under Rule 1313(i)(a)(i) at the time of his promotion to grade Rs.825-1200 and therefore he is not eligible for further fixation in accordance with Railway Board's letter No.PC-IV/93/JCM/DC/3 dated 20th April,2004(Annexure-R1). The respondents denied that the post of Keyman involves higher duties and responsibilities. Averment made by the applicant that the Railway Board has held that the post of Keyman has higher duties and responsibilities than those of the Senior Gangman and have allowed fitment under Rule 1313(i)(a)(i) with prospective effect, is denied. For the above facts and circumstances the respondents prayed for dismissing the O.A.

5. In the rejoinder the applicant submitted that his movement as Senior Gangman Grade II and Grade I are not strictly in the nature of promotions, but only fitments on account of upgradation of the posts and as specifically provided for in the orders by which the posts were upgraded. Annexure A2 refers. It was further pointed out that the delay in filing the O.A. has been condoned by this Tribunal.

6. Arguments were heard and documents perused.

7. The Ministry of Railways had decided to restructure the Group C and D categories of staff in accordance with revised percentages indicated therein vide letter No.PCIII/91/CRC/1 dated 27.1.1993 as per Annexure A2 from which relevant parts are extracted as under:-

"R.B.E.No.19/93

Subject: Restructuring of certain Group C & D cadres.

No.PCIII/91/CRC/1/dated 27.1.1993

The Ministry of Railways have had under review Cadres of certain Groups of C&D staff in consultation with the staff side in the Committee of the Departmental Council of the JCM(Rlys) for some time. The Ministry of Railways with the approval of the President have decided that the Group C&D categories of staff as indicated in the Annexure

(Department wise) to this letter be restructured in accordance with the revised percentages indicated therein. While implementing these orders the following detailed instructions should be strictly and carefully adhered to:-

8. With regard to date of effect of the restructuring, it is stated:-

"1. Date of effect - This restructuring of cadres will be with reference to the sanctioned cadre strength on 1.3.1993. The staff who will be placed in higher grades as a result of implementation of these orders will draw pay in higher grade w.c.f. 1.3.1993."

9. With regard to pay fixation it said:-

"3. Pay Fixation(FR 22-C)- Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316(FR 22-C)R-II w.e.f. 1.3.1993 with necessary option for pay fixation as per extant instructions."

10. Regarding basic functions it said:-

"6. Basic functions, duties and responsibilities- In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result of restructuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities, as considered appropriate."

11. Further,

"Statement Regarding Restructuring of Group 'C' & 'D'
Staff of Civil Engineering Department/Mechanical

Annexure to Board's letter No.PC-III/91/CRC/1,dated 27.1.1993.

Category	Grade(Rs.)	Existing %age	Revised %age
Gangman/	775-1025	30	25
Trolleyman/	800-1150	70	55

Gateman	825-1200	--	20
Watchman	1320-2040	15	15
	1400-2300	35	25
CMT	1640-2900	25	30
	2000-3200	25	30"

12. Admittedly in terms of R.B.E.No.19/93 20% of the posts in the cadre of Gangman were upgraded to the scale of pay of Rs.825-1200 with effect from 1.3.1993. In the higher grade posts pay fixation was to be under under Rule 1316 with necessary option for pay fixation as per extant rules. Although higher pay scales have been introduced as a result of restructuring the basic functions, duties and responsibilities attached to a post at present were to continue with scope for addition of such other duties and responsibilities as considered appropriate. Under Rule 1316 the benefit of pay fixation is granted when promotion to a post carrying duties and responsibilities of greater importance than those attached to the post already held by an employee. Therefore it would appear that the Railways had given a special dispensation to grant the benefit of pay fixation when higher grades were given as a part of the restructuring done in accordance with R.B.E. No.19/93 although the basic functions, duties and responsibilities attached to the post at present continued. The applicant benefited from this special dispensation.

13. The applicant was alerted for selection of Keyman vide Annexure A3(a) dated 4.7.1996. He was promoted as Keyman in the pay scale of Rs.825-1200 vide Annexure A4. His pay was fixed giving the benefit of pay fixation as per Annexure A6 dated 4.9.96. This promotion benefit was effectively cancelled vide Annexure A6 which reads as follows:-

"With reference to the above, you are hereby advised that you are were not eligible for any Promotion Benefits. Since Sr.G.Man Gr-1 and Keyman involves no shouldering higher responsibilities in the promoted grade which is an identical grade. This order was given by APO/Engg endorsed vide File No.V/P 483/Engg/Promotion Fixation on PP No.(1) and (2)."

14. The bone of contention is whether the post of Keyman involves higher responsibilities than the post of Senior Gangman. Para 149 of the Indian Railways Permanent Way Manual reads:-

"149. Knowledge of Rules and Signals -(1) Every Mate, Keyman and Gangman shall have the correct knowledge of hand and detonating signals and shall be conversant with the following rules:-

- (a) Protecting the line in an emergency and during work affecting the track.
- (b) Method of fixing and safety range of detonators.
- (c) Action to be taken when a train is noticed to have parted.
- (d) "Safety first" rules
- (e) Action to be taken where sabotage is suspected, and patrolling in emergencies.

(2) Every Mate and Keyman shall see that the signals, supplied to the Gangs are kept in good order and ready for use and that every man in his Gang has a correct knowledge of all the signals."

15. Para 157 reads:-

"157. Action when line is unsafe or in the event of Accident-(1) If a Mate or his Keyman considers that the line is likely to be rendered unsafe, or that any train is likely to be rendered unsafe, or that any train is likely to be endangered in consequence of any defect in the permanent way or works, or abnormal rain or flood or any other occurrence, he shall take immediate steps to secure the safety of trains by using the prescribed signals to "Proceed with Caution" or to "Stop" as necessity may require, vide Para 806, and shall, as soon as possible, report the circumstances to the nearest Station Master and the Permanent Way Inspector.

(2) In the event of an accident, the Mate, Keymen and Gangmen should lookout for broken fittings of wagons and track components and see that these are not disturbed until they have been seen and recorded by a responsible official."

16. Para 170 which lists the duties of Keyman reads:-

"170. Duties of Keyman -(1) While walking over his length, he should look for defects, such as loose spikes, keys, chairs, fish-bolts, and fittings on girder bridges and open top culverts, broken or burnt sleepers, broken plates or tie bars, and attend to them as necessary. If he finds that fittings are consistently working loose even after repeated attention, he should report the matter to the Mate and the Permanent Way Inspector. If the defects are serious, he should at once inform the Mate of the gang, protecting the line in the mean time, if necessary, according to rules.

(2) If he should notice any condition of danger, such as broken rail or wash-away of ballast, he shall at once protect the line as per rules, take such action as is possible and report the matter to the Mate, the nearest Station Master and the Permanent Way Inspector.

(3) At unmanned level crossings, he shall maintain the flangeways between the check and the running rails clear of obstruction.

(4) After completing inspection of the Gang length, the Keyman should assist the Mate in the day's work being done.

(5) When materials, such as dynamo-belts, engine tools and personal articles of passengers, are found on line, the Keyman should collect them and arrange for handing them over to the nearest Station Master.

(6) The Keyman should ensure that, in addition to his normal duty of inspection and tightening of fittings, he proceeds in a systematic manner from one end and he must ensure that keys and fittings in at least 3 T.P. lengths are made perfect every day, with a view to complete the beat in a month."

17. Paras 168 and 169 deal with the Keyman's daily inspection and his equipments. A plain reading of the above sections show that generally speaking a Keyman shoulders higher responsibilities and ranks higher than the Sr. Gangman, though at times Gangman, Senior Gangman and Keyman may do same work. In the face of the provisions in the Railway Manual it is illogical to say that the Keyman does not shoulder higher responsibilities than a Senior Gangman. True, Senior Gangman and Keyman have the same pay scale. Posts having higher and lower levels of responsibilities can have identical pay scales. But identical pay scales do not necessarily mean same level of responsibilities. In Annexure R(1)(2) the respondents describe the post of Keyman as functionally superior post to the post of Sr. Gangman (redesignated as Sr. Trackman) contradicting their stand in Annexure A6 that Sr. Gangman Gr.1 and Keyman involve no shouldering of higher responsibilities which shows that Keyman is superior to Sr. Gangman. It is common understanding that functionally superior post carries higher

responsibilities and duties. Thus the respondents ground for depriving the applicant of the pay fixation on his promotion as Keyman becomes untenable.

18. In the facts and circumstances of this case same pay scale does not indicate that the Keyman and the Senior Gangman are shouldering the same responsibility. When one is promoted from the post of Gangman to the post of Senior Gangman, there is no change in the functions and duties. As admitted by the respondents the applicant was subjected to an aptitude test and was selected and promoted as Keyman. There is no logic in making the applicant to undergo this procedure if he were not to be entrusted with higher duties and responsibilities. His pay was fixed under Rule 1313(i)(a)(i) giving the benefit of pay fixation as he was promoted on a functional basis. When the applicant was promoted as Senior Gangman it was a promotion to a non-functional higher scale. And his pay was fixed under Rule 1313(i)(a)(i) but only because Railways had given a dispensation vide their R.B.E.No.19/93 for doing so. Being a non-functional promotion there was justification not to give the benefit of pay fixation when the applicant was promoted as Senior Gangman. This is sought to be squared off by not giving the benefit of pay fixation when the applicant was functionally promoted as Keyman. This shows that what the Government gives with one hand, it takes away with the other. The applicant was not entitled to the benefit of pay fixation when he was promoted as Senior Gangman but for the special dispensation. The applicant was entitled to get the benefit of pay fixation when he was promoted as Keyman which is denied. A major part of working life of a Government employee is spent on extracting from a reluctant Government what was granted to him by the Government itself.

19. Restructuring was done in 1993. The applicant was promoted as Keyman on 22.7.96. Vide R.B.E. No.89/2004 dated 20.4.2004, the Railway Board has streamlined the granting of the benefit of pay fixation by making sure that no employee gets the benefit of pay fixation under Rule 1313(i)(a)(i) twice on such type of movement as the applicant has undergone. This is most welcome. But it has come too late in the day almost 8 years after the applicant was promoted as Keyman. R.B.E.No.89/2004 is not having retrospective effect to cover the applicant. The Railway Administration was too slow to realize that employees have been getting benefit of two pay fixations in

one pay scale of which one could have been avoided quite justifiably. There is a cost to pay for being too slow. Rule 1313(i)(a)(i) and Rule 1313(i)(a)(ii) remained the same all these years. The Railways erred in applying them properly. Meanwhile as per Annexure A7 vide R.B.E No.1119/99 dated 24.5.99 the Railways was generous to grant the benefit of pay fixation under Rule 1313(i)(a)(i) for promotions made between 1.1.86 to 31.12.95 to certain categories of employees similarly placed as the applicant. The category to which the applicant belongs somehow did not figure in the list of beneficiaries. However, para 4 of the said Annexure reads:-

“4. If any other categories fulfilling the criteria mentioned in para 1 above come to the notice of the individual Railway Administrations, specific proposals containing the relevant details may be sent to Railway Board for further examination.”

20. It appears that the Railway Administration had forwarded the case of the applicant to the Railway Board for examination as per their statement of reply, but with no positive result. Transparency is conspicuous by its absence in the decision of the Railway Board not to grant the benefit of pay fixation to the applicant on his promotion as Keyman while giving it to other categories of employees who are similarly placed as the applicant is. Similarly placed persons cannot be meted out unequal treatment without valid ground. The denial of benefit of pay fixation upon promotion as Keyman was arbitrary and discriminatory.


21. The Railway Administration admits of having committed a mistake in granting the benefit of pay fixation when the applicant was promoted as Keyman. What it admits is not a mistake. The mistake was in depriving the applicant of the benefit of pay fixation which he was entitled to and was enjoying. That mistake was compounded by recovering the amount already paid and also by not following the principles of natural justice of giving him notice, hearing what he has to say and considering it before taking a decision. This procedural lapse also made the deprivation of the benefit of pay fixation, arbitrary, illegal and insensitive. The reduction in the pay of the applicant amounted to a punishment. The recovery of the alleged excess payment without his consent was an administrative excess. The Railway Administration may give bountifully at its will and pleasure but procedure has to be strictly followed when pay

is cut or recovery is effected from the salary of an employee. Transparency, accountability and sensitivity and speed are hallmarks of good governance, which the Railways as an organ of the Government should uphold always. During arguments it was submitted by the applicant that the subject matter of this O.A. is covered by O.A.No.261/2008. However, in O.A.No.261/08 the respondents had conceded that the applicant had assumed higher responsibilities on his promotion, whereas in the present O.A. the respondents flatly deny that the applicant had assumed higher responsibilities when he joined duty as Keyman on 22.7.96, which obviously is flying against the Indian Railways Permanent Way Manual and logic, as pointed out earlier.

22. From the above, it is quite clear the applicant cannot be deprived of his legitimate benefit of pay fixation under Rule 1313(i)(a)(i) on his promotion as Keyman on the ground that he benefited from an earlier pay fixation on his promotion as Senior Gangman which was a special dispensation. On the earlier occasion the applicant did not have a legitimate claim for the benefit of pay fixation as he was not assuming any higher duties and responsibilities. However the Railways chose to be generous, for which they cannot penalize the applicant by denying his legitimate entitlement as per Indian Railway Establishment Code which is a statutory Rule. Accordingly the prayer of the applicant deserves to be granted.

23. The O.A. is allowed. Annexure A11 order is quashed and set aside. The respondents are directed to fix the applicant's pay under Rule 1313(i)(a)(i) of the Railway Establishment Code, Vol.II upon his promotion from the post of Senior Gangman to Keyman and to grant all consequential benefits within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.


(K. GEORGE JOSEPH)
MEMBER(A)


(GEORGE PARACKEN)
MEMBER(J)

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