

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 504/2004

Friday this the 4th day of August, 2006

CORAM

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 S.Mony, S/o Sundaran Nadar,
Senior Gangman/II under Section Engineer (PW)
Trivandrum, residing at Suresh Bhavan,
Parasala PO, Thiruvananthapuram.
- 2 K.Viswambharan Asari, S/o Krishnan Asari,
Senior Gangman/II under Section Engineer
(PW) Trivandrum residing at Krishna
Vilasam, Manjavalham PO, Thiruvananthapuram.
- 3 K.Sadasivan Nair, S/o Kuttan Pillai
Senior Gangman/II under
Section Engineer (PW) Trivandrum
residing at Padmavilasam, Nemom PO
Thiruvananthapuram.
- 4 K.Achuthan, S/o Krishnan Nadar,
Senior Gangman-II under Section Engineer,
(PW), Trivandrum residing at Kavuvila Puthenveedu,
Dhanuvachapuram PO
Thiruvananthapuram.
- 5 K.Sreekantan S/o Krishnan Asari,
working as Gangman under
Section Engineer (PW), Trivandrum
residing at Perathalackavila Veedu,
Fathimanagar PO, Kanyakumari
Tamilnadu.

.....Applicants

(By Advocate Mr. M.P. Varkey)

Vs.

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Union of India, represented by
General Manager, Southern Railway,
Chennai-600 003.

contd....

2 The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695104.

3 Section Engineer (PW)
Southern Railway,
Trivandrum.695014.

...Respondents

(By Advocate Mr. K.M.Anthru)

The application having been finally heard on 4.8.2006, the Tribunal on the same day delivered the following:

ORDER

Hon'ble Mr.George Paracken, Judicial Member

The applicants in this OA are aggrieved by the Annexure.A1 common pay fixation order dated 3.6.04, which, according to them would result in reduction in their pay as well as recovery from their pay.

2 The applicants 1 to 5 were initially engaged as Skilled casual Labourers in the categories of Blacksmith/Carpenter/Brick Layer from 5.4.1980, 24.3.1980, 21.3.1980, 21.4.1980 and 14.3.1983 respectively. Later on, all of them were granted the regular pay scale of Rs. 260-400 admissible to Group 'C' employees with effect from 5.8.80, 24.7.80, 21.7.80, 21.8.80 and 21.1.84 respectively. They were also granted the revised Group 'C' scale of pay of Rs. 950-1500 and Rs. 3050-4590 with effect from 1.1.86 and 1.1.96 respectively. However, the respondents absorbed them in Group 'D' post as Gangman/Sr.Gangman.II in the scale of Rs. 775-1025 (revised to Rs. 2610-3540) and Rs. 800-1150 (revised to Rs. 2650-4000) respectively considering their empanelment position as Casual Labourers vide order dated 24.3.97. The applicants resisted the said order and sought absorption in Group 'C' post, which was not accepted by the respondents. They unsuccessfully filed OA 834/97 and OA 1502/98

seeking direction for their absorption in Group C post. Finally, they joined as Gangman/Sr.Gangman.II and the pay of the applicants 1 to 4 was fixed in the maximum of the scale Rs. 4000 in scale Rs. 2650-4000 and at Rs. 3540 in the case of the applicant 5 in the scale of Rs. 2610-3540. They were also given stagnation increments once in two years and presently (at the time of filing of this OA on 6.7.2004) the basic pay of the applicants 1 to 5 are Rs. 4210/-, 4140/-, 4140/-, 4210/- and 3575/- respectively. According to the impugned Annexure A1 pay fixation order dated 3.6.2004, applicants have been absorbed as Gangman/Sr.Gangman.II on regular basis with effect from 24.3.97 and their pay refixed by granting increments with reference to their length of service. The applicants submit that if the Annexure.A1 pay fixation order is implemented, their pay will be substantially reduced and also there would be resultant recovery from 24.3.1997.

3 The respondents in their reply has submitted that in terms of the Railway Board instructions that all casual labourers in the Railways should be regularized by 31.3.97 the applicants were absorbed in the Group 'D' post as Gangman/Sr.Gangman-II in the scale of pay of Rs. 775-1025 (revised to Rs. 2610-3540) and Rs. 800-1150 (revised to Rs. 2650-4000) with effect from 24.3.97. They did not join in the respective posts but challenged the said regularization before this Tribunal but the same was rejected. They have also submitted that the Annexure.A1 pay fixation order was issued in accordance with the instructions contained in the Railway Board letter No.E(NG)-11/96/CA/79 dated 5.11.76 according to which "those who have been working in semi-skilled and skilled grades, but are absorbed in regular Class IV unskilled grades will have their pay fixed by

granting increments in the unskilled grade with reference to their earlier service as Casual Labour in higher or equivalent grades."

4 We have heard the arguments of the learned counsels on either side. The Apex Court in **Bhadei Rai Vs. Union of India and others, 2006 SCC (L&S) 89** was considering the case of daily rated worker given temporary status on Group 'D' post of Khalasi and later granted adhoc promotion of Group 'C' post as Rigger on higher pay scale. On repatriation, he was regularized and absorbed in Group 'D' post and the pay was also accordingly reduced. The Hon'ble Apex Court following its earlier judgment in the case of **Inderpal Yadav V. Union of India and others, 2006(11) SCC 301** held that in such circumstances the employees would be legitimately entitled to the relief of pay protection. Similar is the order of the Hon'ble Supreme Court in its judgment in **Bardriprasad and others Vs. Union of India and others, 2006 SCC L&S 92**. The last pay drawn by them in the Group 'C' post has been protected even after their repatriation to Group 'D' post in their parent department. Following the same principle in this case also the applicants were regularized as Gangman/Sr.Gangman-II in the scale of pay of Rs. 2610-3540 and Rs. 2650-4000 respectively vide respondent's office order No.23/97/WP dated 24.3.97. Though, the applicants have not accepted such absorption at that time, they had to do so later when their claim for regularization in Group 'C' post was not met with success on their representation before the respondents and on filing applications before this Tribunal. Subsequently, all of them have joined in the post of Gangman/Sr.Gangman-II. Applying the above principle laid down by the Apex Court in the case of **Inderpal Yadav Vs. Union of India and others, 2006(11) SCC 301** followed in the

case **Bhadei Rai Vs. Union of India and others (supra)** and **Badriprasad and others Vs. Union of India and others(supra)**, we direct that the respondents shall protect the pay of the applicants which they have been drawing as on 24.3.97 in the Group 'C' scale and fix their pay in the aforementioned scales of Gangman/Sr.Gangman-II.

5 In the result, Annexure.A1 order dated 3.6.04 is quashed and set aside in respect of applicants herein. The respondents are directed to issue revised orders fixing their pay in accordance with the above directions within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 4th day of August, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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