

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 506/2004

Monday this the 25th day of September, 2006

CORAM

Hon'ble Mrs. Sathi Nair, Vice Chairman
Hon'ble Mr. George Paracken, Judicial Member

L.Madhusoodanan,
Senior Gangman/II.
Under Section Engineer (PW)
Southern Railway, Kollam,
residing at Akhil Bhavan,
Melevila Kizhakkethil,
Chandanathope, Kollam.

.....Applicant

(By Advocate Mr. T.N.Sukumaran)

V.

- 1 Union of India, rep. By General Manager,
Southern railway, Chennai.3.
- 2 The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.14.
- 3 Section Engineer (PW)
Southern Railway, Kollam.Respondents

(By Advocate Mr.Thomas Mathew Nellimootil)

The application having been heard on 15.9.2006, the Tribunal on 25.9.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant's grievance is that in spite of the fact that while absorbing him against the Group 'D' post of Gangman/Sr.Gangman Grade-II in the scale of pay of Rs. 775/1025/2610-3540 his pay in a Group 'C' post as CPC Skilled Casual Labour (Blacksmith) in the scale of Rs. 2650-4000 drawing the maximum basic pay of Rs. 4000/- p.m was duly protected but

vide Annexure.A1 letter dated 3.6.2004 the respondents have ordered to refix his pay in the aforesaid lower scale of Rs. 775-1025/2610-3540 by granting increments with reference only to the length of service he has put in as a CPC Skilled Casual Labour (Blacksmith) causing him great financial loss.

2 The brief facts of the case are that the applicant was initially engaged as a CPC Skilled Casual Labour (Blacksmith) in the scale of pay Rs. 260-400 with effect from 5.8.80 and granted its replacement scale of Rs. 950-1500 and Rs. 3050-4590 with effect from 1.1.86 and 1.1.96 respectively. On the basis of directions of the Railway Board that all Casual Labourers in the Railways should be regularized by 31.3.97, the applicant and other similarly placed persons were absorbed in the Group 'D' post as Gangman/Senior Gangman.II in the scale of Rs. 775-1025/2610-3540 and Rs. 800-1150/2650-4000. According to the applicant he was drawing the maximum of Rs. 4000/- in the scale of Rs. 2650-4000 and two stagnation increments as on the date of his absorption on 24.3.97 raising his basic pay to Rs. 4140/-. It was after several years, the respondents issued the Annexure.A1 letter dated 3.6.2004 for the refixation of the pay of the applicant and other similarly placed persons taking away the protection of pay last drawn already granted at the time of absorption, which was said to be provisional, and by granting only the increments with reference to their length of service in the previous post. The applicant apprehended that such refixation will result in substantial reduction of his pay and he will also have to make refund of the salary and allowances already drawn in the higher scale attached to the Group 'C' post he was holding till the date of his absorption in the Group 'D' post.

3 The respondents in their reply has stated that the Annexure.A1 letter has not been brought into effect so far. However, they have submitted that the Casual Labourers working in Skilled Grades on their regular absorption will have their pay fixed by granting increments with reference to their length of service and they are not eligible for any protection of pay and it was in that background the Annexure.A1 order was issued in order to initiate action for re-fixation of the pay of the applicant and other similarly situated.

4 We have heard Advocate Shri T.N.Sukumaran for the applicant and Advocate Shri Thomas Mathew Nellimootil for the respondents. The question of pay fixation, and protection of pay in respect of persons who have already been drawing higher pay in higher pay scale on their absorption in the lower scale and in the lower post is already a settled issue starting with the judgment of the Apex court in the case of **Inder Pal Yadav Vs. Union of India (2005) 11 SCC 301**, relevant part of which is extracted below:

"6 However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.

7 Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service

rendered by the petitioners in the several projects subsequent to their regular appointment."

5 Reiterating the aforesaid judgment in Inderpal Yadav's case, the Apex Court has also allowed the appeals in **Bhadei Rai Vs. Union of India and othrs, 2006 SCC (L&S) 89** and in **Badri Prasad and othrs Vs. Union of India and others, 2006 SCC (L&S) 92** and held that the appellants are entitled for the protection of the pay last drawn by them in Group 'C' post even after their repatriation to the Group 'D' posts.

6 In view of the above legal position as settled by the Apex Court, the OA succeeds and the Annexure.A1 letter dated 3.6.2004 is quashed and set aside in respect of the applicant to the extent that it orders for fixation of his pay on his regular absorption in unskilled grade w.e.f 24.3.97 by granting increments with reference to his length of service. We hold that the applicant is entitled for protection of his last pay drawn in the Group 'C' post held by him while fixing his pay in the absorbed post of Gangman/Sr.Gangman Gr-II w.e.f 24.3.97. The respondents are directed to issue orders fixing his pay from 24.3.97 onwards accordingly 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 25th day of September, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN