

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 530 / 2006Thursday, this the 17th day of January, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MRS O.P.SOSAMMA, ADMINISTRATIVE MEMBER

Suresh Babu,
Technician Grade-I,
Electric Loco Shed (Rolling Stock),
Southern Railway, Erode.Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by the
General Manger,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Personnel Officer,
Railway Coach Factory, Kapurthala,
Punjab.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been finally heard on 17.1.2008, the Tribunal on the same day delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant is seeking a declaration that he is entitled to have his last pay of Rs.1200/- drawn in the post of Technician Grade-II in the scale of pay of



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Rs.1200-1800 in the Railway Coach Factory (RCF for short), Kapurthala protected with all consequential benefits therefrom, upon his joining the Palghat Division as Technician Grade-III in the scale of pay of Rs.950-1500 with effect from 9.3.1994.

2. The factual position is that the applicant joined as Technician Grade-III on 18.8.1988 in the pre-revised scale of Rs.950-1500 at Railway Coach Factory, Kapurthala. Thereafter, he was promoted to the post of Technician Grade-II in the scale of RS.1200-1800 by the order of the 4th respondent on 3.7.1992. His pay was fixed at the minimum of the scale i.e. at Rs.1200/- . Later, in terms of Rule 227 of the Indian Railway Establishment Code, on his request, he was transferred to the Electrical Department of Southern Railway, Palghat Division on 9.3.1993 in the lower post of Technician Grade-III (Electrical) in the scale of Rs.,950-1500. At the time of his transfer also, he was drawing the very same basic pay of Rs.,1200/- per month as Technician Grade-II in the higher pay scale of Rs.1200-1800 as he has not completed one year in that post and earned his increment. According to the applicant, the said basic pay of Rs.1200/- was to be protected in terms of Rule 1313 of IREC Vol.II while fixing his pay in the lower post. The respondents had in fact drawn the salary of the applicant with protection of his earlier basic pay of Rs.1200/- for two months, after his joining the lower post at Palghat, but the same was arbitrarily reduced to Rs.1030/- . The representation dated 25.2.2005 (Annexure A-4) made by the applicant against the reduction in his pay was not considered by the respondents. Again, he was promoted as Technician Grade-II in the revised scale of Rs.4000-6000 on 18.9.2001 and then as Technician Grade-I in the revised scale of Rs.4500-7000. Later, he came to know about an order of the Madras Bench of this Tribunal dated 8.2.2002 in O.A.175/2001 filed by V. Perambalavan and others on the same issue. In the said order, following its earlier order dated 27.4.2000

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in O.A.123/1998, the Tribunal observed that the respondents therein should have extended the benefit of pay protection to all similarly placed persons without forcing them to approach the Tribunal again. They have, therefore, directed the respondents to consider the case of those applicants therein also for extension of the benefit of pay protection as it existed prior to their joining in the ICF by keeping in mind the decision of the Tribunal rendered in O.A.123/1998. The respondents complied with the aforesaid orders of the Tribunal by protecting their pay vide Annexure A-2 order dated 3.5.2002. He, therefore, made the Annexure A-3 representation dated 20.1.2004 followed by the Annexure A-4 representation dated 25.2.2005 to the respondents to extent the similar benefits to him also. Thereafter, he filed O.A.804/2005 before this Tribunal seeking the same reliefs and it was disposed of by order dated 22.12.2005 by directing the respondents to consider his representation dated 25.5.2005 made in this regard and to dispose it of by a speaking order and to communicate the same to him. It is in compliance of the aforesaid directions that the 2nd respondent, viz, the Divisional Railway Manager, Southern Railway, Paghat has issued the impugned Annexure A-6 letter dated 22.3.2006. While rejecting his request for protection of his basic pay of Rs.1200/- which he had drawn as Technician Grade II in the scale of pay of Rs.1200-1800 on his request transfer to the lower post of Technician Grade-III in the scale of pay of Rs.950-1500 with effect from 9.3.1993, the respondents stated as under:

"The fixation of pay on request transfer to lower post in new unit from higher post in parent unit is governed by the provisions contained in FR 22. Rule 1313 of the Indian Railway Establishment Code, Vol.I (1990 Edition) and the provisions in para 604 of the Indian Railway Establishment Manual Vol.I (1989 Edition).

In terms of Rule 1313(a)(iii) of IREC Vol.II and the Explanation thereunder, if a Railway employee who has been confirmed in his post or who has completed two years of regular service and whose probation has not been extended by a specific order as envisaged in the order governing confirmation, was transferred at his own request to the post of another unit of the Railways, he shall have his pay fixed in the time scale of the post

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in the new unit at the stage equivalent to the pay drawn in the post at the parent unit. However, if he had not been confirmed in the higher post in the parent unit or had not completed two years of service in such post, only the benefit of completed years of service in such higher post may be given for the purpose of advance increment in the lower post of the new unit.

In terms of Railway Board's letter No.E(NG) I/88/CN/5/2 dated 20.1.89 issued for simplification of confirmation procedures of non-gazetted staff, confirmation was delinked from availability of permanent posts and the issue of separate orders of confirmation in each promotion grade was dispensed with. Though there will be no separate orders for confirmation in each promotion grade, the benefits of confirmation in a promotion grade will follow only after a period of 24 months has elapsed from the date of promotion on regular basis. One of the benefit of the confirmation as could be seen from the Explanation under Rule 1313(1) (iii) of IREC Vol.II is protection of pay drawn in the confirmed higher post when transferred to lower post at own request. It is seen that the applicant before his transfer to PGT Division had worked at RCF/KXH as Technician – Grade II in scale Rs.1200-1800 only for 8 months from 3.7.92 to 2.3.93. On transfer to a new post on Inter Railway/Inter Departmental transfer at own request, the pay of the employee who holds the higher post otherwise than on substantively regular basis (i.e. those who are not confirmed/completed two years of service in the higher grades) will be fixed in terms of the proviso to Rule 1313 – R II by counting the service in the same grade and the higher grade rendered in the parent unit for the purpose of increment in the lower grade in the new unit. The pay of the applicant on joining PGT Division on request transfer from RCF/KXH was fixed Rs.1030/- in scale Rs.950-1500 with effect from 9.3.93 correctly as per Railway Rules.

As the applicant has not completed 24 months of service in the promotion grade of Technician Grade II before his transfer to Palghat Division, the protection of pay as requested by the applicant is not admissible to him as per Railway Rules."

3. The respondents have filed their reply opposing the claim of the applicant for pay protection. According to them, the applicant had worked only for 8 months in the RCF, Kapurthala from 3.7.1992 to 2.3.1993 in the higher post of Technician Grade II before he was transferred to the lower post of Technician Grade-III on inter-Railway/Inter-Departmental transfer at his request. In such circumstances, the pay of the employee who holds the higher post otherwise than on substantive regular basis (i.e. those who are not confirmed/completed two years of service in the higher grades) has to be fixed by the provisions

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contained in Rule 1313 of the Indian Railway Establishment Code, Vol.II and 604 of the Indian Railway Establishment Manual, Vol.I. In terms of Rule 1313(a)(iii) of IREC, Vol.II and the Explanation thereunder, if a Railway employee who has been confirmed in his post or who has completed two years of regular service and whose probation has not been extended by a specific order as envisaged in the order governing confirmation, was transferred at his own request to the post of another unit of the Railway, he shall have his pay fixed in the time scale of the post in the new unit at the stage equivalent to the pay drawn in the post at the parent unit. However, if he had not been confirmed in the higher post in the parent unit or had not completed two years of service in such post, only the benefit of completed years of service in such higher post may be given for the purpose of advance increment in the lower post in the new unit. Though in terms of Railway Board's letter No.E(NG)I/88/CN/5/2 dated 20.1.1989 issued for simplification of confirmation procedures of non-gazetted staff, confirmation was delinked from availability of permanent posts and the issue of separate orders of confirmation in each promotion grade was dispensed with, the benefits of confirmation in a promotion grade will follow only after a period of 24 months have elapsed from the date of promotion on regular basis. Accordingly, the pay of the applicant, on joining Palghat Division on request transfer from RCF, Kapurthala was fixed at Rs.1030/- in scale Rs.950-1500 with effect from 9.3.1993. They have also submitted that prior to 24.2.1995, according to the then existing instructions of the Railway Board as contained in Rule 227 (a)(2) of IREC, Vol.I, wherever a Railway servant seeks transfer from a higher grade post to a lower grade post on his own volition where the pay in time scale of the post in which he is appointed on transfer is lower than the pay drawn in the old higher grade post held regularly in the parent Railway, he shall draw that maximum as his initial pay in accordance with FR 22(i)(a)(3). In all other cases, the pay in the new post in the lower grade in which he is taken will be fixed at the stage which

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he would have been drawing had he continued in the lower grade post but for his promotion prior to the transfer. The above position was corrected vide Correction Slip No.19 vide letter No.F(E)-II/91/Misc-2 dated 24.2.1995 (Annexure R-3) according to which:

"...When a government 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 in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

When a Government 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 the stage what he would have drawn, had he not been promoted.

When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227(a)(3)-RI (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 similarly, he shall draw that maximum as his initial pay, in accordance with FR 22(i)(a)(3)."

The respondents have therefore, contended that since the applicant was transferred on his own request to Palghat Division on 9.3.1993 i.e. from Technician Grade-II to Grade-III without serving the minimum period of 24 months in the promoted post of Technician Grade-II, the rule provision existed prior to the issue of amendment on 24.2.1995 alone would apply and hence he is not eligible for pay protection on inter-Railway transfer to lower post. They have also submitted that the provisions contained in Rule 1313 (FR 22) of IREC, Vol.II and the provisions of para 604 of the IREM Vol.I are having statutory force, they are not in violation of Articles 14 and 16 of the Constitution of India As far as O.A 175/2001(supra) was concerned, the contention of the respondents was that the applicant herein had not satisfied the requisite conditions and, therefore, the order in the said O.A is not applicable in his case. Moreover, the applicant herein was not a party in the said O.A and any benefits arising out of order in that O.A will be confined only to the parties therein.



4. We have heard Mrs Rejitha for Mr TC Govindaswamy for applicant and Mr Thomas Mathew Nellimoottil for respondents.

5. Before the Railway Board's letter No.E(NG) I/88/CN/5/2 dated 20.1.1989, confirmation at every point on promotion was required in the case of Railway employees. With the delinking of confirmation from availability of permanent post, the issue of separate orders of confirmation in each promotion grade was dispensed with. Therefore, we do not find any merit in the contention of the respondents that though no separate orders for confirmation on each promotion is no more necessary, the benefits of confirmation in promotion grade will follow only after a period of 24 months have elapsed from the date of promotion on regular basis. It is a well settled position of law that on inter-Divisional transfer, on the request of the Railway employee, he will lose only the seniority in the lower post in which he has joined but the actual service rendered by him in the higher post itself will not get obliterated. Once the rule regarding confirmation in each of the promotional post has been removed, the consequential benefits also should be made available to the employees. Therefore, the insistence of the respondents that the Railway employee should have completed 2 years of regular service in the substantive promotional post to have his pay protected in the lower time scale of pay in the new unit at the stage equivalent to the pay drawn by him in the post at the parent unit cannot be justified. Therefore, the contention of the respondents in the present case that the applicant had not completed 2 years of service in the post of Technician Grade-II in the scale of Rs.1200-1800 in RCF, Kapurthala before he was transferred and posted to the lower post of Technician Grade-II in the scale of pay Rs.950-1500 for protection of his pay Rs.1200/- drawn in the higher pay is absolutely untenable.

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6. We also agree with the counsel for the applicant that the issue raised in this O.A has already been decided by the Madras Bench of this Tribunal on 8.2.2002 in O.A.175/2002 (Annexure A-1). The relevant part of the said order on the specific issue of pay protection as in the case of the applicant herein is as under:

"7. We further find that the respondents in their reply had mentioned that the applicants had not spent two years in the promoted grade and therefore they cannot be treated to have held the post on a regular basis or on a substantive capacity. This proposition advocated by the respondents to sustain their action, in our opinion, has no basis or foundation because the rules relating to confirmation in each grade has been given a quietus in a catena of decisions rendered by the Apex Court. As of now, confirmation of a government servant is done only once in his career. Therefore the contention advanced by the respondents that a person should have completed two years after promotion in that grade for the purpose of considering him as a regular employee has no pith and substance. Therefore, the reasoning adopted by the respondents to deny the legitimate benefit in favour of the five applicants is nothing but one drawn free from their imagination and the entire action of the respondents is untenable and applying the ratio of the decision rendered in O.A.123 of 1998, the applicants are entitled to succeed."

7. We, therefore, allow the present O.A and declare that the applicant is entitled to have his pay of Rs.1200 drawn in the RCF, Kapurthala in the scale of pay in the post of Technician Grade-II in the scale of pay Rs.1200-1800 protected upon his joining at Palghat Division as Technician Grade-III in the scale of pay Rs.950-1500 with effect from 9.3.1993 with all consequential benefits emanating therefrom. However, since the applicant had made his first representation in this regard to the respondents only on 20.1.2004 seeking the aforesaid relief and filed the first O.A only in 2005, we restrict the arrears of pay and other allowances payable to the applicant on such protection of his basic pay at Rs.1200/- with effect from 9.3.1993 only from the date of his representation i.e. from 20.1.2004. The respondents shall pass appropriate orders in this regard within a period of two months from the date of receipt of this order and communicate the same to the applicant. The consequential arrears of pay and

allowances arising out of such protection of pay shall be disbursed to the applicant within one month thereafter. There shall be no order as to costs.

Dated, the 17th January, 2008.



O.P.SOSAMMA
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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