

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 54 OF 2009

Thursday, this the 24th day of September, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. S. Sudheer,
Station Master, Grade III,
Southern Railway, Kalamassery,
Residing at Cherupully House,
Manjapra P.O., Angamali,
Ernakulam Dist.
 2. V. Prakash,
Station Master, Grade III,
Southern Railway, Mulanthuruthy,
Residing at 'Anugraha',
Alappatt Pishary Kavil Street,
Eroor North, Ernakulam Dist.
- ... Applicants

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Chennai – 600003.
 2. Divisional Personnel Officer,
Southern Railway,
Trivandrum-695014.
- ... Respondents

(By Advocate Mr. K.M. Anthru)

The application having been heard on 24.09.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicants (two in number) joined the Railways as Assistant Station Masters in the erstwhile scale of pay of Rs 1200 – 2040 (Rs 4,500 – 7,000) in Palghat Division on 29-05-1989 and applied for inter divisional

transfer to Trivandrum Division, soon thereafter. Before the transfer could materialize, they were promoted at the Palghat Division to the post of Station Master Gr. III in the scale of Rs 1400 – 2300 (Rs 5000-8000) respectively in December 1992 and January 1993. Later on in 2002, their inter divisional transfers having materialized, they had joined the Trivandrum Division on 15-02-2002 in the scale of pay of Rs 4,500 – 7000, of course, with pay protection. Annexure A-1 refers. The last para of Annexure A-1 states, *“they will draw their next increment in scale of Rs 4500 – 7000 on completion of 12 months, if eligible otherwise.”* Thus, their next increment in the above scale was allowed with effect from the completion of 12 months of their joining the new Division, i.e. February 2003. In Trivandrum Division, the applicants were, under the financial upgradation scheme, placed in the next grade of Rs 5000–8000 with retrospective effect from 15-02-2002 as per Annexure A-2 order dated 12-08-2003. However, there was no increase in the pay of the applicants, despite the said financial upgradation, apparently on the basis of condition No. 6 of Annexure A-2, which states, *“pay on fitment is subject to the condition that the pay fixed does not exceed the pay that they would have drawn in the same higher grade in their parent unit.”* However, in July 2007, the applicants came to know that the stipulation about the date of next increment vide last para of Annexure A-1 and restriction in pay on upgradation, vide condition No. 6 of Annexure A-2 were not correct and hence, the applicants penned representations vide Annexure A-3 series, whereby they had requested for modification of the order relating to grant of increment, respectively from December 2002 and January 2003 and fix their pay under Rule 1313(1) (a)(i) of IREM. The requests have not, however, been considered by the respondents. Hence, this O.A. praying for quashing and setting aside of the conditions in Annexure A-1 and A-2 relating to grant of



increments and fixation of pay on grant of financial upgradation and for a direction to the respondents to grant increment to the applicants respectively from December 2002 and January 2003 and to have the pay fixed under Rule 1313(l)(a)(1) in the scale of pay of Rs 5000 – 8000 with option facility pursuant to annexure A-2 order and consequential benefits from 15-02-2002.

2. Respondents have contested the O.A. According to them, the applicants having once accepted the conditions as contained in Annexure A-1 and A-2, they cannot challenge the same. The legal plea of limitation has also been raised in their counter. They had also contended that options were made available to the applicants, which they had not availed of at the time of financial upgradation. The alleged annexure A-3 representations were not received. Reference to a circular dated 30th June 2008 of the Railway Board had also been made, which states that where an employee whose pay has been protected, is promoted to the higher grade in the new unit, his pay cannot be fixed under FR 22(1)(a)(1)/1313(1)(a)(1) of RII since on request transfer to a lower post, higher post pay has been protected and fixation under 1313(1)(a)(1) would grant an undue and unintended benefit and that pay in such cases can only be fixed under provisions of FR 22(1)(a)(2)/1313(1)(a)(1) of RII.

3. The applicants have filed their rejoinder, denying receipt of any option forms. They had also contended that limitation in such matters where pay is wrongly fixed does not arise. They had also contended that the case is covered by the order dated 19-02-2009 in OA 492/2007 as also order dated 3rd August 2009 in OA No. 579/2008 of this Tribunal.

4.

At the time of hearing the counsel for the applicant submitted that

the case is squarely covered by the order dated 3rd August, 2009 of this Tribunal in OA No. 579/2008 and also had made a copy thereof available. Counsel for the respondents has been very fair to submit that the facts in the two cases are almost identical, as also in respect of stipulation of the conditions relating to the grant of next increment as well as fixation of pay on grant of financial upgradation.

5. Arguments were heard and documents perused. It is observed from Annexure A-3 representations, that there has been signature and seal of office in token of having received the same by the office. Hence, contention in the reply that the said annexures were not received in the office of the respondents has to be summarily rejected. As regards limitation, since there is continuous cause of action, limitation is applicable only when the question of payment of arrears comes.

6. In OA No. 579/2008, this Tribunal has held as under:-

“The applicant was initially appointed as Assistant Station Master in Palaghat Division in May, 1989 and was promoted as Station Master Grade-III in December, 1991. His pay in the grade of Station Master was Rs. 1,400-2,300/- corresponding to Rs. 5,000-8,000/-. Provision exists for inter divisional transfer against certain direct recruitment post and the applicant applied for the same in the grade of Rs. 4,500-7,000/-. This could materialize only in August, 1999 when the applicant's pay was Rs. 5,750/- in the scale of pay of Rs. 5,000-8,000/-. On his being absorbed in the Trivandrum Division as on 23.8.1999, the applicant's pay was fixed in the scale of pay of Rs. 4,500-7,000/- at Rs. 5,750/- vide Annexure A-1. It has been indicated therein that the applicant could draw the next increment in the aforesaid scale on completion of 12 months from 23.8.1999.

2. Again when the respondents granted ACP to the applicant, they had fixed the pay of the applicant at Rs. 6,050/- in the scale of pay of Rs. 5,000-8,000/- with effect from 8.11.2001. According to the applicant this has been wrongly fixed. Vide paragraph 6 of the order at Annexure A-2 pay on fitment has been fixed subject to the condition that the pay fixed does not exceed the pay what the individual would have drawn in the same higher grade in the parent unit. This particular stipulation was later on withdrawn. The applicant has therefore, claimed the following relief:-



"a) Set aside A-1 in so far as it allowed the applicant's next increment in scale Rs. 4500-7000, only on completion of 12 months on joining Trivandrum Division; set aside the second para in Condition No. 6 at A-2 and the consequential pay fixed therein for the applicant on 1.11.2002 and; set aside A-3 in so far as it allows option for pay fixation.

b) Declare that the applicant is entitled to draw annual increments in scale Rs. 4500-7000 on 1st January 2000/2001; to opt for pay fixation in scale Rs. 5000-8000 with effect from 8.11.01/1.1.02 under FR 22(I)(a)(i) and to draw annual increment thereafter on 1st of January, with consequential arrears and; direct the respondents accordingly."

3. Respondents have contested the OA. According to them the applicant is trying to mislead the Tribunal as he has not exercised his option for fixation of pay though so asked for vide Annexure A-2. Again the eligibility of next increment indicated in Annexure A-1 is in terms of order dated 21.12.1994 which is in tune with the rules and in fact the applicant has been keeping silent on account of the fact that he is thoroughly convinced with the same.

4. Applicant has filed his rejoinder, wherein he has stated that he believed that the condition of next increment as in Annexure A-1 was as per rules, whereas the same is not so.

5. In their additional reply respondents have reiterated the contentions raised in their counter.

6. Counsel for the applicant submitted that order dated 21.12.1994 has already been quashed and set aside as could be seen from paragraph 7 and 12 of order dated 19th February, 2009 in OA 492 of 2007 which reads as under:

"7. The learned counsel for the applicant relied on Condition No. 14 of ACP Scheme introduced by Railway Board letter dated 1.10.99 to buttress the point that in the case of transfer on request the regular service rendered by the applicant in the previous Division shall be counted along with his regular service in his new Division for the purpose of giving financial up-gradation under the ACP scheme. The learned counsel also relied on clarification No. 35 in support of his argument that in case of an employee appointed to a lower grade as a result of transfer on personal request the period of service rendered in the higher post count for the purpose of ACP. The counsel submitted that condition No. 14 and clarification No. 35 have not been amended or delete so far. The counsel further submitted that Annexure R-2 letter dated 21.12.1994 has already been canceled vide order No. P(R)524/P/Fixation/Vol. III dated 14.8.1997.

12. Annexure R-2 letter dated 21.12.1994 regarding

fixation of pay of employees on transfer to a new post on inter-railway/inter-departmental transfer at own request relied on by the respondents has already been canceled vide order No. P(R)524/P/Fixation/Vol.III dated 14.8.1997."

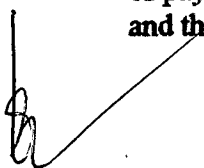
In view of the above the respondents cannot take any different view out of the same.

7. The claim of the applicant is simple. The applicant having earlier being in a higher post of Station Master and having spent a period of eight months or so from the date of previous increment is entitled to count the said period of eight months or so to work out the next period of increment. In other words the respondents ought to have taken into account while working out the date of increment, the period the applicant has already spent from the date of previous increment. Thus, it would be as on 1.1.2000 or so, that the applicant would become eligible for next increment in the pay scale of Rs. 4,500-7,000/- whereas the Department has indicated twelve months period beyond the next increment. To that extent Annexure A-1 order is incorrect and requires modification. As regard Annexure A-2 order, the applicant's fixation of pay cannot be the same which he would have drawn in the higher grade in his parent unit because the said stipulation already stood withdrawn. Hence, the respondents shall fix notional increment at the lower scale arriving at the pay next higher grade of Rs. 5,000-8,000/- from 8.11.2001. As regard option, the applicant is right when he stated that in the absence of any option, a deeming provision exists and the same shall be followed.

8. In view of the above, the OA is disposed of with the direction to the respondents as under:-

- a) The respondents shall modify Annexure A-1 order to the extent that the applicant's next increment in the scale of Rs. 4,500-7,000/- shall be on completion of twelve months from the date of previous increment drawn by him in Palaghat Division.
- b) On the basis of above modification the applicant's pay shall be correctly fixed and arrears paid to him.
- c) As regards grant of ACP, the applicant shall be entitled to the fixation of pay in Rs. 5,000-8,000/- from 8.11.2001 taking into account his pay as on 7.11.2001 in the lower scale of Rs. 4,500-7,000/- calculated after affecting the aforesaid modification.
- d) On working out the same his further pay adding annual increments shall be worked out and arrears of pay and allowances thereof shall also be made available.

9. While working out the arrears of pay and allowances as above one point has to be taken into consideration in regard to arrears of pay and allowances. The claim of the applicant relates back to 1999 and the applicant has filed this OA in 2008.




10. *In Union of India v. Tarsem Singh, (2008) 8 SCC 648*, The respondent while working in the Indian Army was invalidated out of army service, in medical category, on 13-11-1983. He approached the High Court in 1999 seeking a direction to the appellants to pay him disability pension. A learned Single Judge by order dated 6-12-2000 allowed the writ petition and directed the appellants to grant him disability pension at the rates permissible. Insofar as arrears are concerned, the relief was restricted to thirty-eight months prior to the filing of the writ petition. The respondent was also directed to appear before the Re-survey Medical Board as and when called upon by the appellants. The appellants did not contest the said decision and granted disability pension to the respondent and also released the arrears of disability pension for 38 months.

10.1. The respondent however was not satisfied. According to him the disability pension ought to be paid from the date it fell due on 13-11-1983. He therefore filed a letters patent appeal. The said appeal was allowed by the Division Bench of the High Court by judgment dated 6-12-2006. The Division Bench held that the respondent was entitled to disability pension from the date it fell due, and it should not be restricted to a period of three years and two months prior to the filing of the writ petition. By a subsequent modification order dated 23-2-2007, the Division Bench also granted interest on the arrears at the rate of 6% per annum. The said judgment and order of the Division Bench is challenged in this appeal. The only question that therefore arises for our consideration is whether the High Court was justified in directing payment of arrears for a period of 16 years instead of restricting it to three years.

10.2 The Apex Court has, after referring to a few decisions, ultimately held as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the



principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. *In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.*

9. *In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored."*

11. In the instant case as the applicant has filed this OA in October, 2008 only, arrears shall become payable only from 1st October, 2005 onwards and whatever amount accrued prior to that cannot be paid to the applicant.

12. This order in OA shall be complied with by the respondents within a period of four months from the date of communication of this order. No costs."

The above decision fully applies to the facts of the case in hand.

7. Accordingly, this OA is allowed to the extent that -

(a) The respondents shall modify Annexure A-1 order to the extent that the applicants' next increment in the scale of Rs 4500-7000 shall be on completion of twelve months from the date of previous increments drawn by them in Palghat Division;

(b) On the basis if the above modification the applicants' pay shall be correctly fixed and arrears worked out;

(c) As regards ACP the applicants shall be entitled to the fixation of pay in Rs 5000 - 8000 from 15-02-2002, taking their pay as on 14-02-2002 in the lower scale of Rs 4,500 - 7,000 calculated after effecting the aforesaid modification;


(d) On working out the same, their further pay adding annual increments shall be worked out and arrears calculated;

(e) As regards arrears, the same be restricted to three years anterior to the date of filing of the OA i.e. January 2005 (as the OA has been filed in January 2008).

8. The above order shall be complied with, within a period of four months from the date of its communication. Cost easy.

(Dated, the 24th September, 2009.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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