

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 545 of 2004

Friday, this the 15th day of December, 2006

CORAM :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

M.V. George,
S/o. Varkey,
Ex-Office Superintendent Grade-I (S&T),
Southern Railway, Palakkad,
Residing at Muttath House,
Aymury P.O., Perumbavoor. ... Applicant.

(By Advocate Mr. T.A. Rajan for M/s. Santhosh & Rajan)

versus

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Personnel Officer,
Southern Railway, Palakkad. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimootttil)

The O.A. having been heard on 27.10.06, this Tribunal
on 15.12.06 delivered the following:-

**ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

An alleged wrong fixation of pay in October, 1979 is sought to be
rectified on the eve of the retirement of the applicant in 2003, without any

show cause notice and the rectification being from back date, recovery is also sought to be effected from the terminal benefits of the applicant. The legal validity of the above is under challenge in this case.

2. Facts capsule: The dexterously prepared synopsis, which does not deviate from the version of the respondents, would suffice to have a full grip of the facts of the case and the same is reproduced below:-

(a) The applicant commenced his services as Junior Clerk in scale Rs. 110-180 on 16.07.1965. Later he was promoted to officiate as Senior Clerk in scale Rs. 130-300 with effect from 1.10.1968. He had continued in the post without any break and has also drawn increments. On the implementation of the recommendation of the IIInd Pay Commission, the said scale (130-300) was revised to Rs. 330-560. In the meanwhile, the applicant was also given one additional increment as he being a loyal staff during the Railway strike in May, 1974. While the applicant was continuing as Senior Clerk and was drawing Rs. 380/- in the scale Rs. 330-560, he was reverted to the post of Junior Clerk in scale Rs. 260-400 due to the shrinkage of cadre. This reversion was with effect from 30.07.1977. Later the applicant was again promoted to the post of Senior Clerk with effect from 16.07.1979 and his pay was fixed at Rs. 380/- in scale Rs. 330-560, which was the pay drawn by him prior to his reversion. There is no mistake in the fixation of his pay at Rs. 380/-. The applicant continued in the post of Senior Clerk and later promoted to the posts of Head Clerk, Office Superintendent Grade II and Office Superintendent Grade I. Prior

to one week before the retirement of the applicant, the 2nd respondent had issued an order refixing the pay of the applicant with effect from 16.7.1979. The reason stated for refixation of the pay of the applicant is that on promotion of the applicant as Senior Clerk, his pay should have been fixed at Rs. 360/- in scale Rs. 330-560 with effect from 16.7.1979, but he was drawing Rs. 380/- in the said scale. Prior to the refixation of the pay, the applicant was not given any notice and he was also not heard regarding the matter. On the basis of refixation, the applicant's pensionary benefits were calculated on a pay lesser than drawn by him and an amount of Rs. 73,124/- was also recovered from his DCRG towards alleged overpayment. It is submitted that there is no mistake in the pay drawn by the applicant and hence the refixation of pay, calculation of pensionary benefits on a lesser pay and also the recovery of the amount of Rs. 73,124/- are arbitrary, unjust and illegal and hence this O.A.

(b) The main relief sought is as under:-

- (i) Declare that the refixation of pay of the applicant in Annexure A/17 as illegal;
- (ii) Direct the respondents to pay the recovered amount of Rs. 73124/- to the applicant with 12% interest from 1.1.2004 till the date of realisation;
- (iii) Direct the respondents to recalculate and refix the pensionary benefits of the applicant duly taking into account of his last pay as Rs.7900/- and further direct to grant the consequential arrears with 12% interest.
- (iv) Direct the respondents to pay the difference in pay of December, 2003 with 12% interest.



3. The counsel for the applicant argued that pay of the applicant has been correctly fixed as the applicant before reversion to the post of LDC was holding the post of senior clerk and was drawing the pay of Rs 380/- in the scale of Rs 330 – 560 at the time of reversion. Again, when he was promoted on regular basis, his pay was fixed at the afore said Rs 380/- and increments etc., granted subsequently, according to rules. Hence, the order dated 23-12-2003 (Annexure A-17) is not legally sustainable. Principles of natural justice also have not been followed, contended the counsel for the applicant. The counsel also relied upon the decisions of the Apex Court in the case of Sahib Ram, Shyam Babu Verma etc., wherein the Apex Court has held that where the excess payment is not as a result of representation or misrepresentation, the excess payment already made cannot be recovered.

4. Per contra the respondents have contended that when the fixation of pay was erroneous, the respondents have the right to recover the excess payment made to the applicant.

5. The question is what should have been the pay at the time when the applicant was promoted on regular basis as senior clerk in October, 1979? If it be Rs 360/- as contended by the respondents, whether the respondents could be permitted to carry out the rectification? If answer to the same is in affirmative, whether the rectification could be from 1979 both for working out the correct pay (for the purpose of working out the future pension) and

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for recovery or the pay should be revised for limited purpose of fixation of pension but no recovery of the amount already paid cannot be effected in view of various judgments of the Apex Court?

5. Government of India Instructions under FR 22 considers almost an identical issue and the same would answer the first of the above questions.

The same is reproduced below:

"Protection of last pay not actually drawn on his reversion and repromotion to the same post.- A question has been raised as to whether a Government servant can get protection of the last pay actually not drawn (being on leave) on his reversion and repromotion subsequent to the same post in which the previous service is to be counted. The concrete case which has given rise to the above question is as follows:

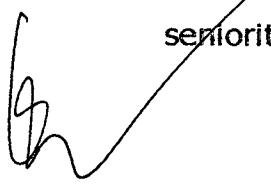
A Government servant was officiating as UDC and drew his pay at the stage of Rs. 404/- during the period from 1.1.1974 to 19.11.1974. Thereafter, he proceeded on leave upto 31.12.1976 and it was certified by the competent authority that he would have continued to officiate as U.D.C. upto 3.9.1975. Excluding the total of all such periods as do not count for increment in the time scale of UDC, the date of next increment was worked out as 13.6.1975 and since he was on leave on this date and continued to remain on officiating post of UDC was actually not drawn. He stood reverted to his substantive post of LDC with effect from 4.9.1975. On his repromotion as UDC with effect from 3.1.1977 his pay was fixed at the stage of Rs. 404/- with reference to his substantive pay of Rs. 390/- as LDC as on that date. The point for consideration is whether his pay may be fixed at the stage of Rs. 416/- on his repromotion with effect from 3.1.1977 and whether he may be allowed to count the period during which he would have drawn that pay for increment in the stage of the time-scale equivalent to that pay.

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2. This has been examined carefully. The fourth proviso to FR 22-C as at present does not permit such a dispensation. On a somewhat analogous situation under FR 31(2) orders have been issued to the effect that in the case of a person proceeding on leave, if the period of leave counts for increment in the officiating post under FR 26(b)(ii) subject to the fulfilment of the conditions and production of the necessary certificates, his officiating pay may be refixed under F.R. 31(2) from the very date of increment or increase in the substantive pay as if he was appointed to officiate in that post on that date. The benefit of the increase in his officiating pay can be had only from the date of resumption of duties but his next increment in the officiating post will accrue to him from an earlier date in the next year calculated with reference to the date of refixation of pay.

3. Accordingly, it has been decided that in the type of cases referred to in paragraph 1 above, the pay may be fixed at the same stage (though not drawn) and the period during which it would have been drawn may also be counted for increment in the stage of the time scale equivalent to that pay."

6. An identical issue arose before the Ahmedabad Bench in the case of S. Natesan Iyer vs Union of India, (1989) 9 ATC 608. In that case the applicant was promoted in the pay scale of Rs 425 – 700 on ad hoc basis from 09-07-1993 to 31-07-1995 and then reverted. As on 31-07-1995, he was drawing pay of Rs 470/- p.m. in that pay scale. Later on, he was repromoted in the said scale on regular basis and his pay was sought to be fixed with reference to his pay in the lower post to which he was reverted and benefit of service rendered in the pay scale of Rs 425 – 700 sought to be denied on the plea that it was an ad hoc promotion which did not count for seniority. The said plea was rejected and it was held by the Tribunal that the



applicant was entitled to have his pay fixed at Rs 470/-.

7. Rules relating to fixation of pay on promotion to a higher post in respect of Railway employees are provided in IREC (Rule 1313 onwards) and these are in pari materia with FR 22, applicable to other Central Government employees. As such, in view of the above decisions, the applicant has made out a cast iron case. Fixation of pay as originally made i.e. @ Rs 380/- cannot be faulted with. In view of the same, other questions i.e. whether rectification could be made prospectively or otherwise are of least relevance.

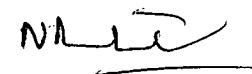
8. In view of the above, the OA succeeds. It is declared that the pay fixed by the respondents initially in 1979 at Rs 380/- does not warrant any modification. Consequently, impugned order dated 23-12-2003 is quashed and set aside. Respondents are directed to refund the amount of Rs 73,124/- adjusted from the DCRG payable to the applicant on account of the aforesaid downward revision of pay of the applicant with interest @ 9% per annum from 01-12-2004 till date of payment. The respondents shall also work out the difference in pay for the month of December, 2003 due to the applicant and the same shall also be paid to the applicant with interest @ 9% per annum from 01-01-2004 till the date of actual payment. Likewise, pension due to the applicant should also be recalculated and the arrears of pension be paid to the applicant with interest @ 9% per annum. All such

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amounts, as afore stated, shall be paid to the applicant within a period of two months from the date of communication of this order. Respondents shall henceforth continue to pay pension as per the correct pay.

9. No costs.

(Dated, the 15th December, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

Cvr.