

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 380 of 2010
Original Application No. 573 of 2010

Tuesday, this the 12th day of April, 2011

Hon'ble Mr. K. George Joseph, Administrative Member
Hon'ble Mr. A.K. Bhardwaj, Judicial Member

1. Original Application No. 380 of 2010 -

1. T. Hareendradas, aged 45 years, S/o. T. Narayanan, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Shoranur, Residing at : Thekkethil House, Manjakkad, Shoranur, Palakkad District, Kérala State, Pin:679 121.
2. V.S. Ganesan, aged 45 years, S/o. V.K. Sivasankaran, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Shoranur, Residing at : Velakketh House, Anthicadu, Thrissur District.
3. R. Rajendraprasad, aged 47 years, S/o. K. Rajan, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Shoranur, Residing at : Kannattuveli, Punnapra P.O., Alleppey District.
4. K.K. Bhagavndhan, aged 45 years, S/o. K.S. Kochekkan, Loco Pilot/Pass/Gr.II/Southern Railway, Office of the SSE (C&W), Palakkad, Residing at : No. 13, Nakshatra, Sagarika Nagar, Opp: to St. Joseph Church, Kellekulangara, Palakkad-678 009.
5. Benny Joseph, aged 46 years, S/o. P.C. Joseph, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Palakkad, Residing at : Padyattil House, Melepuram, Olavakode P.O., Palghat District.
6. P.N. Geethapriyan, aged 46 years, S/o. P.K. Narayanan, Loco Pilot/Pass/Gr.II/Southern Railway, Crew Booking Office, Palakkad, Residing at : Travancore Apartment, Kallekulangar P.O., Palakkad-678 009.
7. Meril Timothy, aged 48 years, S/o. W.G. Timothy, Loco Pilot/Pass/Gr.II/Southern Railway, CRC Office, Calicut, Residing at : 37/718, Vadakkemudapattu Paramba, Karuvissery P.O., Calicut-10.

8. K. Sadasivan, aged 46 years, S/o. E. Appukutty Chettiar, Loco Pilot/Pass/Gr.II/Southern Railway, CRC Office, Calicut, Residing at : Sanmayam, Edassery Parambil, Methottuthazham, P.O. Nellicode, Calicut-673 016.

9. Abi K. Paul, aged 43 years, S/o. K.A. Pylappan, Loco Pilot/Pass/Gr.II/Southern Railway, CRC Office, Shoranur, Residing at : Konikkara House, Sreyas Nagar, Nadathara P.O., Thrissur-680 751.

10. Benny John, aged 45 years, S/o. M.J. John, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Shornur, Residing at : Menachery House, Near Rajya Hall, AJN-40, Angmaly P.O., Pin:683 572, Ernakulam District. **Applicants**

(By Advocate – Mr. T.C.G Swamy)

V e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhavan, New Delhi.

2. The General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.

3. The Sr. Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose)

2. **Original Application No. 573 of 2010 -**

1. P. Premarajan, aged 49 years, S/o. (late) P. Govindan, Loco Pilot/Pass/Gr.II/Southern Railway, Crew Booking Office, Calicut, Residing at : Souparnika, Poovathur House, Parambath Road, Kunduparmba, Edakkad P.O., Calicut-673 005.

2. B. Radhakrishnan, aged 46 years, S/o. (late) N.G. Balakrishna Menon, Loco Pilot/Pass/Gr.II/Southern Railway, CCRC Office, Shoranur Jn., Residing at : Guru Kripa, Kottarappattu House, Konathukunnu P.O., Thrissur District, Pin-680 123. **Applicants**

(By Advocate – Mr. T.C.G Swamy)

V e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhavan, New Delhi.	Respondents
2. The General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.	
3. The Sr. Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.	

(By Advocate – Mr. Thomas Mathew Nellimoottil)

These applications having been heard on 15.3.2011, the Tribunal on 12-04-11 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member –

Having identical facts and points of law, these Original Applications are heard together and are disposed of by this common order.

2. The applicants have filed these Original Applications for quashing of Annexure A-1 order revising their pay. The applicants are presently working as Loco Pilots (Passenger) Grade-II in Palghat Division of the Southern Railway. They were given non-functional promotion as Senior Goods Driver [re-designated as Loco Pilot (Goods) Grade-I] with effect from 1.11.2003 vide order dated 14.6.2004 (Annexure A-4) with the benefit of pay fixation under Rule 1313 (I)(a)(1) of Indian Railway Establishment Code, Volume-II. Later they were given functional promotion as Loco Pilot (Passenger) with effect from 31.10.2006 and afterwards, again with the benefit of pay fixation under Rule 1313 (I)(a)(1) of Indian Railway Establishment Code, Volume-II. When the pay scales were revised

on the recommendations of the VIth Central Pay Commission vide Annexure A-1 order dated 22.3.2010, their pay was revised without the benefit of the above pay fixations with retrospective effect from 1.11.2003. Hence, these OAs.

3. The applicants contend that Annexure A-1 order to the extent it relates to them is opposed to statutory rules, arbitrary and discriminatory. They were not given an opportunity to show cause nor they were informed about the reasons for retrospective reduction of pay. As such, basic principles of natural justice have been violated. Notwithstanding the fact that the scale of pay of the post of Senior Goods Driver and that of the Passenger Driver are one and the same, the pay fixation was directed to be given as a special case under Rule 1313 (I)(a)(1) of the Indian Railway Establishment Code, Volume-II. Paragraph 3 of Annexure A-3 by which the benefit of pay fixation was granted to them as a special cases has not been amended or varied by any process known to law. Therefore, Annexure A-1 order taking away the benefits of fixation of pay granted on promotion as Loco Pilot (Passenger) is ultra virus to the statutory rules. The effect of Annexure A-1 is that as if the applicants have continued as Loco Pilots (Goods) without any promotion. It also results in discrimination in the matter of fixation of pay vis-a-vis those who have been promoted as Senior Goods Driver, Passenger Driver prior to 1.11.2003 and thereafter. It also results in a number of applicants' juniors drawing more pay than them.

4. The respondents submitted in their reply statement that the impugned order has been issued rectifying the erroneous fixation of pay done in the case of promotions of Loco Pilot (Goods) Grade-I and Loco Pilot (Passenger) Grade-II, since both these posts are in the one and same scale of pay. The revision had to be

carried out because the pay of the employees promoted from Loco Pilots (Goods) Grade-II to Loco Pilots (Goods) Grade-I and Loco Pilots (Passenger) Grade-II was fixed on both occasions under Rule 1313 (I)(a)(1) (FR 22 (I)(a)(1)R-II), despite standing instructions of the Railway that benefit of pay fixation will be admissible in the case of functional promotions only. As such promotion of Senior Goods Guard to Passenger Guards and Senior Goods Drivers to Passengers Drivers etc. though in identical scales of pay, there is no basis for allowing pay fixation benefit at the time of promotion from Goods Driver to Senior Goods Driver/Loco Pilot (Goods) Grade-II to Loco Pilot (Goods) Grade-I with effect from 1.11.2003. All the applicants have accepted the promotions as per conditions in Annexure A-4 order wherein it is clearly mentioned that their pay will be fixed under Rule 1313 (FR) 22(1)(a)(2)R-II. However, their pay was fixed applying rule 1313 (FR 22(I)(a)(1)R-II) erroneously. The applicants got the benefit of pay fixation both in non-functional as well as functional promotions. This error was detected and rectified. Consequently, on the recommendations of the VIth Central Pay Commission when the pay scales of Driver cadres were merged and replaced with pay band II (9300-34800/- with grade pay of Rs. 4200) with effect from 1.1.2006, additional allowance of Rs. 1,000/- is available for promotion in respect of Mail Driver/Loco Pilot (Mail) and Rs. 500/- in respect of Passenger Driver/Loco Pilot (Passenger). As the pay revision was given effect from 1.1.2006 the promotions ordered after 1.1.2006 within the merged grade shall not be treated as effected as per instructions of the Railway Board under note No. 3 of Railway Board's letter dated 11.9.2008. The contentions of the applicants that show cause notice has to be issued for recalling inadvertent order is denied. The notification of the revised pay rules and other relevant orders including the contents of Railway Board's

letter dated 9.10.2003 and subsequent modification dated 6.1.2004 and so on where published in all the notifications of the Railway administration including the gazette of Southern Railway and also through circulars to each and every depot. No where in Annexure A-3 fixation was directed to give as a special case under Rule 1313 (I)(a)(1) of the Indian Railway Establishment Code, Volume II to the applicants. There is no necessity to get the approval from Railway Board or President of India and Rule 123 of Indian Railway Establishment Code, Volume-I is not at all applicable as per rule 15 of notification of Railway Service (Revised Pay) Rules, 2008. If any of the Drivers are drawing higher pay than the applicants the same will be examined and appropriate action will be taken based on the provisions of Railway Board's instructions.

5. We have heard the learned counsel for the applicants Mr. T.C.G. Swamy and learned counsel for the respondents Mr. Sunil Jacob Jose and Mr. Thomas Mathew Nellimoottil and perused the pleadings and records of the case.

6. The applicants have been given the benefit of pay fixation twice. The first benefit of pay fixation granted, when they were given non-functional promotion, was clearly a mistake committed by the respondents. The applicants argued that they were given this benefit as per a special rule applicable to persons like them in paragraph 3 of Annexure-3. But they have not proved that paragraph 3 of Annexure-3 confers on them the benefit of pay fixation on non-functional promotion. The mistake that was committed in the year 2003 is rectified in the year 2010. Years have passed since the granting of the first benefit of pay fixation. However, it is to be noted that all the relevant circulars were notified appropriately in the normal course and it was expected that the applicants were in

the know of the relevant notifications. Even if the applicants were given an opportunity to show cause, in accordance with the principles of natural justice, it would have been merely an empty formality as no conclusion other than non-admissibility of the benefit of pay fixation on non-functional promotion is possible. Therefore, in the facts and circumstances of these OAs we are of the view that there is no violation of principles of natural justice in rectifying the mistake committed many years ago which would justify intervention by this Tribunal. Even so we would have appreciated, had the respondents in the interest of good administration informed the employees about the reasons for revising their pay long after it was granted.

7. The second benefit of pay fixation granted to the applicants upon their functional promotion got nullified because of the retrospective implementation of the revised pay scales in accordance with the recommendations of the VIth CPC. The applicants have opted to accept the revised pay scales subject to the conditions attached to the same. Even after nullifying the effect of their functional promotion the applicants stand to the benefit in accepting the revised pay scales. It is not the case of the applicants that they would opt for the pre-revised pay scales with the benefit of promotion, if a chance for option is again given. Therefore, we do not find any illegality in nullifying the effect of functional promotion granted to the applicants on revision of their pay scales.

8. The impugned Annexure A-1 order also directs recovery of the over payment on account of the downward revision of the pay of the applicants nullifying the benefit of pay fixation granted with effect from 1.1.2003. The benefit of pay fixation was given with effect from 1.1.2003 not on account of any

mis-representation made by the applicants. In Sahib Ram Vs. State of Harayana – 1995 (1) SCC 18 it was held as under:-

“.....it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the applicant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.”

9. Undue hardship will be caused to the applicants if recovery of excess payment made over many years is effected now. In such a situation judicial discretion can be exercised to relieve the employees from the hardship that will be caused if recovery is implemented as held in Col. B.J. Akkara (Retd.) Vs. Government of India – 2006 (11) SCC 709. In Co-operative Societies Vs. Israil Khan – 2010 (1) SCC 440 the Apex Court held that recovery of excess payment is refused in cases where the excess payment is made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of the rule/order, which is subsequently found erroneous. In Union of India Vs. R. Vasudeva Murthy decided on 6th August, 2010 the Apex Court has held that those who had been excess paid need not be saddled with recovery.

10. In view of the above position held by the Apex Court we are of the view that in the instant case the respondents are not justified in making recovery of the excess amount paid to the applicants because the excess amount was paid to them on account of a mistake on the part of the respondents. The applicants in no way contributed to the mistake committed by the respondents. They will be put to undue hardship if recovery is made now.

11. In the light of the above there is no justifiable reason to quash the Annexure A-1 order to the extent it relates to the applicants as the respondents have a right to rectify any inadvertent error committed by them. However, they are restrained from making any recovery of the excess payment made to the applicants.

12. The Original Applications are disposed of as above with no order as to costs.

(A.K. BHARDWAJ)
JUDICIAL MEMBER

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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