

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.581/12

Friday,..... this the *2nd*..... day of August 2013

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

1. M.Hussain,
S/o.Moideen Kutty,
Retd. Assistant Guard/Southern Railway/
Erode Railway Station.
Residing at Periyapadam House,
Thanave, Olavakkode, Palakkad.
2. M.Subramanian,
S/o.M.Krishnan,
Retd. Assistant Guard/Southern Railway/
Erode Railway Station.
Residing at Manichi Thodiyil House,
Mannanur P.O., Palakkad Dt.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
2. The Divisional Personnel Officer,
Southern Railway, Salem Division,
Salem – 636 001.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

2nd This application having been heard on 31st July 2013 this Tribunal on
2nd..... August 2013 delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The contention of the applicants in this case is that they are entitled for First Class Post-Retirement Complimentary Pass as provided under Rule 8 of the Railway Servants (Pass) Rules, 1986, but it has not been accepted by the respondents. Hence, this Original Application.

2.

2. The brief facts of the case are that the applicants are retired Assistant Guards of Southern Railway belonging to the category of Traffic Running Staff. According to the rules applicable to them, they are entitled to have 30% of their pay treated as pay for all material purposes, including for the purpose of determining the equation of their grades vis-a-vis the non running staff. The Railway Board, vide order bearing RBE No.254 of 1999 dated 1.10.1999, reviewed the equivalence of grades in the light of the various scales of pay introduced based on the recommendations of the 5th Central Pay Commission and decided to equate the grades of running staff with those of the stationary staff. Accordingly the category of running staff in the post of Senior Assistant Guard in the scale of pay of Rs.4000-6000/- has been equated with the scale of pay of Rs.5000-8000/- of the stationary posts. Similarly, the post of Assistant Guard in the scale of pay of Rs.3050-4590 has been equated to the scale of pay of Rs.4000-6000/- of the stationary posts. Similarly, after accepting the 6th Central Pay Commission recommendations by the Government, the Railway Board issued Annexure A-3 order bearing RBE No.3 of 2011 dated 6.1.2011 revising the existing entitlements of Passes/PTOs to the Railway Servants (Pass) Rules, 1986 and decided that the entitlements of Passes/PTOs in respect of Railway Servants drawing pay in the Railway Services (Revised Pay) Rules, 2008 shall be inter-alia as under :-

S.No.	Category	Type of Privilege Pass & Privilege Ticket Order	Type of Duty Pass
1	Group 'A' & Group 'B' (Gazetted)	Ist Class 'A' Pass	Ist Class 'A' Pass
2	Non-Gazetted employees		
	(i) In Grade Pay Rs.4200/- and above	Ist Class Pass	Ist Class Pass
	(ii) In Grade Pay Rs.2800/-	IInd Class 'A' Pass	IInd Class 'A' Pass

.3.

3. Again, the Railway Board, vide its order bearing RBE No.47 of 2012 dated 2.4.2012, the issue of reckoning of running allowance for the purpose of revised entitlement of Passes/PTOs was considered and decided to allot equivalent grade pay to running staff for the purpose of entitlement of Passes/PTOs as under :-

Post	Vth CPC Pay Scale	VIth CPC Grade Pay	Allotted equivalent 6 th CPC Pay Band/Grade Pay after reckoning Running Allowance	
			Pay Band	Grade Pay
ALP/Brakesman	3050-4590	1900	PB1	2400
Sr.ALP/Loco Pilot (Shntg) Sr.Brakesman	4000-6000	2400	PB1	4200
Goods Guard	4500-7000	2800	PB2	4200
Sr.LP(stg)/LP(Goods)/ Sr.Goods Guard/Pass Guard	5000-8000	4200	PB2	4600
Sr.LP(Goods)/LP(Pas) Sr.Pass Guard/Mail Guard	5500-9000	4200	PB2	4600
Sr.LP(Pass)/LP(M/E)	6000-9800	4200	PB2	4600

In the aforesaid order, Brakesman refers to the cadre of Assistant Guards which is their present designation.

4. The applicants are Assistant Guards who were in PB-1 plus GP of Rs.2400/- as on the date of their voluntary retirement on 4.9.2008. They were granted the above PB plus GP vide Office Order dated 25.5.2011 issued by the 2nd respondent. The aforesaid order reads as under :-

SOUTHERN RAILWAY
O.O.No.46/OPTG.Admn/2011

Sub : Financial up gradation under MACP Scheme,
2008 – Optg. Department.

Ref : Railway Board's Lr. No.PC-V/2009/ACP/2
dt.10.06.2009.

In terms of Railway Board's letter quoted above, having completed 10/20/30 years of regular service/having spent 10 years continuously in the same grade pay and found suitable by the committee nominated for the purpose, the under mentioned staff of Sr.DOM/O/SA are considered for Financial Up gradation and placed in the immediate next higher Grade Pay as indicated against each.

Sl. No.	Name, Designation, PF No. & Station.S/Shri.	Date of entry into regular service	Present Pay, Pay Band & Grade Pay as on .	Eligibility of MACP and Upgraded Pay, Pay Band and GP with effect from		
				I MACP	II MACP	III MACP
1	M.Hussain, 02516834, Asst. Guard ED (VR wef 04.9.2008)	01/10/75	Rs.11370, 5200-20200 + 1900 GP, 31.08.2008	-	Rs.11770, 5200-20200 + 2000 GP, 01.09.2008	Rs.12190, 5200-20200 + 2400 GP, 01.09.2008
2	M.Subramanian 02516810, Asst. Guard ED (VR wef 04.9.2008)	01/10/75	Rs.10810, 5200-20200 + 1900 GP, 31.08.2008	-	Rs.11200, 5200-20200 + 2000 GP 01.09.2008	Rs.11600, 5200-20200 + 2400 GP 01.09.2008

The above up gradation is subject to all the terms and conditions are laid down in Board's letter cited, such as,

1. They are free from DAR/SPE/Vigilance cases pending/initiated/contemplate against them.
2. It will not confer on them any seniority benefits. Their name will be continued to be maintained in the original seniority list of regular capacity and they will be considered for promotion on regular basis in the normal channel only.
3. There shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by the employee such as HBA, allotment of Railway accommodation shall be permitted.
4. They may exercise option for fixation.
 - (a) Of pay under Rule 1313(1)(a)(I) of the Indian Railway Establishment Code Volume II (VI Edition 1987 - 2nd reprint 2005) FR 22 (1)(a)(I) to get their pay fixed in the post/Grade Pay either from the date of his promotion/up gradation.

.5.

(b) From the date of his next increment from 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification No.2 of Railway Board's letter No.PC-VI/2008/I/RSRP/1 dated 25.09.2008 (PC-VI/22, RBE No.132/2009).

In case an employee does not exercise any option within one month from the date of issue of this O.O. It may be noted that his/her pay will be fixed as 4(a) above.

This has the approval of ADRM/SA.


Divisional Office,
Personnel Branch,
Salem

(M.Prakash)
Assistant Personnel Office/T
for DPO/SA

No.SA/P.524/II/Optg?MACPS/Guards Dated 25.05.2011
Copy to : Sr.DOM/SA,Sr.DFM/SA,CSWI/SA,OS/Bills
OS/Pass,Settlement OS/Optg,TI/SA
CMR/ED/SA/DS/SRMU/DREU,
AISC/ST,AIOBC/SA
Individuals.

5. According to them, in the above circumstances, in terms of the aforesaid orders of the Railway Board read with Railway Servants (Pass) Rules, 1986, they are entitled to be granted the benefits of First Class Post Retirement Complimentary Passes.


6. Since they have not been given the said facility they made individual representations to the 2nd respondent. The 1st applicant made the Annexure A-5 representation dated 3.9.2011 and 2nd applicant made the Annexure A-6 representation dated 20.10.2011 requesting the respondents to grant them the facility of First Class Post Retirement Complimentary Passes. As no reply was forthcoming, they made a representation dated 21.11.2011 under the Right to Information Act, 2005, to get information as to what action the respondents have taken on their Annexure A-5 and Annexure A-6 representations. In response to the said representation dated 21.11.2011 the respondents have issued the impugned Annexure



.6.

A-1 letter dated 5.12.2011 stating that the passes have to be issued to the employees whose grade pay is Rs.4200/- and above. The contention of the applicants is that while issuing the aforesaid impugned order the respondents have ignored the fact that they are to be equated to persons holding the grade pay of Rs.4200/- in terms of the aforesaid Annexure A-2, Annexure A-3 and Annexure A-4 instructions of the Railway Board. According to them, if they were in service on account of the fact that PB-1 plus GP of Rs.2400/- is equated to PB-2 plus GP of Rs.4200/-, they would have got the benefit of the First Class Post Retirement Complimentary Passes. They have also stated that Senior Diesel Assistants who are also in the very same PB-1 plus GP of Rs.2400/- are granted First Class Post Retirement Complimentary Pass on the ground that their scale of pay is equivalent to PB-2 plus GP of Rs.4200/-.


7. Learned counsel for the applicant, Shri.T.C.Govindaswamy, has also submitted that a similar case was filed by Shri.P.T.Sasidharan vide O.A.799/12 before this Tribunal. The said Shri.P.T.Sasidharan was a retired Goods Guard of Southern Railway, Palakkad Division. He was aggrieved by the orders by which he was denied the benefit of First Class Post Retirement Complimentary Pass provided for under Rule 8 of the Railway Servants (Pass) Rules, 1986. The respondents rejected his request for granting the First Class Post Retirement Complimentary Pass stating that the eligibility for the type of pass is based on the grade pay as per Railway Board's letter dated 6.1.2011. However, subsequently in para 6 of the reply statement filed by them before this Tribunal they have stated as under :-



"the applicant having retired as a running staff, in order to decide eligibility for First Class Pass, an element of 30% is to be added to his basic pay. Accordingly, his pay would be Rs.6337/- which is above the eligibility criteria of Rs.5375/- for grant of First Class Pass. Hence the applicant will be issued the Post Retirement Complimentary Pass in First Class as and when he prefers a request."

8. On the basis of the aforesaid reply statement, this Tribunal held that the grievance of the applicant therein stood redressed and the O.A was closed.

9. The respondents in their reply statement has simply reiterated their stand taken by them in the impugned Annexure A-1 letter dated 5.12.2011. They have further submitted that the applicants were working as Assistant Guards at the time of their voluntary retirement from service and were in scale Rs.3050-4590 as prescribed by the 5th Central Pay Commission. But pursuant to the recommendations of the 6th Central Pay Commission their pay was revised and the 1st applicant, Shri.M.Hussain who was drawing Rs.4830/- as his basic pay in scale Rs.3050-4590 was refixed and subsequently he was drawing Rs.11370/- + grade pay Rs.1900/- as on 4.9.2008. The 2nd applicant, Shri.M.Subramanian, was drawing Rs.4590/- as his basic pay in scale Rs.3050-4590 and his pay was refixed and subsequently he was drawing Rs.10810 + grade pay Rs.1900/- as on 4.9.2008. Both of them voluntarily retired from service on 4.9.2008. They have also stated that the 1st applicant in his entire service had got three promotions from Traffic Porter, Pointsman-B, Pointsman-A and Assistant Guard. However, as per the recommendations of the 6th Central Pay Commission, some of the 5th Central Pay Commission scales were merged and common grade pay were introduced. Due to the merger of scales of



Traffic Porter and Pointsman-B in grade pay Rs.1800/- and Pointsman-A and Assistant Guard in grade pay Rs.1900/- as per 6th Central Pay Commission recommendations, the three promotions he got were treated as only one promotion ie. from grade pay Rs.1800/- to Rs.1900/- during his entire service which is more than 30 years. Hence he was eligible for the 2nd and 3rd financial upgradation under MACP from 1.9.2008 and accordingly his pay was fixed as Rs.11770 + 2000 and as Rs.12190 + 2400 with effect from 1.9.2008. Similarly, in the case of the 2nd applicant also they have submitted that he was also eligible for the 2nd and 3rd financial upgradation under MACP Scheme from 1.9.2008 and accordingly his pay was fixed as Rs.11200 + 2000 and as Rs.11600 + 2400 with effect from 1.9.2008. Again, according to them, as per the recommendations of the 5th Central Pay Commission, the following Group 'C' employees are entitled for First Class Privilege Pass/PTOs and Duty Passes :-

1. Those who were appointed prior to 1.8.1969 drawing pay of Rs.4900/- or above provided the employees are in a scale the maximum of which is Rs.6000/- or above.
2. Those who were appointed during the period from 1.8.1969 to 10.11.1987 and drawing pay of Rs.5375/- or above, provided they are in a scale the maximum of which is Rs.7000/- or above.
3. Those who were appointed during the period from 10.11.1987 to 1.2.1999 and drawing pay of Rs.7250/- or above or those who are in a scale the minimum of which is Rs.6500/-.
4. Those who are appointed after 1.2.1999 and who are in pay scale minimum of which is Rs.6500/- or above or who are drawing pay of Rs.7600/- or above.

10. The respondents have also submitted that at the time of their voluntarily retirement they were not in the pay scale the maximum of which is Rs.7000/- or above. Their basic pay as on the date of their retirement on 4.9.2008 was Rs.4670 + 1401 = 6071/- (adding 30% of pay as running element) and Rs.4830 + 1449 = 6039 respectively in scale Rs.3050-4590. As per Annexure R-3 circular dated 1.10.1999 the maximum of the equated scale is Rs.6000/- which is less than Rs.7000/-. Hence they are entitled for Second Class Pass only. Again, according to the respondents, the Railway Board has issued revised pay limits for entitlement of Pass/PTOs on the basis of pay drawn in the Railway Service (Revised Pay) Rules, 2008 vide Annexure R-4 letter dated 6.1.2011, according to which, those Non-Gazetted employees in grade pay of Rs.4200/- and above are only entitled to First Class Privilege Pass & Privilege Ticket Order and Duty Passes.

11. I have heard learned counsel for the applicant, Shri.T.C.Govindaswamy and learned counsel for the respondents, Shri.Varghese on behalf of Shri.Thomas Mathew Nellimoottil. In my considered view, it is not necessary to go into the disputed position raised by the parties in this case any more. In a similar case – O.A.799/12 – P.T.Sasidharan Vs. Union of India and another. the respondents themselves have admitted that in order to decide eligibility for First Class Post Retirement Complimentary Pass, an element of 30% is to be added to the basic pay. Accordingly, the pay of the applicant therein worked out to be Rs.6337/- which is above the eligibility criteria of Rs.5375/- for grant of First Class Pass. In the present case also, it is seen that by adding the element of 30%, the pay of both the applicants will be above the eligibility criteria.

.10.

12. In the above facts and circumstances, I allow this O.A and quash and set aside Annexure A-1 letter dated 5.12.2011. I also declare that the applicants are entitled to be granted the benefit of First Class Post Retirement Complimentary Passes with all consequential benefits arising therefrom. Accordingly, I direct the 2nd respondent to pass necessary orders for grant of the aforesaid benefit to the applicants within a period of two months from the date of receipt of a copy of this order.

13. Under the circumstances, there shall be no order as to costs.

(Dated this the 2nd..... day of August 2013)


GEORGE PARACKEN
JUDICIAL MEMBER

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