

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 585/2004

Friday this the 1st day of September, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P.C.Gopalan S/o Sekharan,
(Retired Sarang/Rivetter)
Carriage Repair Shop,
South Central Railway,
Tirupati), residing at
No.11/73, Kallumadathin Pallam,
Kodayattu Kara, Mundankavu
Chengannur PO, Pathanamthitta Dist.Applicant

(By Advocate Mr. M.P.Varkey)

V.

- 1 Union of India represented by
General Manager, South Central Railway
Rail Nilayam, Seconderabad-500371.
- 2 The Senior Divisional Personnel officer,
South Central Railway
Guntakal (AP) 515801
- 3 The Senior Divisional Finance Manager,
South Central Railway,
Guntakal (AP)_ 515801. Respondents

(By Advocate Mr.P.Haridas,Railway Counsel (rep).

The application having been finally heard on 11.8.2006, the Tribunal on 1.9.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant in the present OA has joined as C.L Artisan (Sarang)
in the Mopla Gang under the Divisional Engineer, (Doubling) at Kazipet

with effect from 19.5.1973. He had earlier filed OA 1105/92 before the Hyderabad Bench of this Tribunal, along with one Shri C.K.Gopalan for regularization of his service in the Skilled Grade from the date his junior's service was regularized and the same was allowed vide order dated 30.8.95, with the following directions:

"He has to be absorbed in Skilled Grade.III against the 20% quota earmarked for direct recruitment on the same date on which his immediate junior in the seniority unit with reference to the trade of Sarang's absorbed or equivalent grade was absorbed. His case for further promotion also has to be considered on the basis of the date of the absorption as referred to."

Thereafter, the respondents vide Annexure.A2 office order dated 3.6.97 absorbed him as Revetter/Gr.III in the scale Rs. 950-1500 (RSRP) w.e.f. 1.5.95 at par with Sri C.K.Gopalan, stated to be his junior who has been absorbed in the said post. When the aforesaid A2 Office Order was issued the applicant objected to it and Shri C.K.Gopalan was never his junior as he was always working one grade below him. He has also pointed out that the Annexure.A2 order dated 3.6.97 is silent regarding his further promotion to Skilled Grade II as directed by this Tribunal. He claimed that even though he has passed the trade test for Grade II held in April, 1997, he was not promoted to that grade whereas his junior Shri Sasidharan has been promoted even to the next higher grade of HS Grade-I, in the Vijaywada Division. The other claim of the applicant in this OA is that since he has already been granted the higher pay scale of Rs. 330-560 (pre revised) (revised to Rs. 1320-2040) of Sarang-II (Skilled Artisan) from 1975 and promoted as Sarang-II (Highly Skilled Artisan) with effect from 1.1.1981 in the scale of pay of Rs. 380-560 his pay on his absorption in Skilled Grade III should have been protected. The applicant

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has made several representations including the one dated 8.4.2002 at Annexure.A5 to fix his seniority and also his pay at par with his immediate junior Shri Sasidharan who has since been absorbed in the Skilled Grade-III in 1987 and further promoted to Skilled Grade-II under BRI/BZA. However, the respondents ignored all his representations and reduced his pay scale itself vide Annexure.A6 Memorandum dated 3.9.2003 by fixing his pay at Rs. 260/- in the lower scale of Rs. 260-400 w.e.f. 1.1.81 and at Rs. 1070/- with effect from 1.1.86 and at Rs. 4030/- w.e.f. 1.1.96 in scales of Rs. 950-1500 and Rs. 3050-4590 respectively, when he was already drawing Rs. 380/- the pay in the higher pay scales of Rs. 380-560 w.e.f. 1.1.81, Rs. 1440/- in the scale of Rs. 1320-2040 w.e.f. 1.1.86 and Rs. 5550/- with effect from 1.1.96 in the scale of Rs. 4000-6000. Vide Annexure.A7 representation dated 8.9.03, he submitted that he has never been reverted as Rivetter and he was given ad hoc promotion or officiation promotion as Sarang and he continued to be in the scale of Rs. 380-560 and Rs.1320-2040/Rs.4000-6000 and he was stagnating at Rs. 6000/- as on 1.1.2001. He has, therefore, claimed that his pensionary benefits should have been worked out treating his basic pay as Rs. 6100/- p.m as on 1.1.03 after adding stagnation increment of Rs. 100/-. Again, without considering his said representation, the respondents went ahead with the Annexure.A8 Pension Payment Order dated 30.9.2003 based on the Annexure.A2 order and the Annexure.A6 Memorandum determining his pensionary benefits based on the reduced pay and pay scale reckoning his last basic pay as Rs. 4590/- as on 30.9.03. He, therefore, filed the present OA seeking the following reliefs:

"i) Declare that A2,A6,A8 and A9 are arbitrary, illegal, unconstitutional, without jurisdiction, opposed to the

principles of natural justice and A1 order and set aside the same;

ii) Declare that the applicant is entitled to be paid the officiating pay as Sarang from 26.6.97 to 30.9.2003 also and; direct the respondent's to refund Rs. 126568/- and pay Rs. 1410+DA to the applicant;

iii) Declare that the applicant is entitled for absorption in Skilled Gr.III and further promotions to Skilled Gr.II/Gr.I on the same dates on which his immediate junior in the Mopla Gang were so absorbed/promoted and; direct the respondents accordingly;

or in the alternative

Declare that the applicant is deemed to have been absorbed in Skilled Gr.III from 1.1.81 and placed in Skilled Gr.II scale from 1.1.93 as per ACP Scheme; retired as such and; direct the respondents accordingly;

iv) Direct the respondents to issue fresh orders in place of the impugned orders in accordance with the relief granted under item (iii) above and protecting the applicant's pay on the date of absorption in Skilled Gr.III and granting him stagnation increments subsequently in Grade III/II as per rules.

v) Pass such other orders or directions as deemed just, fit and necessary."

2 The applicant relied upon the recent judgments of the Apex Court in **Bhadei Rai Vs. Union of India and others, 2006 SCC L&S 89** and **Badri Prasad and others and others Vs. Union of India and others, 2006 SCC (L&S) 92** in support of his contention that the last pay drawn by him has to be protected on re-fixation of his pay in the lower scale. In the case of Bhadei Rai (supra), the Appellant started his service in the Railways on daily rate as Khalasi in the year 1979. He was given a temporary status on that post with effect from 1.1.1982. According to the Railways, he was granted promotion on 31.3.1985 purely on ad hoc basis to the post of Rigger in the pay scale of Rs. 121-150. For a long period between 1985 and 1999 the appellant continued to work on the promoted

post of Rigger carrying higher scale of pay. The post of Rigger is Group 'C' post but the appellant was regularized and absorbed in lower Group 'D' post by order passed on 5.10.1999. Although, he had completed more than twenty years of service on higher Group 'C' post of Rigger, he was repatriated to his parent division in Group 'D' post carrying lower scale of pay. Aggrieved by his repatriation to a lower post he filed a petition in the Central Administrative Tribunal and claimed relief of his regularization in Group 'C' post in which he had been made to continuously work for a period of twenty years. The Tribunal rejected the appellants claim which was challenged before the Hon'ble High Court of Delhi. The High Court upheld the Tribunal's order. However, the Apex Court relying on its judgment in **Inder Pal Yadav Vs. Union of India, (2005) 11 SCC 301** directed the respondents to protect the appellant's pay which he was last drawing on the date of his repatriation from Group 'C' post to Group 'D' post. The relevant part of the decision in Inderpal Yadav's case (supra) relied upon by the Apex Court reads as follows:

"6 However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project, they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.

7 Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service

rendered by the petitioners in the several projects subsequent to their regular appointment."

Similar is the case of Badri Prasad and others (supra). The appellants in the said case started their service in the Railways as daily rated employees on different posts of Khalasi, Gangman, Chowkidar between the years January 1981 to June 1982. They were given temporary status on the post in which they were working. They were posted on different dates in the year 1984 to work as Storeman which is a higher post in Group 'C' carrying a higher scale of pay. They continuously worked on the post of Storeman for long periods during the years 1984, 1985, 1988 and 1990 till they were reverted by the impugned order passed on 29.7.1999 from Group 'C' post of Storeman to Group 'D' post of Khalasi in the open line. The appellants approached the Central Administrative Tribunal with their grievance and prayer that they having been made to work on the post of Storeman and sometimes as Clerk for a long period of more than ten years they are entitled to be regularized and absorbed in Group 'C' post. In this judgment also the Apex Court relied upon paras 6&7 of the judgment in Inder Pal Yadav (supra) and granted following additional reliefs to the appellants:

"The pay last drawn by them in Group 'C' post shall be protected even after their repatriation to Group 'D' post in their parent department. They shall be considered in their turn for promotion to Group 'C' post. The period of service spent by them on ad hoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group 'C'. If there is any bar of age that shall be relaxed in the case of the appellants"


3 During the course of arguments, the counsel for the applicant has fairly submitted that at this late stage he is not pressing for the relief to fix

the applicant's pay at par with his junior Shri Sasidhran but insisted that his pay should not have been reduced while fixing his pay and granting him the pensionary benefits.

4 In the reply, the respondents submitted that the applicant was engaged as a Casual Mazdoor Mopla Khalasi under the construction organization on 19.5.73 in South Central Railway, he was given temporary status with effect from 1.1.86 in the scale of pay of Rs. 380-560, he was absorbed as Rivetter grade III in the scale of pay of Rs. 950-1500 against a vacancy of promotional quota in the Civil Engineering Department (Bridges) w.e.f 1.5.95 and his seniority was assigned in the Skilled Grade III based on the integrated seniority. He was subjected to the trade test for promotion to Technical Grade.II (Rivetter) in the scale of Rs. 4000-6000 but he refused to attend the trade test and his contention that he passed the trade test was not correct. They have further submitted that both the applicant and Shri C.K.Gopalan were subjected to trade test for promotion to the post of Skilled Grade-II in the scale of Rs. 4000-6000 but the applicant refused to attend the trade test. However, Shri C.K.Gopalan passed the trade test and he was promoted as Skilled Grade-II in the scale of Rs. 4000-6000. They have also submitted that his junior Shri Sasidharan, Skilled Grade-I is working in a separate seniority unit at Visakhapatnam Division and he cannot claim promotion/seniority at par with the employee working in another unit/division. Though the applicant was absorbed as a Skilled Grade-III with effect from 1.5.95 in the scale of Rs. 3050-4590, he was granted the higher scale of Rs. 4000-6000 erroneously and when it was noticed at the time of verification of his service records for arranging settlement dues, the overpayment of salary

made to him was recovered from the dues payable to him. They have also submitted that none of his juniors have been promoted to the post of Skilled Grade. II and I. The applicant retired from service on 30.9.03 and all the pensionary benefits were worked out on the revised pay and over payment of pay and allowances were recovered from the leave salary and retirement gratuity of the applicant.

5 In the light of the above facts and circumstances of the case and the judgments of the Apex Court in the case of Bhadei Rai (supra) and Badri Prasad and others (supra) both based on its earlier judgment in the case of Inder Pal Yadav (supra) , the various reliefs sought by the applicant have been considered. The first relief sought in the O.A is to set aside the Annexures.A2, A6, A8 and A9. Since the applicant has given up his claim for fixation of his pay vis-a-vis his alleged junior Shri Sasidharan, the impugned Annexure.A2 Office Order dated 3.6.97 absorbing him as Rivetter/Grade-III in the scale of Rs. 950-1500 w.e.f. 1.5.95 need no modification. As regards Annexure.A6 is concerned, according to the Respondents themselves, the applicant has joined as Rivetter Grade-III in the scale of Rs. 950-1500 on 26.6.97. Since the applicant was working as Sarang upto 25.6.97 in the higher grade and in the higher pay scale of Rs. 4000-6000 having his basic pay of Rs. 5600/- as on 1.1.97, his pay could not be fixed at a stage less than Rs. 5600/- in the lower grade and scale of pay. However, the peculiar situation in the applicant's case is that the lower scale in which he is absorbed is Rs. 950-1500 with its replacement scale of Rs. 3050-4590. Since the applicant has already been drawing the basic pay of Rs. 5600/- as on 1.1.97 and the maximum of the lower scale in which he is absorbed is only Rs. 4590/-, there is no question of fixing his



pay at Rs. 5600/- in the lower scale. Therefore, there is no other alternatives available to the respondents but to fix his pay at Rs. 5600/- as on 26.6.97 ie., the date on which the applicant joined as Rivetter Grade-III as submitted by the respondents without any scope of granting any increments in neither of the scales. The other aspect of the case is that even though he was absorbed in the pay scale of Rs. 950-1500 w.e.f. 1.5.95 by the order dated 3.6.97 by sheer default of the respondents, the applicant continued to draw the salary in the higher grade till his retirement on 30.9.03 with the basic pay of Rs. 6000/- w.e.f. 1.1.2001 as the re-fixation of pay in the scale of Rs. 950-1500 w.e.f. 1.5.95 was done only vide Annexure.A6 order dated 3.9.2003. Hence the pay and allowances already drawn by the applicant cannot be recovered on re-fixation of his pay in the lower scale as ordered in Annexure.A6 Memorandum and the same is set aside. Since the Annexure.A8 Pension Payment Order and the Annexure.A9 Pension Calculation Sheet are based on the Annexure.A6 Memorandum, they are also quashed and set aside. Resultantly, the recovery made for the above period from 26.6.97 to 30.9.2003 shall be refunded to the applicant. As regards the relief regarding grant of ACP Scheme, the position is that the applicant was granted temporary status w.e.f. 1.1.81 in the scale of Rs. 380-560. According to the ACP Scheme, "50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP Scheme on the analogy that the same is also reckoned as qualifying service for pension." The applicant had put in 14 years and 4 months service in the temporary status before he was absorbed on 1.5.95.

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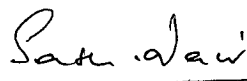
He retired on 30.9.2003 with 8 years and 5 months. He is entitled to add 7 years and 2 months along with the period of regular service for grant of ACP benefits in the scale next to Rs. 950-1500 which is Rs. 1320-2040. However, it is an admitted fact that he was already drawing pay in the higher scale of Rs. 1320-2040 from 1.1.86. Hence the applicant's claim for any ACP benefits cannot be sustained and it is rejected. As regards the stagnation increment is concerned, in view of the aforesaid directions, the applicant would be stagnating at Rs. 5600/- w.e.f. 26.6.97. As no increments can be granted to him in neither of the scales from 26.6.97 till his retirement, it would be in the interest of justice to grant him at least 3 stagnation increments at the rate of Rs.80/- in the re-fixed scale of Rs. 3050-75-3950-80-4590 at the end of every two years for the period from 27.6.97 to 30.9.2003 raising his basic pay on the date of his retirement on 30.9.2003 at Rs. 5840/-. In the above peculiar facts and circumstances of the case, we direct the respondents to re-determine his pension and other retirement benefits on the basis of the basic pay of Rs. 5840/- as on 30.9.03 and pay the arrears arising out of such revision of pension and other retirement benefits. The above directions shall be complied with within a period of two months from the date of receipt of this order. There shall be no order as to costs.

6 Before we part with this order, we want to say that in ordinary circumstances, this Tribunal would not have gone beyond the question of validity or otherwise of the orders against which the application has been made. However, we have gone into the extent of even directing the respondents to fix the pay of the applicant at a certain stage as he has already retired in 2003 and is getting only the reduced pension. The

respondents have also recovered a substantial amount from his terminal benefits on account of the alleged overpayment. We are also constrained to note that it was due to lack of responsibility and accountability of the officers, both the respondent department and the applicant are placed in the present predicament. Though there was a direction to the respondents by this Tribunal in OA 1105/92 on 30.8.95 to absorb the applicant in Skilled Grade III, it took nearly 2 years for them to initiate its implementation by issuing the Annexure.A2 order dated 3.6.97. Again, the respondents went into oblivion for another solid 6 years to wake up only a couple of days before the applicant retired on 30.9.2003 to issue the Anenxure.A6 order dated 3.9.2003, which culminated in the present OA and now it has become a fate accompli for the respondents to pay higher salary and allowances and also pension at higher rate. The Respondent 2 shall, therefore, look into the above state of affairs and quantify the loss suffered by the Railways and recover it from the pay and allowances of the officers concerned.

Dated this the 1st day of September, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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