

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 596 of 2011

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Original Application No. 626 of 2011

Wednesday, this the 21st day of December, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. No. 596/2011

C.P. Prasad, S/o. P.K. Chandrasekharan Pillai
Senior Section Engineer/Permanent Way/
Ultrasonic Flaw Detector
Office of the Assistant Divisional Engineer/
Southern Railway/Quilon
Residing at "Vineetham", Kottarkavu
Mavelikkara (P.O), Aleppey District – 690 101. - **Applicant**

(By Advocate Mr. T.C.Govindaswamy)

Versus

- 1 Union of India represented by
The General Manager, Southern Railway
Headquarters Office, Park Town (P.O)
Chennai – 600 003.
- 2 The Chief Personnel Officer
Southern Railway, Headquarters Office
Park Town (P.O), Chennai – 600 003.
- 3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014. - **Respondents**

(By Advocate Mr. Thomas Mathew Nellimoottil)



2. O.A. No. 626/2011

C.J. James, S/o, C.K. Joseph
 Senior Section Engineer/Permanent Way/
 Ultrasonic Flaw Detector, Office of the
 Senior Section Engineer/Permanent Way
 Southern Railway/Alwaye
 Residing at Chirakkal Manavalan House
 Ayroor (P.O), Kurumassery (Via)
 Ernakulam District – 683 579.

- Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by
 The General Manager, Southern Railway
 Headquarters Office, Park Town (P.O)
 Chennai – 600 003.
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 Southern Railway, Headquarters Office
 Park Town (P.O), Chennai – 600 003.
3. The Senior Divisional Personnel Officer
 Southern Railway, Trivandrum Division
 Thiruvananthapuram – 695 014.

- Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

These applications having been heard on 2nd December 2011, the
 Tribunal on 21-12-11 delivered the following :-

ORDER**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Being identical in facts and issues, these O.As were heard together and
 are disposed of by this common order.

2. The applicants are aggrieved by the substantial reduction in their pay
 upon their repatriation from ex-cadre post after a long time to cadre post.



3. The applicant in O.A No. 596/11 was initially appointed as Junior Engineer Grade-II/Permanent Way on 24.11.1987 in the then scale of pay of Rs. 1400-2300. He was selected and promoted to the ex-cadre post of Senior Section Engineer/Permanent Way/Ultrasonic Flaw Detector (USFD) in the then pay scale of Rs. 2000-3200. He continued on the ex-cadre post till 01.07.2011. He was drawing a basic pay of Rs.19800/- plus Grade Pay of Rs. 4800/- on the ex-cadre post. On joining the parent cadre, his pay would be at the stage of Rs. 17650/- plus Grade Pay of Rs. 4800/- with effect from 01.07.2011,based on the impugned order at Annexure A-5 dated 16.02.2010.

4. The applicant in O.A. No. 626/11 was initially appointed as Permanent Way Inspector Grade-III on 19.07.1985 in the then pay scale of Rs. 425-700. He was selected and promoted to the PWI Grade-I in the then scale of Rs. 2000-3200 for USFD cadre with effect from 21.12.1991. He continued on the ex-cadre post till 01.07.2011 and was drawing a basic pay of Rs. 20720/- plus Grade Pay of Rs. 4800/-. On joining the cadre post, he is eligible, as per the say of the respondents, for Rs. 18740/- plus Grade Pay of Rs. 4800/- with effect fro, 01.07.2011 under Rule 1313(3)(i) of the Indian Railway Establishment Code. Accordingly, the impugned order at Annexure A-8 dated 15.10.2010 was issued.

5. The applicants contended that they are entitled to protection of their pay drawn while working as Senior Section Engineer/P.Way/USFD in the light of the proviso to Rule 1313(3)(i) of the Indian Railway Establishment Code, Vol. II in so far as the scale of pay held by them as Senior Section Engineer/ P.Way/USFD is the same as the one to which they are now being posted on

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substantive basis. In addition, they would be entitled to protection of pay being drawn by them in the light of the order of this Tribunal in O.A. No. 643/2007 and also in the light of various judgements of the Hon'ble Supreme Court cited therein. The applicant in O.A. No. 596/2011 had been holding the post of Senior Section Engineer/P.Way/ USFD for about 16 years and the applicant in O.A. No. 626/2011 for about 20 years.

6. The respondents in their reply statement submitted that the applicants had not quoted any rule which permitted protection of pay received in the ex-cadre post. The order of this Tribunal in O.A. No. 643/2007 is not having the character of application in rem. Their pay was fixed as per rules. The orders posting the applicants as Senior Section Engineer/P.Way/USFD are against ex-cadre posts and not according to seniority. Their seniority is maintained in the cadre of Section Engineer/P.Way and they were promoted as Senior Section Engineer/P.Way in their turn. If their pay was protected, it would result in juniors getting higher pay than seniors.

7. In the rejoinder, the applicant submitted that the filling up of ex-cadre post of PWI/Grade-I/USFD was a positive act of selection consisting of written test and viva-voce test. Therefore, they cannot be faulted for having been promoted and for having discharged higher responsibilities of the posts in public interest and in the interest of administration for about 16 and 20 years, as the case may be. The benefit of service for such a long period and the consequential benefits earned therefrom cannot be taken away.

8. We have heard Mr. T.C. Govindaswamy, learned counsel for the



applicant, Mr. Sunil Jacob Jose, learned SCGSC and Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents in respective O.As and perused the records.

9. As per order dated 11.07.1991 (Annexure A-13 in OA 626/11 and Annexure A-9 in OA 596/11) the tenure of PWI/Grade-I/USFD, an ex-cadre post, was normally for a maximum period of 5 years. The respondents continued the applicants on the ex-cadre posts for about 16 or 20 years as an extra ordinary measure, in the interest of administration, without exercising their option to send them back at the end of the normal maximum tenure. The applicants were selected through written test and viva voce test and promoted to the post of PWI/Grade-I. The higher grade of pay in the ex-cadre post was earned by the applicants on merit. In the case of **Inderpal Yadav vs. Union of India**, (2005) 11 SCC 301, **Bhadel Rai vs. Union of India**, (2005) 11 SCC 298 and **Badri Prasad vs. Union of India**, (2005) 11 SCC 304, the Apex Court enunciated the principle that when an individual is allowed to work in a higher post for a substantial period, on his repatriation to the parent cadre, his pay should be protected. Relying on the law declared by the Apex Court, this Tribunal allowed the O.A. No. 643/2007 as under :

"21. Thus, in the instant case also, the applicant having worked for 20 years continuously in the higher pay scale in the ex cadre post, on his being repatriation to his parent cadre, he becomes entitled to have his pay protected. Contention by the Counsel for the respondents that the decision relied upon by the applicant cannot be of any help as the same did not take into account the rule position in regard to fixation of pay on repatriation does not assist the respondents, since, such a rule would apply only when the repatriation is within a short period. (In fact, in their order No. E(NG) 1/2004/PM1/19 dated 27-08-2004 the Railway Board has fixed the tenure for ex cadre post not to exceed 5 years). In the instant case, the decision by the Apex Court squarely applies as the individual has been functioning in the higher post for 20 years.



22. In view of the above, the OA succeeds. It is declared that while being repatriated to the parent cadre, the applicant is entitled to have his pay drawn in the ex cadre post protected. This protection would be notional from November, 2003 when he was actually repatriated and would be actual from October 2006, which is one year prior to the filing of this O.A. Respondents are directed to re-fix the pay of the applicant accordingly and pay the arrears of pay and allowances to the applicant. This order shall be complied with, within a period of 6 months from the date of communication of this order. No costs."

10. In O.A. No. 121/2006 also, this Tribunal had ordered protection of the last pay drawn by the applicant therein. The major part of the career of the applicants was spent on the ex-cadre posts. Though they can be sent back to the parent cadre, as per the law laid down by the Apex Court, they cannot be deprived of the benefit of higher pay earned by them through long service after passing the qualifying tests.

11. The seniors of the applicants either opted not to participate in the selection process for the ex-cadre post or they could not get selected. The general principle of senior getting higher pay than junior will have no application in the instant cases because the higher grade of pay of the applicants is justified on account of their merit based selection and long service in the ex-cadre posts in the interest of administration.

12. Following the ratio of the judgements of the Apex Court mentioned above and the orders of this Tribunal in O.A. No. 643/2007 and 121/2006, we allow these O.As. Accordingly, it is ordered as under.

13. The impugned orders to the extent they relate to the applicants are set



aside. The respondents are directed to protect the last pay drawn by the applicants as Senior Section Engineer/P.Way/USFD in the Pay Band of Rs. 9300-34800 plus Grade Pay of Rs. 4800/- on being repatriated to the cadre posts in terms of Office Order No. 68/2011/VP dated 23.06.2011 and further directed to grant consequential benefits thereof within a period of 2 months from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 21st December 2011)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.