

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 598 OF 2013

Friday, this the 7th day of April, 2017.

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

Baburaj Valassery, 52 years,
S/o. Ayyappan, Commercial Clerk/
Railway Station/Pattambi/
Southern Railway, Residing at: 'ARUND',
Near Madrassa Hall, Shornur.

- Applicants

[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, Palghat Division, Palghat - 678 002.
4. Shri B. Karthikeyan, Assistant Personnel Officer -E, Southern Railway, Palghat Division, Palghat - 678 002.

- Respondents

[By Advocates Mrs. Sumathi Dandapani, Senior
Mr. Thomas Mathew Nellimoottil for R-1 to 3]

The application having been heard on 24.03.2017, the Tribunal on 07.04.17 delivered the following:

ORDER

Per: Mrs. P. Gopinath, Administrative Member

The applicant who is presently working as a Commercial Clerk in PB-2 + GP Rs. 4,200/- at Pattambi Railway Station of Southern

Railway, Palakkad Division, is aggrieved by a sudden and unprovoked reduction in the applicant's Pay Band and Grade Pay in the salary for the month of June, 2013.

2. The applicant who was initially appointed on 01.01.84 and later promoted as a Tower Wagon Driver in the scale of pay of Rs. 1200-1800 had approached this Tribunal by filing O.A. No. 897/2001 praying inter alia that he is entitled to be granted the scale of pay of Rs. 5000-8000 with effect from 01.01.1996 at par with the Goods Drivers. That O.A. was allowed based on a decision of the Calcutta Bench of the C.A.T. The order in that O.A was challenged by the official respondents before the High Court of Kerala in WP(C) No. 23362/2004. Meanwhile the order of this Tribunal was implemented and the applicant was being granted the benefit of the scale of pay of Rs. 5000-8000 with effect from 01.01.1996. A decision of the Calcutta Bench of the Tribunal having been confirmed by the High Court of Calcutta was taken up in Civil Appeal No. 365/2007 (Union of India & Ors. v. Jagdish Pandey & Ors) before the Apex Court. In the light of the aforesaid position, the Writ Petition (C) No. 23362/04 filed before the High Court of Kerala was disposed of by judgment dated 16.10.2007, taking judicial notice of the pendency of the above Civil Appeal (SLP(C) No. 8468-8469/2005) and noticing the pendency of the aforesaid SLP, the High Court held:

"After hearing both sides, we feel that the parties may await the decision of the Apex Court in the above case. It is ordered that the decision in that case will be treated as a decision in this case also and the parties can work out their remedies accordingly."

3. The Calcutta High Court judgment was challenged before the Apex court in CA No. 365/07. Apex Court while dismissing the same, made it clear that this judgment will not affect the right of Union of India to pass appropriate order in relation to the pay scale applicable to any class of its employees including the respondents afresh and in accordance with law". In the light of the above observations, the Railway Board had considered the issue and had decided that the Tower Wagon Drivers are not entitled to the grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and that they shall continue to be in scale Rs. 4000-6000 and Rs. 4500-7000. In the light of the decision of the Railway Board, the scale of pay of the applicant was reduced to Rs. 4000-6000 with effect from 01.01.1996.

4. This Tribunal heard the CP(C) on 29.09.2011 vide Annexure A-5 order held :

"As a matter of fact, since there is a downward revision of pay scale of Tower Wagon Drivers, the execution of the Railway Board order cannot but be with due notice to the affected individuals and calling for their objections. Again the order of the Railway Board is a general order and it should not be mixed with the specific order of the Tribunal for compliance. As such, the respondents are duty bound to first implement the order of the Tribunal in its letter and spirit. It is, however, open to them to extend the Railway Board's order to the applicant in accordance with law".

5. In the light of above Annexure A-5 order the respondents issued Annexure A-6 order separately for implementation of the order in O.A No. 890/2003. Pursuant to Annexure A-6, CP(C) No. 45/2011 was

closed. The 4th respondent Assistant Personnel Officer issued Annexure A-7 show cause notice dated 24.10.2011. Annexure A-7 issued by Assistant Personnel Officer stated, after narrating the facts and referring to the Railway Board order dated 15.11.2010 that -

"In PGT Division Tower Wagon Driver is operated in the grade of Rs. 4000-6000 (pre-revised scale)/in PB1 Rs. 5200-20200 + GP Rs. 2400 (revised pay scale) only and having volunteered for the said post in scale of Rs. 4000-6000 on your own volition, it is proposed to revise the pay scale of TWD from Rs. 5000-8000 to Rs. 4000-6000 from 01.01.1996 as you are entitled for the scale of pay only in Rs. 4000-6000, in view of the said decision of Railway Board.

You are hereby given an opportunity to show cause as to why your pay scale should not be revised from Rs. 5000-8000 to Rs. 4000-6000 from 01.01.1996 as TWD since you are entitled for the scale of pay only in Rs. 4000-6000, in terms of Railway Board's letter No. PC-V/2000/CC/16/Pt. dated 15.11.2010."

6. No final orders were passed revising the applicant's pay scale. The applicant also submitted a notice expressing his desire to voluntarily retire from service with effect from 15.08.2013. The applicant also submits that he was medically decategorised and granted an alternative appointment as a Commercial Clerk in PB-2 + GP Rs. 4200/- and has been continuing in that grade. It is, while so, the applicant has come across Annexure A-1 reducing the applicant's Pay Band and Grade Pay and also the basic pay in the band pay.

7. The Applicant argues on the arbitrariness of Annexure A-1, in so far as it reduces the applicants Band Pay/Pay Band/Grade Pay, without passing any orders in that regard. The applicant submits that Annexure A-7 proposal understood to be the foundation of the reduction

in the applicant's Band Pay/Pay Band/Grade Pay is without jurisdiction in so far as the same has been issued by the 4th respondent.

8. The applicant argues that the Apex Court in Annexure A-12 while dismissing the Writ Petition categorically stated that, "for the reasons aforesated, we find no legal infirmity in the judgments of the Tribunal and the High Court" and hence the judgments of the High Court and the learned Tribunal stood confirmed. The Apex Court was also pleased to make a obiter, "while dismissing this appeal we make it clear that this judgment will not affect the right of the Union of India to pass an appropriate order in relation to the pay scale applicable to any class of its employees including the respondents afresh and in accordance with law. We do hope that if such an order is passed, it will be upon proper application of mind and after taking into consideration the appropriate material and/or data". The above observations, argues applicant, would make it clear that the SLP filed by the departmental authorities stood dismissed affirming the judgment of the learned Tribunal and that of the Hon'ble High Court. Of course, the liberty was given but that liberty given was only to pass orders afresh and it means it can have only prospective application and not retrospective application. Therefore, the respondents in the applicant's case have no liberty whatsoever to upset the decision of this Tribunal in O.A No. 897/2001 read with the decision of the Apex Court in Annexure A-12. Annexure A-7 and consequently reduction of the applicant's pay by an action as

evidenced in Annexure A-1 argues applicant was without authority of law.

9. The applicant would argue that the 4th respondent is the lowest authority in the hierarchy, a Group 'B' officer, having no power in the matter of fixation of pay of the applicant. The said authority has no decision making power at all either to grant any benefit to the applicant or to take away the same. A reading of Annexure A-7 would show that the proposal for downward revision of the applicant's pay had actually arisen from the 4th respondent. The action of the respondents in reducing the applicant's pay arbitrarily is a colourable exercise of power.

10. It is also submitted that the Tower Wagon Drivers of Trivandrum, Chennai Divisions etc. and even Palakkad Division are being granted PB1 +GP Rs. 2800/- (Rs. 4500-7000) with effect from 01.01.1996 though they did not make any claim for parity with Goods Drivers as was done in the applicant's case. Reduction of the applicant's pay, therefore, to the still lower grade pay of Rs. 2400/- is contested by the applicant.

11. Respondents in their reply statement submit that the applicant was initially enrolled as Khalasi on Southern Railway. He was subsequently promoted as Tower Wagon Driver (in short TWD) an ex-cadre post, with pay scale of Rs. 1320-2040 (IVth CPC scale) vide order

dated 05.03.1991. On noticing, that grant of pay scale Rs. 1320-2040 to the TWDs were erroneous instead of Rs. 950-1500 (RPS), appropriate remedial measures were taken to rectify the same and the applicant's pay was reduced to scale of pay Rs. 950-1500 (RPS). This downward revision was challenged by similar other TWDs by filing O.A No. 1410/1991 before this Tribunal which was disposed of with the direction that the applicants to make representation to the 4th respondent and the 4th respondent shall consider and dispose off the representation. In compliance of the said order, the respondents considered the representation of the applicants in the said O.A and they were granted the scale of pay of Rs. 1200-1800 (RPS). In the year 1991 the Railway Board issued orders dated 10.04.1991 by which TWDs were classified as Running Staff, prospectively and they shall also be paid Running Allowance at the rates applicable for Goods Driver. This according to respondent means that though the TWDs were became eligible for Running Allowance at the rates applicable for Goods Drivers category, they shall continue in the scale of pay Rs. 1200-2040 and shall not be eligible for the scale of pay attached to the post of Goods Drivers.

12. As the post of TWD was operated as an ex-cadre post, it was proposed to revert back the applicant to his substantive post in the year 1993, against which the applicant and others filed O.A No. 898/1993 and 156/1994 before this Tribunal. These were disposed of with a direction to the General Manager, Southern Railway to decide the matter afresh,

who after considering the matter stood by the original stand taken by the respondents. This was challenged by filing another O.A No. 591/1995, which was allowed vide order dated 06.02.1997, holding that the applicants and others shall be treated as regularly promoted as Tower Wagon Drivers. Accordingly, in compliance of the said order, orders were issued treating the TWDs as cadre post in scale Rs. 1200-1800 with effect from 01.05.1993.

13. Subsequently, as an outcome of implementation of the Vth CPC in Railways with effect from 01.01.1996, the TWDs were placed in pay scale Rs. 4000-6000 (RSRO). The applicant submitted a representation claiming pay scale of Rs. 5000-8000 (RSRP) or at least Rs. 4500-7000 (RSRP) (Vth CPC scale) at par with the TWDs of Madras Division. He subsequently filed O.A. No. 428/2001 alleging non-disposal of his above representation. The said O.A was disposed of with a direction to the General Manager to consider the representation and issue appropriate orders. In compliance thereof, his representation was disposed of rejecting his claim either for scale of pay of Rs. 5000-8000 or Rs. 4500-7000 (RSRP). The applicant thereafter filed O.A No. 897/2001 before this Tribunal for a direction holding that he is entitled for scale of pay of Rs. 5000-8000 or at least Rs. 4500-7000 (RSRP) with effect from 01.01.1996. The said O.A was allowed by this Tribunal vide order dated 19.12.2003, duly relying on the orders of Calcutta Bench of this Tribunal in O.A No. 321/2001 (Jagadish Pandey & Ors. v. UOI) and

in O.A No. 1059/2001 (Nalini Adak & Ors v. UOI).

14. In the wake of a contempt proceedings initiated by the applicant alleging non-compliance of this Tribunal's order in above O.A dated 19.12.2003 in O.A No. 897/2001, applicant was granted pay scale of Rs. 5000-8000 (RSRP) with effect from 01.01.1996 with all consequential benefits as per Memorandum dated 18.03.2004 and by order dated 04.05.2004 which was made provisional subject to outcome of appeal, that was being filed before High Court of Kerala.

15. The respondents filed WP(C) No. 23362/2004 before High Court of Kerala against the Tribunal's order dated 19.12.2003 in O.A No. 897/2001, and the High Court of Kerala vide judgment dated 10.07.2007 had disposed of the above WP(C) holding that:

"We feel the parties may await the decision of the Apex Court in the above case. It is ordered that the decision in that case will be treated as a decision in this case also and the parties can work out their remedies accordingly."

16. The applicant has not challenged the above judgment before the higher forum and accepted as such. Therefore, the applicant is estopped to challenge the Annexure A-7 notice and the downward revision of pay in Annexure A-1 salary slip since the grant of pay scale of Rs. 5000-8000 was extended to him provisionally as per the orders of this Tribunal dated 19.12.2003 in O.A No. 897/2001 and the High Court has already held that the parties can work out their remedies based on the decision of the Apex Court in as much as the downward revision was

only a consequential implementation of the orders of the Apex Court. The Supreme Court vide Annexure A-12 while dismissing the SLP (C) No. 8468-8469/2005 (CA No. 365/2007), which was referred to in the High Court's above judgment, by order dated 08.07.2010, inter alia made it clear that

"....the judgment will not affect the right of the Union of India to pass appropriate order in relation to the pay scale applicable to any class of its employees including the respondents afresh and in accordance with law..."

Thus the Tribunal's order was not final, as in the challenge before the High Court the High Court had ordered that the parties should await the order of the Apex Court and the decision of the Apex Court will be treated as decision in the case before the High Court.

17. Keeping the above in view the Railway Board have considered the issue regarding grant of pay parity of Tower Wagon Drivers with Goods Drivers and had decided that the Tower Wagon Drivers are not entitled for grant of pay scale Rs. 5000-8000 (RSRP) on par with Goods Drivers and they shall continue to be in pay scale Rs. 4000-6000 (RSRP) and Rs. 4500-7000 (RSRP) vide Annexure A-13.

18. Respondents argue that the applicant had filed another O.A No. 890/2003 before this Tribunal challenging the order of imposition of penalty pursuant to a disciplinary proceedings initiated against him, which was allowed by this Tribunal vide order dated 07.06.2006, holding that "the applicant is entitled to his pay and allowances in the scale of pay of Rs. 5000-8000 without any truncation as if no penalty

proceedings were initiated against the applicant, i.e. his pay would remain Rs. 6350/- as of June, 2004 and subsequent increments should be added as per rules. The respondents filed WP(c) No. 26011/2006 and the High Court of Kerala has dismissed the same vide judgment dated 16.02.2010.

19. While process were going on for implementation of Railway Board's instructions dated 15.11.2010 at Annexure A-13, the applicant filed CP(C) No. 45/2011 in O.A No. 890/2003 against the respondents alleging non-compliance of order dated 07.06.2006 in O.A No. 890/2003. When the CP(C) came up for hearing, this Tribunal had directed the respondents to file an affidavit stating whether or not the order of the Tribunal in O.A No. 890/2003 have been complied with by the respondents. The respondents vide memorandum dated 30.05.2011 while restoring the pay of the applicant as directed by this Tribunal vide order dated 07.06.2006 in O.A No. 890/2003 has also given effect to the Railway Board's decision to grant scale of pay of Rs. 4000-6000 to the TWDs in terms of Board's letter dated 15.11.2010 revising his pay downward and an affidavit was filed on 31.05.2011 explaining the full facts leading to the revision. This Tribunal after verification of the records by order dated 20.09.2011 in the above CP(C) was pleased to hold that:

"Counsel for the applicant is right when he submits that the two orders (order of this Tribunal as well as the administrative order passed vide Annexure A-4) are to dealt with independent of each other. As a matter of fact, since there is a downward revision of pay

scale of Tower Wagon Drivers, the execution of the order of the Railway Board cannot but with due notice to the affected individuals and calling for their objections. Again, the order of the Railway Board is a general order and it should not be mixed with the specific order of the Tribunal for compliance. As such the respondents are duty bound to first implement the order of the Tribunal in its letter and spirit. If is however, open to them to extend the Railway Board's order to the applicant in accordance with law...."

20. Accordingly, in compliance of the said order, the applicant's pay was refixed in pay scale Rs. 5000-8000 vide memorandum dated 18.10.2011 nullifying the penalty imposed upon the applicant and the resultant arrears of pay and allowance amounting to Rs. 1,24,763/- for the period from 01.03.2004 to 31.10.2011 was paid to the applicant through the salary of April 2012 .

21. The applicant was issued with Annexure A-7 a show cause notice dated 24.10.2011 for revision of his pay from Rs. 5000-8000 to Rs. 4000-6000, in terms of Railway Board's letter dated 15.11.2010 keeping in view the direction of this Tribunal in CP(C) 45/2011 as stated herein above, under the signature of "Assistant Personnel Officer (E) for Senior Divisional Personnel Officer, Southern Railway, Palghat." Respondent argues that the applicant instead of replying to the show cause questioned the authority of the officer who has signed the show cause dated 24.10.2011 knowing fully well that the memorandum dated 18.10.2011 (Annexure A-6) restoring the pay of the applicant pursuant to this Tribunal's order dated 20.09.2011 was also signed by the same authority. It is submitted that since the memorandum dated 18.10.2011

was beneficial to the applicant, he did not raise any such contention and raised the contention when the show cause dated 24.10.2011 was to his disadvantage. Applicant challenges the authority of the officer who had signed on behalf of the Senior Divisional Personnel Officer, Palghat who is in charge of the personnel matters of employees working in Palghat Division of Southern Railway.

22. Even though, the applicant was given ample time and opportunity to reply to the show cause dated 24.10.2011, no response was forthcoming. The letter dated 14.11.2011 was disposed of by Annexure MA-2 letter dated 12.06.2013 by the Senior Divisional Personnel Officer being the officer in charge of the service/personnel matters in the Division and thereafter, the downward revision of pay in respect of the applicant was given effect to in the month of June 2013 against which the present O.A has been filed. Hence, the show cause notice was considered and disposed by the appropriate authority.

23. The issue of grant of scale of pay to the TWDs had been taken up to the Supreme Court and the Court while dismissing the SLP vide order dated 08.07.2010 (in CA No. 365/2007 - UOI v. Jagdish Pandey & Ors) has inter alia clarified that :

"the judgment will not affect the right of Union of India to pass an appropriate order in relation to the pay scales applicable to any class of its employees including the respondents afresh and in accordance with law."

Keeping in view of the observation of the Apex Court, the Railway

Board after a detailed comparison of the nature of duties of Goods Drivers and that of Tower Wagon Drivers by Annexure A-13 order dated 15.11.2010 decided that the TWDs are not entitled for grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and they shall continue to be in the scales of Rs. 4000-6000 and Rs. 4500-7000. As held in a catena of cases, the matter as decided by the High Court and Apex Court has now attained finality, and cannot be re-agitated as it is hit by resjudicata.

24. In Palghat Division, the post of Tower Wagon Driver was available in scale of Rs. 4000-6000 and there was no justification for upgrading the post in consonance with nature of work performed. Applicant was given the pay scale of Rs. 5000-8000 as per the Tribunal's directions only. Accordingly, in consideration of the reply dated 14.11.2011, the Senior Divisional Personnel Officer being the in-charge of the service matters of the Division, had taken the decision to implement the Railway Board's letter dated 15.11.2010 in respect of the applicant. The applicant's contention that the downward revision of pay is sudden and unprovoked are without basis. The revision was visited as a consequence of High Court and Apex Court orders.

WP(C) No. 23362/2004 filed before the High Court of Kerala in applicant's case had been disposed by judgment dated 10.07.2007 holding that :

"We feel the parties may await the decision of the Apex Court in the above case. It is ordered that the decision in that case will be treated

as a decision in this case also and the parties can work out their remedies accordingly."

The Supreme Court while dismissing the C.A No. 365/2007 filed by UOI v. Jagdish Pandey & Ors. vide order dated 08.07.2010 had inter alia stated that the said judgment shall not affect the right of the Union of India to pass an appropriate order in relation to the pay scales applicable to any class of its employees including the respondents afresh and in accordance with law. Such an action taken as per judgment of the Apex Court cannot be now interfered with.

25. The respondents in the first instance complied with Tribunal's order in O.A No. 890/2003 dated 07.06.2009 by restoring the pay of the applicant as if no penalty has been imposed by Annexure A-6 order dated 18.10.2011. Subsequently applicant was issued Annexure A-7 show cause dated 24.10.2011 proposing a downward revision in terms of Railway Board's order dated 15.11.2010. Respondents argue that there has been no violation any Tribunal / Court order by the respondent. The decision taken in applicant's case was as directed by the High Court and the orders of the Apex Court.

26. Respondent argues that the Senior Divisional Personnel Officer is in charge of the service/personnel matters of employees working in the Palghat Division and the decision relating to the service matters are taken by him but communicated under the signature of Assistant Personnel Officers working under the Senior Divisional Personnel

Officer for and on behalf of the Senior Divisional Personnel Officer.

27. The applicant was found medically unfit for the post of Tower Wagon Driver with effect from 29.03.2006 and was declared medically fit for the lower classification of posts in Cee one with glasses. He was charged against a supernumerary post till such time as he was absorbed in a suitable alternative employment. The applicant was found suitable for absorption in an alternative post of Commercial Clerk and on successful completion of the training, he has been absorbed as Commercial Clerk. The respondent argues that the applicant has already been paid the arrears due to him consequent to the quashing of penalty advice as per this Tribunal's order of 07.06.2006 in O.A No. 890/2003.

28. Respondent makes a reference to the observation of the Supreme Court in C.A No. 5899 of 2012 filed by **Shri Chandi Prasad Uniyal & Others v. State of Uttarakhand & Others** in para 16 and 17 as follows:

"16. We are concerned with the excess payment of public money which is often described as "tax prayers money" which belongs neither to the officers who have effected overpayment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bonafide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc., because money in such situation does not belong to the prayer or the payee. Situations may also arise where both the prayer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the

payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore of the considered view that except few instances pointed out in Syed Abdul Quadir case (supra) and in Col. B.J. Akkara (Retd.), the excess payment made due to wrong/irregular pay fixation can always be recovered."

To substantiate the recovery ordered.

29. The Apex Court in **State of Punjab v Rafiq Masih (2015) 4 SCC 334** had cited categories of persons from whom recovery of excess payment cannot be made. The Apex Court directions have been circulated by Department of Personnel O.M. No. F.No. 18/03/2015-Estt. (Pay-1) dated 02.03.2016. Respondent will examine whether applicant comes under any of the categories in para 12 of the above judgment and take a decision as to whether recovery is to be effected or not. But it is made clear that if the applicant had given any undertaking then Clause (ii) of the categories of the case where recovery is prohibited (enumerated in Rafiq Masih) will have no application in the light of the subsequent decision of the Hon'ble Supreme Court in **High Court of Punjab and Haryana v. Jagdev Singh (2016) 3 SLJ 88**.

30. To the extent of the prohibition against recovery of excess payment in the light of the judgment in Rafiq Masih's case modified / clarified by the judgment in Jagdev Singh's case supra in all other respects the O.A stands dismissed. No order as to costs.

(Dated, this the 7th April, 2017.)


(Mrs. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER