

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 61/91 ~~108X~~.

DATE OF DECISION 18.3.1993.

Shri VP Sethumadhavan & 8 ors. Applicant (s)

Shri P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India (General Respondent (s)
Manager, S. Rly., Madras) & 2 ors.

Shri MC Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman
&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ys*
4. To be circulated to all Benches of the Tribunal? *h*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicants, 9 in number, who are working as Goods Drivers in the scale of Rs.1350-2200/- in the Palakkad Division of Southern Railway, have prayed that the respondents may be directed to step up their pay on par with the pay of Shri P.V. Unnikrishnan, who is their junior in the gradation list of Goods Drivers (Annexure A1). The brief facts of the case can be stated as follows:-

2. All the applicants in this case, while working as Diesel Assistants were directly promoted as Goods Drivers along with many others by order dated 14.2.1986 (Annexure A2).

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By this order, 35 shunters working in the scale of Rs.290-400/- and 9 Diesel Assistants in the scale of Rs.290-350/- were promoted as Driver (D) in the scale of Rs.330-560/- (pre-revised). As the number of posts of Shunter were less than the post of Driver (D) and Diesel Assistants, after promoting all the existing Shunters, the Diesel Assistants were directly promoted as Drivers (D). On promotion, the pay of the applicants who were directly promoted as Goods Driver ^{from the post of} Diesel Assistants were fixed giving only one fixation under Rule 2018-B (FR 22-C) without fixing their pay in the intermediate post of Shunter. Shri P.V. Unnikrishnan who is junior to all the applicants was later promoted as Shunter on 17.2.1987 fixing his pay at Rs.1350/- in the post of Shunter and was then promoted as Driver (D) on the very next day, i.e. 18.2.87 and his pay was fixed in the post of Driver (D) under Rule 2018-B. Finding that Shri PV Unnikrishnan and some other persons junior to the applicants promoted after passing through the intermediate post of Shunter got a higher fixation, the applicants submitted representations for stepping up their pay on par with their juniors. They relied on the President's decision No.4 under FR 22-C (Rule 2018-B) communicated under Railway Board's letters No.PC/60/PP/1 dated 19.3.66 incorporated in para 10 at page 158 of the Indian Railway Establishment Code and also letter dated 22nd July, 1966 incorporated in para 11 at page 159 of the Code Vol.II claiming that the pay of the senior directly promoted to the higher post has to be stepped up on par with his junior who is promoted to the higher post after his getting promotion to the intermediate post.

3. The respondents contend that as promotion to the post of Goods Driver in the scale of Rs.330-560/1200-2200 is made on the basis of a selection from among the feeder

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category of Shunter in the scale of Rs.290-400/1200-2040 and Fireman A/Diesel Assistant in the scale of Rs.290-350/950-1500. As per the Railway Board's letter dated 9.7.1982 (Exhibit R1), the post of Shunter ^{according to them} cannot be considered as an intermediary post between Goods Driver and Diesel Assistant and therefore, the claim of the applicants that they are entitled to get their pay stepped up on par with that of their junior, Shri Unnikrishnan, is not sustainable. They have also contended that since there was no post of Shunter to which the applicants could have been promoted when they were promoted as Goods Driver under Annexure A2, there is no basis for the claim of the applicants for stepping up of their pay. The respondents further contend that the instructions contained in the Railway Board's letters referred to in the application are inapplicable to the case of the applicants. The respondents have also contended that paragraph 219-B of the Indian Railway Establishment Manual (1968 edition) also do not apply to the case because the post of Shunter cannot be considered as an intermediary grade in terms of the definition of grade contained in paragraph 103(2) of the Indian Railway Establishment Manual. Though the post of Fireman/Diesel Assistant, Shunter etc are posts in the normal channel of promotion as Drivers since these posts cannot be considered as intermediary grades, the benefit of paragraph 219-B is not applicable to the applicants.

4. The applicants have in the rejoinder indicated that the definition of grade, class, post etc contained in paragraph 103(2) does not apply to the provisions of Chapter II of the Railway Establishment Manual ~~which was issued by the President of India under Article 308 of the Constitution~~ and that the expression grade used in paragraph 219 in Chapter II have a wider meaning to cover posts, class and grades. To

illustrate this, the applicants have produced Railway Board's letters dated 31.5.1982 and 26.5.1984 (Annexure A7 and A8).

5. Having given our anxious consideration to the facts and circumstances of the case disclosed by the pleadings and the documents on record, we are convinced that the applicants in this case are entitled to the relief of stepping up of pay on par with the pay of Shri PV Unnikrishnan as claimed by them. The fact that Shri Unnikrishnan was junior to the applicants both in the post of Diesel Assistant and in the post of Driver D is evident from Annexure A1. This fact is not disputed by the respondents in the reply statement. On the other hand, it is admitted that the applicants are senior to Shri PV Unnikrishnan. From Annexure A1, it may be seen that all the applicants were promoted as Diesel Assistants prior to the date of promotion of Shri Unnikrishnan to that post and that all of them were promoted long prior to the date on which Shri Unnikrishnan was promoted as Driver D on 18.2.1987. That a senior employee should ^{normally} draw pay at least on a par with his junior is recognised in service jurisprudence and the acceptance of this principle is reflected in several Government orders. In the application, the applicants have placed reliance on Railway Board's letters No.PC/60/PP/1 dated 19.3.1966, 22.7.1966 and 5.1.1967. The Railway Board's letter No.PC/64/PP/5 dated 5th January, 1967 and 8th March, 1968 incorporated in page 159 of the Compendium of Rulings, Indian Railway Establishment Code, Vol.II, reads as follows:-

"Benefit of pay admissible in an intermediary higher post which would have been held by a railway servant but for his promotion to a still higher post--The point whether after introduction of Rule 2018-B (FR 22-C)-R.II a railway servant who while holding a post is appointed to officiate in a higher post, can be allowed protection of officiating pay of an intermediary post to which he would have been appointed in an officiating capacity but for his officiating appointment in the higher post, if such officiating

pay of the intermediary post happens to be higher than the officiating pay admissible in the higher post has been considered and it has been decided that--

- (i) The pay that the railway servant would have got from time to time in the intermediary post but for his appointment in the higher post shall be protected by grant of personal pay, from the date his next (eligible) junior in the relevant seniority (promotion) group is promoted to the intermediary post. The pay in the higher post will not be refixed under 2018-B R.II with reference to the proforma pay in the intermediate grade.
- (ii) In case any junior is promoted to the higher post after first getting promotion in the intermediary post, the senior directly promoted to the higher post, will be entitled to the benefit of stepping up, if due, in terms of President's Decision No.4 above.

The above orders take effect from 1st April, 1961 but arrears are payable from 6th January, 1967 only."

Railway Board's letter clarifying the method of regulation of pay of a railway servant who happens to be promoted to two different posts carrying higher responsibilities on the same date, dated 27th July, 1967 reads as follows:-

"I. A point has been raised as to how the pay of a railway servant who happens to be promoted to two different post carrying higher responsibilities on the same date should be regulated after the introduction of Rule 2018-B (FR 22-C) R.II with effect from 1st April, 1961.

Board desire to clarify that in such cases where, for example, a railway servant holding the scale Rs.335-425 is promoted simultaneously to scale Rs.350-475 and Rs.450-575, the pay should be fixed as under--

- (i) He should be deemed to have been promoted first to the lower post (Rs.350-475) and pay fixed under Rule 2018-B (FR 22-C)-R.II provided it is certified that he would have held this post for a period not less than 22 days but for his promotion to the higher post.
- (ii) He should subsequently be promoted the higher post (Rs.450-575) and pay fixed under Rule 2018-B FR 22-C) R.II with reference to the pay arrived at in (i) above."

It is evident from the above quoted instructions that when a railway servant is promoted simultaneously to two different

posts carrying higher responsibilities and higher pay scales he should be deemed to have been promoted to the lower post and pay fixed under Rule 2018-B and should be subsequently promoted to the higher post and that the pay should be fixed with reference to the pay arrived at in the first higher post. Annexure A2 order shows that the applicants were promoted as Driver D while they were working as Diesel Assistants. Item numbers 1 to 35 in the Annexure A2 order were promoted to the post of Shunters while item numbers 36 onwards including the applicants were promoted directly as Driver D from the post of Diesel Assistants. That the post of Shunter is an intermediary post between the post of Diesel Assistant and Driver in the direct line of promotion though disputed by the respondents in their first reply statement, has been admitted by them in their additional reply statement. This fact is also borne out from the avenue chart of Diesel Drivers and Maintenance Staff (Annexure A5). This position is also clarified by the R.B.E. No.76/87 with letter No.E(NG)I-84-PM7/43, dated 1.4.87 (Annexure A6). The case of the respondents that there were no posts of Shunters for the applicants to be promoted at the time when they were directly promoted from the post of Diesel Assistants also does not stand to reason because items 1 to 35 in the Annexure A2 order were Shunters who were promoted as Driver D and, therefore, ^{items} 36 onwards could have been simultaneously promoted as Shunters and Driver D. In view of the instructions contained in the Railway Board's letters quoted above, the applicants should be deemed to have been promoted first to the post of Shunters and then to the post of Driver D. The learned counsel for the respondents brought to our notice P.B. circular No.20/88 by which the Board's letter No.PC/64/PP 5 dated 5.1.1967 was withdrawn. But this letter was dated 24.12.1987. Therefore, it cannot affect the right of the applicants for fixation under the

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rules and instructions which existed on the date on which Shri PV Unnikrishnan, their junior was promoted as Driver D. Shri PV Unnikrishnan was promoted as Driver D on 18.2.1987. He was given a fixation under Rule 2018-B in the scale of Shunter as on 17.2.87 and a fixation in the scale of Driver on 18.2.87. All the applicants being senior to the said Shri Unnikrishnan, were entitled to stepping up of pay on par with their junior Shri Unnikrishnan. Further, paragraph 219 of the Indian Railway Establishment Manual Chapter II reads as follows:-

"219. Automatic empanelment of staff in higher grade selection and non-selection posts:-

(a) Selection posts--A railway servant selected for a higher grade selection post without having been selected for the intermediate grade selection post, if in the same avenue of promotion, should be treated as automatically selected for the latter post, provided that the original class III post, the intermediate class III selection post, and his/her present class III post are all in the same avenue of promotion and none of them is a general post for which several categories of staff are eligible. If the Selection Board for the intermediate grade selection post have placed some persons as "outstanding", in that case, an employee selected for a higher grade class III selection post or a class II post in the normal channel of promotion may be deemed to have been classified as "outstanding", and given the place in accordance with the seniority amongst those classified by the Selection Board as "outstanding" for the intermediate grade selection post, provided the Selection for that post is held after such an employee has already been selected for the higher grade selection post.

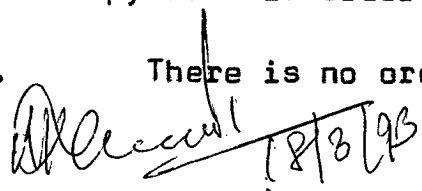
(b) Non-selection posts--In the event of an intermediate grade being a non-selection post, the employee would get a proforma position in such intermediate grade only if such a position was due in accordance with seniority-suitability being accepted by virtue of fitness for the higher grade by a process of selection."

The fact that the applicants were fit to be promoted on account of their seniority and suitability to the post of Shunter is evident from the fact that from the post of Diesel Assistant, they were directly promoted as Driver D. Therefore,

under paragraph 219-b, the applicants are entitled to a proforma fixation in the intermediate grade. The learned counsel for the respondents then argued that the post of Shunter cannot be considered as a grade in comparison to the post of Driver. In this context, the learned counsel invited our attention to the definition of class and grade in paragraph 103(iii) of the Indian Railway Establishment Manual. But it is clearly indicated in paragraph 103 of the Manual that the definition was for the purpose of the rules contained in that chapter. It is evident from P.B. circular 37/86 that the term grade in para 219-b of Chapter II has got a wider connotation to include posts, classes and grades. Further, the principle underlying the provision for fixation of pay in the intermediate posts if a senior official is promoted simultaneously to the higher post without actually being promoted to the intermediate post to step up his pay on par with his junior who was promoted to the higher post passing through the intermediate grade or post ^{necessary} is to obviate the anomaly in enabling a junior employee to draw higher pay than the senior employee. Therefore, on an anxious consideration of the facts and circumstances of the case, we are of the view that the applicants are entitled to have their pay stepped up on a par with their junior Shri PV Unnikrishnan.

6. In the result, the application is allowed, the respondents are directed to step up the pay of the applicants on par with the pay of Shri PV Unnikrishnan as shown in Part II of Annexure A1 with all attendant benefits. Action on the above lines should be completed and orders issued within a period of two months from the date of communication of a copy of this order.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

18.3.1993