

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No.604 OF 2005

MONDAY THIS THE 25<sup>th</sup> DAY OF JUNE 2007

C O R A M:

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN  
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

S. Ramachandran,  
S/o Swaminathan Pillai,  
Tower Wagon Driver  
O/o SSE/OH Equipments/SR, Podanur,  
R/o 73 A, Railway Hospital Road,  
Near S.R. S & T Workshop  
Podanur.

Applicant.

(By Advocate Mr.T.C.Govindaswamy)

Vs.

- 1 Union of India represented by the General Manager  
Southern Railway, Head Quarters Office  
Park Town P.O, Chennai – 3.
- 2 The Senior Divisional Personnel Officer  
Southern Railway, Palghat Division  
Palghat.
- 3 The Senior Section Engineer/  
Traction Distribution (OHE),  
Southern Railway,  
Podanur Junction,  
Coimbatore District.

Respondents

(By Advocate Ms. P.K. Nandini)

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER.

1. The issue: When the applicant, who was working as Motor Truck Driver (MTD for short) in the scale of pay Rs 4,500 – 7,000/-, had volunteered to function in an ex-cadre post of Tower Wagon Driver (TWD for short) in the scale of pay of Rs 4,000 – 6,000/- whether his pay drawn in the higher pay scale (Rs 4,750/-) should be protected.

## 2. The brief facts are as under:-

(a) The post of MTD is a regular post which the applicant was holding since 8<sup>th</sup> January, 1996. Thus, according to the applicant he had been holding the afore said post on substantive basis. Initially, the post carried pay scale of Rs 4,000 – 6000/- which was later on revised to Rs 4,500 – 7000 vide Annexure A-7 order dated 24-11-1998. Earlier, vide Annexure A-4 order dated 20-01-1997, the respondents notified two vacancies of TWD (scale of pay of Rs 4,000 – 6,000) and the eligibility condition is serving regular employees from Artisan Category of TRD Branch having heavy duty road vehicle driving licence with Xth pass and with Aye – One medical classification. The applicant fulfilling the above qualifications, including the first one i.e. holding substantive post of artisan category, he had volunteered vide Application dated 05-02-1997. In his application (Annexure A-5) he had mentioned his scale of pay as Rs 1,320 – 2040 (which is the pre-revised pay scale for Rs 4,500 – 7000/-) as well as the pay drawn by him (Rs 4,750/-) in the said scale. Vide Annexure A-6 order dated 29<sup>th</sup> June, 1998, he was duly selected for the same and fitted in the pay scale of Rs 4,000 – 6000 and the applicant had joined the said post on 16-07-1998 whereby initially his pay was fixed at Rs 4,700/- plus Rs 50/- as personal pay. Thus, the pay of the applicant which he was drawing earlier in the post of MTD was protected. The applicant was afforded this pay protection continuously but suddenly, the respondents had issued him annexure A-9 show cause notice dated 01-03-2004 when his pay was at Ra 5,300/- proposing to reduce the pay of the applicant w.e.f. 16-07-1998. The applicant had penned Annexure A-10 representation dated 03-03-2005 to continue the pay protection as per the original order, with effect from the date of his joining as Tower Wagon Driver. On coming to know that there would be no joy over the representation and the respondents were likely to execute the proposal of revising the pay of the applicant, the applicant filed OA No. 385/05 praying



inter alia for a direction to the Respondents to consider his representation (Annexure A-10 herein) in accordance with the Rules and instructions on the subject and to communicate the same to the applicant before reducing the applicant's pay as proposed in Annexure A-9. The said OA was disposed of, vide Annexure A-3 order dated 22-06-2005 with a direction to the respondents to dispose of the representation by a speaking order within the time prescribed in the order. By Annexure A-2 letter dated 29-07-2005, (impugned) the respondents had stated that since the post of MTD carries higher pay scale, the induction of the applicant in strict sense being not provided for, the case of the applicant was in fact considered only on the basis that the applicant himself volunteered to work in the lower pay scale and as such, his pay was to be fixed as if he had been functioning only in the pay scale of Rs 4,000 - 6,000 by giving corresponding increments for the years he had served as MTD. Further, it was informed that the post being one of tenure basis, the incumbents thereof should be repatriated to their parent cadre on completion of their tenure. Thus, as earlier, the pay of the applicant was fixed erroneously, his pay was to be revised. And, by Annexure A-1 order dated 04-08-2005 (Impugned), the respondents have fixed the pay reducing the same w.e.f. 16-7-1998 from Rs 4,700/- + Rs 50/- as p.p. totalling Rs 4,750/- to Rs 4,300/-. Thus, the two orders are under challenge.

(b) The applicant has challenged the Annexure A 1 order and A-2 order on the ground that when a person is posted from one post to another, the pay earlier drawn has to be protected in accordance with the relevant rules. Rule 1313 of the I.R.E.Code provides for the same as per which on transfer to a lower post under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. The counsel for the applicant also



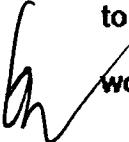
relied upon a recent O.M. of the Department of Personnel and Training dated 14-02-2006 as amended by OM dated 4-01-2007. The applicant also relies upon a very recent judgment of the Tribunal in OA No. 814/05 decided on 8<sup>th</sup> June, 2007, whereby it was held as under:-

"3. Arguments were heard and documents perused. Though normally move from higher post to a lower post is not permitted, except in the case of transfer at request falling under the provisions of FR 15 (also vide Rule 1313 of the IREC), in the instant case, instead of rejecting the application of the applicant at the very outset itself, the respondents, fully aware of the fact that the applicant's pay scale in his substantive post was higher than that applicable to the ex cadre post of TWD, appointed the applicant to the said post in the lower pay scale of Rs 4,000 – 6,000/- . The applicant must have been under the genuine impression that his basic pay as drawn in the substantive capacity as MTD i.e. Rs 4,750/- would be protected. However, when he had been informed that his pay would be only Rs 4,400/- the applicant made representation. It is by now more than six years that have passed since the applicant has been functioning as TWD. His move till date should therefore, be treated as if it is a transfer sought by the applicant in which event, the provisions of FR 15(a) would apply and the applicant's pay drawn as MTD shall have to be protected. The appointment of the applicant as TWD cannot be held to be illegal since he fulfills all the conditions of the appointment including that, his post as MTD is an artisan post. At best it could be held as irregular and to right the wrong, the only option is pay protection treating the applicant's move to the post of TWD as one of transfer covered under the provisions of FR 15(a). The applicant is therefore, entitled to the pay protection right from the day he joined as TWD.

4. However, one aspect has to be considered. The counsel for the respondents submitted that the post TWD has been treated as a tenure post for a period of four years or so. If so, it is left open to the respondents to notify the vacancy for being filled up in which event, the applicant would be reverted back to his substantive post of MTD on any one being appointed in the post. Till then, the applicant shall be continued and his pay would be protected. Respondents are directed to pass suitable orders accordingly. Arrears of pay and allowances due to the applicant shall be made available to him within a period of three months from the date of communication of this order.

5. The OA is disposed of with the above observation and direction. No cost."

3. Counsel for the Respondents do agree with the fact that the case is identical to that in OA 814/05, save that the applicant in the instant case had agreed to work in the lower pay scale/pay.



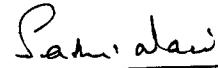
4. Arguments were heard and documents perused. The order dated 8<sup>th</sup> June, 2007 being applicable in all the four in respect of this OA, as held in the case of *Sub-Inspector Roopal v. Lt. Governor*, (2000) 1 SCC 644, that precedent law must be followed by all concerned, we have no hesitation in following the said order of this Tribunal.

5. In view of the above, the OA is allowed. It is declared that the applicant is entitled to the pay protection, which he had been drawing prior to his posting as Tower Wagon Driver on 16-07-1998. Orders at Annexure A-1 and A-2 are therefore, quashed and set aside. Respondents are directed to pass suitable orders restoring the original pay of the applicant at Rs 4,700 + Rs 50 p.p. as of 16-07-1998 and increment the same by adding annual increments. The observation as contained in para 4 of the order dated 8<sup>th</sup> June, 2007 in respect of repatriation would equally apply to the applicant as well. If any application is pending over the revision of pay scale of the post of <sup>Wagon 6</sup> Tower Driver, the decision in the said application would govern the case of the applicant as well.

Dated, the 25th June, 2007.



(K.B.S. RAJAN)  
Judicial Member



(Sathi Nair)  
Vice Chairman