

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.610/08

Thursday this the 4th day of March 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.Vijayakumar,
S/o.Gangadharan,
Senior Train Clerk, Podannur,
Working at Control Office, Palghat.
Residing at Railway Quarters No.212 B,
Shornur, Palghat District.

...Applicant

(By Advocate Mr.Shafik M.A.)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters, Chennai – 3.
2. The Senior Divisional Personnel Officer,
Palghat Division, Southern Railway, Palghat.
3. The Chief Personnel Officer,
Southern Railway, Chennai.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 4th March 2010 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has sought the following reliefs in this Original
Application :-

1. To call for the records leading to the issue of Annexure A-1
to A-4 and to declare that the applicant is entitled for protection of
his pay which he was drawing as Switchman at the stage of

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Rs.4100/- in the scale of pay of Rs.4000-6000 and to declare that the recovery effected from his salary of the overpayment in the scale of pay of Rs.4000-6000 as illegal and arbitrary.

2. To direct the respondents to refix the pay of the applicant in the post of Train Clerk reckoning the basic pay which he was drawing in the scale of pay of Rs.4000-6000 at the stage of Rs.4100/- on appointment as Train Clerk and to pay all consequential benefits including arrears of the difference of salary with 18% penal interest.

3. To direct the respondents to refund the amount of Rs.20,863/- which has been recovered from the salary of the applicant immediately with 18% penal interest.

2. The brief facts of the case are that the applicant was initially engaged in the Railways on 22.4.1982. He got promotions to higher post during his service from time to time. While he was working as Sweeper-cum-Porter (SCP for short), Tirur, he applied for the post of Switchman in the scale of pay of Rs.4000-6000 and also for the post of Train Clerk in the scale of pay of Rs.3050-4590. His selection for the post of Switchman materialised first. He joined the said post on 19.8.1998 and his pay was fixed at the minimum of the scale of pay of Rs.4000-6000. Thereafter, he earned an annual increment in that grade on 1.8.1999 raising his pay to the stage of Rs.4100/-. Meanwhile, he qualified in his selection for the post of Train Clerk also. On joining the said post on 10.10.1999, the respondents fixed his pay at Rs.3275/- in the scale of pay of Rs.3050-4590 resulting in drop in his emoluments as well as recovery of excess payment of an amount of Rs.20,863/- from his salary. He has, therefore, made the Annexure A-1 representation dated 12.5.2001 stating that he was already drawing Rs.4100/- as Switchman and his pay should be fixed at Rs.4100/- itself as Train Clerk in the grade of Rs.3050-4590 so that his last pay drawn



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was protected. As the respondents continued with recovery of the aforesaid amount in installments, he made Annexure A-2 representation dated 14.2.2004 to stop further recovery from his pay. However, the respondents recovered the entire amount of Rs.20,863/- in 30 installments from October 2002 to February 2004. The applicant once again made Annexure A-3 representation dated nil of October 2007 requesting the respondents to return the recovered amount and to make proper fixation of pay. In this regard he has relied upon Rule 1313 (2) of Indian Railway Establishment Code Vol.I which reads as under :-

“ When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.”

3. The respondents in their reply have not disputed the facts leading to his appointment as Train Clerk in the scale of pay of Rs.3050-4590. As Switchman, his pay was fixed at Rs.4000/- in scale of Rs.4000-6000 on 19.8.1998 and he has drawn an annual increment on 1.8.1999 raising his pay to Rs.4100/-. As Train Clerk, he joined on 10.10.1999 and his pay was fixed at Rs.3275/- in scale Rs.3050-4590 as if he was promoted from SCP duly taking into account of his pay in the substantive post of SCP at Rs.3020/- in scale Rs.2550-3200 and adding the minimum benefit of Rs.100/- on posting as Train Clerk in scale Rs.3050-4590 as per the provisions of Rule 1313 FR 22(1) (a) (1). As regards the protection of his pay is concerned, they submitted that the post of Train Clerk is lower in



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grade than the post of Switchman and the applicant was not selected as Train Clerk from Switchman. In fact no one is entitled to volunteer for posting as Train Clerk in scale Rs.3050-4590 when he was already working in higher scale of Rs.4000-6000. However, in the case of the applicant, he applied for the posts of Train Clerk as well as Switchman when he was working as SCP which was a Group D post. When his selection as Switchman materialised first, he joined that post but he left it and joined the post of Train Clerk when got selection to that post later. Therefore, the provisions of 1313 (1) (a) (2) is not applicable for fixation of pay in the post of Train Clerk in the scale of Rs.3050-4590.

4. We have heard Shri.R.Sreeraj on behalf of Shri.Shafik MA for the applicant and Shri.Varghese on behalf of Shri.Thomas Mathew Nellimoottil for the respondents. The undisputed fact is that the applicant was a SCP till 19.8.1998. As a Group D employee he has volunteered for the post of Switchman in the scale of pay of Rs.4000-6000 and also for the post of Train Clerk in the scale of pay of Rs.3050-4590. His selection for the post of Switchman came first and accordingly he joined the said post with effect from 19.8.1998. The respondents have, therefore, rightly fixed his pay at the minimum of the scale of pay of Rs.4000-6000 from 19.8.1998. He has also earned an increment of Rs.100/- during his service as Switchman with effect from 1.8.1999 till he joined as Train Clerk on 10.10.1999. The respondents have allowed him to join as Train Clerk in the lower scale of pay because he had applied for the said post at the time when he was working as a Group D employee. Therefore, the liability of the respondents

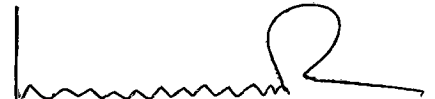


to pay him the salary in the scale of pay of Rs.4000-6000 is limited to the period he actually worked in the said post ie. from 19.8.1998 to 10.10.1999. Thereafter, his pay has been notionally fixed, as if he was promoted from the post of SCP, with effect from 10.10.1999 in the scale of pay of Rs.3050-4590. As a result, the applicant has received some overpayment which has been computed as Rs.20,863/- and the same has already been recovered from his pay. We, therefore, do not find any merit in this case and, therefore, it is dismissed. There shall be no order as to costs.

(Dated this the 4th day of March 2010)



K.NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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