

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 63 OF 2007

Dated the 19th November, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

C.Radhakrishnan,
S/o late R Chami,
Chief Travelling Ticket Inspector Grade II/Sleeper,
Southern Railway, Coimbatore,
Residing at "Krishna Priya", Swathi Nagar,
Kallekulangara PO, Palakkad-9.

.. Applicant

[By Advocate: Mr. TCG Swami]

-Versus-

1. Union of India,
Represented by the General Manager,
Southern Railway, headquarters Office,
Park Town, PO, Chennai-3.
2. The Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.
3. The Divisional Railway manager,
Southern Railway, Palghat Division,
Palghat.

.. Respondents

[By Advocates: Mrs Viji for Mr Sunil Jose]

The application having been heard on 28th October, 2008 the
Tribunal delivered the following -

ORDER

(Hon'ble Dr.KS Sugathan, AM)

The applicant is presently working as a Chief Travelling Ticket Inspector in the Palghat Division of the Southern Railway. He is aggrieved by the erroneous fixation of his pay in the post of Ticket Collector in the year 1984 resulting in recurring and substantial loss in the monthly salary. He had initially joined the service of the railways in Group D in 1971. He was subsequently promoted as Switchman. While in the Switchman pay scale of Rs.330-560 he sought posting as Ticket Collector in the lower pay scale of Rs.260-400. He was accordingly posted as Ticket Collector, initially on ad hoc basis with effect from 1.5.1984 and subsequently on substantive basis by order dated 14.12.1984 (A/1). By the same order dated 14.12.1984 Shri K.R.Hariharan who was junior to the applicant in the Switchman cadre was also posted as Ticket Collector. However the applicant's pay was fixed as on 1.5.1984 on the basis of the pay drawn by him in the higher pay scale of Rs.330-560 as on that date. But the pay of Mr.Hariharan was fixed as on 16.12.1984 i.e. the date on which he joined as Ticket Collector, by which time he had earned one more increment in the previous scale. As a result Mr.Hariharan's pay was fixed at a higher level. The applicant made many representations for fixing his pay on par with Mr.Hariharan, but it was not accepted by the respondents. Hence he filed this OA seeking the following relief:

[i] Call for the records leading to the issue of Annexure A8 and quash the same;

[ii] Declare that the applicant is entitled to have the pay of Rs.350/- drawn by the applicant in scale Rs.330-560/-, with effect from 16.12.84, on par with his junior Shri KR Hariharan, as evidenced by Annexure A4 and as admitted by the respondents in Annexure A8 and direct the respondents accordingly;

[iii] Direct the respondents to fix the initial pay of the applicant as Ticket Collector with effect from 16.12.84 at the stage of Rs.350/- in scale Rs.260-400 with all consequential benefits emanating therefrom, including arrears of pay and allowances;

[iv] Award costs of and incidental to this application;

[v] Pass such other orders or directions as may be do fund just and proper by this Hon'ble Tribunal."

[2] The respondents have filed a reply statement. It is contended in the reply statement that the OA is barred by limitation as the pay fixation sought to be revised is of 1984 vintage. As per the Railway Board letter dated 7.12.1994 pay anomaly can be corrected only if such an anomaly is a result of the application of FR22C. Even if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or any other account the anomaly cannot be corrected. The applicant was in the pay scale of Rs.330-560 for a shorter period compared to Mr. Hariharan who earned another increment in the previous scale. As the applicant was drawing the pay Rs.340 as on 1.5.1984 his pay was fixed at Rs.334 plus Rs.6 as personal pay in the pay scale of Rs.260-400. Whereas Mr. Hariharan was drawing a pay of Rs.350 on 1.8.1984.

[3] We have heard the learned counsel for the applicant Shri T.C.Govindswamy and the learned counsel Shri Sunil Jose for the respondents. We have also carefully perused the documents on record.

[4] The issue for consideration is whether the applicant is entitled to get his pay re-fixed as on 14/16.12.1984 when he was substantively appointed as Ticket Collector. The respondents have stated that the applicant's pay was fixed as on 1.5.1984 where as the pay of Mr.Hariharan was fixed as on 16.12.1984 and therefore Mr.Hariharan got a higher pay on re-fixation. It is seen from records that both the applicant and Mr. Hariharan were appointed as Ticket Collectors by order dated 14.12.1984 after successful completion of training. Both underwent training between 2.7.1984 and 1.8.1984. However the applicant was utilised as a Ticket Collector on ad hoc basis for a short period prior to the order dated 14.12.1984. It is not disputed that the applicant is senior to Mr. Hariharan in the cadre of Switchman and that he was drawing higher pay than Mr.Hariharan in that cadre. The respondents have contended in the reply that pay anomaly cannot be rectified if the junior was drawing higher pay in the previous scale for any reason. We are unable to accept this contention because this is not a case wherein the junior was drawing higher pay while the senior was also continuing in the same cadre. By the time the junior got higher pay the senior had already been taken out of the cadre though on ad hoc basis. The applicant's counsel has produced a judgment of this Tribunal in

OA 48/95 was wherein the issue of pay fixation at the time of substantive appointment, even though the pay was already fixed at the time of ad hoc posting to the same post, was considered. The following extract from the judgment of the Tribunal in that case is relevant for this case:

"6. The short question is whether an employee who gets an adhoc promotion and a pay fixation under FR 22C at the time of adhoc promotion can get his pay re-fixed under FR 22C when he is regularly promoted after continuous officiating in an adhoc capacity without any break. FR 22C does not place any restriction on the number of times it is to be applied. Every time there is a promotion or an appointment of a person holding a post in a substantive, temporary or officiating capacity to a post carrying duties and responsibilities of greater importance in a substantive, temporary or officiating capacity, his pay will be fixed under FR 22C. The contention of respondents that because the applicant's pay was fixed under FR 22C at the time of adhoc promotion, his pay cannot be re-fixed again at the time of regular promotion just because he has been continuing after his adhoc promotion without break in the higher post till his regularisation, is not supported by any rule..."

[5] We are in agreement with the finding of the Tribunal in the aforesaid OA. The applicant is entitled to get his pay re-fixed on his substantive appointment as Ticket Collector with effect from 14/16.12.1984. However he will not be entitled for arrears arising out of such re-fixation in view of the long period that has elapsed. The counsel for applicant also did not press for arrears and wanted only notional re-fixation.

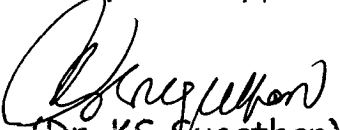
[6] Now the question of limitation. The respondents have contended that the matter is more than twenty years old. The applicant's counsel has relied on the judgment of the Hon'ble Supreme Court in **Union of India vs. Tarsem Singh (2008) 2**

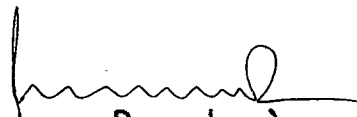
SCC L&WS 765) wherein it has been held that in certain service matters such as pay fixation and pension which do not involve third parties, relief can be granted even if there is a long delay in seeking remedy. The following extract from the judgment of the Hon'ble apex Court in that case is relevant:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of their parties. But if the claim involved issues relating to seniority or promotion, etc. affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

[7] The present case is one of pay fixation where the loss arising out of erroneous fixation is a continuing cause of action and there is no third party involvement. Hence the ratio of the aforesaid judgment is squarely applicable. We therefore do not accept the contention of the respondents that the relief cannot be granted due to limitation.

[8] For the reasons stated above, the OA is allowed as follows. The impugned order dated 7.7.2006 is quashed in so far as it relates to the rejection of the applicant's request for re-fixation of his pay. The respondents are directed to re-fix the pay of the applicant in the pay scale of Rs.260-400 as on 14/16.12.1984 with reference to his presumptive substantive pay in the previous scale and extend notional consequential benefits without arrears of pay to the applicant within a period of three months from the date of receipt of copy of this order. No costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)

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