

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.69 of 2011

Thursday, this the 11th day of August, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member

M Mahadevan Pillai
 Aged 60 years, S/o Madhavan Pillai
 (Retired Head Clerk (Ad-hoc))
 Office of the Deputy Chief Engineer
 Southern Railway, Construction, Ernakulam
 Residing at House No.36, ATHIRA
 Subhash Nagar, Kaithavana, Alappuzha – 683 519 **Applicant**

(By Advocate – Mr.T.C Govindaswamy)

V e r s u s

1. Union of India
 represented by the Secretary to the Government of India
 Ministry of Railways
 New Delhi-110 001
 2. The General Manager
 Southern Railway, Head Quarters
 Office, Park Town P.O
 Chennai - 3
 3. Chief Engineer (Construction)
 Southern Railway, Egmore
 Chennai – 8
 4. The Deputy Chief Engineer
 Southern Railway, Construction
 Ernakulam – 682 016
 5. The Chief Personnel Officer
 Southern Railway, Head Quarters
 Office, Park Town P.O
 Chennai – 3
 6. The Financial Advisor and Chief Accounts Officer
 Southern Railwa, Head Quarters
 Office, Park Town P.O
 Chennai – 3
- **Respondents**

(Bt advocate – Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 11.08.2011, the Tribunal on
 the same day delivered the following :



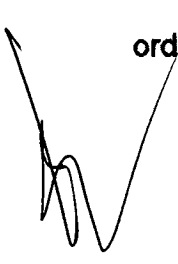
ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant was superannuated from Railway service as a Head Clerk (Ad-hoc) on 30.11.2010. The applicant, who was an Ex-Service Man, was initially appointed as a Lower Division Clerk on 10.09.1990 in the Construction Organisation. He got his next promotion as Senior Clerk w.e.f 27.08.1996 and Head Clerk (Ad-hoc) with effect from 01.12.1999. The applicant was also accorded with second financial up-gradation (under the MACP Scheme) on 01.09.2008 in the pay scale of PB II plus Grade Pay of Rs.4200/-. Incidentally, it is the same pay scale which was also drawn at the time of his retirement on 30.11.2010. It is the case of the applicant that respondents have wrongly fixed his pension treating him as a Senior Clerk only and without taking into consideration his promotion as Head Clerk on ad-hoc basis/the benefit of MACP granted.

2. The respondents have contested the Original Application. According to them, the Railway Board's letter dated 19.08.2010 clearly provides for exclusion of any ad-hoc promotion granted in the Construction Organisation for the purpose of fixation of pension, which has to be calculated only on the basis of the pay that the individual would have drawn in the cadre post as per Rule.

3. The applicant has filed his rejoinder reiterating his claim and also pointing out certain errors committed by the respondents in regard to pay fixation. By MA 615 of 2011 the applicant has also annexed a true copy of Railway Board Order No.RBE No.85/2011 dated 09.06.2011 by which the earlier Railway Board order of 19.08.2010 stood withdrawn.

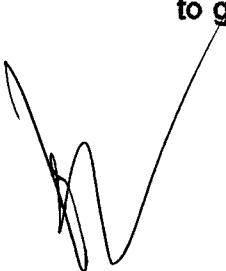


4. Counsel for the applicant argued that with the withdrawal of Railway Board's earlier letter dated 19.08.2010 the embargo of reckoning the date of ad-hoc promotion for pension purpose having no longer been there, the applicant is entitled to fixation of pension on the basis of pay drawn as ad-hoc Head Clerk. In any event since MACP has been granted to the applicant which is identical to the pay drawn by the applicant as Ad-hoc, in his case the order of the Railway Board dated 19.08.2010 should not have been applied at all.

5. Counsel for the respondents initially wanted time to seek instructions. However, it is found that the entire issue revolves around the order dated 19.08.2010, which already stands withdrawn. The sum and substance of the contention of the applicant is that on grant of the grant of MACP, the applicant's pension has to be based on the last pay drawn/10 months average, which ever is earlier. As such, this Original Application deserves to be allowed. The respondents are directed to re-calculate the pension due to the applicant taking into account his last pay drawn as Head Clerk plus the grade pay and revise the pension and terminal benefits accordingly. They should make the payment of arrears arising out of the above also.

6. This order shall be complied with within a period of 3 months from the date of communication of this order.

7. The applicant has claimed interest, thereon, at the rate of 12%. Since the calculation is not based on any deliberate mistake, but due to interpretation of Railway Board Letter, no interest is payable. However, if the implementation of this order is delayed beyond the stipulated period, the applicant shall be entitled to get interest at the rate of 9% from the expiry of 3 months stipulated

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8. Accordingly, the Original Application is allowed. No Costs.

(Dated this the 11th day of Aug, 2011)



(Dr.K.B.S Rajan)
Judicial Member

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