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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No.119/2013

Thursday, this the 8<sup>th</sup> day of October, 2015

**C O R A M :**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

M.Abdul Latheef  
S/o.M.Mohammed Moideen  
Gate Keeper/Southern Railway  
Kumbala  
Residing at Arrikady Kadavath  
P.O Kumbala, Kasaragod District

...Applicant

(By Advocate Mr.T.C.G Swamy)

**V e r s u s**

1. Union of India represented by the  
General Manager, Southern Railway  
Head Quarters Office, Park Town P.O  
Chennai – 600 003

2. The Sr.Divisional Personnel Officer  
Southern Railway, Palakkad Division  
Palakkad – 678 002

3. The Divisional Finance Manager  
Southern Railway, Palakkad Division  
Palakkad – 678 002

...Respondents

(By Advocate Mr.K.M.Anthru)

This Original Application having been heard on 8<sup>th</sup> October, 2015  
this Tribunal on the same day delivered the following :



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**ORDER (Oral)**

**HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER**

Applicant is a Gate Keeper working in the Civil Engineering Department of the respondent Railways in Palghat Division. He started his service as a Casual Labourer, who when retrenched, had approached this Tribunal with O.A No.786/2006 seeking absorption as Group D employee in preference to and on par with his juniors with all consequential benefits. The aforesaid O.A was allowed vide Annexure A-1 order dated 23.08.2007. The operative portion of Annexure A-1 order reads:-

"In the above facts and circumstance of the case, the O.A is allowed. The impugned Annexure A-6 letter dated 2.5.05 rejecting the request of the applicant to absorb him against the post of Trackman (Group D) is quashed and set aside. As the objections raised by the respondents for his absorption in the regular Group D establishment has already been rejected, I do not find any other reasons for not absorbing the applicant in the Group D service. The respondents are, therefore, directed to absorb the applicant as Group D employee at par with his juniors with all consequential benefits emanated therefrom except arrears of pay and allowances. The respondents shall necessarily issue orders absorbing him as a Group D employee within two months from the date of receipt of this order, failing which the applicant will be entitled to full pay and allowances attached the post from the expiry of the said date onwards. There is no order as to costs."

2. Applicant was offered regularisation as Group D as temporary Track Man vide Annexure R-1 order dated 03.04.2009. He joined the Railway as temporary Track Man on 11.4.2009. Grievance of the applicant in the present O.A is that he was not brought under the old pension scheme and that the respondents have started recovering amounts from his salary




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towards the contributory pension scheme which was brought into force from 01.01.2004. He states that by Annexure A-4 pay slip an amount of Rs.1593/- has been deducted from his salary towards the head "TIER-I". Applicant prays that in terms of Annexure A-2 order of this Tribunal his date of appointment is to be deemed as 19.08.2002 so that he would be covered under the Railway Services (Pension) Rules, 1993 - not under the new pension scheme which is applicable to those who were appointed after 01.01.2004.

3. Respondents resisted the Original Application contending that in obedience to Annexure A-1 order respondents have offered appointment to the applicant by Annexure R1 on 03.04.2009. According to them he joined the railway services only on 11.4.2009 and therefore, the applicant can not be treated as an employee to whom Railway Services (Pension) Rules 1993 is applicable. He can be considered only under the new pension scheme which was brought into force with effect from 01.01.2004.

4. Heard Mrs.Kala, learned counsel for applicant and Mr.K.M.Anthru, learned counsel for respondents. Perused the records.

5. At the out set of his arguments, Shri.K.M.Anthru, learned counsel for respondents submitted that though Annexure A-1 order was brought



under challenge by the respondents before the Hon'ble High Court of Kerala and also before the Apex Court both the Courts rejected the case of the respondents against Annexure A-1 order. Thus Annexure A-1 has attained finality and is only to be obeyed by the respondents in its letter and spirit. After his regularisation applicant had approached this Tribunal again with O.A 843/11, where also he had prayed for relief similar to the relief sought in this O.A. The relief sought in O.A 843/11 was :

- " 1. Declare that the applicant is entitled to be granted the pay band of Rs.5200-20200 plus GP Rs.1800/- in implementation of the recommendations of the VI Central Pay Commission and direct the respondents to grant the same, with all consequential arrears of pay and allowances arising therefrom.
2. Declare that the non-feasance on the part of the respondents to grant the applicant the benefit of absorption from the date of such absorption of the applicant's juniors in the list of retrenched casual labourers of Southern Railway, Palakkad Division, is arbitrary and discriminatory and direct the respondents accordingly.
3. Direct the respondents to grant the applicant the benefit of absorption from the date of such absorption of the applicant's juniors in the list of retrenched casual labourers, as directed in Annexure A-2 order of this Hon'ble Tribunal and direct further to grant all consequential benefits at par with such juniors, within a time limit as may be found just and proper by this Hon'ble Tribunal.
4. Declare that the applicant is entitled to the benefit of arrears of pay and allowances for the period from 1.11.2007 and direct the respondents to grant the same forthwith, with interest calculated at the rate of 9% per annum from the date from which such arrears fell due month after month.
5. Award costs of and incidental to this application.
6. Pass such other orders or directions as deemes just fit and necessary in the facts and circumstances of the case. "

6. In the order dated 24.07.2013 in O.A 843/11 it is noted that the learned counsel for applicants had submitted that prayer Nos.(1) to (3) are not pressed and that the only the last prayer ie. for payment of arrears from

01.11.2007 with interest alone was pressed. Accordingly O.A 843/11 was allowed to the extent directing that respondents shall work out the pay and allowances admissible to the applicant for the period from 01.11.2007 to 10.04.2011 though he was absorbed only with effect from 11.4.2009. The operative portion of the order in O.A 843/11 reads:

" 8. Thus, the Original Application is allowed to the extent the respondents shall work out the pay and allowances admissible to the applicant for the period from 01.11.2007 till 10.04.2009 as the applicant was absorbed w.e.f 11.04.2009.

9. This order shall be complied with, within a period of three months from the date of its communication. "

7. It is clear that the question as to from which date the applicant ought to have been absorbed for the purpose of pension was not adjudicated in O.A 843/11. It goes without saying that only if applicant was absorbed in the Group D service prior to 01.01.2004 he will get the benefit of the old pension scheme under the Railway Services (Pension) Rules, 1993

8. Applicant has produced Annexure A-2 memo issued by respondent railway fixing his pay. It reads :



## Memorandum

Sub: Fixation of pay Sri.M.Abdul Lathif/Track Man/MAQ  
 Ref: Orders of Hon'ble High Court of Keraa and Central Administrative  
 Tribunal, Ernakulam in O.A 786/06

As per the judgment of the Hon'ble Central Administrative Tribunal/Ernakulam in O.A 786/06 dt.23.08.07 filed by Sri.M.Abdul Lathif, Ex.CLR it was directed to absorb him as Group D employee at par with his juniors with all consequential benefits. Accordingly, his pay is fixed as under on par with his junior Sri.R.Jayachandran, Sr.Track Man in MAQ unit duly extending him the promotional benefits as Sr.Track Man on Sr.Track on proforma basis.

Existing pay of Sri.Abdul Lathif.M	Pay of Sri.Jayachandran/Junior in MAQ unit	Pay fixed on par with his junior in MAQ unit
5200+1800 11/04/09	2610 2610-3540 19/08/02	2610 2610-3540 19/08/02
5410+1800 01/07/10	2670 2610-3540 01/08/03	2670 2610-3540 01/08/03
5630+1800 01/07/11	2845 2650-4000 01/08/04	2845 2650-4000 01/08/04
	2910 2650-4000 01/08/05	2910 2650-4000 01/08/05
	5700+1800 5200-20200 +1800 01/01/06	5700+1800 5200-20200 +1800 01/01/06
	5930+1800 " 01/07/06	5930+1800 " 01/07/06
	6170+1800 " 01/07/07	6170+1800 " 01/07/07
	6410+1800 " 01/07/08	6410+1800 " 01/07/08
	6660+1800 " 01/07/09	6660+1800 " 01/07/09
	6920+1800 " 01/07/10	6920+1800 " 01/07/10
	7190+1800 " 01/07/11	7190+1800 " 01/07/11

Pay fixation from 19.08.02 to 10.04.09 on proforma basis. "

9. As per Annexure A-2 memo, applicant was absorbed as Group D at par with his junior with all consequential benefits emnated from. It was directed in Annexure A/1 order that if the railway issues orders absorbing

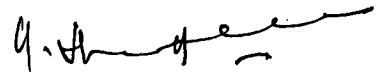
him as Group D beyond two months from the date of receipt of that order, the applicant would be entitled to full pay and allowances attached to the post from the expiry of the said date. Nevertheless, the question of arrears of pay is not a matter for consideration in this case.

10. Annexure A-2 memo reveals that the applicant was absorbed on par with his junior with effect from 19.08.2002. Therefore, by virtue of Annexure A-1 order the applicant is entitled to a notional extension of his date of regularisation retrospectively to the date on which his junior was regularised. Annexure A-2 reveals that 19.08.2002 is the date on which his junior Shri.Jayachandran was absorbed. Therefore, no doubt, applicant is entitled to be treated as having been regularised with effect from 19.08.2002, notionally. In the circumstance, as the applicant is deemed to have been absorbed in the railway service from 19.08.2002, he comes within the ambit of Railway Services (Pension) rules 1993.

11. In view of the above discussion, Annexure A-4 is hereby quashed and set aside. Respondents are directed to treat the applicant as having been regularised with effect from the date of regularisation of his junior Shri.Jayachandran i.e; from 19.8.2002. Hence, all the amounts recovered from the salary of the applicant towards the new contributory pension scheme shall be refunded to the applicant forthwith with a simple interest

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of 6% per annum from the date from which such amounts have been recovered. The Original Application is allowed to the extent as above. It is made clear that this order does not confer any right to the applicant for claiming arrears of pay for the period between the date of his notional absorption and the actual date of absorption.



**U.SARATHCHANDRAN**  
**JUDICIAL MEMBER**

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