

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 121 of 2006

Wednesday, this the 12th day of September, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

K. Ayyappan Achary.
S/o. Kumaravelu Asari,
Carpenter Grade I,
Office of Senior Section Engineer (Electrical Power),
Southern Railway, Thiruvananthapuram,
Residing at Thiruchandur Muruga Kadaksham,
Kattuvila, Peyad P.O., Thiruvananthapuram. ... **Applicant.**

(By Advocate Mr. P. Ramakrishnan)

v e r s u s

1. Union of India, represented by
The Secretary,
Ministry of Railway, New Delhi.
2. The Chief Personnel Officer,
Southern Railway Headquarters,
Chennai.
3. The Sub Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.
4. The Divisional Railway Manager,
Southern Railway, Thiruvananthapuram. ... **Respondents.**

(By Advocate Mr. Sunil Jose)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The brief facts which are not in debate would suffice to have a hang of this case. The applicant's seniority is maintained in the cadre of Post of Technician (Train Lighting) in Electrical Fitter HS III and on his passing the trade test he was promoted to that post as per office order dated 03-09-1988. He was again trade



tested for further promotion as HS II on his turn and was promoted to that post as per Office Order dated 16-10-1996. Again, on his having qualified in the trade test for further promotion in the grade of HS I, he was promoted as Technician I (Train Lighting) as per Annexure A-6 order dated 02-12-2005. Notwithstanding that the applicant's seniority has been maintained in the electrical Department, the fact is that the applicant right from the beginning (1984) had been functioning as Carpenter which admittedly is an ex-cadre post. On the revision of pay scale in the wake of the VI Pay Commission Recommendations, the applicant was placed in the scale of Rs 4,000 – 6000 available for Carpenter Gr.I w.e.f. 01-01-1996 and w.e.f. 15-06-1998 the scale was revised at Rs. 4,500 – 7,000 and he was placed in the stage of Rs 5,125/-. And, prior to the passing of the impugned order the applicant was working as Carpenter Grade I with the pay at Rs 6,125/-.

2. The grievance of the applicant is that his promotion order in the Electrical wing should have been one above the pay scale he has been now in receipt of and thus he should be placed in the post of Senior Technician in the pay scale of Rs 5,000 – 8000. according to the applicant, the recent restructuring is available even in respect of Carpenter wing and thus, the benefit thereof should be extended to him.

3. The respondents contend that the applicant's lien being only in the Electrical wing, any benefit available at the ex cadre post cannot be extended when he is repatriated to the parent cadre. According to the respondents, the restructuring is not applicable to the ex cadre post.

4. After exchange of counter and rejoinder, at the time of hearing, the

counsel for the applicant submitted that repatriation at this stage would mean a complete depletion in his pay package from Rs 6,125/- to Rs 5,000/- with attendant reduced allowance. Thus, though not placed in the scale of Rs 5,000 – 8,000 in the post of Senior Technician, even in the scale of Rs 4,500 – 7,000 in the post of Technician I (pay scale Rs 4,500 – 7,000) his pay drawn in the Carpentry wing should be protected.

5. The question is whether the applicant's claim that his pay drawn in the ex cadre post should be protected in his parent cadre.

6. Though the applicant had been periodically promoted in the Electrical wing, respectively in 1988, 1996 and 2005 on paper, actually his promotion as Carpenter is as under:-

As carpenter Grade III: 15-02-1983
As Carpenter Grade II: 01-01-1984
As Carpenter Grade I: 01-01-1996

7. Thus, his position in the Carpenter wing had all through been above that as available in the Electrical Wing especially in respect of Grade II and I, and the difference in the period works out to 12 years in Grade II and 9 years in Grade I. The applicant is under legitimate aspiration that his promotion would now only be above Grade I i.e. in the scale of Rs 5,000 – 8,000 whereas by the impugned orders, the applicant is not only retained in the same pay scale of Rs 4,500 – 7,000 in which he has been placed since 1998 onwards and to make the matters worse, he would not get even the pay protection.

8. This is not the first occasion that the Railways encounter such a claim. In the case of *Bhadei Rai v. Union of India*, (2005) 11 SCC 298 the Apex Court

has had the occasion to deal with an identical situation. The Apex Court held as under:-

"In the case of the present appellant, the aforesaid directions squarely apply. The appellant had to undergo a screening test in the year 1995 and in the result declared in 1997, the appellant had qualified. A long period of twenty years has been spent by the appellant on a higher post of Rigger in Group C post. In such circumstances, he is legitimately entitled to the relief of pay protection and consideration of his case for regular appointment to Group C post on the basis of his long service in Group C post.

9. In yet another decision, the Apex Court in the case of **Badri Prasad v. Union of India, (2005) 11 SCC 304**, held as under:-

11. It is not disputed that the appellants were made to work on the post of Storeman-cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments.

12. Reliance is placed on the decision of this Court in the case of Inder Pal Yadav v. Union of India. In that case, similarly placed railway employees, who were substantively holding Group D post but were made to work for long period on higher Group C were granted partial relief by making the following directions:

" 6 . However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.

7 . Additionally, while it is open to the Railway Administration to utilise the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as



the length of service rendered by the petitioners in the several projects subsequent to their regular appointment."

13. The practice adopted by the Railways of taking work from employees in Group D post on higher Group C post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the Railways is utilising for long periods the services of employees in Group D post for higher post in Group C carrying higher responsibilities, benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

14. As held by the High Court the appellants cannot be granted relief of regularising their services on the post of Storeman/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the project or construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on higher Group C post.

15. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in Group C post shall be protected even after their repatriation to Group D post in their parent department."

10. The above decision of the Apex Court goes to show that when an individual has been serving for a substantial period in a particular post, notwithstanding the fact that he has his lien elsewhere, in the event of his repatriation, his pay drawn in the other post has to be protected. Such a pay protection is available even if the individual is to go back from Group C to Group D post. If so, the applicant who is to be back only from Group C to Group C post only, he cannot be made worse than the other who goes back to one post lower. Thus, it is declared that the applicant is entitled to pay protection on his repatriation to Electrical Wing. Beyond this, however, the applicant is not entitled to any higher pay scale.

11. The OA is thus, partly allowed. The respondents, while placing the applicant in the pay scale of Rs 4,500 – 7,000 as Technician Grade I in the

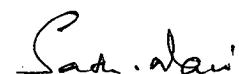
Electrical wing shall ensure that the applicant's last pay drawn as Carpenter Grade I is protected and his pay fixed accordingly.

12. Under the circumstances, there shall be no orders as to cost.

(Dated, the 12th September, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

CVR.