

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 136/08

This the 4th day of November, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

V. Ramachandran Nair Retd. Senior Loco Inspector
Southern Railway, Nagercoil Jn.
residing at Ramraj, H.No. 217,
SCT Nagar Pattom PO,
Trivandrum-1

.. Applicant

By Advocate Mr. TC Govindaswamy

Vs

- 1 Union of India rep. By the Secretary
to the Government of India
Ministry of Railways, Rail Bhavan
New Delhi.
- 2 Chief Personnel Officer
Southern Railway, Hqrs Office
Park Town PO, Chennai-3
- 3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-11
- 4 Divisional Railway Manager
Southern Railway,
Trivandrum Division
Trivandrum-11 ..Respondents.

By Advocate Mr. Thomas Mathew Nellimoottil for respondents

The Application having been heard on 12.10.2009, the Tribunal
delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Railway employee seeks stepping up of pay on par with his alleged junior Sri S. Seran w.e.f. 12.3.1997.

2 The applicant entered service on 1.7.1965, promoted to the running cadre and further as Goods Driver w.e.f. 29.9.89, Junior Fuel Inspector (Loco Running Supervisor cadre) w.e.f. 27.2.92 in the scale of Rs. 2000-3200. The Loco Running Supervisor cadre was later merged with various posts of Loco Running Supervisors along with the incumbents. The applicant was drawing a pay of Rs. 2180 as on 31.12.1995. Consequent on the implementation of the Vth CPC his pay was fixed at Rs. 6700. In the scale of Rs. 6500-10500 with next increment on 1.2.1996. Thus as on 1.3.1997 the applicant was drawing Rs. 7100. The applicant's juniors S/Sri S. Seran and V. Radhakrishnan (Annexure A-1) who were drawing less pay than the applicant in the lower cadre, were promoted to the cadre of Loco Running Supervisors on 12.3.1997 and 27.3.97 respectively. The pay of Shri V. Seran was fixed at Rs. 7500/- and that of V. Radhakrishnan was fixed at Rs. 8100/-. In the Annexure A-1 provisional seniority list the applicant is at Sl. No.11 whereas the above cited juniors are at Sl. Nos. 75 and 76. The applicant submitted several representations for stepping up of his pay on par with the juniors. The Railway Board issued Annexure A-6 order dated 20.7.2001. In the mean time, the applicant voluntarily retired from service w.e.f. 30.11.2001. Till now no decision is communicated to the applicant. Hence he filed this O.A. for stepping up of his pay on par with his junior Shri S. Seran w.e.f. 12.3.1997 with consequential revision of terminal benefits and arrears thereof with interest. According to the applicant, the anomaly has arisen as a consequence of inclusion of the element of running allowance - in the case of the applicant the running allowance was included before the pay revision whereas in the case of the junior it was granted after revision of pay.

TY

3 The respondents opposed the O.A. on non-impleadment of necessary and proper parties as the juniors were not impleaded in the O.A. On merits, they submitted that the applicant and the two alleged seniors are in different seniority units, hence stepping up is not possible. They submitted that the post of Loco Running Staff is a general post. According to Paragraph 219(i) of Indian Railway Establishment Manual Vol. I, general posts are to be filled up by calling for volunteers from various grades (Annexure R-2). The LRS has two grades viz. Rs. 2000-3200 (Revised Rs.6500-10500) and Rs. 2375-3500 (Revised Rs. 7450-11500). Both these grades were centrally controlled and seniority was maintained in Hqrs office upto 31.5.1994. A policy decision was taken to decentralise the initial grade from 1.6.1994. While decentralising the initial grade of Rs. 2000-3200 some posts were set apart for the Hqrs unit also to man the Central Control Office. The feeder category of the running staff cadre is being maintained in Divisions. The posts of LRS in Hqrs unit are filled up by calling volunteers from the eligible running staff working in the Divisions. S/Shri V. Radhakrishnan and S. Seran were selected to the cadre of LRS of Hqrs unit in September, 1996. Before joining the Hqrs unit Shri V. Radhakrishnan was working as Goods Driver in the scale of Rs. 1350-2200 and Shri Seran was working as Senior Goods Driver in the scale of Rs. 1600-2660. Thus, they were selected and appointed to the LRS cadre only after the decentralisation of the initial grade against the posts belonging to Hqrs Unit, their seniority in the LRS is maintained in Hqrs office whereas the seniority of the applicant is maintained in the Division. More over, the V. Radhakrishnan a Goods Driver in the scale of Rs. 1350-2200 was drawing more pay than the applicant. They submitted that the principle of senior and junior will not apply in the case of the applicant and S/ Shri V. Radhakrishnan and Seran as they were borne in different seniority lists. Therefore, they submitted that stepping up of pay is not permissible among them.

71

4 The applicant has filed rejoinder reiterating the averments in the O.A stating that the seniority is maintained on Zonal basis and promotions are ordered according to the availability of the vacancies in the zone and that decentralisation was only to the extent that there will not be any transfers outside the division.

5 The respondents filed additional reply statement reiterating their averments in the reply statement.

6 We have heard learned counsel for the parties and perused the records produced before us. During the argument, the learned counsel for the applicant submitted that the applicant is seeking stepping up of pay w.r.t. Shri S. Seran only.

7 The principle of stepping up of pay in Railways is contained in Rule 1316 of the Indian Railway Establishment Code Vol. I which also contains conditions which have to be followed while ordering stepping up of pay. Two of the conditions contained therein are :

(a) Both the senior and junior officers should belong to the same cadre and the posts in which they have been promoted on a regular basis should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

The aforesaid conditions were further explained as follows:

"If as a result of application of the proviso to and the exception below Rule 1313(FR 22) the pay of the junior is more than that of the senior in the lower post, there would be no question of stepping up the pay of the senior in the higher post. If despite the application of the proviso to and the exception below Rule 1313(FR-22) the junior's pay is less than that of the senior and on promotion the former's pay happens to be greater than the pay of the latter by virtue of the provisions of Rule 1316 (FR 22-c) stepping up will have to be done with reference to the actual pay drawn by the junior in the higher post."

TJ

From the above it is seen that for stepping up of pay both the senior and junior should belong to the same cadre in the lower as well as in the higher categories.

8 The applicant is admittedly working in the Trivandrum Division whereas Shri Seran is working in the Headquarters Unit. The respondents asserts that they are in two different cadres since de-centralisation of posts w.e.f. 1.6.94. The applicant has produced the provisional seniority list of LRS as on 1.6.2002. The respondents submitted that this list is prepared for further promotion to the higher grade of LRS of Rs 7450-11500. No other material is produced before us to show that both the applicant and Shri Seran are in one seniority list.

9 The respondents state that the post of LRS in grade Rs. 2000-3200(IV CPC) is a general post. As per Paragraph 219(i) of IREM Vol. 1 1989 edition, the general posts are to be filled up by calling Volunteers from various grades. Paragraph 219(i) is extracted below:

(i) For general posts i.e. Those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under:-

(i) All eligible staff irrespective of the department in which they maybe working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to a selection which should consist of both written test and viva voce test; and

(ii) The Selection Board should call for viva voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva voce test in accordance with the procedure for filling selection posts.

Df

The applicant had applied for the post of LRS when a call notice for selection was issued and he was selected. Therefore, it is not a promotion in the normal course.

10 From the provisional seniority list of Loco Running Supervisors Annexure (A-1) a comparative statement of the applicant vis-a-vis his alleged juniors is made below in a tabular form from the time they entered the grade of Diesel Assistant:.

Designation	V. Radhakrishnan Trichy Division	S. Seran Palghat Division	Applicant Trivandrum Division
Diesel Assistant	Rs. 290/- in scale 290-350 III CPC from 3.12.1985	Rs.950/- in scale Rs. 950-1500 (IV CPC from 1.6.87	Rs. 290/-in scale Rs. 290-350(III CPC from 26.1..85
Shunter (Promotion)	Rs. 1380/- in scale Rs. 1200-2040 (IV CPC from 5.8.1981)	-----	-----
Goods Driver	Rs. 1480/-in scale Rs. 1350-2200 (IV CPC from 25.6.92)	Rs. 1350/-in scale Rs. 1350-2200 (IV CPC from 5.8.92	Rs 1350/-in scale Rs. 1350-2200(IV CPC from 29.9.89
Goods Driver pay in V CPC	Rs. 5750 in scale Rs. 5000-8000 from 1.1.1996	Rs.5150 in scale Rs. 5000-8000 from 1.1.1996	-----
Sr. Goods Driver	-----	Rs. 5500/- in scale Rs. 5500-9000 from 28.11.96	-----
LRS	Rs. 7700/- in scale Rs. 6500-10500 from 27.3.97 (after decentralisation)	Rs. 7500/-in scale Rs. 6500-10500 from 12.3.97 (after de-centralisation)	RS. 2000/-in scale Rs. 2000-3200 (IV CPC) from 27.2.1992 and pay fixed at Rs. 6700/- in scale Rs. 6500-10500 from 1.1.1996 before decentralisation)

From the above tabulation, it is seen that the applicant was drawing pay in a higher scale on 1.1.1996. However, the respondents submitted that the applicant was directly promoted as Goods Driver from the grade of Diesel Assistant and then to LRS whereas Shri S. Seran was promoted to the post of Goods Driver and then to the post of Senior Goods Driver and later to the post of LRS. The cadre of LRS has two grade viz. Rs. 2000-3200 (IV CPC)/Rs. 6500-10500 (V CPC)being the initial grade and Rs. 2375-3500 (IV CPC)/Rs. 7450-1150 (V CPC)being the next higher grade. Both these grades were centrally controlled and seniority was maintained in Headquarters Office upto 31.5.1994. A policy decision to decentralise the initial grade in the cadre of LRS was taken w.e.f. 1.6.94and accordingly posts

74

of LRS in the scale of Rs. 2000-3200/Rs. 6500-10500 (V CPC) were set apart for each Division as per the letter dated 30.6.94 of the 2nd respondent. Further in view of the proposed decentralisation, the LRS in scale Rs. 2000-3200 who were available in the cadre at that time were also advised to submit option denoting the Division of their choice in which they prefer to work.

11 While de-centralising the initial grade of R. 2000-3200 in the LRS cadre, a few posts were set apart for the Headquarters Unit also in order to man the Central Control Office functioning in Headquarters. Since the feeder category of the running staff cadre is being maintained only in Divisions, where the trains are being operated and are not available in Headquarters unit, the recruitment to the LRS Rs. 6500-10500 grade by way of promotion is being done by calling for volunteers from eligible running staff working in all the Divisions and subjecting them to a process of selection through written test and viva voce.

12 S/Shri V. Radhakrishnan and S.Seran were selected to the cadre of LRS of Hqrs Unit in September, 1996 and they joined the said post in March, 1997. Therefore it is clear that they were selected to the LRS cadre only after the decentralisation of the initial grade w.e.f. 1.6.94 against the posts belonging to Hqrs unit, i.e. their seniority as LRS is maintained in Hqrs whereas the seniority of the applicant is maintained in Trivandrum Division. As such he cannot claim pay parity with them working in another seniority unit.

13 In all his representations A-3, A-4 and A-5 the applicant was seeking for stepping up of pay with respect to S/Shri V. Radhakrishnan and one K.V.Sundaresan on the ground that his juniors who were drawing less pay in the pre-revised scale were granted higher pay fixation. It is seen that the pay of LRS in Hqrs was stepped up on par with their junior. The

TJ.

grievance of the applicant was that Shri K.V. Sundaresan allegedly junior to the applicant, got his pay stepped up on par with his juniors but applicant's pay had not been stepped up correspondingly.

14 The applicant and Shri S.Seran are working in different divisions. Therefore, there is no senior junior relationship. It is seen that the applicant is the Trivandrum Division and Seran in the Hqrs. Central Control Office. Moreover, though both of them were in the Goods Driver cadre in the scale of pay of Rs. 1350—2200, the applicant was directly promoted to the cadre of LRS on 27.2.1992 before de-centralisation and revision of the pay scale, whereas Shri Seran's pay was revised to Rs. 5000-8000 in the cadre of Goods Driver, promoted to the cadre of Senior Goods Driver in the revised pay scale of Rs. 5500-9000 and then to the cadre of Loco Running Supervisor after selection to Hqrs and revision of the pay scales. It is also seen that de-centralisation of the cadres were effected w.e.f. 1.6.1994 and that the applicant was promoted before the de-centralisation whereas the alleged junior was promoted after de-centralisation.

15 One of the grounds raised by the applicant is that the anomaly in the pay has arisen because of the counting of the running allowance for the purpose of fixation of pay. The applicant having been promoted prior to revision of the pay scales and the junior having been promoted after the revision of pay, counting of 30% of revised running allowance of the alleged junior would have made his pay higher. This was rectified by the Railway Board by letter dated 23.7.2004 (Annexure A-6). The relevant portion is extracted below:

"It has come to the notice of the Board that staff appointed prior to 1.1.1996 as Loco Running Supervisors in the pre-revised pay scales, whose pay has been fixed in the replacement scales for Loco Running Supervisors under the RSRP Rules 1997 are drawing less pay than their juniors appointed to the Supervisory post after 1.1.1996. The anomaly has arisen due to the fact that the benefit of element of Running allowance granted at the time of promotion of running staff to a

ty

stationary post has been granted to the junior in the revised scale, whereas, the same benefit granted to the senior is of lesser value as the same has been calculated on pre-revised pay scale.

It has been decided that the anomaly be resolved by granting stepping up of pay to the seniors at par with the juniors in terms of Note 9 below Rule 7 of RSRP Rules, 1997

The benefit of stepping up of pay will be subject to the following conditions:-

- (a) The stepping up of pay will be allowed to running staff only appointed as Loco Supervisors in whose cases 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non-running staff of Mechanical Department appointed as Loco running supervisors as in their cases the question of pay element in the running allowance does not arise.
- b) If even in the lower post, revised or pre-revised, the junior was drawing more pay than the senior by virtue of advance increments granted to him or otherwise, stepping up will not be permissible
- © Stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged
- d) The next increment will be allowed, if due, on completion of the requisite qualifying service with effect from the date of refixation of pay."

Thus any anomaly in the pay fixation of a senior as a result of taking into account 30% of Running Allowance of the post held by the Running Staff for fixation of pay under the Revised Pay Rules, stepping up of pay of the senior is permissible subject to the conditions stipulated above. The applicant does not fulfill the conditions.

16 The respondents have relied on the judgment of the Supreme Court in Union of India and Others Vs. O.P. Saxena (CA.No. 8852 of 996 and other cases) in which it is held that for removal of anomaly in pay fixation, by stepping up of senior's pay with reference to junior's pay, one of the conditions laid down in departmental provisions was that the scales of pay of the lower and higher posts should be identical. The condition is not satisfied

ty

where the seniors were promoted from Driver Grade C to Loco Supervisor while Junior was promoted from Driver Grade-A to Loco Supervisor. The Supreme Court held:

"....Whereas the respondents were promoted as Loco Supervisors from Driver Grade-C, Shri Kareer on the other hand was placed in the cadre of Loco Supervisor after being promoted from the post of Driver Grade-A. When the feeder posts of Shri Kareer and that of the other respondents were different the applicability of the principle of stepping up cannot apply. The pay of Shri Kareer had to be fixed with reference to what he was last drawing as Driver Grade-A, a post which was never held by any of the respondents."

In the case on hand the applicant was promoted to the post of LRS from the post of Goods Driver in the grade of Rs. 1350-2200/Rs. 5000-8000 (V CPC), whereas the alleged junior Shri Seran was promoted from the post of Senior Goods Driver in the grade of Rs. 5500-9000. Therefore, the case of the applicant is covered by the above dictum laid down in the judgment of the Apex Court.

17 The applicant has relied on the judgment of the Apex Court in Gurcharan Singh Grewal and Another Vs. Punjab State Electricity Board and Others (2009) 1 SCC (L&S) 578) in support of their case. In that judgment the Apex Court held that senior cannot be paid less than his junior even if anomaly in senior's pay is due to difference of incremental benefits. Senior's pay therefore directed to be stepped up with reference to higher pay of junior. The case of the applicants in this O.A. is different from the issue raised in judgment relied on by them.

18 The applicant has produced Memorandum dated 26.3.1999 issued by Tiruchirappalli Division of the Southern Railway stepping up pay of S/Shri K.V. Sundaresan, Ramsingh and Thiagarajan on par with Sri V. Radhakrishnan (Annexure A-2) and argued that the applicant is eligible for stepping up of

74

pay. We notice that all the three referred to above are working in Tiruchirappalli Division. Therefore, there is no question of denial of stepping up of pay to the senior in the same cadre and division. In the case on hand, the applicant has not been able to show that he and the alleged juniors are working in the same cadre and that there is senior junior relationship. Hence, in the light of the extant rules on the subject, the applicant is not eligible for stepping up of on par with the alleged juniors.

19 In this view of the matter, we do not find any merit in the grounds raised by the applicant. The O.A. is accordingly dismissed. No costs.

Dated 4th November, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

Kmn