

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 14 of 1999

Thursday, this the 28th day of June, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Benny K. Varghese, S/o K.P. Varghese,
Diesel Assistant, Southern Railway,
Ernakulam Marshalling Yard
Permanent Address: Karumankottil House,
Allapra PO, Perumbavoor.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO, Madras-3

2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town PO, Madras-3

3. The Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.

4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14Respondents

[By Advocate Mrs. Sumathi Dandapani]

The application having been heard on 28-6-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:-

"(a) Declare that the non-feasance on the part of
the respondents to implement the recom-
mendations of the Fifth Pay Commission in full
as regards the applicant is highly arbitrary,
discriminatory and unconstitutional.

(b) Declare that the applicant is entitled to have
his pay fixed at the stage of Rs.3875/- on and
with effect from 1.1.96 on par with his junior
Shri. C.Harikumar and direct the respondents
to grant the consequential benefits thereof.

- (c) Direct the respondents to accept the applicant's option exercised in terms of Annexure A4 and fix his pay upon promotion at the stage of Rs.4000/- on and with effect from 27.11.96 and at the stage of Rs.4100/- on and with effect from 1.1.97 in the scale of pay of Rs.4000-6000 and to grant the consequential benefits thereof.
- (d) Direct the respondents to protect the pay of Rs.4100/-, otherwise due to the applicant as on 10.7.96, upon his transfer and appointment in the Trivandrum Division of Southern Railway in terms of Rule 1313(a)(2) and (3) of the Indian Railway Establishment Code, Volume-II, and as decided by this Hon'ble Tribunal in Annexure A5 and related cases and to grant the consequential benefits thereof.
- (e) Direct the respondents to grant and pay forthwith the arrears of pay and allowances including mileage allowance and average mileage allowance, due to the applicant consequent upon the implementation of the recommendations of the Fifth Pay Commission.
- (f) Award costs of and incidental to this Application.
- (g) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. During the course of argument, the learned counsel appearing for the applicant submitted that prayer (b) has become infructuous in the light of the issuance of R-I. It was further submitted that in the light of what is contained in paragraph 7 of the reply statement, prayer (e) is partly granted.

3. Still further it was submitted by the learned counsel for the applicant that respondents have implemented the recommendations of the Fifth Pay Commission in full as far as the applicant is concerned. That being so, prayer (a) has become infructuous now. What remains is only prayers (c),(d) and (e) in part.

4. On going through the pleadings and after hearing both sides, we feel that certain factual aspects are to be gone into by the department in deciding these questions. The applicant

has submitted A4 representation to the 3rd respondent. There is no dispute that there was no reply given to the applicant with regard to A4, though the grievances projected in A4 to some extent have been redressed. That being the position, in the first instance as factual aspects are to be considered by the administration, the administration is to be directed to consider A4 representation with regard to the remaining grievances of the applicant and pass appropriate orders in accordance with law.

5. Accordingly, the 3rd respondent is directed to consider A4 representation of the applicant dated 16-8-1998 in respect of the applicant's remaining grievances and pass appropriate orders within a period of three months from the date of receipt of a copy of this order, in accordance with the rules and instructions on the subject and also in the light of the decisions of the Tribunal and Courts having bearing on the subject.

6. The Original Application is disposed of as above. No costs.

Thursday, this the 28th day of June, 2001



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A4 True copy of the representation dated 16-8-98 submitted by the applicant to the third respondent.
2. A5 True copy of judgement in OA 403/97 dated 15-12-97 passed by this Tribunal.
3. R-I True copy of Memorandum No.V/P.524/VI/VPC/RG dt. 7-4-99 of Senior Divisional Personnel Officer, Southern Railway, Trivandrum.