

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 146 OF 2011

Friday, this the ^{11th day of November, 2011}

CORAM:

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

N.P Nair
S/o Narayanan
(Retd. JE/I/PW/ADEN/RE/ERS)
Residing at "Revathy", Kuttamperoor P.O
Alapuzha, Kerala – 689 623 - **Applicant**
(By Advocate Mr.M.P Varkey)

Versus

1	Union of India represented by General Manager, North Central Railway GM Office Complex, Subedar Ganj Allahabad – 211 033	
2	General Manager Railway Electrification Project Civil Lines, Allahabad	
3	Chief Project Manager Railway Electrification Egmore, Chennai – 600 008	
4.	Senior Divisional Finance Manager North Central Railway Jhansi Division, Jhansi – 246 442	
5.	Divisional Railway Manager (P) North Central Railway Jhansi Division, Jhansi – 246442	- Respondents

(By Advocate Ms.Sumathi Dandapani.Sr and Mr.K.M Anthru)

The application having been heard on 03.11.2011, the Tribunal

on 11.11.2011 delivered the following:

ORDER

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant has filed this Original Application seeking the following relief:-

“ (a) Declare that Annexure A-2 PPO and Annexure A-3 Settlement Advice are illegal, arbitrary, without jurisdiction and opposed to the principles of natural justice and; set aside the same.

(b) Declare that the applicant is entitled to have his last pay reckoned as Rs.16560 + 4200 (GP) = 20760 as on 01.07.2008/31.08.2008 in pay band Rs.9300 – 34800 + 4200 (GP); to have his pensionary benefits computed on that basis by issuing revised PPO and Settlement Advice; and direct the respondents accordingly.

(c) Declare that the applicant is entitled to arrears of pension from 01.09.2008; to get Rs.408059 as difference in commutation, Rs.397353 as difference in DCRG and Rs.83463 as balance of 6 Pay Commission arrears with 9% interest and; direct the respondents accordingly.

(d) Declare that the applicant is entitled to be considered for notional promotion on par with his erstwhile juniors in Jhansi Division or for ACP/MACP benefits with consequential increase in emoluments and pensionary benefits and; direct the respondents accordingly. ”

2. The applicant who was appointed in Jhansi Division of Central Railway in 1970 was transferred to Railway Electrification Project in 1980 at his request. He retired from the said project on 31.08.2008 while holding the post of JE/I/PW/ADEN office/Railway Electrification at Ernakulam Junction on a basic pay of Rs.8475 in the pay scale of Rs.5500-9000 (pre-revised). As

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his pensionary benefits were not settled, he filed O.A 81/09 before this Tribunal. During the pendency of the said O.A. the 3rd respondent herein arranged refund of ground Insurance and PF amounts, last pay, and encashment of leave and 1st instalment of 6th Pay Commission arrears. This Tribunal in its order dated 21.07.2009, directed the respondents to arrange payment of the remaining dues within three months (Annexure A-1). Consequently the pension payment order dated 28.08.2009 was issued by the fourth respondent (Annexure A-2). The applicant avers that he finds many deficiencies in his settlement dues. Therefore, he submitted Annexure A-5 representation dated 27.02.2010 to the 5th respondent. He had pointed out in his representation that his retirement benefits were computed on a lower pay and lower grade than his actual pay and grade, resulting in a loss of nearly two lakhs rupees. Since Annexure A-5 did not elicit any action on the part of the respondents, he has filed this Original Application. He avers that he is entitled to the pensionary benefits as noted below:-

Pension 50% of last pay of Rs.20760/- =	Rs. 10380/-
Reduced family pension 30% " =	Rs. 6228/-
Commutation (40% of pension) =	Rs. 4152/-
Commutation value (8.19 x12x4152) =	Rs.408059/-
DCRG (last pay + 16% DA=24082x16.5)=	Rs.397353/-
Encashment of leave 24082 x 10 =	Rs.240820/-
6 th Pay Commission arrears	Rs.139105/-

3. The respondents have contraverted his contentions and filed a



detailed reply statement. They submitted that the applicant was posted/promoted in Railway Electrification Project purely on adhoc basis to the post of Junior Engineer-I in Gr.Rs.5500-9000 (Pre-revised) and hence applicant was paid the admissible retiral benefits as per his substantive pay (Annexure R-1). They added that the applicant slept over his claim for years together during his service in the Railway Electrification Organisation. Regarding ACP benefits they stated that the applicant has been granted two promotions i.e, first in the post of Junior Clerk in 1978 and second in the post of PWM in 1979 and hence he is not entitled for such benefits. The benefits of MACP also will not be admissible as the scheme came only on 01.09.2008 whereas the applicant retired on 31.08.2008. The applicant has filed rejoinder with copies of the order passed in O.A 488/2002 and 450/2003. In both O.As supra, it was held that the applicant is eligible for the actual pay drawn in the ex-cadre post from where he retired. He also filed M.A 872/11 with a prayer to accept documents M.A 1 & II which are true copies of the letter issued by DS(P) Jhansi and the seniority list of JE-I(P.Way) Gr. in the pay scale of Rs.5500-9000 of Jhansi Division.

4. Heard the counsel for the parties and perused the documents. It is an undisputed fact that the applicant held ex-cadre post in the Railway Electrification Project from 1980 to 2008. He retired as Junion Engineer and he drew a basic pay of Rs.8475 in the pay scale of Rs.5500-9000 at the time of his super annuation on 31.08.2008. The respondents have submitted that his emoluments were reckoned for calculation of pension and other retiral benefits based on Annexure R-2. According to this letter dated 19.08.2010

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from the Railway Board the practice of computing the basic pay drawn by the officials on account of grant of higher grade posts/increments on adhoc basis than the amount of basic pay that would have been admissible had they been holding their cadre posts is not permissible.

5. The counsel for the applicant brought to my notice an order dated 11.08.2011 in O.A 69/11 of this Tribunal wherein para 3 shows that the above order of the Railway Board stands withdrawn in accordance with the Railway Board order RBE 85/2011 dated 09.06.2011. In view of that the direction given by this Tribunal in its order dated 17.05.2005 in O.A 488/02 holds the ground. The relevant paras are extracted below:-

“ 5. The learned counsel for the respondents argued that since staff employed in the executive offices of Construction Organisation are granted only adhoc promotion it becomes necessary to fix their pay on regular basis when they get regular promotion in the cadre. This is also part of the same misreading of rules. To clarify matters let us look at the operative rule itself.

“ Notwithstanding anything contained in this rule, when a Railway servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment. ”

This rule clearly specifies that when a person holding an ex-cadre post gets his regular promotion in the cadre, his cadre pay would be fixed with reference to the presumptive pay in the cadre and not with reference to his ex-cadre pay. “ ”

6. The applicant has produced Annexure M.A 1 letter showing

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appointment of the applicant as Gangman in Jhansi Division. His name figures at serial No.3. Serial No.8 is his junior Mr.Motilal Raikwar. Annexure M.A 2 is the seniority list dated 10.07.2007 of JE-I (P.Way) in the pay scale of Rs.5500-9000 . It is seen that at Serial No.23 is his junior Mr.Motilal Raikwar is shown as working in the cadre of JE. Therefore, the applicant might have been granted proforma promotion in Jhansi division when his junior Mr.Motilal Raikwar was promoted as JE in 2003. Therefore the respondent's statement that the applicant was promoted only on adhoc basis in the project and drawn the pay of JE only in that capacity. This averment is not tenable, since his junior was promoted in the applicant's parent cadre and had he reverted back to his parent cadre he would have been promoted on regular basis. Hence the applicant is entitled for pensionary benefits due to him as JE.

7. In the result I allow the Original Application following the decision taken in O.A 488/02. Respondents are directed to re-fix his pay in his eligible pay band as recommended by the 6th Central Pay Commission and issue the revised PPO. He shall also be paid all the difference arising from such refixation of his pay, pension, family pension, commuted value of pension, DCRG, encashment of leave and 6th CPC arrears. This may be done at the earliest at any rate within three months from the date of receipt of this order. No Cost .


 (K. NOORJEHAN)
 ADMINISTRATIVE MEMBER

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