

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 15 of 2004

*Wednesday*, this the 4<sup>th</sup> day of July, 2007

**C O R A M :**

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

Fernandez Nicholas,  
S/o. T.J. Fernandez,  
(Retired Station Master/III, Kandanur Pudukkottai,  
Southern Railway, Thiruchirappalli Division),  
Residing at : Mallikaparambu, Palace Road,  
Thangasseri, Kollam : 7

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by the  
Secretary to Ministry of Railways,  
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager,  
Southern Railways, Headquarters Office,  
Chennai.
3. The Senior Divisional Personnel Officer,  
Southern Railway, Thiruchirappalli Division,  
Thiruchirappalli.
4. The Senior Divisional Accounts Officer,  
Southern Railway, Thiruchirappalli Division,  
Thiruchirappalli.
5. The Chief Personnel Officer,  
Southern Railways, Headquarters Office,  
Chennai.
6. The Senior Divisional Operations Manager,  
Southern Railway, Thiruchirappalli Division,  
Thiruchirappalli.

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)



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

The applicant while in service as Assistant Station Master, was meted with a penalty of removal from service in a disciplinary proceeding and when he filed review application after exhausting the intermediate appeal remedy, the review was no doubt dismissed but the General Manager had on compassionate basis reappointed the applicant as a fresh entrant as ASM. The order of the G.M. exhibited the pay scale also as Rs 425 - 640, whereas while reappointing the applicant in November, 1984, the applicant was appointed in the scale of pay of Rs 130 - 560 with pay of Rs 530/-. In 1990 the applicant raised the said issue of his appointment not in conformity with the order passed by the G.M. and thereafter, in 2004 and the applicant through this OA claimed the following reliefs:-

- (a) Call for the records leading to the issue of Annexure A-3 and A-4 and quash the same to the extent it treats the applicant's reinstatement as "fresh entrant" and reinstates him in the scale of pay of Rs. 330-560 instead of Rs. 425-640.
- (b) Call for the records leading to issue of Annexure A-13 and quash the same to the extent it grants the applicant's pension on a total qualifying service of only 16 years and 6 months as against 33 years.
- (c) Call for the records leading to issue of Annexure A-14 and quash the same to the extent it reckons only 16 years 8 months and 16 days as qualifying service for pension and other retirement benefits.
- (d) Declare that the reinstatement of the applicant in scale Rs. 330-560 as against the scale of pay of Rs. 425-640 as ordered in Annexure A3/A4 is arbitrary, discriminatory and unconstitutional and direct the respondents to deem the applicant to have been

reinstated in scale Rs. 425-640 and direct further to grant all consequential benefits flowing therefrom including arrears of pay and allowances.

(e) Declare that the applicant is entitled to reckon 33 years of qualifying service for pension and other retirement benefits duly taking into account the service rendered by him prior to reinstatement and direct the respondents accordingly.

(f) Direct the respondents to revise the applicant's pay, allowances, pension, other retirement benefits etc., based on the declaration in para (d) & (e) above and to grant the consequential benefits forthwith.

2. For proper appreciation of the case, the facts as contained in the OA are as under:-

(a) The applicant is a retired Station Master of Tiruchirappalli Division, Southern Railway. While working as Station Master-II in Kundanur-Puthuvayal Railway Station, he retired from service on superannuation on 31.12.2002.

(b) The applicant was initially appointed as an Assistant Station Master on 19.11.1963. On an allegation of misconduct, he was removed from service by the Senior Divisional Operating Superintendent in terms of order dated 11.06.1982 (Annexure A/1). Appeal filed by the applicant was rejected, which fact was communicated as per letter dated 23.09.1982 (Annexure A/2). Applicant approached the Madras Bench of the Tribunal in TAK 372/85 praying for his reinstatement. Meantime, the applicant had also submitted a review petition to the General Manager. Considering the review petition, the General Manager was pleased to modify the penalty to one of reinstatement as a fresh entrant on the same pay scale which the applicant was drawing in scale Rs. 425-640 vide order dated 30.10.1984 (Annexure A/3).

Instead of reinstating the applicant in scale Rs. 425-640, the applicant was reinstated only in the scale of pay of Rs. 330-560 on 29.11.1984. Order dated 20.12.1984 (Annexure A/4) was issued by the Senior Divisional Operating Superintendent, Tiruchirappalli, reinstating the applicant. In the light of the revisional order, TAK 372/85 was closed by the Tribunal vide Annexure A/5 order dated 12.06.1987.

(c) Applicant submitted series of representations. One of the applicant's representations dated 08.01.1990 was responded to by letter dated 04.04.90. Applicant continued to submit various representations. Applicant retired from service on superannuation on 31.12.2002. Upon retirement, he was granted only a reduced pension (vide Annexure A/13 P.P.O) and other retirement benefits reckoning his qualifying service of only 16 years 8 months and 16 days against the actual service of over 37 years.

3. Respondents contested the OA and their main stand is as under:-

(a) Applicant was appointed into service as a fresh entrant from 30.10.1984 and during the tenure of service, he was, after such new appointment, promoted as Station Master Grade III in scale Rs. 425-640 with effect from 30.06.1986 and further promoted as Station Master Grade II in scale Rs. 5500-9000 with effect from 28.02.2001. The General Manager has ordered reemployment of the applicant as fresh entrant not by invoking any rule provisions contained in the Railway Servants (Discipline and Appeal) Rules, 1968, but by invoking provisions contained in Rule 402 (Chapter 4) of Indian Railway Establishment Code Volume I (RI in short). Therefore, applicant's claim for counting his past services as one of qualifying services for the purpose of extending the benefit of retirement is not tenable.

4. Rejoinder and additional reply statements have also been filed reiterating

the respective stand as contained in the OA and reply.


5. Counsel for the applicant argued that the reinstatement back in service would enable the applicant the benefit of his past services and as such, his entire period of service should have been taken into account for working out the penalty proceedings. Again, the counsel contended that the initial fixation of pay scale is not in conformity with the order passed by the respondents. The counsel argued that the order of the G.M. is as per the provisions of Rule 2044, 2434 of the IREC and also as per the provisions of Personnel Branch Circular No. 124/99.

6. Counsel for the respondents argued that the fixation was in order since the re-appointment was not in the nature of allowing review application but as on compassionate grounds, coming under the provisions of Rule 153 and 402 of IREC.

7. Arguments were heard and documents perused. The original records were also perused. The Reviewing authority had clearly dismissed the review petition. However, in the very same order, fresh appointment was ordered. The said order dated 22-10-1984 reads as under:-

*"While the Review Petition is rejected for the reasons already recorded, purely on humanitarian ground and considering the plight of the family, I have decided that the petitioner be re-appointed as a new entrant in Grade Rs 425-640, his pay being fixed at Rs 560/- the last pay drawn by him when he was removed from service."*

8. The records further reflect the following:-

 (a) On 30-10-1984, the Asst. Personnel Officer/Traffic passed the following order:-

" I am directed to advise you that the G.M. Has in terms of Rule 25 of Railway Servants (Discipline and Appeal) Rules, 1968, considered your review petition quoted above and other connected records and rejected the same observing that you were correctly dealt with for your misconduct and indiscipline following correctly the prescribed procedure under DAR and that on merits of the case, he does not find any ground to interfere with the punishment already imposed on you.

2. However, purely on humanitarian grounds and considering the plight of your family, the G.M. Has passed orders that you be re-appointed as ASM **AS A FRESH ENTRANT** on the same pay which you were drawing prior to the date of your removal from service in scale Rs. 425-640.

3. You are to report to the DRM/TPJ Immediately for necessary further posting orders."

(b) The service book contains the following entries for the period between March 1982 to July, 1986:-

"11-03-1982: Annual Increment from Rs 530/- to 545/- in scale of Rs 425 - 640 normally due on 1-1-1983 is withheld for 18 months (NR) for the following charge:-

*"In spite of the clear warning he was resorted to boycott of control phone with view to disrupt train services while he was on duty on 10-04-1981 at PO. Thus he contravened the provisions of Rule 3-1(ii) and (iii) of the R.S. (Conduct) Rules, 1966."*

This will not have the effect of postponing the future increment.

11-06-1982 : Removed from service of this administration with effect from the afternoon of 15.06.82 for the following charge:

*"For, refused to take delivery of uniforms supplied to him for 1981-82. He was booked to office to check up with regard to any problems in acceptance. He did not turn up in uniform on 13.1.82. He was adamant in giving size and accepting correct sized uniforms. He insisted that he should be given cash in lieu of uniforms. He was told that as per extant orders, no such provision exists. Thus, he contravened Rule 3(I), (II) & (III) of R.S. (Conduct) Rules, 1966."*

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30-10-1984: The G.M. has in terms of Rule 25 of Railway Servants (Discipline and Appeal) Rules, 1968, considered his review petition and other connected records and rejected the same observing that he was correctly dealt with for his misconduct and indiscipline following correctly the prescribed procedure under DAR and that on merits of the case, he does not find any ground to interfere with the punishment already imposed on him.

2. However, purely on humanitarian grounds and considering the plight of his family, the G.M. has passed orders to re-appoint as ASM **AS A FRESH ENTRANT** on the same pay which he was drawing prior to the date of his removal from service in scale Rs. 425-640.

26-12-84: Attended R/C from 29.11.84 for Sms/ASMs in Batch No. 600 and passed on 21.12.84. Pay Rs. 530/-, Scale Rs. 330-560, from 29.11.84.

28-07-86: Promoted as SM/Ayl in scale Rs. 425-640 on being found suitable by a J.A. Grade."

9. Now the rule position as relied upon by the respective parties is as under:-

(a) Rules relied upon by the applicant :

(i) **Rule 2044 (IREC Vol. II - 1971 Edn.)**

**2044. (F.R.54).-** (1) When a Railway servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be,

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of the opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the railway servant shall subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

**(ii) Rule 2434 (IREC Vol. II - 1971 Edn.):**

**2434 (C.S.R. 419).-** (a) An officer who is dismissed, removed or compulsory retired from public service, but is reinstated on appeal or revision, is entitled to count his past service.

(b) The period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement and the period of suspension (if any) shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement.

**(iii) RBE No. 123/99 P.B. Circular No. 124/99**

*Offer of reappointment to dismissed-removed employees on consideration of their appeal / revision - regarding.*

Copy of Board's letter No. E(D&A)/99/RG6-6 dated 3<sup>rd</sup> June, 1999 on the subject cited is appended.

It has been observed in many cases that the Appellate/Revising Authorities on Railways have ordered reappointment as a fresh entrant of dismissed/removed employees, on consideration of their appeal/revision petition. It is advised that such a practice, wherever in vogue, should be discontinued forthwith.

It is clarified that the Appellate/Revising Authorities can only confirm, set aside or modify a penalty on consideration of an appeal/revision and that authority cannot order reappointment of the dismissed/removed employee while disposing of the appeal/revision petition.

If the Appellate/Revising authority, on consideration of an appeal/revision petition of a dismissed/removed Railway employee, is of the view that the reinstatement of the appellant/petitioner in Railway service (with or without a lesser penalty) is not warranted but that there is a case for offering him reappointment in Railway service as a fresh entrant, the proper course for the Appellate/Revising Authority

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would be to reject the appeal/revision petition and communicate its orders in regard to the appellant/petitioner. Thereafter, the question of reappointment as a fresh entrant should be examined subject to the provisions contained in Rule 402-RI. The action of ordering reappointment, if need be, should thus be independent of the orders passed on the appeal/revision petition. The above position may be impressed upon the concerned authorities on your Railways for compliance.

**(b) Rules relied upon by the Respondent :**

**(i) Rule 153: (I.R.E.C Vol.I - 1971 Edn.) :** No person who has been dismissed from Government service or convicted of a criminal offence shall be re-employed or employed, without the sanction of the President, or, if the employment or re-employment is to be non-gazetted post, without the sanction of the General Manager.

**Note.-** If a Railway Servant who is dismissed, removed or compulsorily retired from service, is to be re-employed by an authority vested with such powers either under this rule or delegations made thereunder, this should not be done without the specific approval of the authorities indicated below:

- |   |   |
|---|---|
| (a) In cases where no appeal was preferred or no review was done;   | The authority next higher than the authority who had dismissed, removed or compulsorily retired him from service. |
| (b) In cases where an appeal was preferred or review was Done and the action of dismissal, removal or compulsory retirement from service was upheld on appeal/review. | The authority higher than the Appellate/Reviewing authority.  |

**(ii) Rule 402 (I.R.E.C. Vol.I - 1971 Edn.) :** (1) The amount of a compensatory allowance shall be so regulated that, on the whole, it is not a source of profit to the recipient.

(2) ..... "

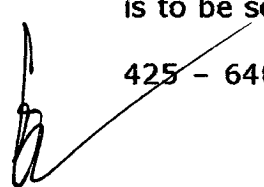
10. From the recital of the order dated 22-10-1984 of the G.M. as extracted above, it is in unequivocal term that the G.M. has stated that the review was rejected. Thus, the orders relied upon by the applicant cannot be pressed into

service.

11. The character of the re-appointment, is, therefore, on the basis of the powers vested with the G.M. vide provisions of Rule 153 of IREC read with 402 extracted above.

12. One paragraph of 129/99 deals with the fact that Independent of the review order there could be an order by the G.M. relating to the Re-appointment. In the instant case, of course, it was in the same order that the review application was rejected and re-appointment as a fresh entrant ordered. This however, does not change the character of the order of re-appointment. Though in the same order, the order of reinstatement is indeed independent of rejection of review petition. Just because the two orders are passed in the same communication, the same cannot be attempted to be encashed by the applicant as if it is the order under review power. As a matter of fact, even as per the circular reproduced at para 9(a) (iii), the action of ordering reappointment, if need be only should be independent. Under these circumstances, there is no question of past services being counted.

13. The applicant claims that the G.M. having ordered reinstatement as A.S.M. a fresh entrant in the scale of pay of Rs 425 - 640, the applicant ought to have been placed in that scale and not Rs 330 - 560/. The order no doubt provided the above pay scale of Rs 425 - 640 and that the pay to be fixed would be Rs 560/-, being the last pay drawn by the applicant before imposition of the penalty. While considering the claim of the applicant in this regard, what is to be seen is - (a) whether there is direct recruitment in the pay scale of Rs 425 - 640/- and that (b) whether the applicant was really drawing pay of Rs



560/- before he was removed from service. Direct Recruitment is available only in Rs. 330-560 grade. Again, since the applicant was sent on training, which he attended as a fresh attendant, the intention of the G.M. is only to re-appoint the applicant at the entrant stage for which training is a must. Further, the reappointment could be only against a direct recruit vacancy in the grade of ASM carrying a pay scale of Rs 330 - 560 and not a promotional post carrying pay scale of Rs 425 - 640/-. Keeping in view the above, it can be safely said that the reappointment of the applicant was only in the grade of Rs 330 - 560 and in so far as fixation of pay is concerned, again, the G.M. wanted to fix the pay of the applicant only in that pay which the applicant had been drawing prior to his removal from service. And, from the entries in the Service Book, as extracted above, it was only Rs 530/- and not 560/- as, the applicant at the time when the order of removal from service was passed was already undergoing a currency of penalty of withholding of increment for 18 months (NR). Thus, by order dated 30<sup>th</sup> October, 1984, the error of the authorities had stood rectified. To sum up, the earlier service cannot be counted as penalty of removal stood, which forfeits past service. As regards fresh appointment, it was in Rs. 330-560 scale with Rs. 530/- as initial pay.

14. In view of the above, there is no merit in the claim of the applicant either for counting the services prior to reappointment or for placement in the scale of Rs 425 - 640/-. The OA is thus, devoid of merits and is dismissed. No costs.

(Dated, the 4<sup>th</sup> July, 2007)



**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**