

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 164 of 2000

Wednesday, this the 6th day of March, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.T. Ahamed Kabir,
S/o Thampikannu,
working as Station Master Grade II,
Piravam Road Railway Station,
residing at Railway Quarters No.3/B,
Piravam Road Railway Station,
Mavelloor Post, Kottayam (District)Applicant

[By Advocate Mr. M.P. Varkey]

Versus

1. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum - 695 014
2. Southern Railway represented by
General Manager, Southern Railway,
Chennai - 600 003
3. Union of India, represented by Chairman,
Railway Board, Ministry of Railways,
Government of India, New Delhi.Respondents

[By Advocate Mrs Sumathi Dandapani]

The application having been heard on 6-3-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant, aggrieved by A1 memo dated 22-1-1998
issued by the 1st respondent by which his pay in the revised pay
scale has been fixed from 1-1-1996, A3 - Rule 7 of Railway
Services (Revised Pay) Rules, 1997 with the Notes thereunder
issued by the 3rd respondent and A4 - Fifth Pay Commission Ready
Reckoner, Southern Railway, Chennai, 1997 for scale



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Rs.1600-50-2300-60-2660/5500-175-9000 issued by the 2nd respondent, has filed this Original Application seeking the following reliefs:-

- "a) Set aside Annexure A-1 memorandum in so far as it fixed the pay of the applicant at Rs.2200/6725 in scale Rs.1600-2660/Rs.5500-9000 from 1-1-1996, which is less than the pay of Rs.2200/6800 each fixed in scale Rs.1400-2300/Rs.5000-8000 from 1-1-96 in favour of P.P.Varghese and K.P.Punnoose;
- b) Strike down Rule 7 and Notes thereunder of the Railway Services (Revised Pay) Rules, 1997 at Annexure A-3 in so far as they resulted in the pay of the applicant being fixed at Rs.2200/6725 in scale Rs.1600-2660/5500-9000 while the pay of those in the lower grade being fixed at Rs.2200/6800 in scale Rs.1400-2300/5000-8000 with effect from 1-1-96 and; in so far as they do not provide for stepping up the pay of the applicant to the next higher stage of Rs.6900 to overcome such discrimination;
- c) Strike down Annexure A-4 Ready Reckoner for scale Rs.1600-50-2300-60-2660/Rs.5500-175-9000;
- d) Declare that Annexure A-1 Memorandum, A-3 Rules/Notes and A-4 Ready Reckoner are illegal, discriminatory and unconstitutional to the extent they are assailed above; that the applicant is entitled to have his pay fixed at not less than Rs.6900 in scale Rs.5500-175-9000 from 1-1-1996 and; direct the respondents accordingly;
- e) Pass such other orders or directions as deemed fit, just and necessary in the facts and circumstances of the case."

2. The applicant was working as Station Master Grade-II in the scale of Rs.1600-50-2300-60-2660 (pre-revised) with a basic pay of Rs.2200 as on 1-1-1996. On the basis of the Railway Services (Revised Pay) Rules, 1997 published under notification No.PC.V/97/1/RSRP/1 dated 8-10-1997 issued by the 3rd respondent, the Vth Central Pay Commission scales were implemented with effect from 1-1-1996. According to the applicant, Station Masters in the two higher grades were assigned the standard replacement scales and Station Masters in



the three lower grades were assigned better replacement scales than the standard replacement scales with effect from 1-1-1996 as below:-

Designation	Pre-revised scale	Standard replacement scale	Scales assigned from 1-1-1996
Station Superintendent	Rs.2375-3500	Rs.7450-225-11500	Rs.7450-225-11500
Station Master Grade-I	Rs.2000-3200	Rs.6500-200-10500	Rs.6500-200-10500
Station Master Grade-II	Rs.1600-2660	Rs.5000-150-8000	Rs.5500-175-9000
Station Master Grade-III	Rs.1400-2300	Rs.4500-125-7000	Rs.5000-150-8000
Assistant Station Master	Rs.1200-2040	Rs.4000-100-6000	Rs.4500-125-7000

3. As per A1 memo, the applicant who was drawing a pay of Rs.2200/- in the pre-revised scale of Rs.1600-2660 was fixed at Rs.6725/- in the revised scale of Rs.5500-175-9000 with effect from 1-1-1996. Employees at serial numbers 83 and 104, S/Shri P.P.Varghese and K.P.Punnoose appearing in the said memorandum, who were in the lower pre-revised scale of Rs.1400-2300 with a basic pay of Rs.2200 each were fixed at a pay of Rs.6800/- each in the lower revised scale of Rs.5000-150-8000 from 1-1-1996. Aggrieved by a lower pay in a higher scale as compared with the higher pay in a lower scale for his juniors for one and the same basic pay, the applicant submitted A2 representation dated 11-4-1998 praying for fixing his pay at Rs.6900/-. Not getting any response to A2, he made efforts to represent the grievance to the 1st respondent, when the office of the 1st respondent advised him that his pay had been fixed in accordance with Rule 7 and the Notes thereto contained in the Railway Services (Revised Pay) Rules, 1997 and as per the Vth Pay Commission Ready Reckoner, Southern Railway, Chennai, 1997 issued by the

2nd respondent (Annexures A3 and A4). Feeling that A3 and A4 were deficient and illegal, in that he was getting a lesser pay than what he would have got had he been fixed in the corresponding revised pay scale, he filed A7 representation dated 15-8-1998 to the Chairman, Railway Board. Not getting any response to A7 representation, he filed OA No.1304/99 before this Tribunal. That OA was disposed of by this Tribunal by A8 order on the submissions made by the learned counsel for the applicant. Pursuant to the said order he filed this Original Application challenging the rules, A1 and A4 Ready Reckoner seeking the above reliefs.

4. Respondents filed reply statement. According to them, the pay scales of the Government employees have been recommended by the expert body viz. Central Pay Commission and have applicability not only in Railways but throughout the Central Government. Further, the applicant while praying for striking down Rule-7 and Notes thereunder of A3 in so far as they do not provide for stepping up of pay, has not sought the relief for declaring that rule as arbitrary, unconstitutional and ultra vires the constitutional provisions. Employees referred to in the Original Application as juniors to the applicant had not been impleaded in the party array. Further, the said employees could not be cited as juniors to the applicant in the grade of Rs.1400-2300 as at the relevant time they and the applicant were working in different seniority units. Applicant's pay had been fixed in accordance with the Revised Pay Rules. The applicant can claim stepping up of pay only with reference to note 6 under Rule 7(1) of Railway Servants (Revised Pay) Rules, 1997. The same stepping up would be admissible only if the railway servant who was in the pre-revised scale was drawing immediately before 1st January, 1996 more pay than another railway servant junior to him in the same cadre got fixed in the revised scale at a



stage lower than that of such junior, his pay should be stepped up to the same stage in the revised scale that of the junior. The applicant borne on the cadre of Station Master Grade-II in the pre-revised scale of Rs.1600-2660 can seek stepping up of pay only on the basis of the pay fixed in respect of a person junior to him borne on the same cadre of Station Master Grade-II and not on the basis of the pay fixed in respect of a person borne in a different cadre.

5. The applicant filed rejoinder.

6. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the pleadings in the Original Application. He submitted that by the present Rule as it stood today, even though the applicant was fixed in a higher replacement scale he was drawing less pay than a person who had been fixed in a lower replacement scale. He also explained that this had happened because even though initially in the starting of the grade given to him there is an advantage of Rs.500/- in the higher stages, the said advantages were not carried forward to higher stages and that is why this feature had occurred. Further, according to him, the two employees irrespective of whether they are junior or senior drawing the same pre-revised scale when fixed in the revised pay scale, the one who had been fixed in a higher replacement scale was drawing less pay than the other who was fixed in the lower replacement scale. He said such a situation is discriminatory. Learned counsel for respondents submitted that the applicant's pay had been fixed in accordance with the rules and he had not been pointed out any mistake in the method of fixing his pay. She also submitted that the applicant cannot compare himself with the pay fixed for another person who did not belong to the same cadre as that of the applicant. She cited the following judgements of the



Hon'ble Supreme Court and the Benches of this Tribunal in support of her submissions that fitment of pay scales for different categories of staff are to be decided by expert bodies such as Pay Commission and it is not for the Courts/Tribunals to go into the same and there is no violation of Article 14 of the Constitution because of two employees getting fixed at different stages of pay in their respective scales of pay:-

- (i) Kishori Mohanlal Bakshi vs. Union of India [AIR 1962 SC 1139];
- (ii) Shiba Kumar Dutta and Others vs. Union of India and Others [(1997) 3 SCC 545]; and
- (iii) C. Seetharamaiah and Others vs. Accountant General, Andhra Pradesh-I and Others [(1988) 7 ATC 507] (FB);
- (iv) V.L. Somayajulu and Others vs. Telecom Commission and Others [(1997) 35 ATC 26] (FB).

7. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have perused the documents brought on record. On a careful consideration of the materials placed before us as well as the case laws cited, we are of the considered view that the applicant has not made out a case for the reliefs sought for by him.

8. The applicant's basic contention is that he and another person who, according to him, is similarly situated like him and were drawing the pay of Rs.2200/- had been on 1-1-1996 fixed at different pay scales from 1-1-1996. The person who is junior to him had been fixed in a lower pay scale but had been fixed at an amount which is higher than the amount at which he had been fixed. According to him, this is discriminatory and violative of Article 14 of the Constitution. According to him, a person like him who is senior and was drawing the same pay prior to 1-1-1996 should after 1-1-1996 get equal or higher than the pay



drawn by his junior who was drawing same pay as him. He pleads that it is because of the rules governing pay fixation that his pay was fixed at a lower value, but at the same time he is not challenging the said rule as such but wants something to be added to it. He has no complaint that his pay has been fixed wrongly. According to the submission of the learned counsel for the applicant during the course of arguments, the anomaly had arisen because of the replacement scales given for the three lower stages of Station Masters, i.e. Against the normal replacement scales recommended by the Pay Commission, higher than the normal replacement scales had been given to them and this contributed to the factor of the junior who was drawing same pay being fixed at a higher pay.

9. What we find is that the Government in the Revised Pay Rules have decided a formula for fixing the pay of the employees in the revised pay scales. They have also listed the corresponding replacement scales generally for the pre-revised scales of pay and for specified categories in the pre-revised scales the corresponding revised pay scale. These are decisions taken by the Government on the basis of the recommendations of the Pay Commission. These matters are not to be generally interfered with by the Tribunals/Courts. So, as long as the applicant has accepted the replacement scale given to him, i.e. Rs.5500-9000, he is estopped from questioning the pay fixed to him as per the formula enunciated by the Government in the rules. Further, the applicant had not been able to point out any rule or law which stipulates that a senior should always get higher pay than the junior in a different pay scale.

10. The Hon'ble Supreme Court in Kishori Mohanlal Bakshi vs. Union of India [AIR 1962 SC 1139] held as follows:-



"The only other contention raised is that there is discrimination between Class I and Class II Officers in as much as though they do the same kind of work their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, also fails."

11. The above said ruling holds that even between a Class II and Class I officer who are doing the same work, the pay scales need not be identical. It cannot be held that a person who is doing work in a higher scale of pay should always get higher pay than another who is doing work in a lower pay scale.

12. Again in Shiba Kumar Dutta and Others vs. Union of India and Others [(1997) 3 SCC 545], the Hon'ble Supreme Court held as follows:-

"The admitted position is that the petitioners, who are working as Fitters (T&G), had sought to be fused in the category of, and to be on a par with, Jig Borers. They sought equal pay on a par with them. The contend that they were drawing higher pay scales than the Fitter; instead of elevating their cadre and placing them in the higher pay scales, they have been brought down in the category as a Fitter after removing the two nomenclatures. Thereby, it is arbitrary on account of invidious discrimination. The Third Pay Commission had gone into that aspect of the matter and fixed the scales of pay. Thereafter, admittedly, Expert Classification Committee and Anomalies Removal Committee had also gone into the matter and made distinction between them. Subsequently, nomenclature of all of them were removed and fused into one category, namely, Fitter. Nomenclature and fitment is one of executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, as is pointed out, it would be difficult for the courts to go into the question of equation of posts or fitment into a particular scale of pay. They must be left to be decided by the Expert Committees and Government. The courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category. Under those circumstances, the Tribunal is justified in refusing to go into the question."

13. According to the above, the Courts/Tribunals are not justified in going into the pay scale allotted to the Government



servants on the basis of the recommendations of expert bodies like the Pay Commission.

14. This Tribunal had also held that the right of a senior to draw higher pay emanates only from the anomalies as defined by the rules. In this case, no anomaly has been defined in the rules and as long as no anomaly has been defined in the rules, the applicant does not have an ipso-facto right to get a higher pay than the junior in a different pay scale.

15. In the conspectus of the facts and circumstances of the case, we find no merit in this Original Application and accordingly, we dismiss this Original Application. No costs.

Wednesday, this the 6th day of March, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of memorandum No.1V/P.524/II/V.PC/SMs dated 22.1.98 issued by the 1st respondent.
2. A-2: True copy of representation dated 11.4.98 submitted by the applicant.
3. A-3: True extract of Rule 7 of Railway Services (Revised Pay) Rules, 1997 with the notes there under issued by the 3rd respondent.
4. A-4: True extract of 5th Pay Commission Ready Reckoner, Southern Railway, Chennai, 1997 for scale Rs.1600-50-2300-60-2660/ Rs.5500-175-9000 issued by the 2nd respondent.
5. A-5: True extract of 5th Pay Commission for scale Rs.1600-50-2300-60-2660/ Rs.5000-150-8000 issued by the 2nd respondent.
6. A-6: True extract of 5th Pay Commission Ready Reckoner, Southern Railway, Cehnnai, 1997 for scale Rs.1400-40-1800-50-2300/ Rs.5000-150-8000 issued by the 2nd respondent.
7. A-7: True copy of representation dated 15-8-98 submitted by the applicant.
8. A-8: True copy of order dated 3.1.2000 passed by the Hon'ble Tribunal in OA 1304/99.
9. A-9: True extract of revised scales in Annexure 'A' of the schedule to Railway Services (Revised Pay) Rules, 1997.
- 10 A-10: True extract of revised pay scales in Annexure 'B' of the schedule to Railway Services (Revised Pay) Rules, 1997.

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