

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 167 of 2001

Friday, this the 27th day of September, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. M. Srinivasan,
S/o M. Mahadeva Kurup,
working as Diesel Assistant,
Southern Railway, Ernakulam Marshalling Yard,
resident of Nambiath House, Vadayampadi PO,
Ernakulam District.
2. B. Gireesh Kumar,
S/o V. Balakrishna Pillai,
working as Diesel Assistant,
Southern Railway, Quilon,
resident of 'Latha Mandiram', Kalampadu,
Kadakkal PO, Kollam District.Applicants

[By Advocate Mr. M.P. Varkey]

Versus

1. Union of India, represented by
General Manager, Southern Railway,
Chennai - 600 003
2. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum - 695 014
3. Senior Divisional Personnel Officer,
Southern Railway, Madras Division,
Chennai - 600 003Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 27-9-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Applicants 1 and 2 were initially recruited as Diesel/AC Assistants in Madras Division of Southern Railway on 10-5-1993 in the scale of Rs.950-1500, which was revised to Rs.3050-4590 with effect from 1-1-1996. They were promoted as Shunters in the scale of Rs.4000-6000 by order dated 28-8-1998 (Annexure A1). Applicants were selected for appointment as

regular Goods Driver in the scale of Rs.5000-8000 and were actually regularly appointed as Goods Drivers in the scale of pay of Rs.5000-8000 with effect from 8-6-1999 and 13-6-1999 respectively. Applicants had, while working as Diesel Assistants, requested for inter-divisional transfer to Trivandrum Division. According to the applicants' request for an inter-divisional transfer, they were transferred to Trivandrum Division as Diesel Assistants on 21-6-1999 and 24-6-1999 respectively. By the impugned order dated 20-12-1999 (Annexure A4), the respondents fixed the pay of the applicants 1 and 2 as Diesel Assistants in the scale of Rs.3050-4590 at Rs.3875/- with effect from 22-6-1999 and 25-6-1999 respectively with the date of next increment as 1-5-2000. The grievance of the applicants is that while the applicants, who were drawing pay of Rs.5000/- in the scale of Rs.5000-8000, were entitled to have their pay protected and fixed at the maximum of the scale of Rs.3050-4590 under the provisions of Rule 1313 (a)(3) of the Indian Railway Establishment Code Vol.II, the respondents have fixed the applicants' pay at Rs.3875/- to their detriment and that repeated representations in regard to rectification of the mistake are not being attended to. Therefore, the applicants have jointly filed this Original Application seeking to set aside Annexure A4 to the extent it fixed their pay at Rs.3875/- from 22-6-1999 and 25-6-1999 respectively, declaring that the pay and increment date fixed in Annexure A4 are wrong and incorrect and that applicants 1 and 2 are entitled to have their pay fixed at Rs.4590/-, the maximum pay, in the scale of Rs.3050-4590 with effect from 22-6-1999 and 25-6-1999 respectively with the next increment date as 1-6-2000 or in the alternative, that they are entitled to have their pay fixed at Rs.4100/- in the scale of Rs.3050-4590 with effect from 28-8-1999 with the next increment date as 1-8-2000.

2. Respondents in their first reply statement have denied the averment that the applicants had been regularly appointed to the post of Goods Driver in the scale of Rs.5000-8000. They also contend that as they had not completed two years of service in that grade, they are not entitled to have their pay protected and that in terms of Railway Board's letter dated 4-10-1994 (Annexure R3), their pay had to be fixed taking into account the pay, which they would have drawn in the lower post, had they continued in the lower post. However, when the respondents were directed by this Bench of the Tribunal by order dated 17-12-2002 to file a statement as to whether the 1st applicant had worked as officiating Goods Driver from 7-11-98 to 7-6-99 and as regular Goods Driver from 8-6-99 to 21-6-99 in the scale of Rs.5000-8000 in Madras Division and whether the 2nd applicant had worked as officiating Goods Driver from 7-11-98 to 12-6-99 and as regular Goods Driver from 13-6-99 to 24-6-99 in the scale of Rs.5000-8000 in Madras Division, the 3rd respondent filed a statement in which it has been admitted as follows:-

"... The Respondents submit that it is true that the Applicant No.1 had worked as regular goods driver from 8.6.99 to 21.6.99 in the scale of Rs.5000-8000 in Madras Division till the date of his transfer and it is also true that the second Applicant had worked as regular goods driver from 13.6.99 to 24.6.99 in the scale of pay of Rs.5000-8000 in Madras Division before he was transferred. ..."

3. We have gone through the pleadings and materials placed on record and have heard Shri M.P.Varkey, learned counsel of the applicants and Shri P.Haridas, learned counsel of the respondents.

4. Now, in view of the statement filed by the respondents pursuant to the order dated 17-12-2001 in MA No.1464/2001 admitting that applicants 1 and 2 were working as regular Goods

Drivers in Madras Division in the scale of Rs.5000-8000 prior to their transfer, the fact that the applicants were transferred from Madras Division, while working as Goods Drivers in the scale of Rs.5000-8000, as Diesel Assistants to Trivandrum Division and their pay had been fixed not protecting the pay drawn by them, is not in dispute. According to the applicants, in terms of Rule 1313 (a)(3), in a case of inter-divisional transfer on request under Rule 227(a) [FR 15A] the transferred official is entitled to have his pay fixed at the maximum of the pay of the lower post, when in the post from which he was transferred, he was drawing a pay higher than the maximum of the scale in the lower post. Learned counsel of the respondents, on the other hand, argued that as the applicants had not worked for two years in the post of Goods Driver on regular basis, they are not entitled to have their pay protected. Sub-rule (3) of Rule 1313(a) of the Indian Railway Establishment Code Vol.II reads as follows:-

"(3) When appointment to the new post is made on his own request under [Rule 227(a)(2)-R1 (F-15A)(2)] and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time scale.

....."

5. No requirement of any minimum length of service in the higher post held regularly is prescribed for eligibility for fixation of pay under Sub-rule (3) of Rule 1313(a) of the Indian Railway Establishment Code Vol.II. A similar contention as raised by the respondents in this case was raised by the Railway Administration in OA No.1041/95 relying on a letter of the Chief Personnel Officer. The contention was repelled

stating that the rule does not provide for any such minimum length of service for eligibility for protection of pay. We are in agreement with the view taken by the Bench in that case.

6. In the light of what is stated above, we are of the considered view that the applicants in this case, who were transferred while regularly holding the posts of Goods Driver in the scale of Rs.5000-8000 in Madras Division and drawing a pay of Rs.5000/-, on transfer to Trivandrum Division as Diesel Assistants on the request made by them when they were Diesel Assistants, were entitled to have their pay fixed in accordance with the provisions of Rule 1313(a)(3) of the Indian Railway Establishment Code Vol.II at Rs.4590/-, which is the maximum of the scale of Rs.3050-4590, with effect from 22-6-1999 and 25-6-1999 respectively with the next increment date as 1-6-2000.

7. In the result, the Original Application is allowed. The impugned order Annexure A4 is set aside. Respondents are directed to issue orders fixing the pay of applicants 1 and 2 with effect from 22-6-1999 and 25-6-1999 respectively at Rs.4590/- in the scale of Rs.3050-4590 with the date of next increment as 1-6-2000 and to make available to the applicants the consequential financial benefits. The above direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Friday, this the 27th day of September, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True extract of letter No.M/P (IM) 535/VI/RG/Shunter/Vol.III dated 28.8.98 issued by 3rd respondent.
2. A-2: True extract of letter No.M/P(IM) 535/VI/RG/ Goods Driver/Vol.II dated 5.6.99 issued by the 3rd respondent.
3. A-3: True copy of office order NO.24/99/RG(M) (No.V/P.524/VI/RG/M/Vol.2) dated 8.7.99 issued by the 2nd respondent.
4. A-4: True copy of Memorandum No.V/P.534/VI/RG/M/Vol.2 dated 20.12.99 issued by the 2nd respondent.
5. A-5: True copy of representation dated 31.5.2000 submitted by applicant No.1 to the 2nd respondent.
6. A-6: True copy of representation dated 13.6.2000 submitted by applicant No.2 to the 2nd respondent.
7. A-7: True copy of Railway Board's letter No.F(E)II/89/FR-1/1 dated 12.12.91.
8. A-8: True copy of order dated 10.12.96 in OA No.1041/95 passed by this Hon'ble Tribunal.

Respondents' Annexures:

1. R-1: True photocopies of the Last Pay Certificate No. M/P483/IV/RG/JTJ dated 13.7.99 and 7.7.99 of the applicant.
2. R-2: True photocopy of the Judgment dated 20.6.2000 of the Hon'ble Tribunal in OA Nos.1126/97 & 1151/97.
3. R-3: A true copy of the Railway Board's letter No.F(E) 11-91/Misc/2 dated 4.10.94.
4. R-4: True copy of the order No.M/P1(E)LRG/17/02 dated 30.1.2002 issued by the Divisional Railway Manager.

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7.10.02

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P.(C) No.51/03

in

O.A.No.167/01

Friday this the 19th day of September 2003

C O R A M :

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. M.Srinivasan,
S/o.M.Mahadeva Kurup,
Diesel Assistant,
Southern Railway, Ernakulam
Marshalling Yard.

2. B.Gireesh Kumar,
S/o.V.Balakrishna Pillai,
Diesel Assistant,
Southern Railway, Quilon.

Petitioners

(By Advocate Mr.M.P.Varkey)

Versus

1. V.Anand,
General Manager,
Southern Railway,
Chennai - 600 003.

2. Mohan.A.Menon,
Senior Divisional Personnel
Officer, Southern Railway,
Trivandrum - 695 014.

Respondents

(By Advocate Mr.P.Haridas)

This C.P.(C) having been heard on 19th September 2003 the Tribunal on the same day delivered the following :


O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

When the matter came up for consideration for admission Shri.M.P.Varkey, counsel for the petitioners, submits that the order of the Tribunal in Q.A.167/01 has been complied with and the grievance have been redressed. Accordingly, it is pointed out that the Contempt Petition (Civil) can be closed. On the

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basis of the above submission Contempt Petition (Civil) is closed. No costs.

 (Dated the 19th day of September 2003)

K.V. SACHIDANANDAN
JUDICIAL MEMBER


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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