

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.172 /07

Monday, this the 26th day of November, 2007.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Elizabeth Mathew,
Ad hoc Clerk/Typist,
O/o the Deputy Chief Engineer/Construction,
Southern Railway, Ernakulam Junction.Applicant

(By Advocate Mr TC Govindaswamy)

V.

1. Union of India represented by
the General Manger,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-695 014.
3. The Deputy Chief Personnel Officer/Construction,
Southern Railway, Egmore,
Chennai-8.
4. The Deputy Chief Personnel Officer/Construction,
Southern Railway, Ernakulam Junction,
Ernakulam-682 -016.
5. The Chief Administrative Officer,
Southern Railway, Egmore,
Chennai-8..Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been finally heard on 13.11.2007, the Tribunal on
26.11.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in this O.A is against the Annexure A-9 pay



fixation order dated 18.7.2007 and the subsequent retrospective adverse effect of reduction of her pay. She has, therefore, prayed in this O.A to quash the aforesaid A-9 pay fixation order and to allow her to be continued to be covered by the earlier pay fixation order made vide Annexure A-6 order dated 18.2.2005.

2. The facts in this case are that the applicant was initially appointed as Project Casual Labour in the scale of Rs.196-232 (revised to Rs.750-940). She was promoted as Gangman/Work woman with effect from 17.7.1993 in the scale of pay Rs.775-1025. On her own request, she was reverted as Khalasi in the scale of pay Rs.750-940 with effect from 20.8.1993 and while she was working in that capacity in the Construction Organisation, she was promoted on ad hoc basis as Clerk/Typist in the scale of pay Rs.3050-4590 for a period of 8 months from 1.3.1996 and she was paid at the minimum of the scale of Rs.3050 for this period. However, when she was given retrospective promotion as Senior Gangwoman/Senior Trackwoman Grade-II with effect from 1.12.1995 in the scale of pay Rs.800-1150/2650-4000 on par with her junior in the Division vide Annexure A-3 order dated 8.1.1999, her pay was to be fixed accordingly. Again, she was promoted as Clerk/Typist on ad hoc basis in the scale of Rs.3050-4590 with effect from 1.12.1999 and continued in that post. Subsequently, vide Annexure A-6 memorandum dated 18.2.2005 her pay was fixed as Senior Gangman in the scale of pay Rs.2650-4000 on 1.12.1995 and after granting periodical increments, it was fixed at Rs.2975/- as on 1.12.1998 in the scale of pay Rs.800-1150/2650-4000 and her promotion to the post of Clerk/Typist in the scale Rs.3050-4590 with effect from 1.12.1999 considering her pay in the scale of pay Rs.2650-4000 as on 1.12.1998, her pay in the scale of Rs.3050-4990 was fixed at Rs.3200/. She was given the next increment in the said scale on 1.4.2000 taking into consideration of the 9 months service she had put in in the same scale for the period from 1.3.1996 to 1.10.1996 and her next increment



dates were refixed from the 1st of April, from subsequent years also. The applicant was satisfied with the aforesaid Annexure A-6 fixation of pay. While so, the 5th respondent issued Annexure A-1 letter dated 21.11.2006 stating that the pay in respect of the applicant and other 3 similarly placed persons have been erroneously fixed and they were entitled to get their pay fixed in the cadre post in the scale of pay Rs.2550-3200 from the date of their ad hoc promotion till date. On the basis of the aforesaid letter, the 4th respondent issued Annexure A-2 memorandum dated 24.2.2007 fixing the pay of the applicant in the scale of pay Rs.3050-4590 at Rs.3125/- as on 1.12.1999. However, she was granted the next increment from 1.4.2000.

3. The applicant has made Annexure A-8 representation dated 3.3.2007 against the aforesaid refixation whereby her pay has been reduced from a retrospective date. Since there was no response from the respondents, she has filed the present O.A. During the pendency of this O.A the respondents have issued an order No.173/2007 dated 16.7.2007 (Annexure R-1). According to the said letter, the Annexure A-2 letter dated 24.2.2007 was withdrawn. However, after the reply was filed, respondents have issued Annexure A-9 letter dated 16/18.7.2007 again fixing the pay of the applicant with effect from 1.12.1999 which was in modification of Annexure A-2 memorandum dated 24.2.2007 inasmuch as ante-dating the effect of fixation of pay at Rs.3200 plus PP5 as on 1.12.1999 has been retained but the next date of increment has been postponed from 1.4.2000 to 1.12.2000. According to the applicant, the effect of the order is the same as that of the Annexure A-2 order dated 24.2.2007. He has, therefore, challenged the aforesaid A-9 refixation order on the ground that the same was done without any opportunity to show cause and therefore it was opposed to the principles of natural justice and violative of the constitutional guarantees enshrined under Articles 14 and 16. They have submitted that his



promotion as Clerk in the scale of Rs.3050-4590 is a fact and the same cannot be ignored while fixing the pay. Therefore he denied the contention of the respondents that she had not officiated during the aforesaid period. He had also relied upon the following Illustration 14 given in Swamy's Pay Rules Made Easy (32nd Edition)

"A Government servant drawing the substantive pay of Rs.8,100 from 1.4.2003, in the scale of Rs.6,500-200-10,500, officiated in a permanent post on a time scale of Rs.10,000-325-15,200 from 1.6.2003 to 28.2.2004 and in a temporary post on the same time scale of Rs.10,000-325-15,200 from 1.2.2005 to 31.8.2005. He was promoted to the permanent post from 1.12.2005. Regulate his pay from time to time and indicate his date of next increment in the permanent post to which he was promoted on 1.12.2005.

Ans.

<u>Period</u>	<u>Substantive</u> Rs.	<u>Permanent post</u> Rs.	<u>Temporary Post</u> Rs.
	6,500-10,500	10,000-15,200	10,000-15,200
1.3.2003			
31.5.2003	8,100	.....	.....
1.6.2003		10,000	
28.2.2004	8.100	FR 22(I)(a)(1)	.....
1.3.2004			
31.3.2004	8,100	.....	.....
1.4.2004	8,300	.....	.....
31.1.2005	FR 26(a) and (b)		
1.2.2005	(8,300)		10,000
31.3.2005			FR 22(I)(a)(1)
1.4.2005	(8,500)		
30.4.2005	FR 26(a) and (b)	...	10,000
1.5.2005	(8,500)	.....	.....
31.8.2005			
1.9.2005	8,500	.....	.....
30.11.2005			
1.12.2005	(8,500)	10,325 DNI 1.8.2006	FR 22(I)(a)(1) and Prov.



On 1.6.2003, when he was promoted to officiate in the permanent post his pay was fixed under FR 22(I)(a)(1). On 1.2.2005, when he was promoted to the temporary post in the same time scale, his pay was fixed under FR 22(I)(a)(1) and under the proviso (1) to FR 22(I), the period from 1.6.2003 to 28.2.2004, during which he drew the pay of Rs.10,000 in the permanent post on the same time scale will count for increment in that stage. Hence he will draw the next increment to the stage of Rs.10,325 from 1.5.2005. On 1.12.2005, when he is promoted to the permanent post in the same time scale, his pay is fixed under FR 22(I)(a)(1) read with proviso to FR 22(I). The period from 1.5.2005 to 31.8.2005, during which he draw the pay of Rs.10,325 in the temporary post on the same time scale will count for increment at that stage and he will draw his next increment on 1.8.2006."

4. The respondents in their reply submitted that the applicant was promoted purely on ad hoc basis as Clerk/Typist in the scale of Rs.3050-4590 initially for the period from 1.3.96 to 31.10.96 and again from 1.12.1999 onwards. Further, they have submitted that the applicant's representation was examined with reference to her pay in Khalasi grade (in the scale of Rs.2550-3200) which she was holding in Construction Organisation and also the pay in substantive grade (Rs.2650-4000) as Trackwoman in Division and it was accordingly the Annexure A-1 and A-2 orders dated 21.11.2006 and 24.10.2007 were issued refixing the her pay based on the pay drawn by hr as Khalasi in Construction Organisation were cancelled.

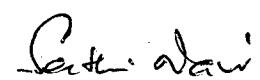
5. We have heard Shri TC Govindaswamy, counsel for applicant and Shri Thomas Mathew Nellimoottil, counsel for respondents. We have observed that the reply given by the applicant is absolutely not convincing and not to the point. The only question for consideration is whether the ad hoc service rendered by



the applicant for the period from 1.3.1996 to 31.10.1996 (8 months) as Clerk/Typist in the scale of pay Rs.3050-4590 would count for fixation of pay and subsequent increments when she was again appointed in the same post of the same condition. In our view, the respondents have rightly fixed her pay taking into consideration of the service rendered by her as Clerk/Typist for the period from 1.3.1996 to 31.10.1996 in terms of FR 22(I)(a)(1) and under the proviso to FR 22(I). It is also our view that the respondents have correctly withdrawn the memorandum dated 24.2.2007 issued in favour of the applicant refixing her pay based on Annexure A-1 dated 21.11.2006. However, the further issuance of Annexure A-9 letter is against the rules.

6. In the facts and circumstances of the case the O.A is allowed and the A-9 corrigendum No, is quashed and set aside. Respondents are directed to allow the applicant to continue existing fixation/promotion benefits as if Annexure A-9 has not been issued. In other words, respondents shall continue to treat the applicant as covered by Annexure A-6 memorandum dated 18.2.2006. The recovery, if any, made on account of Annexure A-9 order shall be refunded to her immediately. Respondents shall issue necessary orders in compliance with the aforesaid directions within a period of one month from the date of receipt of this order. No costs.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN