

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 18/99

Thursday, this the 28th day of June, 2001.

CORAM :

HON'BLE SHRI A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

N. Ramesh,
Aged 39 years, S/o Natesan,
Station Master, Grade-II,
Southern Railway, Ernakulam,
Marshalling Yard, West Cabin,
Permanent Address: Natesa Mandiram,
Krishnapuram, Kayamkulam.Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs.

1. Union of India represented by
The General manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Madras-3..
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Madras-3..
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. The Divisional personnel Officer,
Southern Railway, Madras Division,
Madras.Respondents

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 28.6.2001, the
Tribunal on the same day delivered the following :

O R D E R

HON'BLE SHRI A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs :-

(a) Call for the records leading to the issue of
Annexure A4 and quash the same to the extent it reduces
and fixes the pay of the applicant at the stage of
Rs.5750/- on and with effect from 10.7.96.

(b) Call for the records leading to the issue of
Annexure A5 and quash the same.

(c) Declare that the applicant is entitled to the
extension of the benefit of Annexures A3, A8 and A9
judgements and for fixation of his pay under Rule 1313

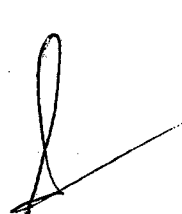
(a)(2) and (3) of the Indian Railway Establishment Code, Volume-II, duly protecting the pay of Rs.1950/Rs.6025 drawn by the applicant in the Madras Division of Southern Railway, upon his transfer and appointment in the Trivandrum Division of Southern Railway in the scale of pay of Rs.1200-2040/Rs.4500-7000 and direct the respondents accordingly.

(d) Direct the respondents to grant the consequential benefit of the declaration in paragraph 8(c) above forthwith including arrears thereof.

(e) Award costs of and incidental to this application.

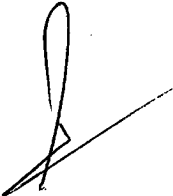
(f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant is at present working as Station Master in the pay scale of Rs.5500-8000 in the Trivandrum Division of Southern Railway. He was initially appointed in the Madras Division and while working there, he was promoted on regular basis to the scale of Rs.1600-2660 on and with effect from 30.1.96. While working in the said post, he on request and under the provisions of Rule 227 of the Indian Railway Establishment Code (IREC for short), Vol.II was transferred and posted to the lower scale of Rs.1200-2400 in the cadre of Station Masters of Southern Railway, Trivandrum Division. He joined the Trivandrum Division in the lower scale w.e.f. 10.7.96. After joining the Trivandrum Division, his pay was reduced and fixed at the stage of Rs.1840 + 10 PP in the scale of Rs.1200-2040 with effect from 10.7.96 as per Annexure A1. He is entitled to have his pay fixed at Rs.1950/6025 protected in the scale of pay of Rs.1200-2040/4500-7000 on and with effect from 10.7.96, the date on which he joined in the Trivandrum Division. From Annexure A1, it is seen that the pay drawn by him in the scale of 1400-2300/- was reduced to the lower scale since he has not completed 2 years of service in his last scale while working in the Madras Division. As per



Annexure A4, his pay has been reduced w.e.f. 10.7.96. It is arbitrary. Annexure A5 to the extent of rejecting his grievance is contrary to law and it is be quashed.

3. Respondents resist the OA contending that the applicant was promoted to the post of Station Master Grade I in the scale of Rs.5500-9000 with effect from 31.1.96. Having not completed two years of service in the above post prior to his transfer to Trivandrum Division on 10.7.96, he cannot be treated as having held the higher post of Station Master since he was not holding the higher post substantively on regular basis. Railway Board as per letter No.F(E)11/91/Misc/2/Pt.`B' dated 4/5.12.97 has advised that the substantive holder of promotional post in terms of Board's letter dated 4.10.94 and Advance Correction Slip No.19, is the one who has completed 2 years of service satisfactorily in that particular post. As per R2, the case of the applicant is treated as reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted. Provisions of Rule 1313 at Annexure A3 can never be applied in this case. In order to get the benefit of the provisions contained in Rule 1313 one should have held the higher post on regular basis. That being so, one has to confirmed in the said post and for getting confirmed one should have held the higher post atleast for a period of two years. Since as per the Railway Board's letter No.E(NG)I/88/CN5/21 RBE No.23/84 dated 20.1.89, the benefit of confirmation will follow only after a period of 24 months from the date of promotion. Even if it is agreed, but not conceded, that the two years of service is not required in order to get the benefits of the provisions of Rule 1313, respondents reasonably expect the applicant to explain what else should be the criterion for determining whether an employee has held a post on regular basis or not.

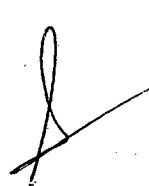


4. One of the contention raised by the respondents is that as per Railway Board's letter No.F(E)11/91/Misc/2/Pt.`B' dated 4/5.12.97 it is advised that the substantive holder of a promotional post in terms of Board's letter dated 4.10.94 and Advance Correction Slip No.19, is the one who has completed 2 years of service in that particular post. Respondents have failed to produce the said letter of Railway Board. The learned counsel appearing for the respondents drew our attention to R1, a copy of letter No.E(NG)I/88/CN5/21 RBE No.23/84 dated 20.1.89 and submitted that 2 years condition is mandatory. At this juncture, it is relevant to note that R1 was issued prior to the amendment of the Rule 1313 of Indian Railway Establishment Code(I.R.E.C. for short), Vol.II. What is the position after the amendment of Rule 1313 of IREC, Vol.I, 1991 is considered by a Division Bench of this Tribunal in OA 1041/95. There it has been clearly stated that

"Sub Rule (a)(3) of Rule 1313 only prescribed a condition that the old post should have been held regularly. There is no mention of any condition prescribing two years as a necessary service in the old post to qualify for the benefit granted by Sub Rule (a)(3) of the Rule 1313."

5. That being so, the position is clear that after amendment of the Rule 1313 of IREC, Vol.II, two years condition is no longer in force and cannot be insisted upon.

6. The learned counsel appearing for the respondents drew our attention to R2. R2 is regarding certain insertions to sub paras (a) (iii) in para 604 of IREM (1989). This is nothing but what is contained in A7. As per the last para of R2, "when appointment on transfer from a higher post to a lower post is



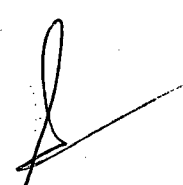
made on his own request under Rule 227 (a) (2) R.I(FR-15) his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay in accordance with FR-22(i) (a) (3)". The specific case of the applicant that he came on transfer from Madras Division to Trivandrum Division under the provisions of Rule 227 of IREC is not disputed. That being so, his pay is to be fixed under the provision of Rule 1313 of IREC, Vol.II.

7. It is stated in the reply statement that respondents reasonably expect the applicant to explain what else should be the criterion for determining whether an employee has held a post on regular basis or not. The Administration should be in the know and it is expected from the administration.

8. In OA 1041/95, Annexure A1 and A8 impugned orders were quashed and also A2 another impugned order to the extent it prescribed a period of two years in the higher post as a condition for protection of pay on transfer by request was quashed. That has been followed by a Division Bench of this Tribunal in OA 893/97 as well as in OA 403/97.

9. The learned counsel appearing for the respondents drew our attention to the common order in OA 1126/97 and 1151/97. The question considered there was in the light of the Rule 1313 of IREC, Vol.II prior to the amendment. That being so, the said ruling has no application to the facts of the case at hand.

10. The learned counsel appearing for the respondents drew out attention to the ruling in Comptroller & Auditor General of India and Others Versus Farid Sattar, (2000)4 SCC 13. There it was a case where the respondent therein on his own volition



sought transfer on certain terms and conditions accepted by him. Circumstances and facts are entirely different here. That being so, said ruling is not applicable to the case at hand.

11. Annexure A5 impugned order says that as the applicant was not holding the higher post in scale of Rs.1600-2660 substantively on regular basis before his transfer to Trivandrum Division to a lower post, he is not eligible for protection of his pay in the scale of Rs.1600-2660/Rs.5500-9000. As far R1 is concerned, we have already stated. That being the position, Annexure A5 is liable to be quashed. Since A5 is to be quashed, Annexure A4 fixation is also to be quashed.

12. Accordingly, Annexures A4 and A5 are quashed. It is declared that applicant is entitled to the extension of benefits as per A3, A8 and A9 and for fixation of his pay under Rule 1313 (a) (2) and (3) of IREC, Vol.II protecting his pay of Rs.1950/Rs.6025 in the scale of Rs.1600-2660 drawn by him in the Madras Division of the Southern Railway upon his transfer to the Trivandrum Division. Respondents are directed to fix his pay within a period of three months from the date of receipt of a copy of this order.

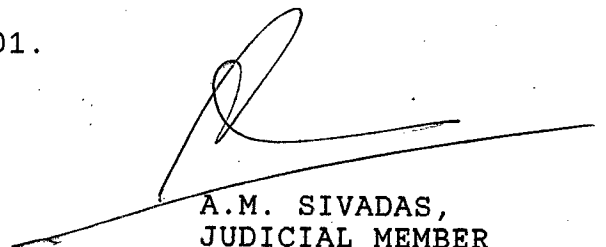
13. The Original Application is disposed of as above. No order as to costs.

Dated the 28th of June, 2001.



T.N.T. NAYAR,
ADMINISTRATIVE MEMBER

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A.M. SIVADAS,
JUDICIAL MEMBER

List of Annexures referred in the Order :

Annexure A1: True copy of the Memorandum No.V/P.535/II/Fixation dated 6.8.96 issued by the 3rd respondent.

Annexure A3: True copy of the judgement of this Hon'ble Tribunal in OA 1041 of 1995 dated 10.12.96.

Annexure A4: True copy of the office order No.V/P.524/II/V PC/SMs dated 22.1.98 issued by the 3rd respondent.

Annexure A5: True copy of the letter No.V/P.535/Fixation dated 16.11.98 issued by the 3rd respondent.

Annexure A7: True copy of the order No.E(E)11-91/Misc/2 dated 4.10.94 issued by the Railway Board.

Annexure A8: True copy of the judgement in OA 403/97 dated 15.12.97 delivered by this Hon'ble Tribunal.

Annexure A9: True copy of the judgement in OA 893/97 dated 18.8.97 delivered by this Hon'ble Tribunal.

Annexure R1: True copy of the letter No.E(NG)I/88/CN5/21 RBE No.23/84 dated 20.1.89 of Railway Board.

Annexure R2: True copy of the Railway Board's letter No.F(E)-II/91/Misc-2 dated 24.2.95.