

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.190/11

Friday this the 28th day of September 2012

C O R A M :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.Sivakumar,
S/o.Madhavan Pillai,
Asst. Loco Pilot/S.Rly/Ernakulam.
Residing at Geetha Bhavan,
Cheriyela, Alummoodu PO,
Kollam – 691 577.

...Applicant

(By Advocate Mr.M.P.Varkey)

V e r s u s

1. Union of India
represented by General Manager,
Southern Railway, Chennai – 600 003.
2. Chief Personnel Officer,
Southern Railway, Chennai – 600 003.
3. Sr. Divisional Personnel Officer,
Southern Railway, Madras Division,
Chennai – 600 003.
4. Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum – 695 014.
5. Sr. Divisional Finance Manager,
Southern Railway, Trivandrum – 695 014.

...Respondents

(By Advocate Ms.P.K.Radhika)

This application having been heard on 28th September 2012 this Tribunal on the same day delivered the following :-

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ORDER**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER**

The applicant was appointed as Diesel Assistant in Bhusawal Division of Central Railway in scale Rs.3050-4590 in 1997. He came to Madras/Trivandrum Division on inter-railway transfer in 2004 and 2008 respectively. During the pendency of his transfer, he was promoted on regular basis as Senior Assistant in scale Rs.4000-6000 on 11.6.2003 and his pay was fixed at Rs.4000/- with effect from 1.7.2003. On joining Madras Division on 5.3.2004, his pay was reduced to Rs.3500/- in scale Rs.3050-4590 on the ground that he is not entitled for such fixation as he having not completed two years in the higher grade. It is now contended by the applicant that completion of two years is not required for getting the pay fixation as per law. He also places reliance on various decisions of this Tribunal in that regard. O.A.49/11 is a similar case which was disposed of by this Tribunal wherein it was held that the applicant was entitled for protection of pay when he was transferred from one Division to another on request from a higher grade to a reverted post. It was accordingly declared that he is entitled for similar benefits as was granted in O.A.893/10 ie., to say that the applicant is entitled for refixation of his pay in the scale of Rs.3050-4590 with effect from the date he joined Trivandrum Division under Rule 1313 [FR 22 (1) (a) (2)] of IREC. He is also entitled to have his annual increments on the same dates on which he would have earned the same in the parent Division in the scale of Rs.4000-6000 with all consequential benefits. In O.A.892/10 and O.A.933/10 this Tribunal held as follows :-



"9. In the light of the above decision, the applicants are entitled to be fixed in the maximum of the scale of Rs.3050-4590 at Rs.4590 on the respective dates on which they joined the service at Trivandrum Division. However, according to the respondents the arrears may be confined to three years prior to the date of filing of the OA. In both the OAs, no such restriction was placed. Besides, the applicant became eligible for arrears as per the new Circular of the Railways contained in Annexure A-2 dated 30.06.2008 which is circular issued as per No.F(E)-II/2003/FOP/1(Misc) dated 30.06.2008. The subject mentioned there in is "Fixation of pay on transfer to a lower post at own request." The clarification is made applicable with effect from 12.12.1991. Letter dated 01.11.2007 is a corrigendum to their letter dated 17.04.2007 and both these letters are mere adoptions of DOPT's OMs dated 14.02.2006 & 04.01.2007 on the subject. As far as past cases are concerned, the present form of FR 22 came into effect with effect from 12.12.1991 no clarification to the modified rule can have effect from the date of introduction of the rule i.e 12.12.1991. Since the applicants were transferred only subsequently they are entitled to have the benefit including arrears from 12.12.1991, the date on which they joined at Trivandrum Division which is much after 12.12.1991. In this regard, we may refer to Annexure A-4 (a) (i) which is dated 17.04.007 enclosing a clarification issued by the Railways. The clarification issued is Annexure A-4 (a) (2) as per which it is clarified vide O.M dated 14.02.2006 that staff of the Railways are demanding for uniform interpretation of the rule in the matter of FR 22 (1) (a) (3). On examination of such request, Ministry of Finance clarified that on transfer to the lower post / scale under FR 15 (a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22 (1) (a) (3). Even though as per Clause 5, it was stated that past cases already decided need not be re-opened. Subsequently, vide letter No.F(E) II/2003/FOP/1/ Misc dated 01.11.2007 (Annexure A-4 (b) it was clarified that in partial modification of the Department's O.M dated 14.02.2006, Annexure A-4 (a) (2) it was decided that the sentence will stand deleted by virtue of this order. We have no hesitation to say that the applicants are entitled to have their pay fixed in the scale of

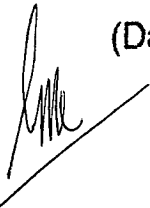


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Rs.3050-4590 at Rs.4590 from the respective dates they joined service at Trivandrum Division, and to draw stagnation increments as per rules in that regard with consequential arrears as the case may be. This shall be done as early as possible, at any rate, within four months from the date of receipt of a copy of this order."

2. Accordingly, we declare that the applicant herein is entitled to have his pay refixed in scale Rs.3950+50(PP) with effect from 5.4.2004, at Rs.4030/- with effect from 1.7.2004 and at Rs.4110/- with effect from 1.7.2005 in scale Rs.3050-4590 with all consequential benefits. This shall be done as early as possible, at any rate, within a period of four months from the date of receipt of a copy of this order. O.A is thus allowed. No costs.

(Dated this the 28th day of September 2012)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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