

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO. 195/2005

Thursday, this the 1st day of September, 2006.

CORAM:

HON'BLE MR K.B.S RAJAN, JUDICIAL MEMBER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T.P.Venkateswaran,  
Retired Senior Clerk(Ad hoc),  
Metropolitan Transport Project (Railways),  
Chennai.  
(Residing at: No.24/42,  
Thondikulam Village,  
Noorani Post,  
Palakkad - 678 004.

- Applicant

By Advocate Mr TC Govindaswamy

v.

1. Union of India represented by  
the General Manager,  
South Western Railway,  
Hubli, Dharwar District,  
Karnataka.
2. The Divisional Personnel Officer,  
South Western Railway,  
Mysore Division, Mysore.
3. The Chief Administrative Officer,  
Southern Railway/Construction,  
Egmore, Chennai-8.
4. The Chief Engineer,  
Metropolitan Transport Project,  
Egmore, Chennai-8.
5. The Senior Divisional Financial Manager,  
South Western Railway,  
Mysore Division, Mysore.

- Respondents

By Advocate Mr P Haridas

The application having been heard on 31.7.2006, the Tribunal on 1.9.2006  
delivered the following:



## ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant Shri T.P.Venkateswaran, a retired Senior Clerk has approached the Tribunal, being aggrieved by reduction in his pension.

2. He entered service as Gangman on 12.4.78, joined Construction Organisation as a Lascar on 30.3.83 and was promoted on ad hoc basis as a Junior Clerk in the scale Rs.260-400 with effect from 10.4.85 and as Senior Clerk in the scale Rs.1200-2040/4500-7000 on 30.7.90 again on ad hoc basis. He retired on 30.6.2004 and, just prior to the retirement, vide A-1 No.MTP/P/NGS/420 document dated 7.6.2004, he was given cash payment in lieu of unutilised LAP based on the pay scale of Rs.4500-7000. A dispute had arisen prior to his retirement, relating to his lien which was reflected in the reference received from the Construction organisation stating that his lien was not maintained in his cadre and he was not considered for his due promotion (R-1) No. MTP(P) NGS/Vol.IV dated 27.12.2001. Vide R-2 No.Y/P..564-I-HAS-MAQ/Vol.II dated 31.12.2001 document issued by the Divisional Office Mysore of the Southern Railway, such lien was provided as Trackman in that Division. In pursuance of provision of such lien, vide R-3 document dated 4.4.2002, he was promoted as Trackman with effect from 12.4.1978. After his retirement on 30.6.2004, vide A-2 No.MTP/P/NGS/579 dated 10.8.2004 document, the Metropolitan Transport Project addressed a letter to the FA&CAO with a request to advise the Divisional Personnel Officer, DPO/Mysore to grant the settlement dues in his last pay drawn as Senior Clerk in scale Rs.4500-7000. In support of this recommendation, they had quoted the case of one Shri K Bhaskaran, in whose case, the CPO Chennai had given certain clarifications providing the basis therefor. Subsequently, a letter was sent on similar lines to the DPO, Mysore vide A-3 document dated 13.8.2005. The applicant sent A-5 representation dated 3.11.2004 requesting early settlement of his pension dues. Despite these official references, the DPO, Mysore issued the impugned A-4



order dated 24.11.2004. Therein, the applicant's pay was refixed from 1.4.83 prejudicially and he was shown as having retired as a Senior Gangman in the scale of Rs.2750-4400 (as against Rs.4500-7000, a scale in which he was drawing actually his pay till retirement). This was followed by the pension payment advice A-6 No.0606245353 dated 3.1.2005. Based on such reduced pay, his gratuity was arranged on 31.12.2004 and his pension paid on 1.2.2005. He made A-7 representation dated 21.2.2005 in which he pointed out that,

- i) His pension had been drawn based on the lower pay of Senior Gangman Rs.2750-440 though he retired as Senior Clerk and
- ii) As per extant orders of the Railway Board, pension should have been fixed on the last pay drawn.

He ended his representation with a prayer for a revision of the pension based upon his pay drawn as Senior Clerk (Rs.4500-7000).

3. Applicant seeks the following reliefs:

- i) Quashing of A-4 and A-6.
- ii) Calculation of pension on a average emolument of Rs.5625 in the scale of 4500-7000.
- iii) Granting the consequential benefits with 9% interest.

4. The reliefs are based on the following grounds:

- i) Vide Rule 49 of the Railway Services (Pension) Rules of 1993, (the Rules, for short) average emoluments mean the emoluments actually received by the employee for a period of ten months, preceding the date of superannuation which works out to Rs.5625/- in the scale of Rs.4500-7000.
- ii) A-4 order to the extent it reduces the applicant's pay with retrospective effect is arbitrary, discriminatory, unconstitutional and against natural justice.
- iii) The delay in arranging the pension much later than 1.7.2004, the



date succeeding the date of his retirement was entirely attributable to the respondents and hence he is entitled to costs.

5. The respondents resist the application on the following grounds:

i) Vide R-4 document dated 13.12.99, ad hoc promotions were to be resorted to only for very short durations vide 216(A) of the I<sup>R</sup>EM.

ii) Vide R-5 document it was ordered as follows: "The ad hoc promotion of the applicant as Junior Clerk and Senior Clerk for a period of about 14 years was not permissible as per the IREM Manual 216(i)(ii)(a)(b)(c)(iii). Further Personnel Branch Circular No.249/99 very clearly states that SECOND ADHOC PROMOTION IS NOT ALLOWED IN ANY CASE.

The last pay drawn by the employee without taking into account his ad hoc promotion as Junior Clerk and Senior Clerk may be sent to this office for verification duly reviewing the case once again."

iii) On the basis above document, the pay was revised.

iv) In the light of the provisions of the IREM, the applicant was not entitled to get the ad hoc promotion.

v) As the ad hoc promotions given were not permissible, his pension benefits were drawn based upon the pay in the post he held on regular basis.

6. Heard both parties and perused the documents including the argument notes.

7. The first point for consideration is the rule which decides the basis on which pension has to be calculated. Relevant portions of Rule 49 of the Rules defining emoluments and Rule 50 defining average emoluments form such basis, as reproduced below:

**"49. Emoluments**

*The expression - (a) "Emoluments" for the purpose of calculating various retirement and death benefits, means the basic pay as defined in clause (i) of rule, 1303 of the Code which a railway servant was receiving*

*immediately before his retirement or on the date of his death."*

**"50. Average Emolument**

Average emoluments shall be determined with reference to the emoluments drawn by a railway servant during the last ten months of his service."

8. Rule 49 on Emoluments makes a reference to Rule 1303(1) of the IREC which is reproduced as follows:

*"1303. (FR 9)(21)(a) Pay – Pay means the amount drawn monthly by a Government servant as:*

*i) pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre."*

9. It is seen that the tenor of the Rule 49 and Rule 1303 of the IREC would mean that the accent is on the amount drawn by the person concerned and not the pay which he ought to have drawn as attached to the post where he holds the lien, as in this case. This is reinforced by the definition of average emoluments drawn by the Railway servant. Besides, Rule 1303 has a definition of average pay as follows:

*"Average pay – Average Pay means the average monthly pay earned during the 12 complete months immediately preceding the month in which the event occurs which necessitates the calculation of average pay".*

Going by this definition, the applicant has been drawing his pay in the pay scale of Rs.4500-7000 undoubtedly, during the period of 10 months ending with the date of his retirement. It is no case of the respondents that he was drawing such a pay in the post on which he had a lien which carried a lower scale of pay.

10. The respondents would forcefully argue that he was on continuous ad hoc

promotions from 10.4.85 to 30.7.90 as a Junior Clerk (5 years) and from 30.7.90 to 30.6.2004 (14 years) as a Senior Clerk. This, respondents contend was against the extant instructions and violation of para 216 of the IREM. It is seen as already referred to above, that the first ad hoc promotion commenced on 10.4.85 and lasted till 30.7.90 (more than 5 years). Rule 216A(ii)(b) was issued vide Board's letter No.E(NG)II/81/RC-1 dated 1.4.1981, a full five years prior to such commencement. The responsibility for continuation for five years squarely rests with the Railways. Vide Rule 216 A(iii) no second ad hoc promotion shall be allowed. This was again part of the additional guidelines and this guideline was issued vide Board's letter No.E(NG)1-85PM/5-III dated 23.8.1985. The second ad hoc promotion was given to the applicant from 30.7.1990 (lasting till 30.6.2004, his date of retirement), again five years subsequent to the said letter. Not only that, such second promotion lasted for fourteen years. Either such long continuance must have been at the explicit or implicit acquiescence of the authorities concerned, or the Board's prescription were not strictly followed. It is inconceivable that the applicant had managed to stay on for such a long duration on his own. If the Railway Administration was serious about implementing the above mentioned circular, action should have been taken to terminate such ad hoc promotions given to the applicant and send him back to a suitable post without violating any of the rules. For such non-observance of the prescription by the IREM, the responsibility cannot be laid at the door step of the applicant. While the respondents might have had possibly genuine reasons for such continuation of prolonged ad hoc appointments, it challenges the very equity of such arrangements when the applicant is handed down an order, that too after his retirement, which deprives him of the terminal benefits substantially. The agony is all the more pronounced, when he was not given an opportunity of presenting his side of the case as to why such downward revision of pay and, consequently, his pensionary benefits should not be made. Last of all, while the prescriptions of IREM and Railway Board letters frown upon



long and multiple ad hoc promotions, they certainly do not lay down any rule about the pay fixation of such promotees.

11. It is worthwhile recollecting the observations of the Hon. Supreme Court in the case of *Badriprasad and others v. Union of India and others* [AIR 2005 SC 2531]. In the argument notes it has been mentioned that his pay in the post held on regular basis has to be taken into account for the purpose of calculation of pension benefits. This application is not for an adjudication of regularisation of the services. However, the dicta of the Hon. Supreme Court is very instructive, focused and mandatory.

*"14. The practice adopted by the railways of taking work from employees in group 'D' post on a higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the railways is utilising for long periods the services of employees in Group 'D' post for higher post in Group 'C' carrying higher responsibilities **benefits of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.***

15. xxx xxx

16. *Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. **The pay last drawn by them in group 'C' post shall be protected even after their repatriation to group 'D' post in their parent department.*** (emphasis supplied)

Following the above dictum, if pay protection is to be given to such ad hoc promotees on their return to their parent cadre, such protection should be given with equal, if not greater force, to persons retired from service straight from such ad hoc posts. Hence, we find that the Railway Board instructions have no applicability about the downward revision of the pay in the case of the applicant.



12. The next point to be considered is about the observance of the principles of natural justice. The applicant very legitimately argued that such downward revision of pay leading to lower pensionary benefits was done without due notice to him. The respondents have no case that a due notice was given. We find therefore that such downward revision without prior notice and hearing given to the affected applicant is violative of the principles of natural justice and hence is incompetent and invalid.

13. The third point of contention relates to the consequences of belated disbursement of the pensionary benefits. As the facts stand, the applicant retired on 30.6.2004. The pension payment order was made on 3.1.2005, after six months and pension paid on 1.2.2005. In reply, the respondents would state due to certain administrative exigencies the pension was ordered on 3.1.2005. Chapter VII of the Railway Services (Pension) Rules, 1993 elaborately deals with the subject of determination and authorisation of pension and gratuity. After dealing with various stages of the commencement of the process, Rule 85 prescribes that the Accounts Officer shall issue the pension payment order not later than one month in advance (emphasis supplied) of the date of retirement of the Railway servant if the pension is payable in his circle of accounting unit. In this case, the accounting unit appears to be different. Factually, it is seen that the applicant's pension was received on 1.2.2005, after 7 months, gratuity and commutation were received in December/2004 at least after six months. We find therefore that the demand for interest is just. All the same, the delay is unfortunate and unconscionable.

14. In sum, we find that

The Railway Board instructions against prolonged and second ad hoc promotion have no bearing on the downward revision of the pay in the case of the applicant,

such downward revision without prior notice and hearing given to the affected applicant is violative of the principles of natural justice and



hence is incompetent and invalid and.

the demand for interest is just.

15. Under the above circumstances, the O.A is allowed by -

- (a) quashing A-4 and A-6 orders,
- (b) directing the respondents to recalculate the terminal benefits like pension, retirement gratuity and leave encashment on a basic pay of Rs.5625/- p.m.
- (c) and directing the respondents to disburse the pensionary benefits based on such recalculation within a period of three months from the date of receipt of copy of this <sup>order</sup> ~~and~~ pay <sup>less</sup> interest on the due amount ~~has~~ already paid @ 3% from 1.7.2004 till the date of disbursement and if the disbursement is delayed beyond the period of three months ordered above, the interest payable on such due amount shall be 5% from 1.7.2004 till the date of settlement.

16. No costs.

Dated, the 1st September, 2006.

*N.R.*

N.RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

*K.B.S.R.*

K.B.S.RAJAN  
JUDICIAL MEMBER

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