

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 20 OF 2007

Dated the 23rd October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

1. S Thajudeen,
S/o Sainulabdeen, Technician Grade I/DSL/
Electrical, Southern Railway, Diesel Loco Shed,
Southern Railway, Ernakulam Junction,
Residing at 'NILAS', House No.31/1018-C,
Rail Nagar, Ponnurunni, Vyttila, Kochi.
2. T.K. Nandan,
S/o TP Kuttan, Technician Grade-I/DSL/
Electrical, Southern Railway, Diesel Loco Shed,
Southern Railway, Ernakulam Junction,
Residing at No.134/F, Railway Quarters,
Ernakulam Junction, Kochi-682 016.

.. Applicants

[By Advocate: Mr. TC Govindaswamy]

-Versus-

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office,
Park Town, PO Chennai-3.
2. The Senior Divisional Personnel
Officer, Southern Railway, Trivandrum Division,
Thiruvananthapuram-14.
3. The Divisional Mechanical Engineer,
Southern Railway, Diesel Loco Shed,
Ernakulam Junction, Kochi-682 016.

...Respondents

[By Advocates: Mr. Prabhin Mathew for Mr Sunil Jose, ACGSC)

This application having been heard on 22nd September, 2008 the
Tribunal delivered the following -

ORDER

(Hon'ble Dr. KS Sugathan, AM)

There are two applicants in this OA. Both are presently working as Technicians Grade I DSL/Electrical in the pay scale of Rs.4500-7000 in the Diesel Loco Shed of Ernakulam Junction. While working as Technician Grade III in the pay scale of Rs.3050-4590 they were promoted to the ex-cadre post of Wireman Grade II and Crane Driver Grade II in the pay scale of Rs.4000-6000 vide order dated 7.10.1998 (A/1). Nearly five years later in September 2003 they were promoted as Technician Grade II in the pay scale of Rs.4000-6000 in their parent cadre, by order dated 25.9.2003 (A/2). However while fixing their pay in the promoted post in the parent cadre, the pay drawn in the posts of Wireman Grade II and Crane Driver Grade II was not protected. As on 25.9.2003 they were drawing the pay of Rs. 4400/- in the pay scale of Rs.4000-6000/- in the ex-cadre posts, but in their parent cadre on promotion to Technician Grade II the pay was fixed at Rs.4000/- by order dated 25.9.2003. Their representations to protect the pay did not evoke any response. Consequently they filed this OA seeking the following relief:

- "(i) Call for the records leading to the issue of Annexure-A2 and quash the same to the extent it fixes the applicants' pay at the stage of Rs.4000/- in scale Rs.4000-6000;
- (ii) Declare that the applicants are entitled to have their pay last drawn by them in scale Rs.4000-6000 as Technician Grade-II (Wireman/Crane Driver) protected while fixing their pay as Technician Grade-II(Elec.) in terms of Annexure-A2 and direct the respondents to protect the same, accordingly, and to grant the consequential benefits arising there from forthwith;

- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

[2] The respondents have stated in their reply that the posts of Wiremen Grade II and Crane Driver Grade II are ex-cadre posts. This fact was clearly mentioned in A/1 order dated 7.10.1998 by which the applicants were promoted. In terms of Rule 1313 (3) (iv) of the Indian Railway Establishment Code, where a railway servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the cadre. The Tribunal had dismissed similar claims in the past. In OA No.692 of 1998 this Tribunal had held that "it is well settled that pay drawn in an ex cadre post cannot be taken into account while fixing the pay on appointment to another post. This point has been clarified by the Full Bench of the Tribunal in its ruling in **R.P. Upadhyay-v- Union of India, (1996) 32 ATC 589**. In view of what is stated above, finding no merit, the application is dismissed, leaving the parties to bear their own costs." The facts of this case are similar to OA No. 692 of 1998. The applicants pay has been fixed in accordance with Rule 1313 (3)(iv) on the basis of their presumptive pay in the cadre, which is less than Rs.4000 as on 01.10.2002. They have thus justified the pay fixation at Rs.4000 as on 27.9.2003 in the parent cadre.

[3] We have heard the learned counsel for the applicants Shri T.C. Govindaswamy and the learned counsel for the respondent Shri Prabhu Mathew for Sunil Jose. We have also carefully perused the records.

[4] The issue for consideration in this OA is whether the applicants are entitled to have the higher pay drawn by them in ex-cadre posts protected on their repatriation to the parent cadre. The respondents have relied on the provisions of Rule 1313 (3)(IV) of Indian Railway Establishment Code which reads as follows:

"IV. Notwithstanding anything contained in this rule, where a Railway servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

[5] The respondents also relied on the orders of this Tribunal in OA No. 692 of 1998 decided on 8.3.2001 which in turn has relied on the orders of the Full Bench of the Tribunal in *R.P. Upadhyay vs. Union of India (1996 32 ATC 589)*. On the other hand the applicants have relied on the orders of this Tribunal in OA No. 121 of 2006 decided on 12th September 2007. In OA No. 121 of 2006 this Tribunal looked into the applicant's claim that his pay drawn in the ex cadre post should be protected in his parent cadre, and relying on the judgments of Hon'ble Supreme Court in *Bhadel Rai v. Union of India (2005 11 SCC 298)* and *Badri Prasad v Union of India (2005*

11 SCC 304) allowed the prayer. It is seen from the order of this Tribunal in OA No.121/06 that the applicant therein had remained in the ex-cadre post for more than 20 years and therefore it was held that the judgments of the Hon'ble Supreme Court in Bhadel Rai-v- Union of India (2005 11 SCC 298) and Badri Prasad -v- Union of India (2005 11 SC 304) were applicable. In Bhadel Rai's case (supra) the Hon'ble Apex Court held thus:

"In the case of the present appellant, the aforesaid directions squarely apply. The appellant had to undergo a screening test in the year 1995 and in the result declared in 1997, the appellant had qualified. A long period of twenty years has been spent by the appellant on a higher post of Rigger in Group-C post. In such circumstances, he is legitimately entitled to the relief of pay protection and consideration of his case for regular appointment to group-C post on the basis of his long service in Group-C post. "

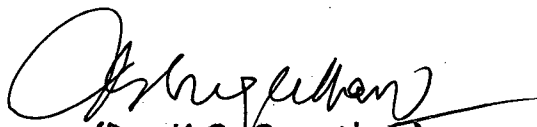
In Badri Prasad-v- Union of India (supra) the Hon'ble Apex Court held that -


"11. It is not disputed that the appellants were made to work on the post of Store man-cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments."

[6] It would be seen from the above extracts that the applicants in those cases had remained in the Grade-C/ex-cadre post for a period of 20 and 10 years respectively. In the case of the present applicant, he was posted to the ex-cadre post in October, 1998 and repatriated in September 2003 i.e. within a period of five years. It cannot be said the period of five years is abnormal for repatriation from an ex-cadre post. It is not long

enough to be compared to the facts of the cases referred to in the order of this Tribunal in OA No.121/06. Therefore, the judgment of this Tribunal in OA No.121/06 cannot be pressed into service to grant the relief sought by the applicants in the present OA. On the other hand, the respondents have acted on the basis of a provision in the IRE Code i.e. Rule 1313(3)(iv) which specifically provides that where a railway employee holding an ex cadre post is promoted in the parent cadre, his pay shall be fixed with reference to his presumptive pay in the original cadre post. The said rule has been extracted in para 4 above. There is no change in the above rule position. It is also very clearly stated in the order dated 7.10.98 (Annexure-A1) that the applicants are being posted to ex-cadre posts. When the Rule position is crystal clear and the period spent by the applicants in the ex-cadre post is not very long, we do not think that the claim of the applicants for pay protection can be sustained.

[7] For the reasons stated above, we are unable to grant the relief sought. The OA is dismissed. No costs.


(Dr. K.S. Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)