

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAULAM BENCH**

OA NO.202/04

FRIDAY, THIS THE 14th DAY OF JULY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

V. Unnikrishnan S/o P.B. Parameswaran Nair
Senior Clerk, Office of the Senior Section Engineer
Carriage & Wagons/Coaching Depot,
Southern Railway, Ernakulam Marshalling Yard
Ernakulam.
residing at Vadayath House
Vadama PO, Mala
Trichur District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

- 1 Union of India represented by
The General Manager, Southern Railways
Headquarters Office, Park Town PO
Chennai-3
- 2 The Chief Personnel Officer
Southern Railway, Headquarters Office
Park Town PO, Chennai-3
- 3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division,
Trivandrum-14

Respondents

By Advocate Mr. P. Haridas

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant, presently working as a Senior Clerk in the scale of Rs. 5000-8000 in the office of the senior Section Engineer (carriage & wagon) Ernakulam Marshalling Yard, Coaching Depot,

Southern Railway, Trivandrum Division is aggrieved by the denial of benefit of First financial upgradation with effect from 1.10.99 though that benefit has been granted to the applicant with effect from 1.11.2002 resulting in recurring monthly losses to him.

2. Briefly the facts are that the applicant was initially appointed as a Diesel Assistant in the pay scale of Rs 950-1500 on 13.10.1986. He sustained an injury and lost an eye and was therefore medically declassified during 1989. The applicant being a running staff was entitled to the benefit of being considered for an alternative appointment to a post carrying an equivalent scale of pay in terms of para 1309(iv) of the Railway Establishment Manual. The equivalency of the post held was to be determined by adding 30% to the minimum and the maximum of the scale of pay of the running staff and the scale of pay was treated as equivalent to the non-running scale of Rs 1200-2040 applying the above formula. Accordingly the applicant was appointed as Senior Clerk in the scale of Rs. 1200-2040 vide Annexure A1 order and ever since had been continuing in that post. The Assured Career Progression Scheme was introduced in Railways with effect from 1.10.1999 and the applicant submitted a representation for granting him the first financial upgradation which was rejected for the reason that he had been absorbed as senior clerk in scale of 1200-2040 with effect from 2.11.90 only. Again the applicant submitted representation stating that he is entitled to have his service counted from 13.10.86 for the purpose of ACP as the scale of pay granted to him is only an equivalent scale and not a

higher one. The applicant has contended that the respondents have not considered his representations in accordance with rules and the Board's instructions relied on by the respondents are not applicable in his case and his service in the same or equivalent scale of pay was continuous and the 12 years of service was to be reckoned from 13.10.1986.

3 In the reply statement, the respondents while admitting the service particulars have averred that the applicant was absorbed as a senior clerk in scale of Rs. 1200-2040 in a non-running cadre as per Annexure A1. He joined the post of Sr clerk with effect from 2.11.90. As per judgement the benefit of fixation in scale was given to the applicant with effect from 2.11.90. The applicant was working as a diesel assistant in the scale of Rs 950-1500 and he was posted in the scale of 1200-2040 which is admittedly a higher grade. They have also contended that the paragraphs 1312 and 1314 of the Indian Railway Establishment Manual are not relevant for computing 12 years of service from 13.10.86 under the ACP scheme.

4 In the rejoinder ,the applicant has reiterated that in Annexure A2 judgement the Tribunal had come to the conclusion that the applicant was accommodated in a post having a comparable scale of pay to the post he was holding prior to medical de-categorisation. And the scale of pay of Rs 950-1500 is equivalent to the scale of pay of Rs 1200-2040 in the non-running cadre. And hence the applicant's service in the same or equivalent scale of pay was continuous and therefore 12 years of service is to be reckoned

from 13.10.86 and he is eligible to get his financial upgradation from that date.

5 We heard Sri TCG Swamy for the applicant and Ms Deepa Pal for the respondents. The applicant has been denied ACP on the ground that his service prior to medical decategorisation as Diesel Assistant cannot be taken into account as it was rendered in a lower grade. The contention of the applicant is that both the scales are equivalent and no placement of persons in the higher scale is envisaged in the medical decategorisation scheme. The only issue therefore arising for our consideration is whether the scale of 950-1500 in the running cadre and the scale of 1200-2040 in the non-running cadre are equivalent. In terms of para 1309(iv) of the Railway Establishment Manual the position is as under.

"While finding an alternate post for medically incapacitated running staff 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying equivalent post." The applicant was a running staff and was therefore entitled to the benefit of the above rule and 30% of the basic pay is treated as pay in lieu of running allowance and applying the above formula the equivalent scale was worked out as 1200-2400 in the running cadre. The respondents have not denied this position. They contend that it is a higher scale. The rule itself envisages placement in an equivalent scale only and there is no provision for placing a medically decategorised person in a higher scale. Only a special formula has been devised to establish equivalence between running and non-running cadres. The stand of the respondents is therefore contradictory and incorrect and has to be rejected. We hold that by virtue of the provisions of IREM Para 1309(iv) the applicant was placed in an equivalent/responding pay scale.

6 Let us now examine the provisions under the ACP scheme. The condition for grant of the benefits under the scheme being ;that the first financial upgradation shall be granted after 12 years of regular service and the second upgradation after 12 years of regular

service thereafter. It also stipulates that "for residency period s of regular service for grant of benefit under the ACP scheme shall be counted from the grade in which an employee was appointed as a direct recruit. It is therefore obvious that it is not necessary that the regular service should have been rendered in the same post as long as the employee has not earned a promotion in the 12 year period he is eligible for grant of ACP benefits. The placement of the applicant in the post of senior clerk which was considered as equivalent to the running scale of Rs 950-1500 can not be termed as a promotion by any standards.

7 The applicant has relied on the provisions of Paras 1312 and 1314 of the IREM which has been denied as not applicable and irrelevant. We are of the view that they are relevant to the issue on hand as they govern the conditions of seniority and continuity of service for all purposes as far as the medically categorised persons are considered. The provisions read thus:

"1312. Past service to be treated as continuous. A railway servant absorbed in an alternative post will for all purposes have his past services treated as continuous with that in the alternative post and will if a pre 31 railway servant who has elected to remain on the pre31 scales of pay continue to remain eligible for such scales. He will also continue to be governed by the conditions of service applicable to him before he was declared medically unfit."

Para 1314(a) seniority. The medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in the grade of absorption."

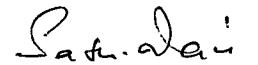
8 The policy of the railways regarding medically declassified staff as fairly discernible from the above is that they should not be deprived of continuity in service and seniority and by placement in equivalent posts it is to be ensured that their service conditions remain unaffected. The use of the words "equivalent or corresponding" in para 1314 above is significant in this context. In this perspective, the scales/posts of Diesel Assistant in the running cadre and Sr clerks in the non-running cadre have to be considered as equivalent and corresponding. The applicant's service in both the ~~✓~~ posts being continuous and regular, has to be considered for reckoning of 12 years service for granting financial upgradation under the ACP scheme.

9 In the result Annexure A5 is quashed. The respondents are directed to grant the benefit of first financial upgradation to the applicant with effect from 1.10.99 and to modify Annexure A-7 accordingly. The applicant shall be also eligible for consequential arrears of pay and allowances. OA is allowed. No costs.

Dated 14.7.2006.


GEORGE PARACKEN
JUDICIAL MEMBER

kmn


SATHI NAIR
VICE CHAIRMAN