

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A No. 204 /2011**

**Monday, this the 12th day of November, 2012.**

**CORAM**

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. F.Sebastian Titus, S/o Frank,  
Loco Inspector, Southern Railway,  
Quilon residing at Sevion, MRA-73 B,  
Mudackal West, Kollam-691 001.
2. K.V.Mathew, S/o Varghese,  
Loco Inspector, Southern Railway,  
Ernakulam residing at Kochuplammoottil House,  
Chennithala South .P.O.  
Mavelikkara, Alapuzha-690 105. - Applicants

**(By Advocate Mr M.P.Varkey)**

**v.**

1. Union of India represented by General Manager,  
Southern Railway, Chennai-600 003.
2. Chief Personnel Officer,  
Southern Railway, Chennai-600 003.
3. Senior Divisional personnel Officer,  
Southern Railway, Trivandrum-695 014. - Respondents

**(By Advocate Mrs K Girija)**

**This application having been finally heard on 12.11.2012, the Tribunal on the same day delivered the following:**


**ORDER**

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicants, while working as Good Drivers, were selected as Loco Running Supervisors during 1992 – 94 as per a scheme introduced by the Railway Board's RBE No. 198/92 dated 25-11-1992. In the wake of the 5<sup>th</sup> Pay

Commission Recommendations, Revised Pay Rules, 1997 came into existence with effect from 01-01-1996. While implementing the Rules, certain anomalies have occurred whereby those who joined as Loco Running Supervisors earlier were getting less pay and allowances than their juniors who joined this post later. In order to overcome this anomaly, the Railway Board issued RBE No. 69 of 2007 order by which stepping up of pay was allowed to the seniors. Annexure A-1 refers. Some of the individuals were benefited by the above said stepping up provisions. However, the 3<sup>rd</sup> respondent cancelled such stepping up pay in respect of four Loco Running Supervisors which was challenged in OA No. 477 of 2009. The said OA was allowed and the order of cancellation quashed and set aside. Annexure A-2 refers.

2. A like anomaly arose when the CCS (Revised Pay) Rules, 2008 was introduced w.e.f. 01-01-2006 in the wake of acceptance of the recommendations of the Sixth Pay Commission Report. The Railway Board again issued an order RBE No. 236 of 2009 dated 24-07-2009 allowing stepping up of pay of seniors at par with juniors in the Loco Running Supervisors (since designated as Loco Inspectors). It is the case of the applicants that the above order of stepping up has been carried out in all the Divisions except the Trivandrum and Palghat Divisions. Vide Annexure A-4 and A-5, such a stepping up of pay has been allowed in Tiruchi Division and Madurai Division. When a similar treatment had been sought, the second respondent has stated that the posts of Senior Loco Inspectors have been decentralized to Divisional level w.e.f. 01-04-2009 and as such, such a stepping up would be carried out only at the Divisional level and hence, comparing the juniors in other divisions, the applicants cannot claim stepping up of pay. Applicant No 1 made representation vide Annexure A-6, for stepping up of pay at par with one of his juniors Shri N.B. Sasikumar, whose fixation of pay is contained in Annexure A-7.



3. The applicants have sought for the following reliefs:-

(a) Quash Annexure A-8 (series) orders.

(b) Declare that the applicants are entitled to stepping up of pay in terms of A-3 order on par with their junior N.B.Sasikumar or S.Sakthivel in the alternative, with consequential arrears and; direct the respondents accordingly.

4. Respondents have contested the O.A. They have contended that the applicants and the juniors to them are not from the same category when they were drafted to the cadre of Loco Running Supervisors and consequently, they cannot maintain a comparison. At the time of the applicants' selection as Loco Running Supervisors, the applicants were Goods Drivers, while the junior was functioning as Mail Driver. Thus, from different seniority units these have come to the cadre of Loco Running Supervisors. At the time of selection as Loco Running Supervisor, the applicants' seniority was maintained zonal Railway wise while the junior whose case is compared, happened to switch over to Loco Running Supervisor cadre after decentralization of seniority units i.e. after 01-04-2009.

5. Applicants have filed the rejoinder stating that if Shri Sasikumar may not be comparable, one S. Sakthivel is comparable. He was junior to the applicants in the post of Goods Driver, vide Annexure A-9 and equally he was junior to the applicants in the Loco Inspector cadre as well, vide Annexure A-10 seniority list. The decentralization took place much later while the claim of the applicants is from 01-01-2006, when the cadre was centralized one.

6. Counsel for the applicant referred to the documents filed and submitted that in at least four cases, this Bench has held that notwithstanding the decentralization of seniority units, since at the time when comparison was to take

place, the two are in the same zonal Railway the same should have been considered, though at a later point of time, the seniority unit would have been divided on Division basis. Following the decision of this Bench in OA No. 1001 of 2010, the Principal Bench also has decided the OA No. 3857 of 2010 allowing the application, vide order dated 24<sup>th</sup> October, 2011. The case of the applicants are all identical in all the four with those already decided cases.

7. Counsel for the respondents submitted that all the above said decisions (save that of Delhi Bench) have been stayed by the High Court of Kerala. In this regard, counsel made available a copy of the stay granted to one of the cases i.e. OA 1002 of 2010. (Order dated 17-07-2012 in OP 1907 of 2012). Again, the grounds of defence in all these O.As, by the respondents resemble the same and the same are pressed into service in this OA.

8. Arguments were heard and documents perused. In so far as grant of stay of the orders of the Tribunal, the question arises as to whether the order so stayed could be followed as a precedent in another identical case. In **State of Uttar Pradesh vs Hirendra Pal Singh (2011) 5 SCC 305**, the judgment in **Shree Chamundi Mopeds Ltd., vs Church of South India Trust Association** had come for discussion and the Apex Court has held in that case as under:-

*"23. In Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. this Court explained the distinction between quashing of an order and staying the operation of the order observing as under:*

*"10. ... While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative*

*from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."*

*24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance."*

9. In view of the above, we are of the considered view that there is no bar in following the earlier decisions even when such past decisions, on challenge, have been stayed (i.e. kept in abeyance).

10. The respondents have contended that there has been change in the Seniority Unit in that the applicants belong to a particular Division while the comparison is with reference to an individual who belongs to another Division. In so far as seniority list of Loco Inspectors, these are on Division Basis w.e.f. 01-04-2009. What is to be seen is as to what is the date w.e.f. which the stepping up of pay has been claimed. In the instant case, the stepping up is demanded w.e.f. 01-01-2006 and admittedly, at that time, the seniority is Zonal based. In that Zonal seniority list, the applicants are seniors to the said Saktivel. Next one is when people entered in the Loco Inspector cadre, they were drawn from different cadres and the applicants and one Shri N.B. Sasikumar did not belong to the same cadre inasmuch as whereas the applicants belong to Goods Driver Cadre, the said Sasikumar belonged to Mail Driver Cadre. The applicant has

now shifted the comparison from Sasikumar to Shaktivel, who was Goods Driver and had been junior to the applicant.

11. The following are the decisions in which uniformly, stepping of pay had been permitted:-

- (a) OA 1001 of 2010 decided on 4<sup>th</sup> October, 2011
- (b) OA 1002 of 2010 decided on 4<sup>th</sup> October, 2011
- (c) OA 3857 of 2010 of the Principal Bench, decided on 24th October 2011
- (d) OA No. 1106 of 2010 decided on 22-11-2011
- (e) OA No. 93 of 2011 decided on 21<sup>st</sup> February, 2011.

12. The reasonings given in the above cases are all identical and we have no hesitation to follow the same in the instant case as well. Of course, this order would also abide by the decision of the High Court in other cases referred to above.

13. In view of the above, the OA is allowed. Respondents are directed to pass appropriate orders stepping up of the pay of the applicants at par with their junior Saktivel and work out arrears of pay and allowances due to them and afford payment.

14. No costs.

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr K.B.S.RAJAN  
JUDICIAL MEMBER

trs \*Name and address of the third applicant as given below is inserted in the cause title to the Order dated 12.11.2012 in OA 204/2011 (vide order dated 16.5.2013 in MA 490/2013 in OA 204/2011)

(P.T.O)