

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.205/11

Friday this the 5th day of October 2012

C O R A M :

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

S.Prakash,
S/o.Srinivasa Pai,
Station Master/II, Ernakulam Jn, Southern Railway.
Residing at 29/192, Valiaparambil House,
Eroor West PO, Tripunithura – 682 306. ...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. Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum.
3. Sr. Divisional Finance Manager,
Southern Railway, Trivandrum. ...Respondents

(By Advocate Mr.Sunil Jacob Jose)

This application having been heard on 5th October 2012 this
Tribunal on the same day delivered the following :-

ORDER

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

The applicant was appointed as a Commercial Clerk in Palghat
Division of Southern Railway in 1988. He was promoted as Assistant
Station Master in 1990 and in 1991 he sought a transfer to Trivandrum
Division which materialized only in 2002. In the meantime, he was
promoted as Station Master Grade III in 1991. The pay scales of Assistant
Station Master and Station Master Grade III were revised as Rs.4500-7000

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and Rs.5000-8000 respectively from 1.1.1996. When the applicant was transferred from Palghat to Trivandrum Division on 18.2.2002, his pay was Rs.5900/- in scale Rs.5000-8000. On joining Trivandrum Division he was absorbed as Assistant Station Master in scale Rs.4500-7000 with a pay of Rs.5875/- + Rs.25 PP with effect from 18.2.2002 as per memorandum dated 15.4.2002 issued by the 2nd respondent. A true copy of which is produced as Annexure A-1. It is stipulated in Annexure A-1 that the applicant would draw his next increment in scale Rs.4500-7000 only on completion of 12 months, which the applicant thought is in accordance with law. Consequently the applicant's pay was raised to Rs.6000/- from 1.2.2003, to Rs.6125 from 1.2.2004, to Rs.6250/- from 1.2.2005 and to Rs.6375/- from 1.2.2006. His increment was withheld for 12 months' (non recurring) from 1.2.2006. The applicant was selected as Traffic Apprentice under 10% LDCE quota for filling up the post of Station Master Grade II in scale Rs.5500-9000 and undergone training as such from 16.6.2006 to 15.6.2008. He was also inducted as Station Master II in scale Rs.5500-9000 from 16.6.2008. During training his pay was raised to Rs.6375/- from 16.6.2006 to Rs.6725/- from 1.6.2007 in the said scale on notional basis. However, the said pay fixation became redundant due to the introduction of 6th Pay Commission pay scale with retrospective effect from 1.1.2006. The applicant contend that he is entitled for refixation of pay at Rs.6000/-, Rs.6125/-, Rs.6250/- and Rs.6375/- respectively on 1st March of 2002, 2003, 2004 and 2005 in scale Rs.4500-7000 with consequential arrears and seeks for a direction to that effect. There is a further prayer for declaration that he is entitled to have his pay refixed at Rs.11860/-, Rs.12300/-, Rs.12760/- plus grade pay of Rs.2800/- each in



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Pay Band I respectively on 1.1.2006, 1.7.2006 and 1.7.2007 and to have his pay refixed at Rs.13360 + Rs.4200, Rs.13890 + Rs.4200, Rs.14440 + Rs.4200 and Rs.15000 + Rs.4200 in Pay Band II respectively on 16.6.2008, 1.7.2008, 1.7.2009 and 1.7.2010 due to his induction/promotion as Traffic Apprentice/Station Master II from 16.6.2008 with consequential arrears.

2. In the reply statement filed by the respondents they virtually conceded the contentions of the applicant regarding his entitlement for fixation of pay. It is stated in paragraphs 2 and 3 as follows :-

"2. At the outset it is humbly submitted, without advertizing to various averments in the OA, that the claim of the applicant for refixation of his pay in Grade Rs.4500-7000 as on 1st March 2002 onwards and for consequent refixation in VI Pay Commission Scale of pay from 1.1.2006 on his induction/promotion as Traffic Apprentice/Station Master-II with effect from 16.6.2008 with consequential arrears has been examined by the respondents on the basis of the averments in the OA. On such examination, a Memorandum No.V/P.524/II/Fixation/Court Case dated 3.5.2011 refixing the applicant's pay with effect from 1.3.2002 and for the subsequent years has been issued. A true photocopy of the said Memorandum is produced herewith and marked as Annexure R-1.

3. It is humbly submitted that the prayer for refixation of pay upto 15.6.2008, ie., till his induction/promotion as Traffic Apprentice/Station Master-II, as claimed in the OA has been granted as per the Annexure R-1. As regards the claim for fixation of pay with effect from 16.6.2008 and for further increments effective from 1.7.2008, 1.7.2009 and 1.7.2010, it is humbly submitted that the same is not correct and hence, denied. The applicant's pay as on 1.7.2007 has been fixed at Rs.1276/- + Rs.2800/- (Grade Pay). Accordingly, on promotion as Traffic Apprentice from 16.6.2008, his pay is fixed at Rs.13270/- + Rs.4200 (Grade Pay) and not as claimed in the OA. This is duly accounting 3% of Rs.12760/- + Rs.4200, ie., Rs.13268.80, rounded off to Rs.13270/-. The applicant's annual increments for the subsequent periods effective from 1.7.2008, 1.7.2009 and 10.7.2010 have been allowed on the basis of pay at Rs.13270/- + Rs.4200, as per

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the Annexure R-1. The arrears consequent to the fixation are due from 22nd February 2008, ie., from 3 years prior to the date of the OA as held by this Hon'ble Tribunal in various similar O.As. It is humbly submitted that arrears consequent to Annexure R-1 are being worked out for effecting payment to the applicant without any further loss of time."

3. Annexure R-1 is dated 3.5.2011 and the applicant's pay has been refixed as thereunder. Therefore, substantial grievance of the applicant stands redressed by Annexure R-1 order. However, arrears have not been paid to him as arrears is limited to 22.2.2008.

4. The question regarding entitlement for payment of arrears has been specifically considered by this Tribunal in O.A.No.892/10. We have held in para 9 thereof 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/I(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



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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 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."

5. In the light of the above finding the applicant is entitled for arrears also since arrears itself is paid based on a order passed by the Railways giving retrospective effect which cannot be denied. Therefore, the benefits already conferred to a similar applicant in O.A.892/10 is extended to the applicant also and arrears shall also be paid. Original Application is, thus, allowed.

(Dated this the 5th day of October 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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