

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 260 OF 2008

.....FRIDAY....., this the 7th day of AUGUST , 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Gopalakrishna Sharma,
Junior Engineer/Electrical Power Grade I,
Office of the Section Engineer (Power),
Southern Railway, Trivandrum,
residing at TC.20/2634, S.S. Street,
Karamana, Trivandrum-695 002.

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Applicant

(By Advocate Mr. P. Ramakrishnan)

versus

1. Union of India, represented by the Secretary, Ministry of Railways, New Delhi.
2. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum.
3. The Assistant Personnel Officer (M&E), Head Quarter Office, Personnel Branch, Chennai – 600 003.
4. The Chief Personnel Officer, Southern Railway, Chennai.

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Respondents

(By Advocate Ms. P.K. Nandini)

The application having been heard on 04.08.2009, the Tribunal on7-8-09..... delivered the following:

ORDER

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

The applicant commenced his service as Electrical Fitter in October 1990. Later on he was selected for appointment as Junior Engineer, Grade II vide Annexure A1 order dated 28.04.1998. However, later on by

memorandum dated 20.09.1999, respondents had cancelled the selection on account of certain irregularities in conducting the selection. The applicant referred O.A. No.1069 of 1999 which was however dismissed and when the same was challenged the High Court also dismissed the original petition by the applicant. At the same time, the Court had directed that till fresh selection is made by the Department, the applicant (and certain other writ petitioners) would be allowed to continue as Junior Engineers provisionally. Annexure A2 refers. Thus the applicant continued in the service and when the fresh selection was conducted, he was selected vide Annexure A3 order dated 27.03.2002. The applicant was fixed his pay on proforma basis in the pay scale of Rs.5000-8000 as under :-

"(2). Shri. N. Gopalakrishna Sharma, JE II/TVC (P)

Rs.5000	in scale 5000-8000 w.e.f. 30.4.98	
Rs.5150	"	1.4.99
Rs.5300	"	1.4.00
Rs.5450	"	1.4.01
Rs.5600	"	1.4.02

} on proforma

2. Vide Annexure A5 representation dated 13.01.2003, the applicant claimed service benefits including arrears of pay from 30.04.1998 onwards. As there was no joy the applicant moved O.A. No.46/2005 which came to be disposed of in the following terms :-

"3. In the light of what is stated above the application is disposed of directing the 2nd respondent to consider and dispose of Annexure A-5 representation of the applicant in the light of the rules and instructions on the subject giving him a speaking order within a period of two months from the date of receipt of a copy of this order."

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3. It was in pursuance of the above order of the Tribunal the respondents had informed the applicant as under :-

"As the selection conducted in 1998 had to be cancelled on account of the orders of the Hon'ble Tribunal and the Hon'ble High Court, a claim for benefits on the basis of the said selection is not permissible. Though your selection as Junior Engineer/Grade-II/Electrical has been accepted only from 5-8-2002, you have been granted fixation of pay as Junior Engineer/Grade-II/Electrical with effect from 30-4-1998 on proforma basis and allowing annual increments thereon.

In these circumstances, your claim for service benefits and arrears of pay and allowances with effect from 1-11-1999 is untenable."

4. Applicant had preferred Annexure A9 and A10 representations again for seniority and service benefits reckoning from 30.04.2008. These remained unanswered by the respondents and hence the applicant had filed this O.A. seeking the following relief :-

"(A) hold that the applicant is entitled to be treated as having entered the cadre of junior Engineer on 28/4/1998,

(B) issue an order directing the 4th respondent to take up and dispose Annexure P-9 and P-10."

5. Respondents have filed their reply. Non joinder of necessary parties and res-judicata have all been the preliminary objections raised.

According to the respondents, there is no justification to include the applicant's services from 30.04.1998 upto 05.08.2002 as the applicant's services were on provisional basis and it was only as a fresh selection that the applicant was inducted in 2002. As regards pay allowances, respondents have submitted that the applicant having been awarded proforma pay fixation, he is not entitled to any other financial benefits.

6. Counsel for the applicant submitted that the applicant was functioning as Junior Engineer as per the direction of the High Court and there is no point in fixation of pay on proforma basis without making actual payment. As regards seniority, on being convinced that his further appointment is based on a fresh selection, the counsel had been fair enough to concede that the same point is not pressed.

7. Counsel for the respondents submitted that apart from the preliminary objections, the applicant's prayer being limited, the relief sought for beyond what has been asked for may not be granted. In other words, as per the counsel for the respondents, the Tribunal may pass an order with a direction to the respondents to dispose of the pending representations.

8. Arguments were heard and documents perused. The fact that the applicant continued to work as Junior Engineer, Grade II from April 1998 (commencement of training) to August 2002 (till fresh selection) has not been denied by the respondents. Infact, they have acted upon the same, by way of grant of proforma fixation of pay. The question is whether the applicant has rightly claimed actual pay and allowances in his representations. The following decisions of the Apex Court would go to show that when by a

Competent Authority, an individual functions in a particular post, he is entitled to pay and allowances attached to the said post :-

(a) *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560.

"We understand that the services of the petitioners have been regularised recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."

(b) *Selvaraj v. Lt. Governor of Island, Port Blair*, (1998) 4 SCC 291.

"It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground."

(c) *Jaswant Singh v. Punjab Poultry Field Staff Assn.*, (2002) 1 SCC 261,

"... while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he

was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties".

9. With the above decision of the Apex Court in view, the respondents should consider the representations at Annexure A9 and A10 and should arrive a just conclusion.
10. In view of the above the respondents are directed to dispose of the pending representations at Annexure A9 and A10, keeping in view the law laid down by the Apex Court in the judgments referred to above and pass necessary orders. Time calendared for the full compliance of this order is 03 months from the date of communication of this order. No Costs.

Dated, the 7th AUGUST, 2009.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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