

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 261 of 2008

Monday..., this the 10th day of November, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K NOORJEHAN, ADMINISTRATIVE MEMBER

Vivek Sreedharan,
S/o. P. Sreedharan,
S.No. J/T 2380,
Deputy Chief Controller (Traffic),
South Railway, Palakkad Division,
Palakkad.

... Applicant.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. Senior Divisional Personnel Officer,
Southern Railway, Palakkad
2. The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai - 3
3. The Railway Board, Represented by its
Chairman, Ministry of Railways,
Rail Bhavan, New Delhi.
4. Union of India, through
The General Manager,
Southern Railway, Park Town,
Chennai - 3

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The original Application having been heard on 30.10.08, this
Tribunal on 10-11-08 delivered the following :


O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant in this case has prayed for the following:

(a) For a declaration that the applicant is eligible and entitled to have fixation of pay in the cadre of Assistant Yard Master in accordance with Rule 1313 of the Indian Railway Establishment Code (FR 22 (1)(a) (1) of the Railways as granted to Shunting Master Grade I and Assistant Station Master in the Scale of Rs.1400-2300 (Pre-revised).

(b) Issue necessary directions to the respondents to re-fix the pay of the applicant in the post of Assistant yard Master in the scale of pay of Rs.1400-2300 in accordance with Rule 1313 of IREC (FR 22(1)(a)(1) with effect from 6.4.1991 and further re-fix his pay in his promotion posts as well and also grant and disburse to him all consequential benefits arising therefrom expeditiously, at any rate, within a time limit to be fixed by this Hon'ble Tribunal.

2. Briefly stated, the applicant joined the services of Southern



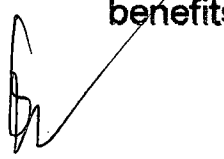
Railway as Train Clerk in Palghat Division in May 1984 and was successively promoted as Senior Train Clerk in January, 1986 and as Head Train Clerk in January 1989. Having been selected on promotion to the post of Assistant Yard Master (AYM for short) he was posted in that capacity in March 1991 and he assumed duties on 06th April 1991. According to the applicant, the said post of AYM carries higher duties and responsibilities of greater importance and as such his pay should be fixed as per Rule 1313 of Indian Railway Establishment Code (IREC for short)(corresponding to FR 22(1)(a) (1)). However, on his promotion from the post of Head Train Clerk to the post of AYM, this benefit under Rule 1313 of IREC was denied. It was stated by the respondents vide Annexure R-8 that cases of promotion from the category of HTC to AYM during the period 1.1.86 to 31.12.95 has not been indicated alongwith categories in the identical scale of pay specified for the benefit of fixation of pay under Rule 1313 of IREC. Hence, this O.A.

3. Respondents have contested the O.A. It has been conceded by the respondents that the applicant had assumed higher responsibilities of AYM with effect from 8.4.91 (para 6 of the counter). However, according to them, pay of the applicant on posting as AYM was not refixed as the scales of HTC and AYM were the same (1400-2300). And, the Railway Board by communication

dated 24.5.99 (Annexure A-12), ~~stated that~~ for the benefit of pay fixation under Rule 1313 to certain categories of promotions made between 1.1.1986 and 31.12.1995 carrying identical scales. Since in the said letter no reference has been made in respect of promotion to AYM from HTC, the applicant is not eligible for pay fixation under Rule 1313 of IREC.

4. The applicant has filed rejoinder wherein he has contended that provision under Rule 1313 of IREC is statutory in nature while Annexure A-12 is only an administrative order of the Railway Board and as such non-inclusion of HTC as a feeder category of AYM in Annexure A-12 cannot be a valid reason in denying higher pay fixation in the post of AYM.

5. Counsel for the applicant argued that, a Rule under IREC is a statutory rule and the benefit arising out of that rule cannot be denied to the applicant on the basis of any order of the Railway Board. It is the admitted fact that the post of AYM carries higher responsibility. As such, irrespective of whether or not the Railway Board Circular dated 24.5.99 (A-12) includes the post of HTC as feeder category for promotion to the post of AYM, the applicant is entitled to the said benefits under Rule 1313 of IREC.




6. Counsel for the respondents, however stated that the provision of Rule 1313 of IREC is admissible only when the promotion is from the feeder category and Railway Board's Circular vide A-12 as amended vide order dated 3.6.99 (Annexure R-2) does not include HTC as feeder category.

7. Arguments were heard and documents perused. Rule 1313 of the Indian Railways Establishment Code reads as under:-

"1313. (FR-22) (I) –The initial pay of a railway servant who is appointed to a post on a time scale of pay is regulated as follows:--

(a) (1) Where a railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more. Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad-hoc basis, the railway servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date or such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this



rule on the date of accrual of next increment in the scale of the pay of the pay of the lower grade or post. In cases where an ad-hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

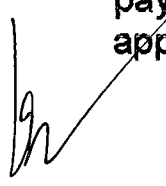
Provided that where a railway servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty five, whichever is more;

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities or greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis;

Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay;

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time scale of the old post; in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time scale of the new post.

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Railway servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of



increment in the old post.

(3) When appointment to the new post is made on his own request under (Rule 227 (a) (2)-RI (FR-15A) (2)) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that **the minimum of the time scale provided that, both in cases covered by clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), if he;**

(1) has previously held substantively or officiated in –

- (i) the same post, or
- (ii) **a permanent or temporary post on the same time scale; or**
- (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale; or

(2) is appointed subject to the fulfillment of eligibility conditions as prescribed in the relevant recruitment rules to a tenure post on a time scale identical with that of another tenure post which he has previously held on regular basis;

then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1) (iii) be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 1303 (iii) - RII (FR-9 (21) (a) (iii)) which he drew on the last occasion,.....
" (emphasis supplied)

8. The stand of the respondents is that as per Railway Board circular, the post of Head Train Clerk has not been indicated as a feeder grade to the higher post of A.Y.M. during the material period i.e. 01-01-1986 to 31-12-1995 and hence, the benefit of pay fixation

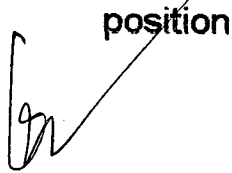
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under Rule 1313 is not available to the applicant.

9. Counsel for the applicant submitted that Rule 1313 having statutory character, the same cannot be varied to the disadvantage of the applicant through a Railway Board's communication. Once it is admitted that the applicant has been performing duties of higher responsibilities the logical consequence is that his pay should be fixed in accordance with Rule 1313 in view of the proviso to Rule 1313 and the same cannot be frustrated under any circumstances.

10. The post held by the applicant prior to his promotion as AYM is Head Train Clerk. He was alerted for necessary written test and he qualified. This post of Head Train Clerk is not an ex cadre post. Non applicability of provisions of Rule 1313 may be justified if the post of Head Train Clerk is one of ex cadre post the same is not a feeder grade for the promotional post of AYM. That is not the case here. Once the applicant was alerted to participate in the written test and is promoted to the post of AYM, he is no doubt entitled to pay fixation as per Rule 1313 IREC.

11. Now the question is one of limitation. The promotion of the applicant took place as early as in April, 1991. It is the settled position that *law leans in favour of those who are alert and vigilant.*




(**State of T.N. v. Seshachalam**, (2007) 10 SCC 137) Counsel for the applicant submitted that where the issue relates to fixation of pay, there is recurring cause of action and as such, on the basis of the decision by the Apex Court in the case of **M.R. Gupta v. Union of India**, (1995) 5 SCC 628, the OA is within limitation. In the above case, the Apex Court has observed as under:-

"6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore v. State of M.P. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

8. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of



limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs."

12. The above divides the issue into two parts – one relating to fixation of pay and the other to consequential reliefs including arrears. While limitation was not insisted regarding fixation of pay, being a recurring cause of action, in regard to arrears, limitation aspect would apply which falls under the category of 'continuing cause of action'. In fact in a recent case of Union of India vs Tarsem Singh 2008(8) SCC 648 decided on 13th August 2008, the Apex Court has referred to the decision in M.R. Gupta (supra) and another case of Shiv Dass vs Union of India (2007) 9 SCC 274 and ultimately held as under:-

"7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third



parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequent relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

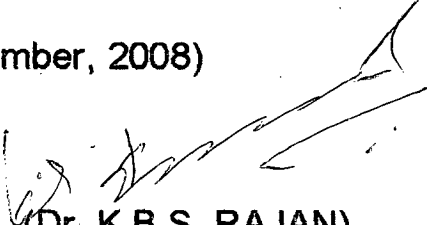
13. Thus, in so far as the case of the applicant is concerned, since the matter pertains to fixation of pay right from April, 1991, wrong fixation of pay from the date of filing of the OA would fall under continuing wrong, while arrears if any, arising out of such fixation right from 1991 till three years anterior to the date of filing of OA would fall under delayed claim. In respect of the former, the same poses no problem as limitation does not apply. In respect of the latter i.e. arrears, in view of the inordinate delay in approaching the Tribunal, the same has to be rejected.

14. Thus, the **OA is allowed** to the extent that the respondents shall fix the pay of the applicant, by applying the provisions of Rule 1313 of IREC for the period from 6th April, 1991 in the scale of 1400 – 2300, afford annual increment accordingly, work out the revised pay as per the revised pay rules of 1996 and work out the pay as of 31st

May 2005 (three years anterior to the date of filing of the OA) and till that day, the pay fixation shall be only notional. Actual pay would be admissible w.e.f. the pay for the month of June, 2005 onwards. Arrears arising out of the fixation of pay from the month of June, 2005 would, however, be admissible to the applicant. Respondents are directed to work out the pay of the applicant accordingly and effect the payment on the above lines. As the matter pertains to 1991 onwards and as in between the pay has been revised coupled with the fact that the applicant has earned certain promotions during this period, the drill involved in fixation of pay initially as of 1991, subsequently in the wake of 5th Pay Commission Recommendation and later at the time of promotion to higher post would certainly be time consuming and as such, sufficient time is required for implementation of this order. A period of eight months would, in our opinion, be adequate to comply with the order in full. Accordingly, the said time schedule of eight months from the date of communication of this order is calendared for full compliance. No costs.

(Dated, the 10th November, 2008)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.