

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
OA NO.266/2005

Friday this the 19th day of February, 2007.

CORAM:

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

Mrs.Chandini Mathew,
Commercial Clerk, Parcel Office,
Southern Railway, Ernakulam Jn
Ernakulam. ... Applicant

By Advocate Mr.K.A.Abraham

V/s

1. Union of India represented by
 the Secretary to Government of India,
 Ministry of Railway,
 Rail Bhavan, New Delhi.
2. The Senior Divisional Personnel Officer,
 Southern Railway,
 Trivandrum Division,
 Trivandrum
3. The Senior Divisional Personnel Officer,
 Southern Railway,
 Bangalore Division,
 Bangalore. ... Respondents

By Advocate Mrs.Sumathi Dandapani Sr
Ms.P.K.Nandini (represented by Ms.Suvitha)

The application having been heard on 19.2.2007 the Tribunal delivered the following on the same day:

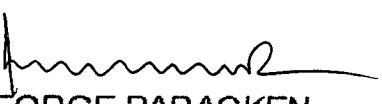
Hon'ble Mrs.Sathi Nair, Vice Chairman

(ORDER)

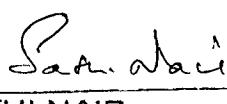
The case was admitted on 12/04/2005 and the counsel for applicant was present on that day. It is seen that the counsel for applicant

has been continuously seeking adjournment from 31/10/2006.

The applicant has also not filed any rejoinder. There is no representation on behalf of the applicant today also. It appears that the applicant is not interested in pursuing the case and hence the OA is dismissed for want of prosecution.


GEORGE PARACKEN
JUDICIAL MEMBER

abp


SATHI NAIR
VICE CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

the 3rd August, 2007

ORIGINAL APPLICATION NO.266 OF 2005

CORAM:-

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

**Ms. Chandini Mathew,
Commercial Clerk, Parcel Office,
Southern Railway, Ernakulam Jn.,
Ernakulam.**

.. Applicant

[By Advocate: Mr KA Abraham)

-Versus-

**1. Union of India,
represented by the Secretary to Govt. of India,
Ministry of Railway, Railway Bhavan,
New Delhi.**

**2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.**

**3. The Senior Divisional Personnel Officer,
Southern Railway,
Bangalore Division, Bangalore.**

....Respondents

[By Advocates: Mrs Sumathi Dandapani, Senior, Ms PK Nandini]

**This application having been heard on 10th July, 2007 the Tribunal
delivered the following -**

ORDER

(Ms. Sathi Nair, Vice Chairman)

The grievance of the applicant is that while fixing the pay in the lower scale the last pay drawn in the higher pay scale has not been given on her transfer to Trivandrum Division of the Southern Railway, on mutual transfer basis.

2. Briefly stated, the facts are that the applicant while working as Senior Commercial Clerk in Bangalore Division of Southern Railway in the pay scale of Rs.4000-6000/- applied for a mutual transfer from Bangalore Division to Trivandrum Division with one Sri D.Sivasankar, Commercial Clerk, Trivandrum Division. The mutual transfer was sanctioned vide Annexure A/2 Memorandum dated 20.5.2003 reverting her as Commercial Clerk in the pay scale of Rs.3200-4900/-. On being relieved the applicant reported to D.R.M. Trivandrum on 21.5.2003 and she was directed to report to Chief Parcel Supervisor, Parcel Office, Ernakulam where she joined on 23.5.2003. At the time of her transfer she was drawing the basic pay of Rs.4100/- and the next increment due had not been granted as she was on maternity leave. After joining at Ernakulam she was allowed to draw the pay at Rs. 4000/- for a period of one year nine months. Thereafter, by Annexure-A/3 order dated 2.9.2004, the 2nd Respondent has re-fixed her pay

reducing the basic to Rs.3625/- in the pay scale of Rs.3200-4900/-. This was done after 22 months of her joining at Ernakulam that too without any notice and also without affording any opportunity of being heard. The applicant has placed reliance on the judgment of Hon'ble Supreme Court in *Bhagawan Sukla -v- Union of India and ors reported in 1994(6)SCC 154*, wherein it was held that any re-fixation of pay visited with civil consequences cannot be sustained. According to the applicant there is no rule or orders to reduce the basic pay on transfer from one Division to another Division, therefore, the applicant claims that she is entitled to her pay re-fixed in terms of Rule 1313 of the Indian Railway Establishment Board Code Vol.2. The applicant has prayed that Annexure-A/3 order reducing her basic pay is to be set aside and the respondents be directed to re-fix the basic at Rs.4100/- after sanctioning the first increment due in the pay scale of Rs.4000-6000/-.

3. The respondents have filed reply statement contending that the applicant is not entitled for the relief prayed for on the ground that she was not given any notice before fixation of her basic pay as she had given her willingness for mutual transfer and the pay received in the higher grade cannot be continued to be paid to the applicant as she joined in a lower grade post at Trivandrum Division; It has

been further contended that the applicant had not held the post of Senior Commercial Clerk on substantively regular basis and pay protection on transfer can be allowed only in the cases where the post has been held on a substantively regularly basis. The transfer of the applicant to Trivandrum Division is to be treated as a case of reversion and her pay has to be fixed at a stage what she would have drawn had she not been promoted. It is also denied that there was protection of pay at Rs.4000/-, and that pending receipt of the Service Register of the applicant, she was only allowed to draw the basic pay at Rs.4,000/-. The respondents have also denied the applicability of Rule 1313 of the Indian Railway Establishment Code in her case.

4. The petitioner has filed re-joinder stating that she is entitled to get re-fixation of pay in the scale of Rs. 3200-4900/- protecting the basic pay drawn in the Bangalore Division, pointing out a decision in a similar case which was considered by this Tribunal in OA No.893/97 (MK Abdul Rahiman-v- Union of India and ors- decided on 18.8.97). In the said order, reference of a similar case was also made (OA No.1041/95) wherein this tribunal held that the applicant therein was entitled to re-fixation of pay by protecting the pay scale drawn in the higher scale.

5. We have heard the learned counsel for the parties and perused the record.

The facts of the case have been admitted by both sides. The question regarding protection of pay in the case of transfer from one Railway Division to another on the basis of mutual transfer to a lower post has come before this Tribunal on different occasions. The applicability of the Rule 1313 of the Indian Railway Establishment Board has also been clarified by this Tribunal. The stand taken by the respondents is that Rule 1313 permits protection of pay in respect of the posts held on substantively regular basis, who rendered regular service for a period of two years. This position has already been considered by this Tribunal. In all the above orders, we have consistently arrived at the conclusion that even if an employee has given his/her willingness to be posted in the lower scale of pay by forgoing his/her seniority, the pay drawn in the higher scale cannot be reduced to the minimum of the lower scale, which would amount to denial of benefit of service rendered in the higher post, obliterating that period of service altogether. In the facts and circumstances of the case, it is to be appreciated that the willingness given by the applicant was for transfer on a lower pay scale to another division foregoing her seniority. She prays only for protection of her last pay drawn in the pay scale while fixing the pay in the lower scale and not to the higher pay scale as such. The respondents

treated such cases as reversion to a lower scale. As we have already mentioned in our earlier orders, this Tribunal cannot accept the view that such cases can be termed as 'reversion', which normally arises when a penalty is imposed on an employee or due to non-availability of posts. At best it can be only a technical reversion resulting in loss of seniority.

6. The respondents have also raised the ground that the applicant has not been holding the higher post on regular basis for two years. In the instant case, admittedly, the applicant was promoted to the higher scale of pay of Rs.4000-6000/-on 7.6.2001 and was transferred on 20.5.2003 to Trivandrum Division and she is short of two years by one month. We had the opportunity to consider a similar question in OA No.1041/95 (Pushparajan & Anr. -V- Union of India and 3 ors) wherein the Chief Personnel Officer by his letter dated 21.12.94 modified the Rule 1313, which was quashed as the ground that the Rule 1313 does not contain any such provision. In the instant case, the petitioner was appointed as Commercial Clerk on 27.4.1988 in Bangalore Division and she had been confirmed after completion of the period of probation. She was also promoted as Senior Commercial Clerk on 7.6.2001, therefore, it cannot be said that she was not holding a substantive post on her promotion to a higher post. The plea

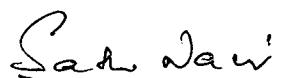
taken by the respondents is not acceptable, as confirmation in service is only a one time exercise.

7. For the aforesaid reasons and also following our earlier orders and the principles laid down in OA No.893/97 (MK Abdul Rahiman-v- Union of India and ors- decided on 18.8.97) and in OA No.1041/95 (Pushparajan & Anr. -V- Union of India and 3 ors), we set aside the Annexure-3 Memorandum No.V/P.535/III/CC/fixation/Vol.2 dated 2.09.2004 and direct the respondents to re-fix the pay of the applicant in the lower pay scale of Rs. 3200-4900/- on the basis of the last pay drawn in the higher pay scale of Rs.4000- 6000/-, after grating her the benefit of increment due, if any, within a period of one month from the date of receipt of this order.

8. In the result, the OA stands allowed as indicated above. No order as to cost.

Dated the 3rd August, 2007


(George Paracken)
JUDICIAL MEMBER


(Ms Sathi Nair)
VICE CHAIRMAN