

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 268/2008

Monday this the 22nd day of June 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

S. Venkataraman S/o Sankararaman
Technician /III/ AC
Trivandrum Central, Southern Railway
residing at TC 40/167, 1-Puthan Street
Manakkad, Trivandrum-695 009

..Applicant

By Advocate Mr.M.P. Varkey

Vs.

- 1 Union of India represented by
the General Manager,
Southern Railway
Chennai-600 009
- 2 The Divisional Railway Manager
Southern Railway
Trivandrum -695 014
- 3 The Senior Divisional Personnel Officer
Southern Railway
Trivandrum-695 014

..Respondents

By Advocate Mr. K.M. Anthru

The Application having been heard on 10.6.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a Technician-II (AC) in the scale of pay of Rs. 4000-6000 challenges the fixation of pay on reversion to Technician-III(AC) in the scale of pay of Rs. 3050-4590.

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2 The applicant entered service as Khalasi, Electrical Department of Southern Railway, Trivandrum Division. His seniority in the cadre was challenged in O.A. 894/96 by S/Shri C.A. Ashok Kumar and 3 others. During the pendency of the O.A. he was promoted as AC Mechanic-III in the scale of Rs. 3050-4590 in 1996 and as AC Mechanic-II in the scale of Rs. 4000-6000 w.e.f. 1.6.1998. The O.A. 894/96 was allowed and the OP filed by the applicant against the order was dismissed. Consequently, the seniority of the Mechanic-III was revised, he was reverted as Technician-II (AC) w.e.f. 1.8.200. As he was not satisfied with the pay fixation he submitted representation to correct the mistake. During the pendency of the representation he was promoted to Mechanic-II w.e.f. 1.5.2005. The grievance of the applicant is that due to the pay fixation on reversion, his monthly emoluments dropped considerably. Hence he filed this O.A. on the ground that on reversion his pay has been fixed arbitrarily and not on the basis of any rule, his pay is to be fixed under Rule 1313(1)(a)(2) of the Railway Establishment Code Vol. II, on his promotion to Grade-II on 1.5.2005 his pay is to be fixed under sub rule (a)(1).

3 The respondents opposed the O.A. by filing reply statement mainly on the ground of delay and in not challenging Annexure R-1 order refixing his pay. They submitted that in compliance of the order of the Tribunal in O.A. 894/96 which was upheld by the High Court of Kerala in OP No. 18429/99, the seniority of the applicant was revised downward and accordingly he was reverted w.e.f. 1.8.2004. His pay was accordingly re-fixed at the stage he would have drawn had he not been promoted to Technician -II as provided in Para 228 II(a) of IREM Vol. I.

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4 The applicant filed M.A. 43/2009 seeking leave to amend the O.A. challenging the impugned reversion orders Annexure A-1 and A-2 which was allowed. The applicant has amended the O.A. and the respondents filed reply to the amended O.A.

5 We have heard learned counsel for the parties and perused the records produced before us.

6 There is no dispute that the seniority of the applicant underwent downward revision in compliance with the orders of this Tribunal in O.A. 894/96 which was upheld by the High Court of Kerala. As per the revised seniority the applicant's turn had not come for promotion. Hence he was reverted. The question that comes up for consideration in this O.A. is regarding the fixation of pay. The argument of the applicant is that on reversion his pay should have been fixed under Rule 1313 (1)(a)(2) and 1320 (b) of the Indian Railway Establishment Code Vol. I, whereas the respondents contend that the promotion of the applicant was found erroneous, he was reverted and hence his pay is to be fixed under Para 228 II (a) of Indian Railway Establishment Manual Vol. 1 as if he was not granted promotion. The relevant rules relied on by the parties are extracted below:

Rule 1313 (FR 22) Fixation of initial substantive Pay:- The initial substantive pay of a railway servant who is appointed substantively to a post on time scale pay is regulated as follows:

(a) if he holds lien on a permanent post, other than a tenure post, or would hold alien on such a post had his lien not been suspended:-

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of Rule 1325 i.e. FR 30) than those attaching to such permanent post., he will draw as initial pay, a stage of the time scale

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next above the substantive pay in respect of the old post.

This rule applies only in the case of appointment to a higher post. The pay of the applicant on promotion to AC Mechanic Grade-II might have been fixed under the above rule. But this rule will not apply on his reversion to the post of AC Mechanic Grade-III.

Rule 1320 Reckoning Service for Increments:- The following provisions prescribe the conditions on which service counts for increments in a time scale:-

(a) All duty in a post on a time scale counts for increments in that time scale.

Provided that, for the purpose of arriving at the date of the next increment in that time scale, the total of all such periods as do not count for increment in that time scale shall be added to the normal date of increment.

(b)(i) Service in another post other than a post carrying less pay referred to in clause (a) of Rule 227 (FR-15) whether in a substantive or officiating capacity service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate, shall count for increments in the time-scale applicable to the post on which the railway servant holds a lien, as well as in the time-scale applicable to the post or posts, if any on which he would hold a lien had his lien not been suspended.

Provided that the service rendered in an ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post and the pay in subsequent ex-cadre post shall be fixed under the normal rules with reference to pay in the cadre post.

This rule applies for grant of increment for the period spent on deputation, leave etc. and not applicable in the case of the applicant whose seniority was revised, the promotion granted was cancelled and was accordingly reverted.

7 The respondents submitted that the pay of the applicant on reversion was governed by Para 228 II(a) of the Indian Railway

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Establishment Manual Vol. 1. The relevant portion is extracted below:

"228- Erroneous Promotions: -(1) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error, and;
- (ii) where a person has been promoted but not on the date from which he would have been promoted but for the Administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

(II) In pursuance of Rule 1326-R-II, 1987 edition, the following provisions shall govern the pay increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts-

(a) The orders of notification of promotion or appointment of a railway servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should immediately on such cancellation, be brought to the position which he would have held but for the correct orders of promotion or appointment.

In the case, however, of a railway servant, who has been erroneously promoted and appointed to a post in a substantive capacity, procedure prescribed in Board's letter No. E 50/RCI/16/3 dt. 23.7.154 for rescinding the irregular confirmation of a railway servant should be followed/and only thereafter the railway servant concerned should be brought down to the position which he would have held but for the erroneous promotion / appointment by the issue of orders as mentioned above. Service rendered by the Railway servant concerned in the post to which he was wrongly promoted/appointed as a result of the error

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should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment.

(b) Any consequential promotion or appointment order of railway servants made on the basis of the incorrect promotion or appointment of a particular railway servant will also be regarded as erroneous and such cases also will be regulated on the lines indicated in the preceding paragraph.

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8 Since the seniority of the cadre of Technician Grade-III was revised in compliance with the orders of the Tribunal/Court and the seniority of the applicant has come down, the promotion of the applicant earlier could be termed as erroneous and therefore, the above rules could be applied.

9 The learned counsel for the applicant has relied on the decision of the Supreme Court in Bhadei Rai Vs. Union of India and Others (2006 SCC (L&S) 89 and Badri Prasad and others Vs. Union of India and others (2006 SCC (L&S) 92).

In Bhadei's case the appellant therein continued on deputation in the promotion post for a long period of 20 years, he was repatriated to his parent division carrying lower pay scale and regularised and absorbed in that lower post. The Apex Court though rejected his claim to absorption and regularisation on the higher post, upheld the plea of the applicant for pay protection and consideration of his case for regular appointment to Group-C on the basis of long service in that post.

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In Badri Prasad and Others' case, the appellants were posted on higher Group-C posts of Storeman/Clerk and after continuing for more than 10 years, they were reverted to Group-D posts. They sought regularisation in Group-C merely on the basis of their adhoc promotion. The Apex Court held that they were entitled to protection of pay last drawn by them even after their repatriation.

The facts in both the cases supra and the case of the applicant in the present O.A. are distinguishable. In the case on hand, the applicant never went on deputation, he was holding the promoted post for shorter period, was reverted to the lower post because of revision of seniority in compliance with court order.

11 Admittedly, the seniority of the applicant had come down on implementation of the judgment of the High Court in OP No.18429/2000. The applicant was reverted from the post of AC Mechanic Grade-II to Grade-III. His pay was accordingly fixed as if he was continuing in the grade of AC Mechanic Grade-III. While fixing the pay on reversion, the pay drawn by him in the higher grade cannot be protected. However, it is stated in the impugned order itself that despite his reversion, he was paid pay in the higher grade of Gr. II and no overpayment was recovered from him and was paid pay Rs. 4030/- in the lower grade w.e.f. 1.8.04 only. Based on the revised seniority he was consequently promoted to Grade-II in his turn and his pay was fixed at Rs. 4200/-

12 There is no dispute that the applicant had worked for about six years from 1998 to 2004 before being reverted and pay of the applicant was reduced. At the time of reversion he was drawing Rs. 4500/- in the

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scale of Rs. 4000-6000 and on promotion to the scale of Rs. 4000-6000 in his turn, his pay was fixed at Rs. 4200. It is a fact that now he is drawing lesser pay in Grade-II than what he was drawing before reversion. In other words, the pay drawn by him by virtue of his earlier promotion could not be protected as it was not a valid promotion. The initial promotion of the applicant happened to be based on a seniority which was challenged and undergone revision on the basis of CAT/High Court judgments in 1999 and 2003 respectively. Therefore, there is nothing arbitrary in the fixation of the pay of the applicant on reversion and on re-promotion which were done in accordance with the extant rules.

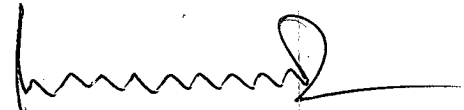
13 In this view of the above discussion the O.A. is dismissed. No costs.

Dated 22nd June, 2009



K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER