

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 283/2000

Monday, this the 1st day of April, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K.K. Srinivasan,
S/o P.K. Kuttappan, aged 59 years,
Station Master Grade-II,
Southern Railway, Kayamkulam,
Residing at Sreevilasam,
Pudiyakavu, Mavelikkara,
Alleppey District. Applicant

(By Advocate T.C. Govindaswamy)

Vs

1. Union of India rep. by
The Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.
3. The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.
4. The Chief Personal Officer,
Southern Railway,
Headquarters office,
Park Town P.O.,
Madras-3.
5. The Senior Divisional Personal Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14. Respondents

(By Mrs. Rajeswari Krishnan)

The application having been heard on 1.4.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced his service as Works Mistry as on 9.3.1962 in the scale of pay of Rs.150-240/- in the Dandakaranya Belangir Kirbura Project(DBK Project for short). On account of

surplussage, the applicant along with many others, identically situated, was absorbed as Assistant Station Master in the then Vijayawada Division of South Central Railway w.e.f. 11.4.1967. The pay of the applicant at the time of surplussage was protected by fixing the initial pay of the new post at the same stage granting him increments in the scale of A.S.M. as in the case of similarly situated persons. However, the pay was later modified and protected only as personal pay to be absorbed in future increments. The applicant was transferred to the Trivandrum Division of Southern Railway on bottom seniority in the initial recruitment grade of Rs.330-560/- (Rs.1200-2040). Coming to know that the colleagues of the applicant, who were absorbed in South Central Railway on surplussage in DBK Project and transferred to Trivandrum Division later, had their pay protected in the cadre of A.S.M. by various orders, and on implementation of award of Labour Court, the applicant submitted A4 representation to the 5th respondent on 23.10.1999. In reply to the representation, the applicant was told by the impugned order dated 25.1.2000 (A5) that as the applicant was in an ex-cadre post in the DBK Project as per extent rules, the fixation of pay taking into account the pay drawn in the Project Organisation is not permissible. He was also told that the Labour Court judgement would be implemented only in the case of the claimants therein. The impugned A5 order was communicated to the applicant by A6 letter dated 31.1.2000. Aggrieved by this, the applicant has filed this application for the following reliefs :-

(a) Call for the records leading to the issue of Annexures A5 and A6 and quash the same.

(b) Direct the respondents to grant the applicant an identical treatment as granted to Shri P.V. Vasudevan Potty, Shri K.R. Unnithan, Shri K.P. Punnoose and others referred to in Annexure A1, A2 and A3 in the matter of fixation of his initial pay upon the applicant's surplussage from DBK Project and absorption as Assistant Station Masters, with all consequential benefits arising therefrom.

(c) Direct the respondents to fix the initial pay of the Applicant in the post of Assistant Station Master, at the stage at which he was drawing his pay in the post of Work Mistry at the time of surplussage and to grant the consequential benefits thereof.

(d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. It has been alleged in the application that the Bangalore Bench of the Central Administrative Tribunal had in Application Nos. 764 to 771 of 1987 considered identical question and held that the applicants were entitled to protection of the pay they were drawing in the DBK Project and that since the applicants in those cases were similarly situated as the applicant and the respondents should have extended the same benefit to the applicant in this case.

3. The respondents in their reply statement resist the claim of the applicant on the ground that having accepted the protection of pay only by grant of Personal Pay and having not raised the issue so far, the applicant is estopped from claiming re-fixation of pay now. They contend that the claim is barred by limitation. As the applicant has been accommodated on humanitarian consideration in the South Central Railway, he has to be satisfied with the protection given to him, contend the respondents.

4. We have heard the learned counsel on either side and have gone through the pleadings and all the materials placed on record with meticulous care.

5. A reading of the judgement of the Bangalore Bench of the Tribunal in Application Nos. 764 to 771 of 1987 would clearly establish that the employment of the Applicants in the DBK Project as Work Mistry and subsequent absorption in the South Central Railway were under exactly identical circumstances and

that there was no difference or distinction whatsoever between the applicant in this case and the applicants before the Bangalore Bench of the Tribunal in the manner in which they were working in the DBK Project and were absorbed in South Central Railway. The pay of the applicant as also the applicants in the OAs before the Bangalore Bench of the Tribunal on their absorption in South Central Railway was initially protected by granting them increments on the basis of the Government of India letter dated 28.12.1965. Referring to this letter while considering the rival contention in those cases, the Bangalore Bench of the Tribunal in para 8 of the judgement held as follows:-

"In respect of persons whose services are not continued in the projects, who are absorbed in other divisions of the Railway, their initial pay should be fixed at a suitable stage based on the experience gained by them in the DBK Railway Project. There cannot be any doubt that his letter squarely applies to the cases of the applicants."

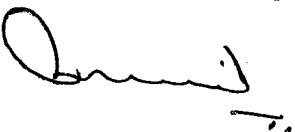
6. Apart from the fact the applicant was late in approaching this Tribunal compared to the applicants before the Bangalore Bench of the Tribunal in the aforesaid applications, we find practically no difference between the applicant in this case and the applications before the Bangalore Bench of the Tribunal. The principle enunciated by the Bangalore Bench of the Tribunal squarely applies to the facts of this case. Therefore, the Railway Administration should have given the same treatment to the applicant in this case even without his filing this application. The argument of the respondent that the claim is barred by limitation has to be rejected as the claim is based on an incorrect fixation of pay which gives to a recurring cause of action till the service subsists.

7. That the claim of similarly situated persons may come up is not a reason to deny the claim of the applicant. The argument of the respondents that claim of the applicant has become barred

by limitation could be understood if the claim is based on one time action as has been held by the Apex Court in M.R. Gupta Vs Union of India and Others - 1995 SCC (L&S) 1273. That similarly situated persons may make similar claim if this belated claim of the applicant is allowed is also not a tenable contention.

8. In the result, in the light of the above discussions, we allow this OA in part setting aside the impugned orders A5 and A6 and directing the respondents to fix the pay of the applicant giving him increments as was done initially and treat the same fixation of pay continued in future by protection of pay. As the applicant ~~since~~^{is} retired, the respondents should work out and recompute the retiral benefits of the applicant and make available to him the arrears of pension and also of the pay from the date of his representation A4. The above direction shall be complied with within a period of four months from the date of receipt of a copy of this order. No costs.

1st day of April 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1 : True copy of the office order No.T/62/88 dated 19/20.9.88 issued by the Divisional Personnel Officer, South Central Railway, Hubli.
2. A-2 : True copy of the memorandum bearing No.V/P.535/II/SM/Vol.9 dated 15.6.90 issued by the 5th respondent.
3. A-3 : True copy of the memorandum bearing No.V/P.535/IX/Fixation dated 24.2.95 issued by the 5th respondent.
4. A-4 : True copy of the representation dt.23.10.99 addressed to the 5th respondent.
5. A-5 : True copy of the letter No.P(S)443/II/SM's-TVC dt. 25.1.2000 issued by the 4th respondent.
6. A-6 : True copy of the letter No.V/P.535/III/Fixation dt. 31.1.2000 issued by the 5th respondent.
7. A-7 : True copy of the judgement in OA No.764 to 771/87 dt. 12.4.87 passed by the Hon'ble CAT/Bangalore Bench.

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12.4.02