

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 26.2.93

O.A. 333/92
O.A. 400/92
O.A. 436/92

Mr. John Joseph and others

Applicants in O.A.
333/92

Mr. E.J. Antony and others

Applicants in O.A.
400/92

Mr. G. Harishkumar and others

Applicants in O.A.
436/92

VS.

Union of India through the
General Manager, Southern Railway
Park Town P.O. Madras-3 and others

Respondents in
all three cases

Mr. P. Sivan Pillai

Counsel for [redacted]
applicants in all
three cases

Smt. Sumathi Dandapani

Counsel for
respondents in the
three cases

CORAM

HON'BLE SHRI N. DHARMADAN JUDICIAL MEMBER

Index: Whether Reporters of local papers may be allowed to
see the judgment? *Yes*

To be referred to the Reporter or not *Yes*

Whether their Lordships wish to see the fair copy
of the judgment *No*

To be circulated to all Benches of the Tribunal. *No*

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

All the cases are heard together on consent of the
parties. Since the facts, question of law and reliefs
arising in this cases are also the same, These cases are
disposed of by a common judgment.

2. For convenience, I am referring to the facts
in O.A. 333/92.

3. Learned counsel for applicant submitted that except
in regard to Applicant No. 5, others were granted relief
pending the application and hence, the case of the 5th
applicant alone need be considered.

4. The applicant while working in the Palghat Division
of the Southern Railway as Station Master in the scale of

Rs. 1400-2300 requested for transfer to Trivandrum Division on bottom seniority. The applicant submitted that he has been confirmed in the scale of Rs. 1400-2300 while he was working in the post at Palghat Division. After the transfer, the applicant was given the scale of Rs. 1200-2040 and he was allowed the same pay even after the transfer. Thereafter, by Annexure A-1 dated January, 1992, his pay was reduced *suo motu*. Accordingly, the basic pay of the fifth applicant was fixed at Rs. 1440/- as on 16.7.91. This fixation, according to the applicant is illegal, arbitrary and violative of the provisions of Article 14 and 16 of the Constitution. The applicant submitted that he was holding a permanent post carrying salary of Rs. 1400-2300 while he was working in the Palghat. The applicants are entitled to have fixation of the salary in terms of Rule 1313(ii) and (iii) of the Indian Railway Establishment Code. This position has been confirmed by the Chief Personnel Officer as laid down in letter No. P(S)481/10/11/Vol.III dated 24.6.91, Annexure A-2.

5. Respondents filed reply in this case. They have taken *u/s* stand that Rule 1313 (a) of the Indian Railway Establishment Code commences with the condition that the rule applies to an employee who holds a lien on a permanent post. Since the applicant did not satisfy this requirement he is not entitled to fixation of pay in the Trivandrum Division in terms of Rule 1313 (a) and Annexure A-2 as claimed by the applicant. The original application is only to be dismissed *according to the reply*.

6. The applicant has also filed rejoinder denying various statements in the reply statement.

7. The fact that *all the applicants were granted relief* *including this applicant and 1* the 5th applicant alone has been denied the relief indicates that the applicant, who is similarly situated, is also eligible. The relevant portion in Rule 1313 (FR 22) of the Indian Railway Establishment Code, Vol.II (Sixth Edition 1987) reads as follows:

"(a)(1) Where a Railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity as the case may be, subject to the fulfilment 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."

X

X

X

(3) When appointment to the new post is made on his own request under (Rule 227(a)(2)-RI(F-15-A)(2) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held by him regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in clause (a) are not fulfilled, he shall draw as initial pay on 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 Govt. on an identical time scale or
....."

It is on the same line Annexure-II letter has been issued by the CPO. The relevant portion of the said letter is also extracted below:

"Oftale it is brought to notice that the fixation of pay of SMs and other staff who come on Inter Railways Inter Divisional transfer on reversion accepting bottom seniority are not done as per rules in force. It is therefore, advised that in the case of permanent employee coming on inter Divisional/Inter Railway transfer on reversion, their pay is required to be protected in terms of Rule No. 1312(a)(iii) R-II which reads as under:

"When appointment to the new post is made on transfer at his/her own request under the Rule 227(2) ER-15A and maximum pay in timescale of

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..

the post is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay."

Please therefore ensure that fixation of pay is regulated accordingly."

8. Admittedly, the applicant is holding a permanent post while he was working at Palghat Division. When he was given inter-Divisional transfer on request, I cannot understand why his permanent status is changed to adhoc or temporary position. The only disadvantage ^{he has to} the railway employee faces on account of his request transfer is his seniority. In other words, the transferee will normally be posted in the new Division having bottom seniority. Except that, nothing can be put against him simply because he has given a request for getting a transfer from one division to another. No dispute regarding seniority arise in this case. The pertinent point urged by the learned counsel for applicant is that reduction of pay cannot be done without application of a legal provision. The legal provision brought to my notice as contained in Rule 1313 of the Indian Railway Establishment Code, as reiterated in Annexure A-2, is that a fixation of pay of staff ^{of the} inter-divisional transfer is only after giving protection of pay which the said Railway employee was enjoying in the original Division.

9. In this view of the matter, I see no reason for ^{any} reduction of the pay of the applicant as indicated in Annexure A-1. Respondents are not giving any reason to support the reduction of pay. Accordingly, I quash the impugned order Annexure-I in regard to the 5th respondent and direct him ^{apply for} to fix his pay in accordance with and allow the application. In regard to applicants in O.A. 436/92, learned counsel for applicant submitted that relief has already been granted to applicants No. 4. In respect of other applicants, the order in O.A. 333/92 applies.

Hence, I allow the application and direct the respondents to fix the pay of the applicants in terms of Rule 1313 of the Railway Establishment Code taking into consideration the pay which the applicants were drawing in the division from where they were transferred to Trivandrum Division on request.

10. The above orders applies to the applicants in the other application No. O.A. 400/92 as well. *It is allowed with same date 12*

11. It goes without saying that the applicants are entitled to consequential benefits in accordance with law.

12. The applications are allowed.

13. There shall be no order as to costs.

N. Dharmadan 26.2.93.
(N. DHARMADAN) JUDICIAL MEMBER
26.2.93

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