

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 335/2003

WEDNESDAY, THIS THE 22nd MARCH, 2006

C O R A M

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

**J. Ezra Stalin
Khalasi Helper
Electrical Loco Shed
Southern Railway
Erode**

Applicant

By Advocate M/s. Santhosh & Rajan

Vs.

- 1 Union of India represented by the
General Manager, Southern Railway
Chennai**
- 2 The Chief Personnel Officer
Southern Railway
Chennai**
- 3 The Divisional Personnel Officer
Southern Railway
Palakkad.**

Respondents.

By Advocate Mrs. Sumathi Dandapani.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is at present working as a Khalasi Helper in the Electrical Loco Shed, Shornur. He was initially appointed as a Constable in the Railway Protection Force (RPF) on 2.1.1996. While continuing there, the applicant was called for selection and appointment to the post of

Khalasi in the Electrical Department of Palakkad Division. The applicant appeared for selection and came out successful. Based on the said selection he was relieved from the post of Constable and he joined the post of Substitute Khalasi on 30.9.1999. Prior to the joining the post of Substitute Khalasi the applicant was drawing Rs. 3125/- in the pay scale of Rs. 3050-4590. However, when he joined the post of Substitute Khalasi the previous pay drawn by him was not taken into account while fixing his pay on appointment as Substitute Khalasi. On the basis of repeated representations the applicant's pay had been refixed taking into account of his past service as Constable in the RPF. But now by the impugned order the third respondent has cancelled the refixation already made and refixed his pay without taking into account his past service. Hence he has filed this O.A. seeking the following reliefs:

- (i) to call for the records leading to the issue of Annexure A-11 order and set aside the same
- (ii) to declare that the applicant is entitled for protection of his pay in the scale of Rs. 3050-4590 in the post of Constable in the Railway Protection Force on his appointment as Substitute Khalasi in the Electrical Department of Palakkad Division.
- (iii) to declare that the refixation of pay of the applicant as Annexure A-11 order is illegal.
- iv) to declare that the applicant is entitled to get the pay fixed as per Annexure A-8 order and direct the respondents grant the consequential arrears of the applicant with 12% interest per annum.
- v) grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case and
- vi) award costs and incidental of this Original Application.

2

2 The respondents have submitted that the applicant was initially appointed as a Constable in the RPF, Madras on 2.1.1996. The Chief Personnel Officer, Southern Railway, Madras vide his letter dated 26.3.1999 accorded sanction for engagement of the applicant and some other Course Completed Act Apprentices trained in Railway Establishment as 'Substitute' in Group-D posts of Khalasi in the Electrical Loco Shed, Erode and accordingly the applicant was engaged as a Substitute Khalasi at the pay of Rs. 2550/- in the scale of Rs. 2550-3200 and he joined duty as a Substitute Khalasi on 30.7.1999 (Annexure A-4). On completion of four months continuous service he was granted temporary status w.e.f. 27.11.1999 (Annexure R-4). In terms of Para 1515 of the Indian Railway Establishment Manual, Substitutes are not entitled to automatic absorption unless they are selected in the approved line and accordingly he was empanelled as a Temporary Khalasi w.e.f. 26.7.2000 (R-3). Prior to joining as a Substitute Khalasi he was drawing a pay of Rs. 3125 in the scale of Rs. 3050-4590 in the RPF Wing of the Railways. After joining the new Wing he represented for absorption as regular Khalasi w.e.f. 30.8.1999, the date of joining as Substitute Khalasi and he was informed that the benefit of past service cannot be taken into account for regularisation or seniority since his status is only 'Substitute'. He was also given opportunity to go back to RPF if he so desired. On a subsequent representation made by him he was advised that his past service cannot be counted for the purpose of seniority but it can be counted for the purpose of other benefits. Hence, construing that other benefits also included pay fixation, Annexure A-8 order was issued refixing the applicant's pay protecting the pay drawn in the RPF. Since the Accounts Division objected to the fixation of pay as

per Annexure A-8 the matter was referred to the Chief Personnel Officer, Madras who clarified that Annexure R-6 approving ^{grant}/~~of~~ benefits did not cover pay fixation. Thereafter a show cause notice was issued and his pay was revised by Annexure A-8 memorandum and therefore it is not arbitrary or unjust as alleged.

3 The learned counsel for the applicant submitted before us that the contention of the respondents that Para 1515 of the IREM is applicable in his case is not correct and submitted that the case was actually governed by Para 1313 of the Indian Railway Establishment Code which is equivalent to the provisions of FR 22. He also drew our attention to Paras 602-604 of the IREM which grants benefits of pay fixation to retrenched non-gazetted employees on appointment or other Government servants on transfer to railway posts at a stage higher than the minimum.

4 The learned counsel for the respondents on the other hand contended that the case of the applicant is governed by Para 1515 of the IREM and submitted that the applicant on his own volition left RPF service and joined as a Substitute Khalasi and that he was also given option to go back to the RPF service if so desired. The ground (B) taken by the applicant that Railway Board's letter dated 4.10.1994 dealing with fixation of pay consequent on transfer from higher to lower grade is applicable in his case is not correct.

5 We have heard learned counsel on both sides and perused the materials produced before us. The fact that the applicant entered the

Railway service in the RPF Department and rendered service for more than three years is not disputed. The issue arising for consideration is whether on his subsequent appointment as Substitute Khalasi in another Wing of the Railways namely Electrical Loco Shed, he would be eligible to count his service in the RPF for the purpose of pay fixation or not. The contention of the respondents is that the applicant's engagement as a Substitute Khalasi in the Loco Shed is a new appointment and he is to be considered only as a fresh employee. It is also their contention that he was engaged only as a Substitute and as per provision of Para 1515 of the IREM, a Substitute is not eligible for the benefits of past service. It is the claim of the applicant that he was offered the appointment as Substitute Khalasi as he is a Course Completed Act Apprentice. The offer was made by the Railway Administration itself which opportunity was availed by him and it cannot be taken as a fresh appointment and in such circumstances, the Railway Board's orders dated 7.2.1961 and 4.10.1994 provide that when a railway employee whether permanent or temporary is permitted to apply for recruitment through any recruiting authority on the same Railway or in any other Railway and on selection is appointed to a new post, no break in service will be involved and his past service will be counted for all purposes (leave, pension, PF, passes, increments), etc. except seniority.

The Railway Board's letter dated 4.10.1994 provides as under:

(i) If the concerned employee has been holding the higher post substantively on regular basis and the pay drawn in; such higher post is less than (or) equal to the maximum of the scale of pay of lower post, then only the pay drawn in such higher post will be protected.

(ii) When the Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn had he not been promoted.

(iii) In other cases of transfer from higher to lower post, on request, in terms of FR 15(a) his pay will be regulated under the provisions of FR 22

2

(I)(a)(3), FR 15(a), FR 22(I)(a)(3)- the maximum pay in the time scale of post (lower) is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay."

Therefore the applicant who was drawing Rs. 3125/- in the pay scale of Rs. 3050-4590 and posted to the lower scale of rs. 2550-3200 was entitled to the protection of the last pay drawn as the pay he was drawing was less than the maximum of the pay he was drawing as a Substitute Khalasi in the Loco Shed.

6 Since the applicant is claiming the benefit under Para 1313 the relevant portions are extracted below:

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

(a) if he holds lien on a permanent post, other than a tenure post, or would hold a lien 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 next above the substantive pay in respect of the old post.

X X X X X X X X X X

(iii) When appointment to the new post is made on transfer at his written request under Rule 227(2) (FR 15-A) and maximum pay in the time scale of the post is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay.

Explanation- A confirmed Gangman of the Civil Engineering Department or a Gangman who has completed two years regular service and whose probation has not been extended by a specific order as envisaged in the orders governing confirmation, transferred at his own request as a Khalasi in the Mechanical and Transportation (Power) department, Traffic and Commercial Department and work side of the Engineering department shall have his pay fixed in the time scale of Khalasi at the stage equivalent to the pay drawn as Gangman. If there is no such stage at the stage next below the difference being treated as Personal pay to be absorbed in future increases in pay as Khalasi, subject to condition that in no case the maximum of the time scale of the Khalasi is exceeded and

(b) In all other cases, the benefit of completed years of service in the higher post of Gangman may be given for the purpose of advance increments in the lower post of Khalasi subject to not exceeding the pay drawn as Gangman or the maximum of the time scale of Khalasi.

© if the conditions prescribed in; clause (a) are not fulfilled he will draw as initial pay the minimum of the time scale.

Provided, both the case covered by clause (a) and in cases other than cases of reemployment after resignation or removal or dismissal from public service covered by clause (b)

7 The relevant portion of Para 602 -604 are also extracted below:

602- In the case of retrenched persons who may have previously served in a Government office/department in authorised scales which are identical to those in which they may be reappointed on a railway, the fixation of pay should be regulated under the provisions of rule 1313(a) (ii) (FR 22(a)(ii) of the Indian Railway Establishment Code, Vol.II i.e. they should be allowed, on reappointment, the pay last drawn by them in identical scales in the previous Government office/department, the period during which they drew pay in such scale being allowed to count for increments in the railway posts.

604 In case of transfer from one railway department to another including transfer from a Government department, following general principle should be observed.

X X X X X X X X X X

(ii) Permanent Government Servants- In the case of permanent Government servants officiating in higher post and transferred to officiate in railway posts which are lower than the previous officiating posts, the previous officiating service in the higher posts should be allowed to count for increments.

8 A cumulative reading of the above paras leads us to the conclusion that general principle is applicable in such cases whether it relates to appointment of retrenched employees or transfers of permanent /temporary employees from one post to another or in case of transfer from higher post to a lower one, is not to deprive the employee of the advantage of completed years of service except for seniority but to allow the benefit of

2

completed years of service in the previous post for fixation of pay by grant of advance increments in the lower post or by grant of personal pay to be absorbed in future increments. The example given in the Explanation under para 1313 of a confirmed Gangman of Civil Engineering department on transfer on his own request as a Khalasi in the Mechanical and Transportation/Power etc. department of the Railways, is being allowed pay fixation in the time scale of pay drawn as Gangman at the stage equivalent to the pay drawn by him as Gangman is relevant in the context. In the case of a Substitute, the position is that even in cases of transfer at own request from a higher post to a lower post, the benefit of protection of pay drawn in the higher post was envisaged. The case of the applicant is very much similar in that he was a former RPF Constable who was transferred to the Electrical Loco Shed in pursuance of the offer given by the Railway Administration based on his qualifications. In such cases, we are of the view that the word "transfer" should be interpreted in its broad meaning and not in the limited context as used in case of routine transfers. In this context the word "transfer" is to be seen as a change from one post to another post in the same department even accepting that contention of the respondents that the applicant had come on his own volition, it cannot be denied that the respondents had also conceded to the change by making the offer and hence it cannot be termed as a unilateral move on the part of the applicant. In fact the respondents themselves have issued Annexure A-8 memorandum after being convinced that the applicant was eligible for the benefit of his past service rendered by him in the RPF except for all purposes other than seniority that being the correct position of law. The applicant is not claiming the benefit of seniority but only

the protection of his pay drawn in the higher scale of Constable in the RPF where he had worked for more than three years and for all purposes acquired a lien. We do not find anything in the Railway's instructions which state that he cannot be granted this benefit.

9. The second contention taken by the respondents is that the applicant is not eligible for such benefit having been appointed as a "Substitute Khalasi" and that "Substitutes" are not entitled for such benefits under Para 1515 of the IREM. Para 1515 is reproduced below:

"1515- Rights and privileges admissible to the Substitute-Substitutes should be afford all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.
....."

10. It is to be seen from the above that "Substitutes" should be given all the rights and privileges as admissible to temporary railway servants on completion of four months continuous service. In the instant case the applicant was initially appointed as a Substitute Khalasi on 30.7.1999, granted temporary status on 27.11.1999 and then empanelled and absorbed w.e.f. 26.7.2000. Therefore in terms of Para 1515 above he is entitled to all the rights and privileges of a temporary railway servant, and if so, he thus comes within the purview of instructions in Paras 601 to 604 of the Railway Establishment Manual. We do not find anything in the said Para extracted above to deny the benefit of protection of pay drawn in the higher post to a Substitute employee who was granted temporary status

and also absorbed in the lower post on a regular basis.

11. In the light of the discussion above, we are of the view that the case of the applicant merits consideration and the relief sought for by him is to be granted. Therefore, we declare that the applicant is entitled for protection of pay of Rs. 3125/- drawn in the scale of Rs. 3050-4590 in the post of Constable in the Railway Protection Force, on his appointment as Substitute Khalasi in the Electrical Department of Palakkad Division in the scale of pay of Rs. 2550-3200 and that re-fixation of the pay of the applicant as ordered at Annexure A-8 is in order. We quash Annexure A-11 order re-vising the pay of the applicant and direct the respondents to restore the orders at Annexure A-8. The OA is allowed. No costs.

Dated 22.3.06.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

kmn