

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.353 OF 2002

Wednesday this the 15th day of September, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

Valsa Surendran, aged 42 years  
W/o Surendran,  
Confidential Assistant,  
Office of the Deputy Chief Engineer,  
Construction, Trivandrum  
Residing at Ambadi, Karali Junction,  
PO.Sasthankotta,Quilon. ....Applicant

(By Advocate Mr.T.C.Govindaswamy)

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1. Union of India rep. by the  
General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town PO, Chennai.3.
2. The Chief Engineer/Construction  
Southern Railway,  
Egmore, Chennai.8.
3. Senior Personnel Officer,  
Southern Railway/Construction,  
Egmore, Chennai.8.
4. Deputy Chief Engineer/Construction  
Southern Railway,  
Trivandrum.
5. Senior Accounts Officer,  
Southern Railway/Construction  
Ernakulam Junction  
Ernakulam. ....Respondents

(By Advocate Mr.P.Haridas, Standing Counsel)

The application having been heard on 11.8.2004, the Tribunal  
on 15.9.2004 delivered the following:

O R D E R

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

The grievance of the applicant presently working as  
Confidential Assistant in the Office of the Deputy Chief

Engineer, Construction, Trivandrum is that, even ~~AS~~ continuing in Construction Organisation when her adhoc promotion as Senior Stenographer in the Construction Organisation was regularised consequent on regular promotion to that grade in her cadre her pay was reduced from what she was drawing on adhoc officiation. The facts are as follows. The applicant while working as Stenographer in the scale Rs. 1200-2040 in Trivandrum Division of the Southern Railway was transferred to the Construction Organisation in the same grade and pay in 1987. In the Construction Organisation she was promoted on adhoc basis on 1.2.1988 as Senior Stenogrpaheer in the scale Rs. 1400-2600. She continued in that grade and got regular increments. She was regularised as Senior Stenographer w.e.f. 26.5.1997 and continued in the Construction Organisation. On implementation of the Vth Central Pay Commission Report she became entitled to have her pay fixed at the stage of Rs. 5300/- w.e.f. 1.1.1996, and at Rs. 5450/- w.e.f. 1.2.1996 and she was drawing Rs. 5900/- in 1999. While so without any specific order her basic pay was reduced to Rs. 5450/- protecting the difference of Rs. 450/- as personal pay. The applicant made representations against the action. The second respondent sent Annexure.A.3 letter to the 4th respondent directing revision of pay of the applicant in the light of the ruling of this Bench of the Tribunal in the case of K.C.Raveendran in OA 714/99. Although the 4th respondent revised the pay as the applicant was similarly placed as of K.C.Raveendran the fifth respondent did not approve the fixation and therefore the 4th respondent sent Annexure.A.4

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letter to the applicant enclosing a copy of the observation of the fifth respondent to the effect that the judgment in OA 714 of 1999 was not to be followed as a precedent as the real legal position was not brought to the notice of the Tribunal, that the adhoc officiation of the applicant as Senior Stenographer having been on fortuitous consideration, when she was regularly promoted on 26.5.1997 her pay should have been fixed under F.R. 22(1)(a)(i) without counting the increment earned on account of adhoc service but protecting the difference as personal pay, that the position was covered by the order No.P.481/E/O/CAT of FA&CAO/MAS dated 18.12.2000 and FA&CAO/CN/MSs letter No.P.483/E/CN/MAS dated 26.4.2001 addressed to CPO, Madras. The applicant was served with Annexure.A.4 letter and the enclosure thereto. Aggrieved by that the applicant has filed this application for a declaration that the respondent's action in reducing the applicant's pay on regularisation while continuing in the Construction Organisation is arbitrary, discriminatory and illegal, that the applicant is entitled to have her pay fixed in terms of the judgment in OA 714/99 and for direction to the respondents to fix the pay of the applicant accordingly and to make available to her the arrears within a time to be fixed by the Tribunal.

2. The respondents in their reply statement have not disputed that the applicant was promoted on adhoc basis as Senior Stenographer in the Construction Organisation, that on continuous officiation in the scale Rs. 1400-2600 she had earned increments while she was regularised as Senior

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Stenographer w.e.f. 26.5.1997 was allowed to continue in the Construction Organisation and that she is still continuing there. That the respondents 2 and 4 the Chief Engineer and the Deputy Chief Engineer found that the case of the applicant was covered by the ruling in OA 714/99 in the case of K.C.Raveendran, a similarly situated person is also not disputed and is also established by Annexures.A3 and A4 letters. However, the respondents resist the claim of the applicant on the basis of the objection raised by the 5th respondent. The contention of the respondents is that "as per para IV of Board's letter No.F.(E)11/89 FR/1/1 dated 12.12.1991 circulated as advance correction slips 14 and 15 amending Rule 1313 R.11(FR 22(C)/1325(FR 30) and 1326 (FR 31) Department of Personnel and Training notification No.1/10/89 Estt.(Pay1) dated 30.9.89 read as follows:

"Notwithstanding anything contained in this rule, where a Railway servant holding an ex-cadre post is promoted or appointed regularly to a post in the cadre his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he became eligible for such promotion or appointment" (emphasis supplied) "

and therefore on regularisation as Senior Stenographer the applicant's pay as Senior Stenographer w.e.f. 26.5.1997 was required to be refixed ignoring the increments drawn on adhoc promotion, basing only on the presumptive pay she

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would have drawn in her substantive post of Stenographer in the scale Rs. 1200-2040 and protecting the difference as personal pay to be absorbed in future increments. They further contend that in view of what is contained in advance correction slip No.65 (Annexure.R.5) and letter No. E (NG)1-97/PM1/30 dated 27.03.1998 by the Joint Director Estt.(N) Railway Board (Annexure.R.6) the increments granted on adhoc officiation could not have been counted for fixation of pay in the higher post. The respondents thus contend that the applicant is not entitled to the reliefs sought.

3. Upon perusing the material available on record and hearing the arguments of the learned counsel on either side we find absolutely no meaning or substance in the contention of the respondents. It is not in dispute that on account of adhoc officiation, the applicant was drawing early increments in the scale of pay of Senior Stenographer. It is also admitted that ~~because~~ it was on account of that the respondents protected the applicant's pay by award of personal pay to be absorbed in future increments. The question is whether an officer holding a higher post on adhoc basis while on deputation in Construction Organisation is regularised on that post on account of regular promotion to that grade in his cadre do the rules provide for refixation of his pay in the excadre post in the Construction Organisation basing on the pay which he would have drawn in the lower post which he held in his parent

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cadre? In terms of the rules and instructions quoted by the respondents in para 4 of the reply statement reproduced in para 2 above only where a Railway servant holding an ex-cadre post is promoted to or appointed regularly to a post in his cadre his pay in the cadre post will be fixed only with reference to the presumptive pay in the cadre post which he would have held. <sup>Here</sup> Hence the applicant even after regular promotion as Senior Stenogrpaher in her cadre w.e.f. 26.5.97 was continuing in the Construction Organisation. So while fixing her pay on the ex-cadre post of Senior Stenographer in the Construction Organisation rules do not provide for fixation of pay reckoning the presumptive pay in the cadre post which she would have held.- That was the reason why the Tribunal in its order in OA 714/99 in the case of KC.Raveendran rejecting similar contention basing on Railway Board Circular dated 7.8.86 held that the said instruction related to fixation of pay in the cadre post and does not apply while fixing the pay on an ex-cadre post. While the 5th respondent had in his communication No.P.483/CN/ERS/E/Pay Fixation dated 20th February, 2002 commended that the judgment in OA 714/99 could not be quoted as a precedent as it was rendered by the Tribunal as relevant rules and instructions were not placed before it, the 5th respondent failed to quote the rules and instructions which would justify the fixation of pay in an ex-cadre post on regular promotion ignoring the increment earned on account of adhoc service and reckoning the presumptive pay basing on the post substantively held in the

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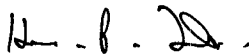
cadre. While stating that codal provision is clear such codal provision has not been referred to in the communication. The rulings of FA& CAO referred to in the communication has no bearing at all to the context. Annexures.R.5 and R.6 which relates to adhoc promotion also are totally irrelevant to the issue on hand. Nowhere in Annexures.R.5 and R.6 it has been stated that while fixing the pay of an official on regular promotion/appointment to an ex-cadre post the increments earned by adhoc officiation in the very same post should be ignored and pay in the ex-cadre post is to be fixed reckoning the presumptive pay in the lower post held in his cadre. The observation of the fifth respondent in his communication enclosed to Annexure. A.4. is totally misconceived and wrong. It is unfortunate that the respondents 2 and 4 who are officers at a fairly high level accepted the untenable position put forth by the 5th respondent and on that basis rejected the rightful claim of the applicant for correct fixation of pay.

4. In the result, the application is allowed. Declaring that the respondents are bound to fix the pay of the applicant on regular promotion to the ex-cadre post of Senior Stenographer in the Construction Organisation while holding that post on adhoc basis basing on the pay held by her on the basis of increments earned by her on account of

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continuous adhoc officiation and are not justified in fixing the pay on the ex-cadre post reckoning only the presumptive pay in the cadre post held substantively by her, we set aside the observation of the 5th respondent in his communication dated 20.2.02 (enclosure to Annexure.A.4) and direct the respondents to fix the pay of the applicant on her regular promotion on ex-cadre post of Senior Stenographer on the basis of the pay drawn by her on the same post on adhoc basis, including the increments and make available to her the arrears, if any, within a period of two months from the date of receipt of a copy of this order. No costs.

Dated this the 15th day of September, 2004



**H.P.DAS**  
**ADMINISTRATIVE MEMBER**

(s)



**A.V. HARIDASAN**  
**VICE CHAIRMAN**