

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 363/2006

MONDAY THIS THE 19th DAY OF NOVEMBER, 2007

C O R A M

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

P.Manickam S/o R. Perumal
Points Man-A, Morappur Railway Station
And Post Office, Dharmapuri District.
Mochikuttal Village Talanatham Post
Pappireddippatti Taluk
Dharmapuri District. **Applicant**

By Advocate M/s T.C. Govindaswamy, D. Heera,
P.N.Pankajakshan Pillai & Sumy P.Bably

Vs.

- 1 Union of India represented by the General Manger
Southern Railway, Hqrs Office
ParakTown PO
Chennai-3
- 2 Senior Divisional Personnel Officer
Southern Railway, Palakkad Division
Palakkad. **Respondents**

By Advocate Ms P.K. Nandini

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIARMAN

This OA has been filed by the applicant for a declaration that he is entitled to stepping up his pay on par with his juniors from the date of promotion of the juniors in the scale of pay of Rs. 3050-4590.

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2 The brief facts can be stated as follows:-

The applicant is presently working as Points Man-A in the scale of Rs. 3050-4590 at the Morappur Railway Section, Palakkad Division, Southern Railway. He started his career as a substitute Porter, was treated as temporary and granted the scale of pay of Rs. 196-232 w.e.f. 1.6.1979 and later absorbed as a Regular Porter during 1984. He was allegedly promoted to the non-functional scale of Rs. 775-1025. He was further promoted as Points Man-B in 1990 in the scale of Rs. 800-1150 (revised Rs. 2650-4000). By order dated 7.3.2000 the applicant was again promoted as Points Man-A in the scale of Rs. 3050-4590. In the lower scale of Points Man-B in the scale of Rs. 2650-4000 the date of his annual increment was on 1st June of every year. Upon promotion to the post of Points Man-A the applicant exercised option to have his pay fixed under FR 22-C (Rule 1313) w.e.f. 1.6.2000 after drawing annual increment in the lower post. He was drawing a basic pay of Rs. 3370/- in the lower post. His annual increment fell due on 1.6.2000 was also drawn. The option submitted by him was within time and forwarded by the Station Master to the second respondent on 15.4.2000. In terms of Rule 1313 of the IREM, according to the applicant his pay should have been fixed at the stage of Rs. 3575 w.e.f. 1.6.2000 in the scale of pay of Rs. 3050-4590. On that basis the applicant, is entitled to have subsequent annual increment from the 1st of June every year. Instead of fixing the pay as above, his pay was fixed at Rs. 3500 as if the increment due on 1.6.2000 was not drawn. The applicant submits that he is not aware of the technical aspects of Rule 1313 and he was not capable of understanding the pay slips given to him. Since he was drawing less pay than what he was

entitled to as that his option was not being acted upon, he submitted series of representations to the authorities. After his promotion, three of his juniors were promoted to the scale of pay of Rs. 3050-4590. Having come to know that these persons were drawing higher pay than him he was advised to submit a representation for stepping up of pay. Accordingly, he submitted representation dated 29.9.2005 (A-5) followed up with reminder on 1.1.2006. Now his representation has been rejected by Annexure A-1 impugned order on the ground that the Railway Board has withdrawn the stepping up of pay in cases of of anomaly due to promotion through an intermediate grade and stating that the applicant was directly promoted from the scale of Rs. 750-940 to the scale of Rs. 800-1150 without going through the intermediate grade of Rs. 750-940 whereas the applicant's juniors were promoted through that intermediate grade as Points Man-B and therefore, he was not entitled to stepping up of pay. The applicant submits that he started his career as a Porter in the Railway and being illiterate he was not familiar with the rules and has been subjected to substantial injustice by the respondents.

3 He has sought the following reliefs.

(a) Call for the records leading to the issuance of Annexure A-1 and quash the same.

(b) declare that the applicant is entitled to have his pay stepped up on par with his juniors referred to in Annexure A5/A6 representations from the date of promotion of the said juniors to the scale of pay of Rs. 3050-4590 and direct the respondents to grant the applicant all the consequential benefits including arrears of pay and allowances arising therefrom in the alternative.

© direct the respondents to fix the applicant's pay with effect from 1.6.2000 in the scale of pay of Rs. 3050-4590 with reference to the pay drawn by the applicant as on 1.6.2000 after drawing the annual increment in the lower

scale of pay of Rs. 2650-4000 and direct further to grant all consequential benefits with progression in increment on 1st of June, every year, including arrears of pay and allowances arising therefrom.

(d) Award costs of and incidental to this application

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

4 The respondents have filed a reply statement maintaining that the claim of the applicant is barred by limitation, the juniors of the applicant Shri M. Krishnan referred by the applicant in the representation submitted by him drawing more pay than him from 1994 – 1999 respectively the applicant having not protested at the material time, is raising the claim after six years without giving a satisfactory reason for the delay. They also denied that they received series of representations from the applicant. In any case, repeated representations would not enlarge the period of limitation. As regards service particulars the respondents have submitted that he was granted temporary status in the scale of Rs. 196-232 w.e.f. 1.6.1999 and absorbed in the regular post of Sweeper –cum –Porter in the scale of Rs. 196-232/750-940 from 3.6.84. Afterwards he was promoted as Pointsman-B in the scale of Rs. 800-1150 w.e.f. 1.6.91. The statement of the applicant that he was promoted to the scale of Rs. 775-1025 is not correct which would be clear from the copy of the Service Register produced with Annexure R-1. His promotion as Pointsman-A in the scale of Rs. 3050-4590 was w.e.f. 14.3.2000. The respondents have also denied the contention of the applicant that he has given option to the effect that his pay in the grade of Rs. 3050-4590 be fixed after the accrual of increment in the lower scale of Rs. 800-1150 (2650-4000) in terms of Rule 1313/(FR 22 (1)(a)(1) of Indian Railway Establishment

Code Vol. II. Therefore his pay was fixed straight way in the scale of Rs. 3050-4590 on the that no option was submitted by him. The fixation of pay in the higher pay was done only in September, 2000, the applicant was drawing Rs. 3370/- in the lower scale. Therefore, his pay was correctly fixed at Rs. 3500/-. The respondents have also that the applicant's claim for stepping up of his pay on par with the juniors as according to the extant orders, one of the conditions for stepping up of pay is that both the senior and junior should belong to the same cadre and the posts in which they have been promoted or appointed should be identical in the same cadre. The applicant was promoted to the scale of Rs. 800-1150 from the scale of Rs. 750-940 whereas the juniors have been promoted to the scale of Rs. 800-1150 from the scale of Rs. 775-1025 and hence the applicant cannot claim similarity with them. They have also produced the letter dated 24.12.1987 of the Railway Board (Annexure R-5) withdrawing the benefit of stepping up granted by the Railway Board earlier letter dated 5.1.1967. Annexure R-5 which are still valid and therefore according to the respondents there is absolutely no basis for the averment made by the applicant.

5 Rejoinder has been filed by the applicant reiterating that he has exercised his option consequent to his promotion to the post of Pointsman-A and it was sent to the Sr. DPO on 15.5.05 by the Station Master, but due to the inaction on the part of the respondents to act upon the option the applicant was constrained to represent again for the same. The applicant had also filed M.A. 1120/2006 to implead Shri A. Raman, the then Station Master Buddireddippatti RS who forwarded the option but as the respondents objected to, the impleading Application it was

dismissed. The endorsement at Annexure A2 would make it clear that the option was submitted on 15.4.2000, Annexure R-3 now produced by the respondents is only an intimation regarding the applicant's promotion as Pointsman-A and taking up independent duty on 14.3.2000 and it is not expected to contain the option of the applicant. Hence according to the applicant by virtue of Annexure A7 decision incorporated in IREC dated 5.1.1967 he is entitled to the benefit of stepping up of pay.

6 We have heard Learned counsel Smt. Rejitha for the applicant and Ms P.K.Nandini for the respondents.

7 The respondents were asked to clarify why the applicant who became eligible for promotion to the intermediate grade of Rs. 775-1025 was not promoted and was directly promoted to the scale of Rs. 800-1150 thus giving rise to the anomaly. The respondents filed an affidavit stating that the connected records relating to the promotion orders issued in 1991 could not be located as the preservation period of such files is only three years, the records are not available at this point of time but as per the avenue chart for promotion to the categories of Pointsman, etc. if sufficient eligible Group-D staff in both operating and Commercial departments in various posts in the scale of Rs. 775-1025 are not willing and available for promotion to the post in the scale of Rs. 800-1150 then the Group-D staff working in the various posts of same department in the scale of Rs. 750-940 may also be considered subject to their medical fitness. In these circumstances only the applicant might have been considered. The learned counsel for the respondents has also relied on the judgment of the

 Hon'ble Supreme Court in Civil Appeal NO. 8658 of 1996 Union of India &

Another Vs. R. Swaminathan etc.etc. (1997(2) ATJ 529 and Union of India and Others Vs. OP Saxena (AIR 1997SC 2978.

After analysis and perusal of the judgments referred to above we are of the view that these cases are not on all fours with the case of the applicant.

8 On hearing the argument of the learned counsel on both sides and going through the pleadings we are of the view that the applicant is a victim of his own ignorance of rules and the inaction of the respondents to protect his interest. At the outset we reject the respondents' contention on the point of limitation as the matter being an anomaly in pay fixation, the cause of action being recurring in nature the Application is not barred by limitation. The crux of respondents' contention is only that the applicant who was promoted directly to the grade of Rs. 800-1150 and the juniors of the applicant who were promoted to the intermediary grade of Rs. 775-1025 and then to the scale of Rs. 800-1150 are not on par and therefore stepping up of pay with reference to the juniors cannot be granted to the applicant. Also the earlier instructions for stepping up in Annexure A-7 on which the applicant relies have been rescinded by the Railway Board's order by Annexure R-5 dated 24.12.1987. Though the applicant has denied the existence of Annexure R-5 order in the IREC Vol.I incorporating all corrections upto 1990 we are not going further in to that aspect. The respondents have produced a copy of the order. Now the point is that if such an order existed in 1987 why it was not made applicable to the applicant at the time of his promotion to the grade of Pointsman-A in 1990. For reference Annexure R-5 order of the Railway

Board dated 24.12.1987 is reproduced below:

"Subject: Benefit of pay admissible in an intermediary higher post which would have been held by a railway servant, but for his promotion to a still higher post- Withdrawal of Board's letter No. PC-64/PP-5 dated 5.1.1967

The instructions contained in Board's letter No. PC-64/PP-5 dt. 5.1.67 permit the benefit of pay admissible in an intermediate higher post to a senior who did not actually officiate in that post but was officiating in a still higher post in the form of protection/stepping up of pay.

2 The Ministry of Railways have reviewed these instructions in the light of the following:-

(i) Orders were issued in 1981 permitting an option for fixation of pay under Rule 2018-B (FR 22-C)-R-II vide Board's letter No. E(P&A)II-81/PP-4 dt. 13.11.1981 which were mainly intended to eliminate claims for stepping up of pay in various situations.

(ii) The 4th Central Pay Commission have reduced the number of scales substantially. Therefore, there would hardly be any occasion when a Railway servant would be promoted from one grade to another, skipping an intermediate grade.

(iii) Instructions were issued vide Board's letter No. E(NG-I)-85-PMI3(RRC) dt. 19.2.87 on the recommendations of the Railway Reforms Committee that the zone of consideration for promotion should be only the next immediate lower grade except in regard to certain categories for which the mode of filling up of vacancies has been separately prescribed and in whose cases the question of protection/stepping up should not, in any case arise.

(iv) Similar provision does not exist in the civil side.

3 In the above background, in the new scales of pay, there should be no occasion for a Railway servant to be promoted to officiate in a higher grade without officiating in the intermediate lower grade. If this happens in any rare or exceptional situation, the appropriate course of action would be to allow the Railway servant to revert to the intermediate lower post, if he wants the benefit of pay admissible in that post. If he elects to remain in the higher post in his own interest, considering the long term

advantages, there should be no question of protection of officiating pay in the intermediate grade or of stepping up of pay with reference to a junior promoted via the intermediate grade.

3.1 The Board have, accordingly decided that the instructions contained in their letter of 5.1.67 referred to, should stand withdrawn in the revised (4th pay commission) scales of pay. Cases already decided otherwise than in accordance with these orders need not, however, be reopened.

4 This has the sanction of the President and issues with the concurrence of the Finance Directorate of the Ministry of Railway."

9 From Para 3 thereof, it is seen that this order withdrawing the facility earlier granted for stepping up to senior was issued on the basis that no Railway servant would be promoted to officiate in higher grade without officiating in an intermediate lower grade and if it happens in any situation, an option has to be given to the employee to revert to the lower post if he wants the benefit of pay. If he elects to remain in the higher post in his own interest there should be no question of protection of officiating pay in the intermediate grade or of stepping up of pay with reference to a junior promoted via the intermediate grade. Had the respondents applied these instructions to the applicant when he was promoted in 1991 to the higher scale without being promoted to the intermediate grade, then he would have at that time got an opportunity to opt to either remain in the higher grade or revert to the lower grade. If that had been done this anomaly of fixation at the time of next promotion to the higher post would not have arisen. The respondents are now quoting these instructions only to deny the benefit to the applicant at this stage when the damage has already been done by not giving this option and his juniors had got the benefit of promotion to the intermediate lower post resulting in higher pay fixation in

the promotion post.

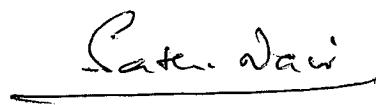
10 Another issue raised by the applicant is that even on his next promotion to the post of Pointsman-A grade in the scale of 3050-4590, the option given by him to draw his increment in the lower pay scale and for fixation under FR 22 (1)(a)(1) – Rule 1313 of IREC was not considered by the respondents. Annexure A-2 submitted by the applicant carries an endorsement to the effect that the option has been submitted to the Sr. DPO on 15.4.2000. The respondents have countered this by producing Annexure R-3 letter stating that no option has been enclosed with the said letter. Here we are inclined to give weight to the contention of the applicant that this letter was only an intimation regarding his taking up the duties of the post on 14.3.2000 and hence could not be expected to carry information regarding the option submitted by the applicant. We have to give benefit of doubt to the applicant and come to the conclusion that the applicant had given an option dated 15.4.2000 which has not been taken into account by the respondents. One of the reasons could be the delay in pay fixation in that the option was submitted on 15.4.2000 and though the applicant had taken charge on 14.3.2000, according to the respondents themselves the pay fixation was done much later in September, 2000.

11 Therefore in the conspectus of the facts and the discussion above, we are of the view that the anomaly in the pay fixation of the applicant has occurred due to the inaction on the part of the respondents and even if the instructions on which the respondents rely at Annexure R-5 had been properly applied at the right time and in the right manner the applicant

would not have been denied the benefit of correct fixation in the higher scale as envisaged in the rules. In this context we also take note of the fact that the applicant is an illiterate Group-D employee who may not have been conversant with the intricacies of the rules of pay fixation and it was the duty and responsibility of the respondents to take care of the interest of such employees. The O.A. is allowed. We declare that the applicant is entitled to have his pay stepped up on par with his juniors referred to in Annexures A5/A6 from the date of promotion of the said juniors in the scale of pay of Rs. 3050-4590 and direct the respondents to grant the applicant consequential benefits thereof including arrears of pay and allowances. This exercise shall be done within a period of three months from the date of receipt of this order. No costs.

Dated 19. 11-2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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