

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 373 of 2010

Wednesday, this the 1st day of February, 2012

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

1. P.G. Sasidharan Nair, aged 54 years, S/o. Gopala Pillai, Senior Gang Man, Senior Section Engineer, Alappuzha, Trivandrum Division, Southern Railway.
2. O.R. Velayudhan, aged 57 years, S/o. Raman, Senior Trackman, Section Engineer (P.Way), Alappuzha, Trivandrum Division, Southern Railway.
3. Varghese P.D., aged 57 years, S/o. Devassy, Gate Keeper, S.L. Puram, Alappuzha, Trivandrum Division, Southern Railway.
4. C. Omana, Aged 52 years, W/o. Uthaman, Senior Gang Woman, Ambalapuzha Section, Trivandrum Division, Southern Railway.
5. M.A. Joseph, aged 58 years, S/o. Joseph, Gateman, Alappuzha, Trivandrum Division, Southern Railway.
6. P.K. Sreedharan, aged 50 years, S/o. Krishnan, Trolleyman, Cherthala, Trivandrum Division, Southern Railway. **Applicants**

(By Advocate – Mr. Martin G. Thottan)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Chennai-3.
2. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.
3. The Senior Divisional Engineer, Southern Railway, Trivandrum Division, Trivandrum. **Respondents**

(By Advocate – Mr. K.M. Anthru)

This application having been heard on 01.02.2012, the Tribunal on the same day delivered the following:

**CHIEF ADMINISTRATIVE TRIBUNAL
REVENUE TRIBUNAL**

Original Application No. 353 of 2010

Wednesday, this the 1st day of February, 2010

COURT:

Hon. Mr. Justice K. B. S. Rajan, Judicature Member
Hon. Mr. Justice K. V. Venkateswar, Administrative Member

T. P. G. Sasiappan, aged 54 years, S/o. Gobala Pillai,
Senior Grade Motor Section Engineer, Alappuzha
Tiruvandrum Division, Southern Railways

O.R. Aiyappan, aged 53 years, S/o. Ramaswamy
Senior Teacher, Section Engineer (P.W.A) Alappuzha
Tiruvandrum Division, Southern Railways

A. Subbarao, P.D., aged 52 years, S/o. Devaswam, Gare Keerai
S/o. P. S. Nair, Alappuzha, Tiruvandrum Division, Southern Railways

C. O. Sankar, Aged 52 years, M/o. Uthamal, Senior Grade Motor
Amperapuzha Section, Tiruvandrum Division, Southern Railways

M. A. Joseph, aged 58 years, S/o. Joseph
Gsterdam, Alappuzha, Tiruvandrum Division, Southern Railways

P. K. Sreedharan, aged 50 years, S/o. Krishnan, Tollayarm, Chettiar
Tiruvandrum Division, Southern Railways

(By Advocate - Mr. Martin G. Jaffer)

PLAINTIFF

Union of India, represented by the General Manager
Southern Railways, Headquarters Office, Chennai-5.

The Senior Divisional Petitioner Officer
Southern Railways, Tiruvandrum Division, Tiruvandrum

The Senior Divisional Engineer, Southern Railways
Tiruvandrum Division, Tiruvandrum

(By Advocate - Mr. A. M. Anupur)

This application being filed on 01.02.2010, the Tribunal on the

same day rejected the following

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicants working as Senior Trackman/Gateman under the Section Engineer, Permanent Way, Alappuzha in the Trivandrum Division of Southern Railway have approached this Tribunal seeking the following relief:-

“i) Declare that the applicants are entitled for fixation under rule 1313 FR 22 (1)(a)(I) RII while they were granted the scale of pay of Rs. 2750-4400 and direct the respondents accordingly including the arrears.

ii) Award costs of an incidental to this application.

iii) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.”

2. Briefly stated the applicants' initial pay scale was Rs. 2650-4000/- and was later on upgraded to Rs. 2750-4400/- (Annexure A-1 refers). While granting the higher pay scale, fixation of pay was not done in terms of Rule 1313 [FR 22(1)(a)(i)] and the applicants were given only a normal increase in the basic pay of Rs. 10/-. The applicants made representation but of no avail. Later on the applicants met across RBE No. 89 of 2004 dated 20.4.2004 wherein it was specifically mentioned that Senior Trackman/Trolleyman/Gateman in the pay scale of Rs. 2650-4000/- when placed in the higher scale of Rs. 2750-4400/- would get the benefit of Rule 1313 [FR 22(1)(a)(i)] (Annexure A-2 refers). Thus applicants one again made a representation but there has been no reply to the same. Hence, this Original Application.

3. Respondents have contested the OA. They have stated that the benefits as claimed by the applicants would be admissible only when there is

functional promotion with higher duties and responsibilities. The contention of the applicants with reference to Railway Board's letter dated 20.4.2004 is not borne on records.

4. When the case came up for hearing, counsel for the applicants invited our attention to a decision of this Bench in OA No. 779 of 2007 [reported in AISLJ 2010(1) CAT 155]. He has stated that by virtue of that decision the legal issue involved in this OA stood already answered and as in the other OA, the applicants may also be granted the same benefits. Counsel for the respondents has not denied the existence of the aforesaid order of the Tribunal.

5. Arguments were heard and documents perused.

6. The glimpse at the order in OA No. 779 of 2007 would go to show that the facts in that case are exactly identical to the facts of the present case. In this regard a part of the said order is extracted below:-

“2. The facts capsule as per the O.A.: The applicants are working as Sr. Trackman Gr. I/Sr. Gate Keeper Gr. I/Sr. Trolleyman Gr. I/Sr. Store Watchman Gr.I in the scale of Rs 2750 – 4400. Promotion orders at Annexure A-1 to A-3 refer. Earlier they were in the grade of Rs 2650 – 4000 in Grade II posts of their respective cadre.

3. Initially, prior to restructuring in the Railways in 1993, the category of Gangmen, Trolleymen, Gatemen and Watchmen had two grade structure of Rs 775 – 1025 (70%) and 800 – 1150 (30%). On restructuring, which took place in 1993, the aforesaid category was provided with a three tier structure, as Rs. 775 – 1025(25%), Rs 800 – 1150(55%) and Rs 825 – 1200 (20%). Thus, seniors in the grade of 800 – 1150 to the extent 20% of the total posts in the category of Gangman (Trackmen)/Trolley Men/Gate keepers were upgraded to the scale of 825 – 1200 (presently 2750 – 4400) vide RBE No. 19/93 dated 27th January 1993 (AnnexureA-4). The following were the salient features of the said scheme: -

“3. Pay Fixation (FR 22-C)- Staff selected and posted against

the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316 (FR 22-C) R-II w.e.f. 1.3.1993 with necessary option for pay fixation as per extant instructions.

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6. Basic functions, duties and responsibilities - In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result of rest structuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities, as considered appropriate.”

The aforesaid order was issued with the approval of the President.

4. While fixing the pay of the incumbents to the above posts, provisions of Rule 1316 {(FR 22 C) (Present 1313 (1)(a) (1) = FR 22 (1)(a)(1))} were invoked, as provided for vide para 3 of the said order extracted above.

5. Later on, another Restructuring of certain Group C and D cadres took place, vide R.B.E. No. 177/2003 dated 9th October 2003 and by this order, the aforesaid 20% in the pay scale of Rs 2750 – 4400 was enhanced to 42%. The following are the salient features of the said order: -

“3. Pay Fixation (Rule 1313 (FR 22)-RII) : Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1313 (FR 22) (I)(a)(I) R-II on proforma basis with effect from the cut off date with usual option for pay fixation as per extant rules. Actual payment based on the pay so fixed should be made from the date of taking over the charge of the higher grade post arising out of the restructuring orders. The benefit under this Rule will, however, no longer be available in the case of movement from Goods Guards to Senior Goods Guards and Goods Drivers to Senior Goods Drivers etc. In the case of such movement, the pay will be fixed under Rule 1313 (FR 22)(I)(a)(I) R-II will now be admissible in the cases of functional promotion such as promotion from Sr. Goods to Passenger Goods and Sr. Goods Drivers to Passenger Drivers etc. thought in identical scale of pay.

6. Minimum years of service in each grade : While implementing the restructuring orders, instructions regarding minimum period of service for promotion issued from time to time should be followed. In other words, residency period prescribed for promotions to various categories should not be relaxed.



7. Basic functions, duties and responsibilities : Since the cadres as detailed in the annexures to this letter are being restructured on functional, operational and administrative considerations, the posts being placed in higher scales of pay as a result of restructuring should include the duties and responsibilities of greater importance.

12. Gatemen (Engg.) : As a result of implementation of this restructuring, more number of additional posts will be available in the highest of grade of this category. Henceforth, therefore, the posts of Gatemen (Engg.) should be operated in grade Rs. 2750-4400 in order to ensure the full availability of Gatemen (Engg.) and rotation of the existing staff specially those who are working, as such, for a long period, the Trackmen etc. at the time of their promotion to grade Rs. 2750-4400 should be posted as Gatemen (Engg.) subject to their fulfilling the requirement of prescribed medical standard and literacy level etc. as per extant instructions.”

The above said order has also been passed with the approval of the President of India.

6. In the above order also, in case of functional promotions, provisions of Rule 1313 (1)(a)(1) were made applicable.

7. The aforesaid order dated 9th October 2003 underwent certain modifications vide order dated 6th January 2004 and the following paragraphs have been inter-alia substituted:

“3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1313 (FR-22) (I) (a) (I)-RII w.e.f. 1st November, 2003 with the usual option for pay fixation as per extant rules. The benefit under this rule will, however, no longer be available in the case of movement from lower grade to higher grade in the non-functional situations where there is no change in duties and responsibilities e.g. As in the case of movement from Goods Guards to Sr. Goods Guards and Goods Drivers to Sr. Goods Drivers etc. In the case of such movement, the pay will be fixed under Trolleyman/Gateman/Watchman. However, the benefit of fixation of pay under Rule 1313 (FR-22) (I) (a) (I)-RII will now be admissible in the cases of functional promotions such as promotion from Sr. Goods Guard to Passenger Guards and Sr. Goods Drivers to Passenger Drivers etc., though in identical scales of pay.

6. While implementing the restructuring orders, instruction regarding minimum period of service for promotion issued from

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time to time should be followed. However, while considering any relaxation in the residency period prescribed for promotions to various categories, General Managers would personally ensure that the safety aspect of Railways is not compromised.”

8. There has been yet another order dated 20th April 2004, effective from the said date, in respect of pay fixation of trackmen etc., and the same inter-alia reads as under: -

“2. The question of fixation of pay in situation of placement of Sr. Trackman/Trolleyman/Gateman/Watchman (scale Rs. 2650-4000) in higher scale of these posts (viz. Scale Rs. 2750-4400) and then promotion to functionally superior post of Keyman in identical scale (Rs.2750-4400) was also under consideration of the Ministry of Railways. It has now been decided in consultation with the recognised federations that henceforth when Sr. Trackman/Trolleyman/Gateman/Watchman (Scale Rs. 2650-4000) are placed in higher scale of Rs. 2750-4400, their pay would be fixed under Rule 1313 (FR-22) (I) (a) (2)-RII but on functional promotion as Keyman though in identical scale Rs. 2750-4400, the pay would be fixed under Rule 1313 (FR-22) (I) (a) (I)-RII. While doing so, it is to be ensured that a person who has already got the benefit of fixation under Rule 1313 (FR-22) (I) (a) (I)-RII on his placement in higher scale Rs. 2750-4400 of Sr. Trackman/Trolleyman/Gateman/ Watchman under erstwhile system does not get benefit of fixation under above rule again on promotion as Keyman, as per the revised scheme. The intention is that no employee gets fixation under Rule 1313 (FR-22) (I) (a) (I)-RII twice on such type of movement.”

9. The applicants were placed in Grade I of their respective category vide Annexure A-1 to A-3, posterior to 20th April 2004 and the respondents have fixed their pay in the higher grade invoking the provisions of Rule 1313(1)(a)(2) and not Rule 1313 (1)(a)(1) as claimed by the applicants. Hence this O.A.

10. Respondents have contested the O.A. According to them, when the pay scales are identical, move from one to another would not involve any additional functional responsibilities and as such, there is no provision for affording the benefits under Rule 1313(1)(a)(1); rather, it is Rule 1313(1)(a)(2) that would be pressed into service.

11. Counsel for the applicant invited the reference of the two Railway Board's orders of 1993 and 2003 to hammer home the point that vide para 3 of order dated 27-11-1993, staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316) (FR 22C) R II w.e.f. 01-03-1993 with necessary option for pay fixation as per extant instructions. Thus,

those who were given the benefit of the order dated 27.11.1993 were entitled to have their fixed in accordance with FR 22C. Again, in so far as order dated 09th October 2003 is concerned, though a rider was imposed that the benefit under Rule 1313(1)(a)(1) would not be available in the case of movement from lower grade to higher grade in the non-functional situations where there is no change in duties as in the case of movement from Goods Guards to Sr. Goods Guards and Goods Drivers to Sr. Goods Drivers etc., vide para 7 thereof, it has been clearly mentioned that since the cadres as detailed in Annexures to that letter are being restructured on functional, operational and administrative considerations, the posts being placed in higher scales of pay as a result of restructuring should include the duties and responsibilities of greater importance. And para 12 of the said order specifies as under: -

“12. Gatemen (Engg.) : As a result of implementation of this restructuring, more number of additional posts will be available in the highest of grade of this category. Henceforth, therefore, the posts of Gatemen (Engg.) should be operated in grade Rs. 2750-4400 in order to ensure the full availability of Gatemen (Engg.) and rotation of the existing staff specially those who are working, as such, for a long period, the Trackmen etc. at the time of their promotion to grade Rs. 2750-4400 should be posted as Gatemen (Engg.) subject to their fulfilling the requirement of prescribed medical standard and literacy level etc. as per extant instructions.”

12. Thus, according to the counsel for the applicants, the above provision affords entitlement to Trackmen etc., to have their pay fixed under Rule 1313(1)(a)(1).

13. In so far as amendment to the order dated 9th November 2003 is concerned, the amendment is only with reference to paragraphs 1, 3, 4 and 6 while paragraphs 7 and 12 remain unamended. Hence, it has been argued that the applicants are entitled to fixation of pay under Rule 1313(1)(a)(1) of the Rules. According to the counsel for the applicant, even in respect of para 3, the change effected is only with reference to the date when the pay fixation benefits would be available. Thus, while earlier it was with effect from the cut-off dates vide para 3 read with para 1 of the said order dated 9th November, 2003, as per the amended portion, it is with effect from 01st November 2003.

14. Counsel for the applicant further argued that vide impugned order dated 20th April, 2004 (Annexure A-9), the same nowhere has stated that the said order had been issued with the approval of the President, whereas, both the restructuring orders of 1993 and 2003 were issued with the approval of the President. The one which has been issued with the approval of the President, attains a status of statutory provision, while the one which lacks such approval of the President

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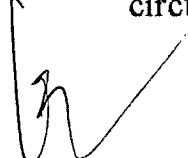
takes the back seat and such an order passed without the approval of the President cannot create any dent in the strength and character of an order passed with the approval of the President, such as orders of 1993 and 2003 referred to above.

15. Counsel for the respondents repeated the contentions as contained in the counter.

16. Arguments were heard and documents perused. In so far as order dated 9th November 2003 is concerned, it has clearly stated that for movement from lower to higher pay scale, when no additional responsibilities are imposed, the benefit of fixation under Rule 1313(1)(a)(1) would not apply. But where functional responsibilities of higher importance as introduced for certain posts are invoked, obviously, provisions of Rule 1313(1)(a)(1) shall have to apply. And, vide para 7 read with 12 thereof, as extracted above, in so far as trackmen, trolleymen, gatekeepers are concerned, they have been, on their move from lower to the higher grade under the restructuring scheme, provided with duties of higher standard. As such, in so far as such categories are concerned, where, after restructuring, certain additional responsibilities are enshouldered upon such railway employees, the provision applicable would be as per Rule 1313(1)(a)(1) and not 1313(1)(a)(2). The respondents have nowhere stated that there is no increase in the functional responsibilities of the cadre of Trackmen etc. or that provisions of para 12 of order dated 9.10.03 do not apply., All that they were emphasizing was that order dated 6th January 2004 clearly stated that where there is no functional increase, pay should be fixed in accordance with the provisions of Rule 1313(1)(a)(2) and not 1313(1)(a)(1). For deriving the benefits of the provisions of 1313(1)(a)(1), additional responsibilities should be affixed and in the case of Gatekeeper (Engg) and their counterparts such as Trackmen, Trolleymen etc., it was made imperative vide para 12 of order dated 9th October, 2003, that additional responsibilities should be imposed. Thus, this condition having been fulfilled, the applicants are entitled to their pay fixed in terms of Rule 1313(1)(a)(1).

17. In view of the above, Annexure A-9 is declared as illegal and void. It is declared that the applicants and others similarly situated who were the beneficiaries of the restructuring scheme of 2003 are entitled to have their pay fixed in accordance with the provisions of Rule 1313(1)(a)(1). Orders whereby the applicants have been afforded the benefit of only the provisions of Rule 1313(1)(a)(2) are also quashed and set aside. Respondents shall fix the pay of the applicants w.e.f. 01-11-2003 in terms of 1313(1)(a)(1). Arrears of pay and allowances arising therefrom should also be paid to them.

18. As the exercise involved is a time consuming process, a period of nine months is granted for full compliance of the order. Under the circumstances, there shall be no orders as to costs."

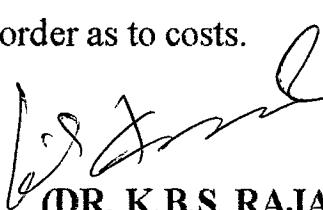


7. In view of the above, this Original Application is allowed and it is declared that applicants are entitled to fixation of pay under Rule 1313 [FR 22(1)(a)(i)] as in the other case (OA 779 of 2007) and the consequential benefits are also to flow therefrom in favour of the applicants. The respondents are directed to extend the same benefits as that could have been given to the applicants in OA No. 779 of 2007 within a period of six months from the date of receipt of a copy of this order.

8. Original Application is allowed as above. No order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

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(DR. K.B.S. RAJAN)
JUDICIAL MEMBER