

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.385/97

Friday, this the 28th day of January, 2000.

CORAM;

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

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

G.Sudevan,
Head Draftsman,
Southern Railway,
Trivandrum.

-Applicant

By Advocate Mr P Ramakrishnan

Vs

1. Union of India, represented by
Secretary to Government,
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. The General Manager(Personnel),
North East Frontier Railway,
Maligaon,
Guahati-11(Assam).
3. The Chief Personnel Officer,
Southern Railway,
Head Quarters Office,
Chennai-3.
4. The Divisional Personnel Officer,
Southern Railway,
Divisional Head Quarters,
Thycaud,
Trivandrum.

- Respondents

By Advocate Mr Thomas Mathew Nellimoottil

The application having been heard on 20.1.2000 the Tribunal on
28.1.2000 delivered the following:

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HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

The applicant who is working as Head Draftsman in the office of the Senior Divisional Engineer, Southern Railway, Trivandrum, is aggrieved by letter dated 22.3.96 by the 4th respondent vide which applicant's request for protection of pay was rejected(A-1). The relief sought by the applicant is as follows:

"(a) To issue an order quashing/setting aside A-1,

(b) An order declaring that the applicant is entitled to have the basic pay of Rs.1900/- in the scale Rs.1600-2660 protected upon his reversion to the scale of Rs.1400-2300 consequent to his transfer from North East Frontier Railway to Southern Railway.

(c) An order directing the respondents to refix the applicants pay after granting protection at the stage of Rs.1400-2300 consequent to his transfer from North East Frontier Railways to Southern Railway and to grant him all consequential benefits such as increments and arrears of pay pursuant to such refixation."

2. Facts of the case are that the applicant commenced service as Senior Draftsman in the scale of Rs.425-700(Rs.1400-2300) on 14.1.80 in North East Frontier Railway, at Maligaon(Assam). He was promoted as Head Draftsman in the scale of Rs.550-750(Rs.1600-2660) on an ad hoc basis vide order dated 19.8.93(A-2). The promotion was regularised by virtue of proforma promotion with effect from 1.4.86 vide order dated 15.7.91 issued by the 2nd respondent(A-3). The applicant was transferred to Southern Railway on his request and joined Trivandrum Division of Southern Railway on 27.12.88 in the lower scale of Senior Draftsman(Rs.1400-2300) with seniority at the bottom vide order dated 3.1.89(A-4).

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3. The applicant claims that he was drawing a basic pay of Rs.1900 in the scale of Rs.1600-2660 and his pay was not protected when he joined Trivandrum Division on request transfer. Latter, his pay was fixed at Rs.1640/- by an order dated 15.5.90(A-5). It was submitted that by virtue of Rule 1313(a)(ii) of Indian Railway Establishment Code and the proviso thereto, the applicant was entitled for protection of the basic pay of Rs.1900/- when he joined as Senior Draftsman at Trivandrum Division. The applicant, accordingly made a representation to the 3rd respondent pointing out the above anomaly(A-6).

4. In the meanwhile, the applicant was promoted as Head Draftsman with effect from 16.11.94. The 4th respondent finally rejected applicant's claim for protection of pay drawn in the scale of Rs.1600-2660 on the ground that the applicant had not been confirmed in the higher scale. According to the applicant, the reason given by the respondents was erroneous as his promotion as Head Draftsman under the North East Frontier Railway had been regularised by way of proforma promotion with effect from 1.4.86. Further, the 2nd respondent had informed the 4th respondent vide letter dated 28.6.96 about the above fact as well as the fact that the confirmation orders are issued only in the entry cadre(A-7).

5. The respondents resist the claim of the applicant and have filed a written statement. It was contended that the application is very much delayed and barred by limitation. The inaction on the part of the applicant for the period from 15.5.90 to the date of preferring a representation to the

respondents in 1994 squarely enable to conclude that the applicant was not having grievance and he had filed this O.A. only on the trial basis.

6. It was further submitted in the reply statement that the applicant's request for a transfer to Trivandrum Division was against a post of Senior Draftsman in the scale of Rs.1400-2300 only and on transfer, he was not bound to nclaim the protection of pay he was drawing in the higher grade of Rs.1400-2660. His occupation of the higher grade of Rs.1600-2660 may be on the regular basis but he was not on substantive post. Further, he was confirmed against a post of Tradesman in the scale of Rs.1400-2300 and not as Head Draftsman in the scale of Rs.1600-2660.

7. It was also contended that as per Railway Board's letter No.E(E)II-91/Misc/2 dated 4.10.94, when a 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. Thus this condition squarely applies to the applicant and, therefore, his pay was rightly fixed at Rs.1640 with effect from 3.12.88.

8. We have heard the learned counsel either side and have carefully considered the rival submissions.

9. The respondents have raised a question of limitation. Since the cause of action is recurring in nature, the

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applicant's claim cannot be called barred by limitation. Moreover, the 3rd respondent himself took almost two years to decide the representation of the applicant.

10. The applicant was drawing a basic pay of Rs.1900 to the post of Head Draftsman in the scale of 1600-2660 when he was transferred to Trivandrum Division of Southern Railway from North East Frontiers Railway on his request. The applicant's representation to the respondents was rejected on the ground that the applicant was confirmed in the lower scale of Draftsman of Rs.1400-2300 and not as Head Draftsman in the scale of Rs.1600-2660. The 2nd respondent has clearly stated in his letter dated 28.6.96 to the 4th respondent(A-7) that confirmation of staff is done only once in the service career of staff i.e. only on the entry grade and no subsequent confirmation is done in higher grade. The applicant was confirmed as Draftsman in the scale of Rs.1400-2300. The plea taken by the respondents while rejecting applicant's representation is quite contradictory to the letter under reference in A-7. The applicant had been confirmed in the entry grade of Senior Draftsman and he ought to have been deemed as having been confirmed.

11. Rule 1313(a)(ii) of the Indian Railway Establishment Code, Vo.II clearly provides as under:

"When appointment to the new post does not involve such assumption, he will draw as initial pay, the stage of

the time scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay."

12. As stated above, Rule 1313(a)(ii) of the said rule and the proviso thereto provides in clear terms that the pay on an appointment to a new post has to be protected. It has been stated by the applicant that there is an identical corresponding stage of Rs.1900/- in the time scale of Rs.1400-2300 and therefore his pay in the scale would have been protected without any difficulty. The applicant had apprised the respondents of the fact that his promotion as Head Draftsman was regular for all purposes as envisaged in A-7 letter. A-3 order granting him proforma promotion with effect from 1.4.86 had been brought to the attention to the respondents. Thus, we find that there was no justification in denying the benefit of pay protection to the applicant.

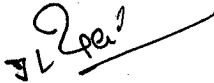
13. In the light of what has been discussed above, we allow the application and quash A-1 and declare that the applicant is entitled to have the basic pay of Rs.1900 protected upon his reversion to the scale of Rs.1400-2300 consequent to his transfer from North East Frontier Railway to Southern Railway. We also direct the respondents to grant him all consequential

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benefits flowing therefrom within two months from the date of receipt of a copy of this order. No costs.

Dated, the 28th of January, 2000.



J.L.NEGI
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to/the Order:

1. A-1: True copy of letter No.V/P-524/I/Fixation of pay dated 22.3.96 from the 4th respondent to the applicant.
2. A-2: True copy of Office Order No.111/83 dated 19.8.83 issued by the General Manager, Construction, Northeast Frontier Railway, Maligaon.
3. A-3: Relevant extracts of Office Order No.E/254/111-21 Pt.III(E) MLG dated 15.7.91 issued by the 2nd respondent.
4. A-4: True copy of Memorandum No.V/W.349/Staff dated 31.1.89 issued by the Divisional Railway Manager, Works, Trivandrum.
5. A-5: True copy of Memorandum No.V/P.535/I/II/Engg.Drawing/Vol.II dated 15.5.90 issued by the 4th respondent.
6. A-6: True copy of representation dated 7.2.94 from the applicant to the 3rd respondent.
7. A-7: True copy of letter No.E/254/111/21-Pt.III(E) dated 28.6.96 from the 2nd respondent to the 4th respondent.