

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.No.396/08**

Wednesday this the 9<sup>th</sup> day of September 2009

**C O R A M :**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

P.Moni,  
S/o.Padmanabhan Nadar,  
Technician Grade – I,  
O/o. Section Engineer Electrical,  
(Construction), Southern Railway, Ernakulam.  
Residing at Kalivilai, Alaganparai P.O.,  
Manavalakurichi (via), Kanyakumari District.

...Applicant

(By Advocate Mr.T.A.Rajan)

**V e r s u s**

1. Union of India represented by the General Manager,  
Southern Railway, Park Town P.O., Chennai – 3.
2. The Chief Administrative Officer (Construction),  
Southern Railway, Chennai.
3. The Chief Electrical Engineer (Construction),  
Southern Railway, Chennai.
4. The Executive Electrical Engineer (Construction),  
Southern Railway, Ernakulam.
5. The Divisional Personnel Officer,  
Southern Railway, Trivandrum. ...Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 9<sup>th</sup> September 2009 the  
Tribunal on the same day delivered the following :-

.2.

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-6 Memorandum dated 23.3.2006 by which his basic pay was fixed at Rs.5125/- with effect from 3.12.2005 on his promotion duly taking into consideration of the substantive pay in scale Rs.5000-8000 whereas he was already drawing the higher basic pay of Rs.5200/- in the lower scale of Rs.4000-6000.

2. The brief facts of the case are that the applicant was maintaining his lien in the post of Technician/Electrical in Trivandrum Division. He was transferred to the Electrical Construction Unit at Ernakulam on ex-cadre basis where he was appointed as Technician Grade-II in the scale of Rs.4000-6000. When the said scale was reduced to Rs.3050-4590 by the respondents by order dated 18.3.1998, he challenged the same before this Tribunal vide O.A.468/98 and on its order, it was later restored. Thus, while he was drawing the basic pay of Rs.5200/- in the aforesaid scale of Rs.4000-6000, he was promoted as Technician Grade-I in the ex-cadre in the scale of pay of Rs.4500-7000 with effect from 3.12.2005 and his pay was fixed at Rs.5375/- in the said scale vide Annexure A-5 Office Order dated 9.1.2006. Thereafter, the respondents refixed his pay at Rs.5125/- taking into consideration his substantive pay of Rs.5000-8000 in the cadre post in terms of Rule 1313 of the Indian Railway Establishment Code which reads as under :-



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"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)

3. The applicant has challenged the aforesaid Annexure A-6 refixation of his pay reducing his basic pay already fixed by Annexure A-5 from Rs.5375/- to Rs.5125/- in the promoted scale of Rs.4500-7000 on the ground that he was working as Technician Grade-II and was drawing Rs.5200/- in the scale of Rs.4000-6000 prior to his promotion to the post of Technician Grade-I in scale Rs.4500-7000. But on promotion his pay was reduced and fixed at Rs.5125/- which is arbitrary, unjust and illegal. He has also submitted that where a Railway servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. However, in his case it has been reduced on promotion which is unjust and illegal. His further contention is that the fixation of his pay at Rs.5125/- on promotion to the post of Technician Grade-I in scale Rs.4500-7000 is against Rule 1313 of the Indian Railway Establishment Code.

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4. Counsel for the applicant has also submitted that the applicant's case is squarely covered by the earlier orders of this Tribunal in O.A.353/02 dated 15.9.2004. In the said case also the applicant therein was promoted from lower ex-cadre post to higher ex-cadre post and the respondents have applied Rule 1313 of the Indian Railway Establishment Code. This Tribunal have found the said fixation incorrect and the operative part of the said order was as under :-

"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 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 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. Here the applicant even after regular promotion as Senior Stenogrpahe 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

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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 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 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."

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5. In another similar order in O.A.488/02 passed by this Tribunal on 17.5.2005 also, it has been held as under :-

"2. We have heard the learned counsel for both parties extensively and have examined a wide array of rules, orders and circulars as well as pay fixation statements produced in support of respective positions, and have arrived at the crux of the issue, as an agreed basis for proceeding with the adjudication. The issues in crux are (i) whether it was right on the part of respondents to refix the pay on 1.1.1996 by reducing it from Rs.3800 to Rs.3350 and whether (ii) it was right on the part of the respondents to reduce the last month's basic pay to Rs.3800 from Rs.4270 already drawn since February 2001 upto the previous month? At our instance the respondents also produced a comparative statement of fixations showing how the amount of recovery was arrived at.

3. The respondents contend that this revision was done at the instance of the Internal Finance, who had not vetted the Pay fixation done by the Construction Organisation at the time of giving effect to the revised scale recommended by the Vth Pay Commission and the Construction Organisation had fixed the pay of the applicant as Rs.3800 on 1.1.1996 in the revised scale by applying the corresponding replacement stage for Rs.1225 in the old scale. The Internal Finance however held, when the case was handled by them at the late stage of December, 2001 that in accordance with the Board's letter dated 7.8.1986 (Annexure R1) the applicant was to be treated as the holder of an ex-cadre post for the purpose of pay fixation and the benefit of pay drawn in such posts could not be admissible in cadre posts.

4. To say the least, we are dismayed by this obvious, misreading and misinterpretation of the text by the authors of the refixation R1 rightly declares that while fixing the pay of a lien order in a cadre post, his ex cadre pay would not be taken into account. Converse is also true. Pay in a cadre post would not restrict the ex cadre pay as long as the employee remains in a ex cadre post. When a employee continues in the excadre set up without ever having been reverted to the cadre, his pay in the cadre post, regulated from time to time based on his position in the cadre remains only a theoretical construct or at best a guide post to be brought into use when the employee reverts to the cadre. In other words, the cadre pay his what he would have been drawn had he be in the

cadre of what he would draw on reversion to the cadre with reference to both his senior and junior in the cadre. In excadre placing there is no cadre seniority in operation. There would be many seniors unwilling to volunteer for excadre post who would be drawing less pay in the cadre in comparison to his junior working in the excadre posts. As long as the employees continues in the excadre post he would be entitled to this advantage, but on reversion, the cadre pay would become effective. In the instant case the fixation done by Internal Finance evidently relates to the cadre post, but this would not have the effect of reducing the pay in the excadre post as long as the applicant continues in the excadre post.

5. The learned counsel for the respondents argued that since staff employed in the executive offices of Construction Organisation are granted only adhoc promotions it become necessary to fix their pay on regular basis when they get regular promotions in the cadre. This is also part of the same misreading of rules. To clarify matters let us look at the operative rule itself :-

"Notwithstanding anything contained in this rule, when a railway servant holding an excadre post is promoted or appointed regularly to a post in his 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 holding any excadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

(emphasis added)

This rules clearly specifies that when a person holding an excadre post gets its regular promotion in the cadre, his cadre pay would be fixed with reference to his presumptive pay and not with reference to his excadre pay. There is no instruction anywhere that on getting promotion in the cadre while continuing in the excadre post his excadre pay would be brought down to the level of cadre pay. In the instant case, the applicant's promotion in the cadre post would have no effect on his excadre pay. In other words, when an excadre clerk gets regular promotion as clerk in the cadre, his pay in cadre would be fixed in the presumptive basis but his excadre pay when he is continuing in the excadre post would continue to remain unaffected.



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6. Accordingly the application is disposed of with the directions to the respondents to authorise pay at the basic of Rs.4270/- for the months of December 2001 that the applicant was entitled to, to recalculate pensionary and other retiral benefits with reference to pay actually drawn in the excadre post from where the applicant retire and refund the amount deducted (Rs.49,074) towards recovery of misjudged over payments already made from the gratuity with 8% simple interest per annum. The exercise culminating in the discharge of all the dues of the applicant should be completed within a period of three months from the date of issue of these orders. No order as to costs.

6. In the reply statement respondents have only stated that on promotion of the applicant from the post of Technician Grade-II in the scale of pay of Rs.4000-6000 to that of Technician Grade-I in the scale of pay of Rs.4500-7000 the Rule 1313 of the Indian Railway Establishment Code will apply and the pay has to be fixed under Rule 1313 (3) (iv) in terms of the substantive pay which he was drawing in his cadre post.

7. Since this Tribunal has already held that such a fixation as bad in the aforesaid two orders of this Tribunal (OA No.353/02 & OA No.488/02), we have no hesistation to hold that the impugned Annexure A-6 Memorandum dated 23.3.2006 is absolutely arbitrary and illegal. Hence the same is quashed and set aside. We also hold that the applicant's pay is correctly fixed in terms of Annexure A-5 order dated 9.1.2006 in which his basic pay has been fixed at Rs.5375/- in the scale of Rs.4500-7000/- from the date of his appointment to the post of Technician Grade – I. The respondents are directed to restore his aforesaid fixation and grant him all consequential benefits. As it is reported that the applicant has already been retired from



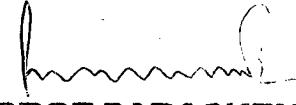
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the aforesaid excadre post of Technician Grade – I itself from the Electrical Construction Unit at Ernakulam, he shall be granted all the arrears of pay and allowances as well as revised pension within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 9<sup>th</sup> day of September 2009)

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

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**GEORGE PARACKEN**  
**JUDICIAL MEMBER**