

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.402/2007

Tuesday, this the 30.... th day of Sept., 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

G.Thomas
S/o P.A.Gilbert,
Asst.Loco Pilot/S.Rly/Quilon,
Residing at; 'SHALOM',
Island Nagar 10,
Uliyakovil P.O., Kollam. Applicant

(By Advocate Shri M.P.Varkey)

vs.

1. Union of India, represented by General Manager, Southern Railway, Chennai – 600003.
2. Senior Divisional Personnel Officer, Southern Railway, Trivandrum- 695 014. Respondents

(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 3.9.2008,
the Tribunal on/../.2008. delivered the following.

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The Applicant, appointed initially in 1993 as Diesel Assistant in the Madras Division in the scale of pay of Rs 950 – 1500 (revised pay under the V Pay Commission Recommendation, at Rs 3050 – 4590) applied for inter-divisional transfer to Trivandrum Division in the said post. However, before this transfer could materialize, he was, in October, 1999, promoted in the Madras Division as Shunter in the scale of pay of Rs 4,000 – 6,000/-.

The applicant did join the Trivandrum Division in the post of Diesel

assistant in January 2001 and had been placed in the pay scale attached to it but without any pay protection.

2. The applicant came to know that some others similarly situated had been afforded the pay protection as well, and on his enquiry, he was informed that in their cases, they having put in two years service in the higher grade, had been granted the said pay protection, while the applicant did not have the said two years service in the higher grade. However, the applicant came to know about an order dated 29-10-2002 of the Railway Board and DOPT order dated 14-02-2006 as per which pay protection is admissible in all cases. Hence, he has claimed the same vide Annexure A-2 letter dated 27-10-2006 whereas the same has been rejected by the respondents. Hence this O.A. The applicant has relied upon the decision of this Tribunal in OA No. 459/2004 decided on 25-04-2007.

3. Respondents have contested the OA. According to them, the application is barred by limitation. Annexure A-2 communication is non est as such a representation has not been submitted at all. He having accepted the transfer and pay fixation is estopped from claiming pay protection. The High Court has stayed the operation of the order dated 25-04-2007 in OA No. 459/2004, vide order in Civil Writ Petition No. 2014 of 2007. Order dated 14-02-2002 is applicable only to those where the cases were not decided and past cases already decided need not be re-opened.

4. Applicant has filed rejoinder contending that he did file his representation dated 27-10-2006 and as per the provisions of Sec. 20 and 21 of the A.T. Act, 1985, he has filed his OA within 18 months of the filing of representation. Hence, there is no question of limitation in this case.

As regards the restriction that past cases need not be re-opened, the DOPT has already come up with a modification, deleting the said clause, vide order dated 04-01-2007.

5. Counsel for the applicant submitted that restriction imposed on the applicability of the order dated 14-02-2006 that past cases need not be reopened has been removed by order dated 04-01-2007 and again, writ petition No. 2014/2007 stands disposed of stating "such transferees are entitled to get pay protection in view of Ex R1(a) order dated 17-04-2007 read with Ext. R1(b) order dated 14-02-2006. Therefore it is declared that the claim of the applicants for protection of their pay on inter divisional transfer will be governed by those orders.". A copy of the said judgment has been produced before the Court. Counsel for the applicant invited the attention of the Tribunal that annexure A-2 representation had been acknowledged by the Asst. Superintendent (Mechanical) Quilon vide endorsement beneath the same and as such, it is denied that the same is non est. Again, as regards limitation, he has submitted that the case is within limitation as per the provisions of Sec. 20 and 21 of the A.T. Act.

6. Counsel for the respondents did not deny the existence of the judgment of the High Court and other orders relied upon by the applicant.

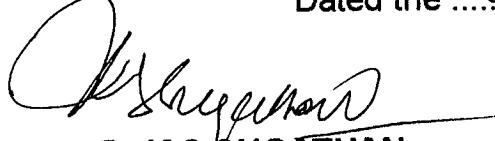
7. Arguments were heard and documents perused. First as to limitation. The applicant has relied upon the decision of the DOPT dated 14-02-2006. He had filed representation dated 27-10-2006. Earlier he was stated to have been informed orally that non protection of pay of the applicant on transfer was due to the fact that he had not put in two years of regular service in the higher post of shunter whereas the same is not a



condition precedent. The restriction that past cases already decided need not be reopened had been removed very recently in January, 2007 and as such, it cannot be stated that the case is time barred. We are in full agreement of the above contention. Hence, it is declared that the case is within the limitation provided in sec. 21 of the A.T. Act, 1985.

8. As regards merits, in view of the existence of the orders on the subject referred to above and with the decision of the High Court in Writ Petition No. 2014/2007 and connected case, there is no need for any further discussion on the basis of the pleadings or arguments. The judgment of the High Court has to be treated as a judgment in rem since it has decided a legal issue. Hence, respondents are to act in accordance with the above decision of the High Court in respect of all the similarly situated individuals, including the applicant in this case as well. Respondents shall act accordingly and fix the pay of the applicant in accordance with the provisions contained in Railway Board's circular dated 29-10-2002 read with order dated 14-02-2006 and order dated 04-01-2007 of the DOPT (presumably for Railway cases, corresponding to the same is order dated 17-04-2007 referred to in the High Court judgment extracted above). The applicant is entitled to the consequential benefits including arrears of pay and allowances. The drill of pay fixation and payment of arrears etc., be completed within a period of eight months from the date of communication of this order. No cost.

Dated the ...30-09-2008.



Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER

rv



Dr.K.B.S.RAJAN
JUDICIAL MEMBER