

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 403/2005

WEDNESDAY THIS THE 25TH JANUARY 2006

C O R A M

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

1 Rajendra Babu S. S/o Sreedharan
1st Class Coach Attendant
Chief Travelling Ticket Inspector (CTTI)
(Sleeper) Office, Southern Railway
Trivandrum Central
residing at Kattil Veedu,
Venni Code PO, Trivandrum District.

2 C. Jayaraman S/o R. Chellappan Asan
1st Class Coach Attendant (TTA)
(Sleeper) Office Southern Railway
Residing at Railway Quarters No. 91-A
Opposite Police Station
Thampanoor, Trivandrum;-695 001

Applicants

By advocate Mr.PV Mohanan

Vs

1 Senior Divisional Personnel Officer
Southern Railway, Divisional Officer
Thycaud, Trivandrum

2 The Chief Personnel Officer
Southern Railway, Park Town
Chennai.

Respondents

By Advocate Mr. KM Anthru

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The facts of the case as submitted by the applicants in the OA can be briefly stated as under. Both the applicants are working as First Class Coach Attendant (FCCA for short) under the Chief Traveling Ticket Inspector, Southern Railway and are aggrieved by the order in Annexure A-4 transferring them as Senior Gate Keepers. The first applicant commenced service as Casual Labour on 21.1.1969, was granted temporary status and promoted as Relieving Porter in the year 1979 in the Traffic Department of the Trivandrum Division of the Southern Railway. While

working as Porter he was posted as Clerk in the office of the Station Superintendent in the Commercial Branch and continued to work there till 1988. He was selected to work in the post of FCCA in the year 1988 in the scale of pay of 2650-4000. The second applicant also commenced service as Casual Labour and was granted temporary status and was promoted as Coupling Porter in the Traffic Branch in 1983 and was posted as Clerk in the office of the Office Superintendent in the Commercial Branch from 1976 to 1988. He too was selected for the post of FCCA in the Commercial Branch in the year 1988. By proceedings dated 22.1.2003 the applicants were ordered to be promoted as Pointsman Grade-I/Senior Gate Keeper in the scale of pay of 3050-4590 and posted at Kayamkulam and Changanacherry respectively. The applicants relinquished promotion for one year and were retained as FCCA. After one year from the date of relinquishment, the applicants were transferred and posted as Gatekeeper-II in the scale of 2650-4000 at Kayamkulam and Ambalapuzha respectively and aggrieved by that order they filed OA 216./2004 before the CAT and the Tribunal by order dated 24.6.2004 dismissed the OA directing the respondents to consider the promotion of the applicants as Pointsman Grade-I subject to availability of vacancy (Annexure A1). Thereafter by proceedings dated 9.8.2004 they were promoted as Pointsman Grade-I/Gate Keeper Grade-I in the scale of 3050-4590 (Annexure A2). But the applicants were retained as FCCA in the same scale at Trivandrum. Thereafter the proceedings dated 29.9.04 was issued restructuring the cadre of Group-C and D posts and the pay of the applicants was fixed at Rs. 4190 and 4030 in the pay scale of 3050-4590 in the post of FCCA (Annexure A3) The respondents issued the impugned order at Annexure A4 transferring the applicant from the post of FCCA to the post of Senior Gate Keeper in the same scale and according to the applicants this order prejudicially affected their claim for higher scale of pay. According to them there are 45 vacancies of Ticket Collectors available for promotion against which they could have been appointed. The promotion of the applicants in the Operating Branch could only be

to the category of Cabin Man Grade-II in the Scale of 4000-6000 and not to that of Senior Gate Keeper in the scale of 3050-4590. Had the respondents implemented in spirit the judgment rendered by the Tribunal in the earlier OA they would have been promoted as Pointsman Grade-II long back and would have been entitled to get promotion in the higher scale of 4000-6000. They have also cited the cases of S/Shri Radhakrishnan, Velayudhan and S. Suresh Kumar who were promoted as Ticket Collectors after deputing for training and contend that the same treatment should have been meted out to them instead of transferring them as Sr. Gate Keeper. In brief the applicants contended that since they are working in the restructured posts of FCCA in the scale of 3050-4590 from 1.11.2003, they must be promoted to the scale of 4000-6000 as Cabinman Grade-II in Operating Branch or absorbed as Ticket Collector in Commercial branch.

2 The respondents have denied the averments of the applicants in the reply statement filed and submitted that the OA is not maintainable either in law or in facts. The Annexure A-2 order promoting the applicants to the post of Pointsman Grade-I was issued complying with the Tribunal's order in O.A. 216/2004. The applicants have prayed therein for setting aside their posting as Gatekeeper Grade-II and for their retention as FCCA. But the Tribunal declined to interfere with the impugned order and the second applicant took up the matter before the High Court by filing WP(C) 21659 of 2004. The Hon'ble High Court did not interfere with the order of the Tribunal but directed the Railways to consider the claim of the applicants for promotion as Pointsman Grade-I. Therefore, posting as Pointsman Grade-I was in compliance of the order of the Tribunal/High Court. In the present OA they are seeking promotion to the scale of 4000-6000 as Ticket Collectors and this prayer is barred by constructive resjudicata. Without joining the post of Pointsman Grade-I as ordered by the Department they are now seeking posting to a still higher scale of pay which are abuse of the legal provisions. They have also

suppressed vital facts and as per the Service Register of both the applicants they were promoted to the higher grade of Gate Keeper/Pointsman on two/three occasions respectively and they had declined the same. In accordance with their request they were retained as FCCA, however several posts of FCCA were rendered surplus and the applicants were to be transferred to their parent department. Since the applicants declined to accept the promotion granted in January, 2003 the period of one year expired in February, 2004 during which time the surplussage in the post of FCCA became more acute. There were also no vacancies in the post of Pointsman Grade-I. Under these circumstances the applicants were transferred as Gate Keepers which order they had challenged in OA 216/2004. The Tribunal held that there was nothing unexceptionable and declined to give order and Annexure A2 order dated 9.8.2004 was issued promoting the applicants but they were not immediately relieved as they preferred to remain as FCCA for some more time. In the meanwhile cadre restructuring in Group-C and D took place w.e.f. 1.11.2003 and it has been denied that the restructuring order in respect of the applicants is in the category of FCCA.

3 They further submitted that the impugned order Annexure A4 is only a common order transferring several employees including the applicant to different stations and it is an order of transfer on administrative grounds and by no means the promotion order, does not suffer from any infirmities or illegalities as made out by the applicants. The respondents also denied the claim of the applicants that they are entitled to promotion in the Commercial Branch and that there are 45 vacancies of Ticket Collectors. Their claims for promotion have to be considered only in the Operating Branch and none of the applicants' juniors have been placed in the scale of 4000-6000. The three employees mentioned by the applicants namely S/Shri Radhakrishnan Velayudhan and Suresh Kumar were declared medically unfit and they were given alternative employment as Ticket Collectors, the applicants cannot in any way compare with them. The promotion granted to the applicants is to the post

of Pointsman Grade-I and not to the category of FCCA which is a ex-cadre post. In the light of the above the OA is totally devoid of merits and the impugned order do not suffer from any illegality or irregularity.

4 The applicants filed a rejoinder reiterating that they were compelled to work as Clerk in the office of the Station Superintendent in the Commercial Branch though recruited initially in the Operating Branch and therefore it is not administratively feasible to repatriate them to the Operating Branch. Additional Reply statement was also filed by the respondents enclosing the full text of the Annexure A3 order produced by the applicants as it was found that only some relevant portions have been produced by the applicants.

5 The applicants thereafter filed an additional rejoinder enclosing copies of certain certificates to show that they had been working as Clerks in the Commercial Branch and also that three persons namely S/Shri K. Vikaraman Pillai, P. Muraleedhran and T. Sudharsanan have been granted the scale of 4000-6000 in the Operating branch and hence the applicants are also entitled to the same relief.

6 We have heard the learned counsel on both sides and perused the materials produced before us. The learned counsel for the applicant relied on two judgments of the Kerala High Court and the Apex Court in 1993(2) ILR 812 and 2003(11) SCC 632. It was also submitted on behalf of the learned counsel for the applicants that the applicants having worked for long continuously in the Commercial Branch are not attuned to the working in the Traffic Branch and it was due to no fault of theirs that they were retained in the Commercial Branch and later as FCCA.

7 The prayer of the applicants is two fold (i) to set aside the Annexure A-4 order transferring them to the operating Branch and (ii)to grant them a higher scale

of 4000-6000 either in the Commercial or Operating Branch. As regards the first prayer the contention of the respondents is that the applicants had already been promoted to the post of Pointsman Grade-I in the scale of 3050-4590 vide order in Annexure A2 and the posts of Pointsman Grade-I and Senior Gate Keeper being interchangeable posts having the same scale of pay there is no irregularity in posting the applicants as Senior Gatekeeper and it is only an order of transfer issued on administrative grounds, as the posts of FCCA held by the applicants have become surplus due to discontinuance of such posts. The claim of the applicants is based on the order at Annexure A-3 purportedly issued as a result of cadre restructuring in which according to them they have been shown as fitted against the post of FCCA. This claim is not found to be indicated from the full text of the order produced by the respondents along with the additional reply statement at Annexure R-4. A reading of the above order produced by the applicants shows clearly that the applicants have fabricated the order incorporating certain portions of the order which are in their favour so that a cursory reading of Annexure A3 would convey the impression that the order at Annexure A2 has been given a goby and a decision had been taken by the respondents to adjust the applicants against the post of FCCA in the Commercial Department. The note below the table V in para 2 relating to the posts of Pointsman and Gate Keeper in the full text of the order at Annexure R-4 belies the above claim of the applicants that on reconsideration of their cases they were refixed against the posts of FCCA. The note reads as under:

V. CM.I/PM.I/LM.I/GK.I in Scale Rs. 3050-4590								
1	T.Suresh	FCCA	ERS	3930	2650-4000	4110	3050-4590	01/11/03
2	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx
3	Xx	Xx	Xx	Xx	Xx	Xx	Xx	xx
4	MAravindan Pillai	FCCA	TVC	4000	2650-4000	4110	3050-4590	01/11/03
5	S.Rajendra Babu	FCCA	TVC	3930	2650-4000	4110	3050-4590	01/11/03
6	R.Mohanam	FCCA	TVC	3720	2650-4000	3875	3050-4590	01/11/03
7	C.Jayaraman	FCCA	TVC		2650-4000		3050-4590	01/11/03
8	MK Rajan	GK	AFK	3720	2650-4000		3050-4590	01-11-03

V. CM.II/PM.II/MLM.I/GKI in Scale Rs. 3050-4590								
9	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx
10	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx
69	PP Devine	PM.II	CHTS	3790	2650-4000	3950	3050-4590	Prospective (Adhoc)

Note: Item Nos. 1 to 5 & 7 were already promoted as PM.I/GKI in scale Rs.3050-4590 in compliance with Hon'ble Court's orders vide this Office O.O. No. T.43/2004/Gr.D dt. 9.8.2004. Their promotions are now advanced to 1.11.2003. They may be relieved to stations where they were posted on promotion.

8 It is thus clear that their earlier promotions as Pointsman Grade-I / Gate Keeper-I ordered in Annexure A2 were reconfirmed and advanced w.e.f. 1.11.2003 wherein it was also ordered that they may be relieved to the station they were posted on promotion. Though the learned counsel for the applicants argued extensively on the question of their long continuance in the Commercial Branch by virtue of which they have acquired a lien in that Branch and therefore they could be considered only for further promotion in the same Branch and also relied on the judgment of the High Court of Kerala in 1999 (11) ILR 812 on the question of lien, we find that these arguments are no longer valid or relevant to deal with the reliefs prayed for in this OA as these issues have already been settled in the judgment of this Tribunal in OA 216/2004 confirmed by the Hon'ble High Court in WP(C) 21659 of 2004. The claims of the applicants for lien in the Commercial Branch have been rejected by the Tribunal and the High Court which had held that they can seek their career progression only in the Operating Department to which they belong. It is also confirmed by the fact now highlighted by the respondents in their reply that the posts of FCCA against which the applicants were retained are ex-cadre posts and no lien can accrue in an ex-cadre post. As per the provisions of the FRs an employee can acquire lien only on a substantive post and the suspension or termination of lien occurs only when he gets a substantive appointment in another post. Therefore these issues being well settled, are not to be reopened now and the starting point now is only with ~~xx~~ reference to the Annexure A2 order issued in compliance of

our orders in OA 216/04. Though the applicants have tried to make out a case that Annexure A2 order is not in force in view of Annexure A3 order it is now proved beyond doubt that Annexure A3 order in full text only confirms the order in Annexure A2. It is also to be pointed out here that the applicants were retained in the post of FCCA after issue of the order Annexure A3 and on earlier occasions also on their own request and that cannot give any presumptive right to them for further promotions in that cadre.

9 According to the respondents the impugned order Annexure A4 had to be issued since it was no longer possible for them to continue the applicants as FCCAs as the posts were rendered surplus on account of policy decision to surrender these posts and since there were no vacancies in the post of Pointsman Grade-I they have been constrained to post the applicants as Gate Keeprs who are on equivalent scale although interchangeable. We do not find anything irregular or illegal in the said action of the respondents and it is also in line with the earlier orders of this Tribunal and the High Court directing them to be promoted to the post in the Operating Branch. Therefore, we decline to interfere with this order.

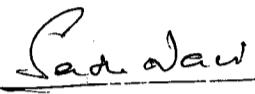
10 As regards the second relief prayed for, for a higher scale of pay it is to be made clear that the right of the applicant to higher scale of pay can only accrue to them in the Operating Branch to which they belong. It is submitted by the respondents that no juniors to the applicants have been given the higher scale of pay in the Operating Branch. Therefore the applicants cannot have any grievance. The applicants in their additional rejoinder have however pointed out names of three persons who entered service along with them and have been granted higher pay scale. These facts will have to be verified with reference to the facts and if these persons are juniors to the applicants the applicants may have a claim for proforma promotion as contended by them. The applicants can make suitable representations to

the authorities along with supporting documents and if such representations are received the respondents shall look into them. As no records have been produced before us and no such claims have been made in the original OA, we think that no specific directions are necessary on this aspect. In the result, the OA is dismissed.

No costs.

25.1.06.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN.

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