

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 404/2005

MONDAY THIS THE 2nd DAY OF JULY, 2007

C O R A M

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

- 1 Syed Ismail S/o N.K. Syed Kasim
Station Maser Grade-III
Salem Jn. Southern Railway
Salem.
- 2 P. Govindan S/o M. Palanisamy
Station Master, Gr. III Southern Railway
Salem Jn. Salem.

..Applicants

By Advocate Mr. K.A. Abraham

Vs.

- 1 Union of India represented by the
Secretary to Government of India
Ministry of Railway, Rail Bhavan
New Delhi.
- 2 The Senior Divisional Personnel Officer
Southern Railway
Palakkad Dilvision
Palakkad.

..Respondents

Mrs. Sumathi Dandapani Esq.
By Ms. P.K. Nandini

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

In this O.A. the applicants are challenging Annexure A-1 and A3 orders issued by the respondents and claiming refixation of their pay protecting the pay drawn by them in the Trichy Division on their joining the Palghat Division on Inter-Divisional transfer during the

year 1993.

2 The facts in brief are as follows:- While the applicants were working in Trichy Division of the Southern Railway as Station Masters Grade-III in the scale of Rs 1400-2300, they applied for inter-divisional transfer to Palghat Division accepting bottom seniority in the initial recruitment grade in the scale of Rs. 1200-2040. The request of the applicants were considered and the first applicant was transferred to Palghat Division on 11.5.1993 and the 2nd applicant on 12.4.1993. At the time of transfer, both the applicants were drawing the basic pay of Rs. 1440/- in the scale of Rs. 1400-2300 in the Trichy Division. After transfer, the applicants also continued to receive the basic pay of Rs. 1440/- fixed in the initial recruitment grade of Rs. 1200-2040 for about two years. Then by Annexure A-1 order the Divisional Personnel Officer, Palghat Division reviewed the pay fixation of the applicants and others who were transferred to Palghat Division and refixed the pay of the first applicant as Rs. 1290/- w.e.f. 10.5.1993 and that of the second applicant at Rs. 1290/- w.e.f. 31.3.1993. Because of the refixation, the applicants allege that there is huge drop in the emoluments in their basic pay and the respondents have also recovered the over-payment made on refixation. The main grounds taken by the applicants is that M/s C. Pushparajan and Ramakrishnan whose basic pay had also been refixed by Annexure A-1 order along with the applicants, had filed O.A. 1041/95 before the CAT Ernakulam Bench and the above OA was allowed and the pay of those applicants were protected at Rs. 1440 in the scale of Rs. 1200-2400, but the respondents have refused to grant the same pay to the applicants vide Annexure A-3

order. They have also relied on the Hon'ble Supreme Court judgment in M.R. Gupta's case for excluding the ground of limitation as erroneous fixation of pay gives rise to a recurring cause of action. They further relied on the Hon'ble Supreme Court judgment in Bhagwan Sukla Vs. Union of India and Others (1994 (6) SCC 154) holding that any refixation of pay visiting with civil consequences cannot be done without notice. On the question of recovery of over payment, the applicants have relied on the judgment of the Hon'ble High Court of Kerala in Padmanabha Pillai Vs. University of Kerala (1982 KLT 503) holding that a genuine mistake of the competent authority cannot be made the basis for ordering recovery of the excess amount paid.

3 The following reliefs are sought:

- (i) to set aside Annexure a-1 order to the extent refixing the basic pay of the applicants being issued in violation of the principles of natural justice and also in violation of Rule 1313 of the Railway Establishment Code Vol.II and A2 order of this Hon'ble Tribunal.
- (ii) to set aside Annexure A-3 order rejecting the request to fix the basic pay of the applicants as Rs. 1440/-
- (iii) to direct the respondents to refund the amount already recovered from the applicants on refixation of pay made by A-1 order.
- (iv) to direct the respondents to refix the pay of applicants at Rs. 1440/-
- (v) to issue such other writ order or direction as this Hon'ble Tribunal may deem fit to grant in the facts and circumstances of the case.

4 In the reply statement, the respondents contend that there is no basis or justification for the claims of the applicants. The judgment in O.A. 1041/95 relied on by the applicants to substantiate their claim,

was rendered on 10.12.1996 and the applicants have filed the O.A. after nine years and that too after making representation only in 2004. No eyes of law can condone the inordinate delay in filing the O.A. It is further submitted that the provisions governing fixation of pay of employees who come on inter divisional transfer at their own request are contained in Para 1313 of Indian Railway Establishment Code Vol.II. On the basis of these provisions the Chief Personnel Officer, Madras had issued Annexure R-1 letter dated 30.6.1993 clarifying how the pay is to be regulated in such cases. The applicants are covered by clause (ii) of Annexure R-1. In accordance with which their pay was fixed at Rs. 1290/- The matter was further clarified by Annexure R-3 order of the Railway Board pointing out that pay protection is to be granted only when the concerned employee has been holding the higher post substantively on regular basis. The applicants have not completed two years of service in the higher grade while working in Trichy Division and therefore they are not eligible for pay protection. The benefits of Annexure A-2 cannot also be extended to the applicants since the said order is applicable to the applicants in that OA only. The applicants herein who have approached the Tribunal after a long period of nine years have no locus standi to claim the benefit flowing out of the judgment.

5 The applicant filed certain additional documents relating to their pay fixation and that of other applicants in O.A. 1041/95 through M.A.18/2006 which was allowed. No rejoinder was been filed.

6 The respondents also submitted additional documents containing the instructions of the Railway Board further

substantiating the contentions of the respondents in the context of Para 1313 of IREC Vol. II.

7 We have heard Shri K.A. Abraham the learned counsel for the applicant and Ms Nandini the learned counsel appearing for the respondents.

8 The contention of the learned counsel for the applicants was that the issue is already settled by the judgment of this Tribunal in O.A. 1041/95 and also the judgments of the co-ordinate bench of CAT Madras in O.A. Nos. 1189 and 1190/97 and the judgment of the Hon'ble High Court of Madras on several Writ Petitions on the same issue upholding the decision of the CAT Madras Bench which had followed the orders of the CAT Ernakulam Bench in O.A. 1041/95. The counsel for the respondents while conceding the decisions in the earlier OAs of the Ernakulam and Madras Benches contended that the case of the applicants herein has to be distinguished as they have given consent to come to the lower scale of Rs. 1200-2040 and therefore they cannot raise such a claim for pay protection.

9 We have gone through the pleadings and the judgments referred to by the learned counsel for the applicants. In our view the issue is settled in O.A. 1041/95 dated 10.12.1996 which was allowed in favour of the applicants M/s C. Pushparajan and Ramakrishnan who have been transferred in the same way as that of the applicants in this case and their pay was refixed by the same order as that of the applicants. The Chief Personnel Officer, Madras's

letter dated 21.12.1994 had already been set aside by this judgment and any clarification of the Railway Board on the issue cannot change the situation. The Tribunal had held that the prescription of two years in the higher post for protection of their pay on transfer is unsustainable. It is pertinent to peruse the observations of the Hon'ble High Court of Madras which has considered the various judgments of the CAT Madras Bench including the O.A. 1041/95 of the Ernakulam Bench and upheld the orders following the decision rendered by the Ernakulam Bench:

"14 It is not in dispute that in all the impugned orders, the Central Administrative Tribunal merely applied and followed the decision rendered by Ernakulam Bench. The learned counsel appearing for the applicants have also brought to our notice that the Railway administration had implemented the said decision. In such a circumstance, though Mr. R. Thiagarajan, learned senior counsel vehemently argued to distinguish the decision of the Ernakulam Bench, as rightly contended the facts and issues in all these cases including the cases that were decided by the Ernakulam Bench are one and the same and we are of the view that the Tribunal (Madras Bench) is perfectly right in granting relief by following the decision of the Ernakulam Bench.

15 In the case of Union of India Vs. V. Bhat reported in 2003 (8) SCC 714, the Supreme Court has held that even on voluntary transfers employee only loses seniority and not other benefits and cannot be deprived of his experience and eligibility for promotion.

16 The learned senior counsel appearing for the Railway Administration very much relied on the decision of the Supreme Court in the case of Comptroller & Auditor General of India Vs. Farid Sattar reported in 2000 (4) SCC 123, wherein while considering FR 22(I)(a)(2), 22(I)(a)(3) and the agreed terms and conditions, the Supreme Court held that the pay of the employee had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post, since he was to be considered as a direct recruit in the lower post.

17 Mr. Chandrasekar, learned counsel appearing for some of the applicants, after taking us through the entire factual details in the above said Supreme Court decision would

contend that the said decision is not applicable to the case on hand. A perusal of the said decision shows that viz. Comptroller and Auditor General of India and others disputed the contentions of the respondent, on the ground that he was bound by the terms and conditions of the unilateral transfer and on acceptance of such terms and conditions of the unilateral transfer and on acceptance of such terms and conditions, the respondent was required to tender technical resignation from the post of Senior Accountant and to join as a direct recruit in the lower post of Accountant ranking junior most in the cadre of Accountant. As rightly pointed out, in the present case, none of the applicants were asked to render technical resignation from the post held prior to the order of transfer. Accordingly, we accept the claim of the learned counsel for the applicants and considering the special feature in the decision of the Supreme Court, the same is not directly applicable to the case on hand and it is distinguishable.

18 The learned counsel appearing for the applicants have also brought to our notice a Division Bench decision of this Court in the case of Union of India Vs. Registrar, CAT reported in 2002(3)LLN 352. It is a writ petition filed by the very same Southern Railway, Chennai questioning the order of Central Administrative Tribunal, in and by which the Tribunal allowed the application filed by the second respondent therein. Since the Division Bench decision is directly on the point, we intend to refer to the factual details therein. The second respondent therein entered the service in South Central Railway in the post of Traffic Signaller. He was promoted to the post of Assistant Station Master, then to Station Master Grade-III and ultimately to Station Master Grade-II where his pay was Rs. 1600-2660. He was then serving in the Hubli Division in Karnataka. From there, he sought transfer to the Southern Railway, which transfer was given, but strangely he was placed in the pay scale of Rs. 1200-2040. For this, the Railway Board relied upon their resolution that where there is a transfer from one Railway to another, the persons concerned would be entitled to be placed at the bottom of the seniority list only. Its further case was that the transfer from one Railway to another can be done only if the post in which such an employee is transferred has the element of direct recruitment. It is also its claim that since the post of Station Master did not have the element of direct recruitment, he was placed in the post of Assistant Station Master, which had the element of direct recruitment and therefore he was bound to be placed in the lower pay scale of Rs. 1200-2040. Aggrieved by this, the second respondent has approached the Tribunal. The Tribunal has allowed the Original Application and directed that he shall be placed in the pay scale of Rs. 1600-2660, which is applicable to the Station Master Grade-II, but in that his seniority will be at the bottom.

19 An argument was advanced on behalf of the Railway Administration that it was possible for an employee to seek transfer from one Railway to another like the second respondent, if only the employee sought for a post, which could be filled in by direct recruitment, fully or partly. For this, learned counsel invited the attention of the Court to the decision of the Railway Ministry under Rule 226 of the Railway Establishment Code. On the side of the applicant it was argued that the post of Station Master always had an element of direct recruitment to the extent of 25 per cent. The Division Bench accepted the argument of the applicant and rejected the argument of the Railway Administration for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority, of doing so, he cannot be straightaway reverted to the post in which he was working earlier. The following conclusion of the Division Bench is relevant:-

“8 The argument raised on behalf of the writ petitioner Railway Board must fail for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority for doing so he cannot be straight away reverted to the post in which he was working earlier. Here is clear example where a person who was working as Assistant Station Master and had earned two promotions, is being posted in the post which is two stages below the post of Station Master, merely because of his request transfer. This is to say the least absurd interpretation of the rule.”

20 After finding so, the Division Bench has concluded that the Tribunal has correctly read the Rule and ordered the second respondent to be placed in the pay scale applicable to the Station Master Grade-II and dismissed the Writ Petition as devoid of any merit. It is also brought to our notice that the Special Leave Petition filed by the Railway Administration came to be dismissed by the Hon'ble Supreme Court at the admission stage. Though it was argued that there is no law laid down by the Supreme Court by dismissing the SLP filed by the Railway Administration, the fact remains, the decision of the earlier Division Bench, viz. 2002 (3) LLN 352 (cited supra) is binding us on the basis of the precedence and considering the relevant rules and factual details, we are in respectful agreement with the view expressed by the Division bench and reject the contra argument made by the Railway Administration.

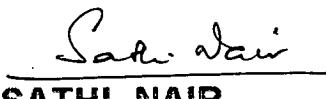
10 In the light of the overwhelming legal pronouncements on this issue it is futile for the respondents to contend at this stage that the reliefs granted in O.A. 1041/95 cannot be extended to the applicants herein who were transferred on the same lines by raising the

question of limitation. We are of the view that the question of limitation cannot be made applicable at this stage as erroneous fixation of pay can give rise to continued cause of action resulting in loss of emoluments on a monthly basis. Further in a recent judgment of the same Bench in O.A. 810/04 in which the claim of the applicants who had come on request transfer from Bombay Central Division to Palghat Division has been allowed holding that the applicant is entitled for protection of pay and also that any recovery of excess amount is illegal and unsustainable.

11 In the light of the above legal position this O.A. is also allowed following the judgments in the earlier OA Nos. 1041/95 and 810/2004 and the various pronouncements of the coordinate Bench of the CAT Madras Bench as confirmed by the Hon'ble High Court of Madras. Annexure A1 order is set aside in respect of the applicants. The Annexure A-3 order is also set aside. The respondents shall refix the pay of the applicants granting protection of pay as discussed above. The amounts if any already recovered shall be refunded. The direction shall be complied within three months of receipt of the order. No order as to costs.

Dated 2.7.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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