

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex (BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : 31/8/87

APPLICATION NO 191 /87 (F)

W.P. NO \_\_\_\_\_

Applicant

Shri Somasundra V/s The Chief Personnel Officer,  
Southern Railway, Madras & 2 Ors

To

1. Shri Somasundra  
Executive Engineer (Construction)  
Southern Railway  
Chitradurga
2. Shri S.K. Srinivasan  
Advocate  
C/o Shri M.S. Nagaraja  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009
3. The Chief Personnel Officer  
Personnel Branch  
Southern Railway Headquarters Office  
Madras - 3
4. The General Manager  
(Construction)  
Southern Railway  
Bangalore - 560 046
5. Shri Srinivasaiah  
Executive Engineer  
C/o The Chief Engineer (Construction)  
Southern Railway, Bangalore

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/  
~~INTERIM ORDER~~ passed by this Tribunal in the above said  
application on 13-8-87.

*B.N. Venkatesh*  
DEPUTY REGISTRAR  
SECTION OF EXIGER  
(JUDICIAL)

Encl : as above

6. Shri A.N. Venugopal  
Central Govt. Stng Counsel  
Room No. 12, 2nd Floor  
SSB Mutt Building  
Tank Bund Road, Bangalore - 9

*O/C*

*RECEIVED 01/9/87*  
*Diary No. 1087/CR/87*

*Date: 2-9-87* *S*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE 13th DAY OF AUGUST, 1987

Present : Hon'ble Shri P. Srinivasan Member (A)

APPLICATION NO.191/87(F)

Somasundra,  
S/o H.K.Krishnappa,  
Executive Engineer(Construction)  
Southern Railway,  
Chitradurga.

.... Applicant

(Shri S.K.Srinivasan, Advocate)

Vs.

1. The Chief Personnel Office,  
Southern Railway,  
Head Quarters Office,  
Personnel Branch,  
Madras-3.

2. The General Manager,  
(Construction)  
Southern Railway,  
Bangalore-560 046.

3. Shri Srinivasaiah,  
Executive Engineer,  
through the Chief Engineer,  
(Construction) Southern Railway,  
Bangalore.

.... Respondents

(Shri A.N.Vanugopal, Advocate)

This application has come up before the Tribunal today.

Hon'ble Shri P.Srinivasan, Member(A) made the following:

ORDER

In this application the applicant who was promoted as Assistant Engineer (AE) in the Class II service of Civil Engineering Department of the Southern Railway and posted on promotion as AE, Davanagere, by order dated 17.1.1978 (annexure C) complains that his initial pay fixed on such promotion was lower than that of his junior Shri R.Srinivasaiah (Respondent 3).



2. Shri S.K.Srinivasan, learned counsel appearing for the applicant and Shri A.N.Venugopal appearing for Respondents 1 and 2 have been heard. Respondent 3 who has been duly notified of the hearing today has chosen to remain absent.

3. The brief facts emerging out of the arguments of counsel may now be recounted. It is common ground that Respondent 3 was junior to the applicant in all the lower rungs of the ladder. The post held by them immediately before promotion to Class II service of the Civil Engineering Department was that of Inspector of Works (IOW) Grade I. The post held by them prior to that was that of IOW Grade II. The applicant and Respondent 3 were promoted together in the various earlier grades upto the grade of IOW Grade II. However, Respondent 3 alone was promoted on adhoc basis as IOW Grade I in the scale of Rs.700-900 from 4.11.1975. This was not because the applicant was superseded but because Respondent 3 was working in the Bangalore Guntakal conversion project and the applicant was working in Mangalore Hassan Railway project and they could not be disturbed from their respective projects for administrative reasons. Further a post of IOW Grade I was created temporarily in the Bangalore Guntakal Conversion Project and there was no post of that grade available at the time in the Mangalore-Hassan Project. Respondent 3 worked as IOW Grade I, albeit on an adhoc basis, in long spells between 4.1.1975 to 3.11.1976 and again from 6.11.1976 to 25.11.1978. The applicant came to be promoted to the grade of IOW Grade I on adhoc basis from 11.12.1977. Thereafter both the applicant and Respondent 3 continued to work in IOW Grade I till their promotion to Class II services of the Civil Engineering Department of the Southern Railway. In reply to the applicant's representation that he being senior also in the grade of AE his pay should be fixed at the same figure as that of Respondent 3,

the respondents - Railway Administration - informed him that Respondent 3 was drawing higher pay in IOW Grade I when he was promoted to the Class II service and so his initial pay in Class II services had necessarily to be fixed at a higher figure. The applicant then represented that his pay in the grade of IOW Grade I should be raised to equality with that of Respondent 3. This was rejected by the Respondents by letter dated June 1986 (Annexure H) on the ground that Respondent 3 having acted as IOW Grade I for a longer period had earned more increments in that grade and so his pay as IOW Grade I was higher than that of the applicant.

4. The question that arises for determination is whether on his adhoc promotion as IOW Grade I with effect from 11.12.1977 the applicant was entitled to have his pay fixed at the same figure as that being drawn by Respondent 3 on that date. If he was eligible to fixation of his initial pay on that basis on 11.12.1977, he would automatically be entitled to the fixation of the same pay ~~when he~~ as Respondent 3 when both of them were promoted to Class II service. The fixation of pay on promotion is governed by Rule 2013-B of the Indian Railway Establishment Manual Volume II. This is on the same lines as Fundamental Rule 22C. There is no dispute that on 4.11.1975 when Respondent 3 was promoted as IOW Grade I his pay in that grade was fixed applying the said rule 2018B with reference to the pay being drawn by him in the immediately lower grade before promotion. It is also not disputed that the applicant's initial pay as IOW Grade I from the date he was promoted to that grade on 11.12.1977 was fixed applying the said rule 2018-B to the pay he was drawing immediately before in the next lower grade. In terms of Office

Memorandum of the Government of India dated 4.2.1966 printed at page 75 of Swamy's FR and SR 8th edition which is also applicable to the employees of the Railway (vide Railway Board letters dated 19.3.66 and 22.7.66

P. S. V

printed at pages 160-161 of ML Jands Railway Establishment Manual II Edition) a senior is entitled to have his pay stepped up to equality with that of his junior promoted to the same post subsequently, if the difference has arisen purely by the application of FR 22C in both cases. This, however, is subject to certain conditions viz. that both the junior and senior belong to the same cadre and are appointed to identical posts, the scales of pay of the lower and higher posts are the same in both cases and the difference in pay has arisen directly as a result of the application of FR 22C.

5. Shri A.N.Venugopal, Counsel for the respondents 1 and 2, points out that the difference in the pay of the applicant fixed on his promotion as IOW Grade I on 11.12.1977 and the pay that was being drawn by Respondent 3 at the time was not directly due to the application of Rule 2018-B. The reason for the difference was that, rightly or wrongly, Respondent 3 had officiated as IOW Grade I for long spells from 4.11.1975 and those periods had to be counted to give him increments in that grade. No doubt the applicant was senior to Respondent 3 and should have been promoted as adhoc IOW Grade I from 4.11.1975, but owing to reasons of administration exigency Respondent 3 was promoted and not the applicant. That fact has now become final. The fortuitous promotion of Respondent 3 from 4.11.1975 was the reason why he drew higher pay than the applicant as IOW Grade I on 11.12.1977 and continued to draw higher pay till both of them were promoted to Class II. The difference did not arise directly out of the application of Rule 2018-B in both cases. The applicant was, therefore, not entitled under the rules and the Railway Board's instructions to have his pay stepped up to equality to that of Respondent 3 in the grade of IOW Grade I and so the authorities rejected his claim.



6. Shri S.K.Srinivasan pointed out that the whole thing was unjust to the applicant because if the administration had promoted him as IOW Grade I on 4.11.1975 according to his seniority instead the Respondent 3 who was junior to him, the discrepancy would not have arisen. It was no fault of the applicant that he was not promoted then. The administration has admitted that he should have been permitted and not Respondent 3.

7. After careful consideration I must agree with Sri Venugopal that instructions regarding stepping up the pay of a senior to equality with the junior do not apply to the facts of this case. However, there is no doubt that this is a very hard case. The Chief Engineer (Construction) Bangalore under whom the applicant was working has, in a letter dated 29.4.1986 addressed to the OSD Industrial Relations, Madras (Annexure G) explained that the applicant had not been passed over when Respondent 3 was promoted as IOW Grade I and Respondent 3 had been promoted due to exigencies of work. The Chief Engineer recommended that the applicant's request for raising his pay to that being drawn by Respondent 3 be granted. OSD Industrial Relations, in his reply dated June 1986 (Annexure H) pointed out that if the seniormost employee had been considered for adhoc promotion when Respondent 3 was promoted, the situation would not have arisen. In other words, the latter clearly indicated that the applicant being the senior should have been promoted in 1975 and not Respondent 3. As already stated, the applicant was senior to Respondent 3 in all the lower rungs of the ladder. It was, therefore, clearly no fault of the applicant that he was not promoted in 1975, though eligible for the same. Therefore, his request for bringing up his pay in the grade of IOW Grade I

*P. J. K. B.*



to that of Respondent 3 appears prima facie a reasonable one though  
this may not come under the existing instructions <sup>as</sup> ~~as~~ the subject.

Respondents 1 and 2 have the power to grant advance increments under Rule 2023 of the Railway Establishment Manual and the present case seems to be a fit one for consideration under that rule. I would, therefore, direct the applicant to make a fresh representation to the Respondents for refixation of his pay in IOW Grade I with effect from 11.12.1977 under Rule 2023 of the Indian Railway Establishment Manual. Respondents 1 and 2 are directed to consider the representation so made sympathetically and in the light of the facts mentioned above and to take a decision thereon within three months of the receipt <sup>of</sup> ~~the~~ representation.

8. The application is disposed of on the above terms. Parties to bear their own costs.



SD — MEMBER (A). 13/8/81

*Through*

*R.V. Venkatesh*  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE  
31/8/81

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 3 NOV 1989

CONTEMPT  
PETITION(CIVIL) APPLICATION NO (8) 47  
IN APPLICATION NO. 191/87(F) 89  
W.P. NO (D)

Applicant (s)

Shri Somasundara

v/s

Respondents

To

The Chief Personnel Officer, Southern Railway,  
Madras

1. Shri Somasundara  
Executive Engineer (Construction)  
Bangalore City - Mysore Conversion  
Southern Railway  
Mysore
2. I.A. Shariff  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009
3. The Chief Personnel Officer  
Southern Railway  
Headquarters Office  
Personnel Branch  
Park Town  
Madras - 600 003
4. Shri A.N. Venugopal  
Railway Advocate  
Room No. 12, 2nd Floor  
SSB Mutt Building  
Tank Bund Road  
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/NOTICE/INFORMATION ORDER  
C.P.(Civil)  
passed by this Tribunal in the above said application(s) on 30-10-89.

*AP/*  
For DEPUTY REGISTRAR  
(JUDICIAL)

Somasundara by  
I.A. Shariff Adm

v/s

The Chief Personnel Officer, Southern Rly,  
Madras A.N. Venugopal

Date

Office Notes

Orders of Tribunal

KSPVC/LHARM(A)

30-10-89.

Petitioner by Sh.I.A.Shariff.

Respondents by Sh.A.N.Venugopal.

In this petition made under Section 17 of the Administrative Tribunals Act, 1985 and the Contempt of Court Act, 1971, the petitioner has moved this Tribunal to punish the respondents for not implementing the order made in his favour on 13-8-1987 in application No.191/87(F) by this Tribunal

2. Shri Venugopal has placed before us an office order No.185/89 dated 14-6-1989 made by the Chief Personnel Office, Southern Railway, Madras (CPO) stepping up the pay of the petitioner to the level of his junior. We are satisfied that this order of the CPO implements the order of this Tribunal made in favour of the petitioner in letter and spirit. If that is so, then these contempt of court proceedings are liable to be dropped. We, therefore, drop these Contempt of Court proceedings. But in the circumstances of the case, we direct the parties to bear their own costs.



TRUE COPY

For DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

Ratty 3/11/89

Sd —

Sd —

VICE-CHAIRMAN 30/10/89 MEMBER(A) 30-10-89