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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

ORIGINAL APPLICATION No.1488 of 1995.
Dt. of Decision : 22-07-96.

1. M.Thamma Rao
2. E.Srinivasa Raju ..Applicants.

Vs.

1. The General Manager,
SC Rly, Rail Nilayam,
Sec'bad.
2. The Divl.Railway Manager,
SC Rly, Vijayawada.
3. The Sr.Divl.Personnel Officer,
SC Rly, Vijayawada. .. Respondents.

Counsel for the Applicants : Miss Sarada for
Mr.P.Krishna Reddy.

Counsel for the Respondents : Mr.C.V.Malla Reddy,
SC for Rlys.

CORAM:-

THE THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

ORDER

Oral Order (Per Hon'ble SHRI R. RANGARAJAN : MEMBER (ADMN.)

Heard Miss Sarada for Mr.P.Krishna Reddy, learned counsel for the applicants and Mr.C.V.Malla Reddy, learned counsel for the respondents.

2. There are two applicants in this OA.
3. The first applicant joined Railways in the year 1982 as Electrical Signal Maintainer (ESM for short) Grade-II having been selected by the Railway Recruitment Board, Secunderabad in the scale of pay of Rs.1200-1800/-. Thereafter he was promoted as ESM Grade-I in the scale of pay of Rs.1320-2040/-. While working so in grade-I he requested for transfer to the clerical cadre in the Operating Branch. His request transfer was considered and he was posted as a Junior





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Clerk on 1-12-93, a different seniority unit, in the scale of pay of Rs.950-1500/-. At the time of his relief as ESM Grade-I he was drawing a basic pay of Rs.1530/-.

4. The second applicant in this OA was an Electric Loco Fitter Grade-II in the Grade of Rs.1200-1800/- in the Electrical Loco Shed at Vijayawada. He also requested for transfer to the ministerial cadre. His request was agreed to and he was posted as a junior clerk in the grade of Rs.950-1500/- on 17-1-94. At the time of his relief as Electric Loco Fitter Grade-II he was drawing a basic pay of Rs.1230/-.

5. Both of them represented for protection of their pay in the grade of Rs.950-1500/- when they were transferred as Junior Clerk. Though it is stated that they filed their representations, no copy of the representations have been enclosed. It is stated that no reply has been given to them. No impugned order is also filed alongwith OA, though the learned counsel for the applicants submit that their pay was not protected while paying the salary.

6. This OA is filed praying for a direction to the respondents to fix the pay of the first applicant at Rs.1500/- i.e., the maximum of the scale of pay of Rs.950-1500/- as he was drawing more than 1500 at the time he joined as Junior Clerk and in the case of second applicant to protect his pay at the stage of Rs.1230/- in the scale of pay of Rs.950-1500/-.

7. This OA was filed on 21-11-95. The applicants submit that as per provision of Rule 1313 (3) (iii) of IREC Vol.II, the applicants are entitled for protection of pay on their absorption as junior clerk. They also



rely on the judgement of this Tribunal in OA.1422/93 dated 17-11-94 to state that the Tribunal has already upheld the rule for protection of the pay when an employee joined on request transfer to a lower grade in another seniority unit.

8. The respondents have filed their reply resisting the prayer. They submit that their pay have been fixed in terms of extant instructions i.e., the pay of the staff on absorption in the lower alternative post shall not be protected where the person is absorbed in a post carrying lower pay scale at his own request. The extant instructions are not enclosed. The learned counsel for the respondents submit that the instructions are governed by para 604 of IREM Vol.I. They have not commented anything about the code rule in para 1313 (3)(iii) Vol.II.

9. In the citation quoted by the learned counsel for the applicants which was disposed of on 17-11-94, the pay of the applicant therein who was an Assistant Station Master, and who came to a different division accepting the bottom seniority in the lower grade it was directed to be protected in terms of the above rule. That rule is specific in that whenever a request transfer is acceded and the transferee assumes charge in a different seniority unit in a lower scale, he is entitled for protection of pay in accordance with rule. From the above citation there is no doubt that the fixation of pay of a railway servant coming to a lower grade on request transfer is governed by rule 1313 (3)(iii) Vol.II. It was held by the Ernakulam Bench in OA's No.333,400 etc., of 1992 decided by common judgement dt. 26-2-1993, that the applicants

therein would be entitled to protection of pay drawn prior to their transfer to another division on their own request. This Tribunal had also followed the dictum laid down by the Ernakulam Bench and passed number of orders directing the Railways to fix the pay of the request transferree to a lower grade following the rule of the code referred to above. Hence, there is no need to deviate from that direction in the present case.

10. The learned standing counsel submits that in terms of Para 604 of IREM Vol.I that the applicants are not entitled for protection of pay. But the learned counsel for the applicants submit that this para is not applicable to the Railway Servant coming on request transfer. This para is applicable only to other Government servants on transfer to Railway posts. A correction slip of the Rule 604 of IREM Vol.I have been issued vide letter No.F(E)-II/91/Misc.2 dated 24-2-95. As per this correction slip the pay of the railway employee when absorbed in a lower post on request transfer has to be protected. The respondents submit that this correction slip is only prospective and applicable only after 24-02-95. In any case it is not necessary to go further into this contention as the respondents themselves admit that the pay of an employee who is posted on request transfer ^{is} eligible for protection of pay in the lower grade from the date of issue of the correction slip dated 24-2-95 for Rule 604 of IREM Vol.I.

11. In my opinion the transferred employee on request transfer is entitled for protection of pay in accordance with rule 1313 (3)(iii) of IREC Vol.II.

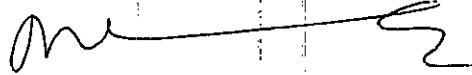


Hence, it will be in order if a direction is given to the respondents to follow the rule 1313 (3)(iii) of IREC Vol.II for notionally fixing the pay of the applicants herein when they are posted as a junior clerk. However, they are entitled for arrears if any only from one year prior to filing of this OA.

12. In the result, the following direction is given:-

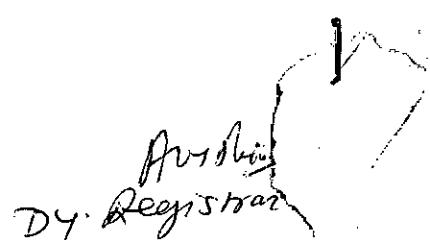
The respondents are directed to notionally fix the pay of the applicants protecting their pay in accordance with para 1313 (3)(iii) of IREC Vol.II. Consequential monetary benefits accruing to the applicants shall be calculated for the period from one year prior to filing of this OA i.e., w.e.f., 21-11-94 (This OA was filed on 24-11-95).

13. The OA is ordered accordingly. No costs.



(R. RANGARAJAN)

MEMBER (ADMN.)


D.Y. Registrar

Dated : The 22nd July 1996.
(Dictated in Open Court)

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Copy to:-

1. The General Manager, S.C.Railway, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, SC Railway, Vijayawada.
3. The Sr. Divl. Personnel Officer, S.C.Rly, Vijayawada.
4. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd
5. One copy to Sri. C.V.Malla Reddy, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

6/8/92

CA 148895

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN: M(A)

DATED:

22/7/96

ORDER/JUDGEMENT

O.A. NO. / R.A. / C.P. NO.

O.A. NO.

148895

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLR

II COURT

No Spare Copy

