

(H)

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985

For use in Tribunals Office

Date of filing

Signature of Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: ADDITIONAL BENCH
AT HYDERABAD

O.A.No. 1399 of 1997

Between :

R. Narasimha Murthy, Son of R. Subba Rao,
aged about 33 years, working as Assistant
Station Master, Donakonda, S.C.Rly.,
Vijaywada Division.

... Applicant

and

1. Sr. Divisional Personnel Officer,
S.C. Railway, Vijayawada Division,
Vijayawada, Krishna District.

2. Divisional Railway Managers, S.C.Rly.,
Vijaywada Division, Vijaywada,
Krishna District.

3. General Manager, S.C. Railway,
Rail Nilayam, Secunderabad.

... Respondents

The address for service of all notices and
processes of the applicant is that of his counsel
M.C. Jacob, Advocate, 3-5-926/19/A, Himayath Nagar,
Hyderabad.

The address for service of all notices and
processes of the respondents are the same as shown
in the cause title.

DETAILS OF APPLICATION

1. Particulars of the order against which application is made:

- (1) Order No. : B/P.676/VI/ASM/IDT/Vol.20
(ii) Date : 18-07-1996
(iii) Issued by : Sr. Divisional Personnel Officer,
S.C.Railway, Vijaywada Division.
(iv) Subject in Brief : Fixation of pay without protecting
the pay drawn in the old post.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal under section 14 of the Administrative Tribunals Act, 1985.

3. Limitation :

The applicant further declares that the application is within the limitation period prescribed under section 21 of the Administrative Tribunals Act, 1985 in view of the pendency of the representation dated 11-08-1996 made against the impugned order.

4. Facts of the case :

4.1 The applicant joined railway service as an Assistant Station Master in Gr.1200-2040(RSRP) on 18-07-1988 in Guntakal Division of Southern Central Railway. Subsequently he was promoted to the next higher grade of 1400-2300 (RSRP) on 21-06-1991 in the same division. In the meanwhile he sought inter division transfer on request under rule 227(a) of Indian Railway Establishment Code, Vol.I (IREC) to the Vijaywada Division of same railway and the competent authority accorded sanction for the said transfer vide proceeding No. No.G/P.676/1/IDRT/Vol.I dt. 7-5-1996/11-07-1996. The said proceeding is filed as annexure - I at page.

Pursuant to the above said proceedings the applicant was relieved from Guntakal division on 16-7-1996 by the proceedings of the Station Master, Iranagallu Station (Annexure-II at page 8) and he joined Vijayawada division on 17-7-1996. At the time of said transfer the applicant was drawing a Basic pay of Rs.1600/- in the pay scale of Rs.1400-2660 (RSRP).

4.2 On joining Vijayawada division in the lower grade of Rs.1200-2040 the first respondent vide proceeding No.B/P.676/VI/ASM/IDT/Vol.20, dated 18-7-96 fixed the pay of the applicant at Rs.1440/- without protecting the pay which he was drawing in the old post held regularly as per Rule 1313 (a)(2) and (3) of I.R.E.C Vol.II. Aggrieved by the impugned order applicant submitted a representation to the 2nd respondent on 11-8-96 requesting the said authority to fix the pay at Rs.1600/- which is one of the appropriate stage in the lower grade of Rs.1200-2040. But so far the applicant has neither received any reply to the said representation nor his pay was correctly fixed. The delay and inaction on the part of the authority in not fixing the pay of the applicant at Rs.1600/- on joining Vijayawada division with effect from 17-7-96 is arbitrary, illegal and contrary to Rules. The impugned proceeding and representation are filed as Annexures-III and IV at pages 9-11.

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5. Grounds for relief with legal provisions :

5.1 The initial fixation of pay of a Railway Servant who is appointed to a post on a time scale of pay is regulated by Rule 1313 (FR.22) of the IREC, Vol.II.

As the appointment of the applicant to the new post does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis. As there was a stage of Rs.1600/- in the lower grade of Rs.1200-30-1560-EB-40-2040, the applicant will continue to draw Rs.1600/- on joining Vijayawada division and the said protection is available till the maximum in the new post.

5.2 In O.A. 1252/94 decided on 14-11-94, this Hon'ble Tribunal directed the respondents therein including the 3rd respondent herein to protect the pay of the applicants therein as per Rule 1313 of IREC Vol.II and the same was complied with. A similar direction given in other O.As filed by the similarly placed employees of Vijayawada division was also complied with by the respondent authorities. As there is no change in rule position, the pay of the applicant herein ought to have been fixed at Rs.1600/- instead of at Rs.1440/- as was done in the ~~aa~~ similar cases. As such, the impugned order is discriminatory. The order copy in O.A. 1252/94 dated 14-11-94 is filed herewith as Annexure-V at page No. 12-13.

5.3 The Hon'ble Tribunal, Cuttack Bench by order dated 12-8-96 in NALINIKANTA SAHOO & OTHERS Vs. UNION OF INDIA (reported in ASLJ 1997(1) (CAT) page 191 to 194) further confirmed the right of the employee for protection of pay on transfer on one's own request and upheld the order of this Hon'ble Tribunal referred above.

The order of the Cuttack Bench is filed herewith as settled Annexure-VI at page 14-17. In view of the above/rule position and catena of decisions the impugned proceeding dated 18-7-96 is contrary to the rules and also against the law laid down by the courts.

6. Details of the remedies exhausted :

The applicant declares that as his representation dated ~~16.8~~ 11-8-96 against the impugned proceedings is still pending he has no other alternative effective remedy other than to approach this Hon'ble Tribunal.

7. Matters not previously filed or pending with any other court

The applicant declares that the subject matter for which this O.A. is filed is not pending with any court or authority or any other bench of this Tribunal.

8. Relief sought :

The applicant respectfully prays that this Hon'ble Tribunal may be pleased to direct the respondents to fix the pay of the applicant at Rs.1600/- in the time scale of pay of Rs.1200-2040(RSRP) consequent to his request transfer from Guntakal division of S.C.Railway to Vijayawada division with effect from 17-7-96 as per Rule 1313(a)(2) & (3) of I.R.E.C, Vol.II including payment of arrears after declaring the impugned proceedings of the 1st respondent No.B/P.676/VI/ASM/IDT/Vol.20, dated 18-7-96 fixing the pay of the applicant at Rs.1440/- as illegal, unjust, arbitrary, discriminatory and contrary to rules and pass such other order or orders as deemed fit and proper to meet the ends of justice.

9. Interim relief :

From the facts and circumstances of the case, the applicant does not seek any interim order.

10. In the event of application sent by Regd.post.

Not applicable.

11. Particulars of the Application fee :

i) Postal Order No. & Date : 687103 dt 2-9-97.

ii) Name of the Post office : Wghr hwr

iii) Amount : Rs.50/- *Rs. 50/-*

12. List of Enclosures :

~~1. P.O. B.C.D.D. / Removed~~

1. Material paper booklet
2. Vakalat & covers
3. Postal order

IN VERIFICATION

I, R. Narasimha Murthy s/o R. Subba Rao, aged about 33 yrs., Asst. Station Master, Donakonda, S.C. Railway Vijayawada division do hereby verify that the contents stated above are true and correct to the best of my knowledge and belief and I have not suppressed any material facts.

Hence verified.

R. Narasimha Murthy
Signature of the applicant

Hyderabad

Date: 6-10-1997

[Signature]
Signature of the Counsel
for Applicant

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::ADDITIONAL BENCH
AT HYDERABAD

O.A.No.

of 1997

Between:

R. Narasimha Murthy

.. Applicant

and

Sr.Divisional Personnel Officer,
S.C.Railway, Vijayawada division,
Vijayawada,Krishna district
& others

.. Respondents

LIST OF MATERIAL PAPERS

<u>S.No.</u>	<u>Annex.</u>	<u>Particulars</u>	<u>page</u>
1.	I	G/P.676/I/IDRT/Vol.I,dt.7-5-96/ 11-7-96	7
2.	II	Relieving order dt.16-7-96	8
3.	III	B/P.676/VI/ASM/IDT/Vol.20, dt.18-7-96	9-10
4.	IV	Representation dt.11-8-96	11
5.	V	Order in OA 1252/94	12-13
6.	VI	Order copy of Cuttack Bench	14-17

Hyderabad

Date: 6-10-97

Counsel for Applicant

SOUTH CENTRAL RAILWAY

Divisional Officer,
Personnel Branch, Guntakal.

No.G/P.676/1/IDRT/Vol.I.

Dt:07-05-96/11-07-96.

O.O.No.68/TA/C1.III/96.

Sub: Inter Divisional Request Transfer of ASMs.

Ref: CPO/SC letter No.P(T)/535/SM/ASMs of 24-08-95.

Sanction of the competent authority is hereby accorded to the transfer of the following ASMs in Scale Rs.1600-2660 (RSRP), Rs.1400-2300 (RSRP) and Rs.1200-2040 (RSRP) as per their request on bottom seniority in the recruitment grade of Rs. 1200-2040 (RSRP) to BZA division as shown against their names under the usual terms and conditions governing such transfers.

Sl. No.	G.P./P.F.No.	Name & Design./Stn. (S/Shri).	Grade Rs.	Transfer to Divn.
1.	2252/09268960	R. Narasimha Murthy ASM/EGU	1400-2300	BZA

2 to 20

The above employees will rank junior to all the temporary and permanent ASMs in Scale Rs.1200-2040 (RSRP) on the date of their joining at BZA division.

They will not seek any re-transfer to their parent division at a later date.

They should be prepared to work any where on the BZA division. There are no DAR/SPE/Vig.cases pending against them on the date of their relief. They are not eligible for any transfer facilities such as TA/DA, pass, joining time etc., The above employees should be relieved accordingly with instructions to report to DRM/P/BZA and this office advised.

They should vacate railway quarters if in occupation before effecting transfers to the BZA division.

The changes should be advised to all concerned.

The changes should be effected immediately.

Sd/-

for DRM/T/GTL.

// True copy //

Up
17.12.96
Amul (for signature)

SOUTH CENTRAL RAILWAY

From:

STATION MASTER
IRANAGALLU

DYSS/O/EGU

IRANAGADLU

Dt: 16-07-96.

To

Sri. Reddy Narasimha Murthy
Asst. Station Master/Iranagallu
G.P.2252,P.F.09268960

Sub: Relief on request Transfer to BZA Division-Reg.

Ref: Sr.DPO/GTL letter No.G/P.676/I/IDRT/Vol.I,
dt. 11-07-96.

.

Please note that you are hereby relieved on and to 16-07-96 to report DRM(P) BZA to carryout request transfer orders to BZA Division as per Sr.DPO/GTL letter cited as above.

B I O - D A T A

- | | | |
|---|---|---|
| 1. Date of Birth | : | 01-06-1963 |
| 2. Date of appointment | : | 18-07-1988 |
| 3. T.M.E Attended on | : | 6-7-1995 due 1-8.1999 |
| 4. Refereshor course attended on | : | 26-06-95 due 25-08-97 |
| 5. BCC/PCC issued on | : | 26-08-1995 due 25-08-1997 |
| 6. Casual leave availed in 1996 | : | 10 days |
| 7. LAP & LMAP availed in 1996 | : | LAP - NIL
LHAP- 4 |
| 8. Privalege passes availed in 1996 | : | One set only |
| 9. P.T.O availed in 1996 | : | NIL |
| 10. Uniform supplied on | : | Summer 12-07-1995
Winter 14-08-1995 |
| 11. Date of entry into Rs.1200-2040 Grade (Sr.DPO/GTL letterNo. | : | 30-01-1989
G.F. 612/I/Optg/Vol.IV of 15-04-91) |
| 12. Basic pay from june 96 | : | Rs.1600/- |
| 13. Last pay drawn on | : | 16-07-1996 |
| 14. Vacated Rly.QTRS on | : | 16-07-1996 |

Sd/-

Copy to : Sr.DPO/GTL,
Sr. DOM/GTL
DRM(P)/BZA.

17.08.96
and photo

// True copy //

SOUTH CENTRAL RAILWAY

Office of the DRM,
Personnel Branch, Vijaywada.

No. B/P.676/VI/ASM/IDT/Vol.20.

OFFICE ORDER NO.T/104/1996.

Sub: Inter Divisional request transfer of ASMs in Grade Rs.1400-2300 (RSRP) on GTL & HYB Division to BZA Division on bottom seniority to Grade Rs. 1200-2040 (RSRP).

Ref: (1) DRM(P) GTL Lr. No.G/P.676/V/IDRT/Vol.I dt. 11-07-96 (O.O.NO.68/TA/C1-III/96).
(2) DRM(P)HYB Lr.No. Y/P/676/IDT/ASM dt. 5-7-96 issued under O.O.No.26/ET.III/96.).

The following 15 ASMs in Grade Rs. 1400-2300 (RSRP) on GTL & HYB Divisions have been transferred to this Division on bottom seniority to the recruitment grade of ASMs in Scale Rs.1200-2040 (RSRP) on Inter-Divisional Request Transfer under usual terms and conditions governing such transfers stipulated therein under references cited. Their date of reporting, places of posting orders and pay fixation in Grade Rs. 1200-2040 (RSRP) on this division are shown against their names. The pay fixation in Grade Rs. 1200-2040 (RSRP) on this division is fixed provisionally until their Service Registers are received.

Contd.. 2.

: : 2 : :

Sl. No.	Name of the Employee. S/Sri.	Ex.Stn/Divn. PF A/C.No.	D.O.B. D.O.A.	Date of relief on their pre-sent divn/ Date of reporting on the divn.	Station posted to on this division	Provisional pay fixation in Gr.Rs. 1200-2040 (RSRP) on this division.	Next due date of increment is Gr. 1200-2040 (RSRP).
1 to 9							
10.	R. NARASIMHA MURTHY	EGU/GTL 09268960	01-06-63 18-07-88	16-07-1996 17-07-1996	DKD	Rs. 1440/-	1-7-1997 vide Ref:1 :2

11 to 15

They are not eligible for any transfer benefits on their transfer to this division, since the transfer are ordered at their request. Their date of reporting on BZA Division to the date of reporting at their respective stations where they are posted is treated as duty for drawal of salary. They are instructed to report to their SSs concerned on 19-07-96 without fail.

Sd/-

(B. TAMILCHOLAI)
APO(T)
for Sr.DPO/BZA.

[Handwritten signature]
P.C. Jacob
Civil P.W. Dept.

// True copy //

From:

R. Narasimha Murthy,
ASM/DONAKONDA,
BZA Division.

Donakonda,

Dt. 11-08-1996.

To

The Divisional Railway Manager,
South Central Railway,
BZA Division.

Sir,

Sub: Protection of pay on Inter-Divisional
Request Transfer - Regarding.

Ref: Sr. DPO/BZA/Order No.
B/P.676/VI/ASM/IDT/Vol.20, dt.18-07-1996.

.

While I was working as Asst. Station Master in GTL Division in Grade Rs.1400-2300, I requested for Inter-Divisional Transfer to BZA Division on request in the lower grade of Rs.1200-2040. I was relieved from GTL Division on 16-07-1996 and joined BZA Division on 17-07-1996. On 18-07-1996 Sr.DPO/BZA vide reference cited above fixed my pay at Rs.1440/- in the lower grade of Rs. 1200-2040. At the time of request transfer in GTL Division my basic pay was Rs. 1600/- in the Scale of Rs.1400-2300. As per Rule 1313 of Indian Railways Establishment Code Vol.II. I was eligible to get protection of pay which I was drawing in the previous division, as my appointment to the new post does not involve assumption of duties and responsibilities or greater importance, I shall draw as initial pay, the stage of the time scale which is equal to my pay in respect of the old post held by me on regular basis (Rule 1313 (a)(2)). Since there is a stage of Rs.1600/- in the lower grade of Rs. 1200-30-1560-40-2040, my pay would have been fixed at Rs.1600/- instead of at Rs.1440/-.

It is learned that some of the ASM's who came on Inter-Divisional Transfer on request to BZA Division, their pay was protected by applying the above said rule. As I am also similarly placed my pay also to be protected as in their case. I am enclosing a copy of fixation done by the division for your kind perusal.

I requested your good office to fix my pay at Rs.1600/- ~~xxxxxx~~ in the lower grade of Rs.1200-2040 instead of at Rs.1440/- as per the rule referred above.

Thanking you,

Yours faithfully,

Sd/-

(R. NARASIMHA MURTHY)

// True copy//

*recd
17/8/96
Coul
R. Narasimha Murthy*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

...

O.A.No. 1252/94.

Dt. of Decision: 14-11-94.

1. K. Venkateswarlu
2. Fazalullah Sahib
3. B. Rama Chandrudu
4. C. Ranganayakulu

... Applicants.

Vs.

1. Divisional Personnel Officer,
SC Rly, Guntakal.
2. Divisional Railway Manager,
SC Rly, Guntakal.
3. General Manager,
SC Rly, Rail Nilayam,
Secunderabad.

... Respondents.

Counsel for the Applicants : Mr. V. Rama Rao

Counsel for the Respondents : Mr. D. Gopal Rao, S.C. For Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

O.A.No. 1252/94

Dt. of decision: 14-11-1994.

ORDER

(As per Hon'ble Justice Sri V. Neeladri Rao, Vice Chairman)

Heard Sri V. Rama Rao, learned counsel for the applicants and Sri D. Gopal Rao, learned counsel for the respondents.

2. When these applicants were working in the Hubli Division in the pay scale of Rs. 1400-2300, they sought

: 2 :

transfer from Hubli Division to Guntakal Division. As they are not entitled for transfer in the pay scale of Rs.1400-2300, they were transferred to Guntakal Division in the pay scale of Rs.1200-2040. But on transfer to Guntakal Division their pay was not protected. Hence this O.A. was filed seeking direction to respondents to fix their pay in terms of para 1313 (a) (iii) of the Railway Establishment Code, by protecting their pays as on the respective dates of their inter-divisional transfers from Hubli Division to Guntakal Division. It is submitted for the respondents that the pay of these applicants was fixed at the maximum of the pay scale of Rs.1200-2040.

3. Para 1313 (a) (iii) of the Railway Establishment Code is applicable in case of inter divisional transfers when such request transfers have to be made on reversion, while the request for transfer cannot be entertained in the scale in which they are working. Para 1313 (a)(iii) of the Railway Establishment Code lays down that the pay of the officer has to be protected in such a case. As the pay of the applicants is not protected, it is a case where a direction has to be given to the respondents for fixing the pay of the applicants in accordance with para 1313 (a) (iii) of the Railway Establishment Code.

4. In the result, the O.A. is allowed at the admission stage directing the respondents to fix the pay of the applicants by protecting their pay in accordance with para 1313(a) (iii) of the Railway Establishment Code. On that basis, the arrears due to the applicants have to be paid. The time for compliance is by the end of February, 1995. There is no order as to costs.

Sd/-

[Handwritten signature]
Deputy
Chief

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1994; and *Rakesh Kumar and another v. State of Himachal Pradesh and others*, CWP No. 1634/93 decided on January 10, 1994, while placing reliance on ILR 1987 HP 405, *Tirath Raj v. HPSFB and Others*, (1987) 4 SCC 634, *Bhagawan Dass v. State of Haryana and others*; *Rai Singh & others v. State of H.P. and others*, CWP No. 62 of 1990, decided on June 1, 1993; *Kishori Mohan Lal Bakshi v. Union of India*, AIR 1962 S.C. 1139; *State of Punjab v. Joginder Singh*, AIR 1963 SC 913; *U.S. Menon v. State of Rajasthan*, AIR 1968 SC 81; *D.S. Nakara and others v. Union of India*, AIR 1983 S.C. 130; *P. Savita and others v. Union of India and others*, AIR 1985 SC 1124; *Daily Rated Casual Labour Employees under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others*, AIR 1987 SC 2342; *U.P. Income Tax Department contingent paid Staff Welfare Associations v. Union of India and Others*, AIR 1988 SC 517, allowed the application directing the respondents to pay the wages equivalent to the wages paid to other daily paid incumbents and further directed to pay the arrears.

11. In view of above narration, the application is allowed. The respondent are directed to pay the enhanced wages to the applicants in accordance with the orders dated May 15, 1990 and August 23, 1991, Annexure A-2 and A-9 respectively and any enhancement, if any, made on any subsequent date. The arrears of wages will be worked out and paid to the applicants within a period of two months. The application is allowed in above referred to the terms with no order as to costs.

[40/96]

Application allowed

Central Administrative Tribunal—Cuttack

The Hon'ble Mr. N. Sahu, Member (A)

Nalinikanta Sahoo & Others

—Applicants

Versus

Union of India & Ors.

—Respondents

O.A. No. 742, 743, 744, 745, 746, 792, 793/93 & 195/96

Decided on 12.8.1996

Pay fixation, transfer on own request—Rule 227(a)(2), 1313(a)(iii), Circular No. 50/95—Notional pay—Applicants sought transfer on own request in initial grade 1200-2040—Were drawing pay Rs. 1560 in grade 1400-2300 but on transfer pay was fixed at 1410 in grade 1200-2040 counting notional increments to the extent of their service—Above rules relied upon saying that promotion was only *ad hoc* so pay cannot be protected—Relying upon earlier decisions held no distinction could be made on substantive on *ad hoc* pay.

Case Referred :

1: Jayanta Kumar Choudhury v. Union of India, O.A. No. 76 of 1992

Advocates :

For the Applicants : M/s R.K. Patnaik, S.C. Pushpanaka, S. Jena, P.K. Nayek, T.K. Sahoo, S. Ray & A.N. Samantaray, Advocates.

For the Respondents : M/s B. Pal, O.N. Ghose & S.K. Ojha and Mr. R.C. Rath, Advocates.

IMPORTANT POINT

In Railway pay drawn has to be protected on transfer on one's own request also.

JUDGMENT

N. Sahu, Member (A).—Common grounds, common facts and similar reliefs are claimed in all these eight Original Applications and therefore they are consolidated together and disposed of in a common order.

2. Illustrative of these applications are the facts in O.A. No. 742 of 1995. It is enough if the facts in this application are first succinctly summed up. All the three applicants, working as Assistant Station Masters in the scale of Rs. 1200-2040/- in Chakradharpur Division were promoted temporarily to officiate as Assistant Station Masters in the scale of Rs. 1400-2300/- on *ad-hoc* measure by D.P.O., Chakardharpur's Office Order dated 22.12.1984. They were transferred to Khurda Division on their own request by accepting bottom seniority in the initial grade of Rs. 1200-2040/-. They accepted other terms and conditions applicable to inter-divisional transfers. The counter says that such transfers can be made only in the initial recruitment grade in A.S.M. category-(Rs. 1200-2040/-). Their pay was protected at Khurda Division establishment in the reversion grade of Rs. 1200-2040/-. Their common basic pay before their transfer was Rs. 1560/- in the scale of Rs. 1400-2300/- whereas at Khurda they were fixed at Rs. 1410/-. Their representations having elicited no response, they claim in this O.A. pay protection at Rs. 1560/- as per their L.P.C. to begin on joining at Khurda.

2. The Respondents agree in view of Rule 227(a)(2), Rule 1313(a)(iii) and also Establishment Circular No. 50 of 1995 to protect the last pay drawn, but such protection is admissible only to those regularly holding the post and not *ad-hoc* employees. *Ad-hoc* employees on transfer will be accorded "proforma progress of increments notionally as if they continued as A.S.Ms. in the scale of Rs. 1200-2040/-.

The relevant Rules are as under :—

"(iii) when appointment to the new post is made on transfer at his written request under Rule 227(2) (FR 15A) and maximum pay in the time scale of the post is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay."

"When a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

When a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted

When appointment on transfer from a higher post to a lower post is made on his own request under the Rule 227(a)(2)-RE (FR 15-A(2) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay, in accordance with FR 22(1)(a)(3)."

On a similar point, the C.A.T., Ernakulam Bench in OA 333/92, OA 400/92 and OA 436/92 held by its Order dated 26.2.1993 as under :

The pertinent point urged by the learned Counsel for applicant is that reduction of pay cannot be done without application of a legal provision. The legal provision brought to my notice as contained in Rule 1313 of the Indian

Railway Establishment Code, as reiterated in Annexure-A-s, is that a fixation of pay of staff on inter-divisional transfer is only after giving protection of pay which the said Railway employee was enjoying in the original division." and

"I allow the application and direct the respondents to fix the pay of the applicants in terms of Rule 1313 of the Railway Establishment Code taking into consideration the pay which the applicants were drawing in the division from where they were transferred to Trivandrum Division on request."

In O.A. No. 241 of 1994, the C.A.T., Cuttack Bench by its Order dated 10.5.1995 allowed the applicant's claim for pay protection on similar facts.

3. What remains to be examined is the contention of the Respondents that the applicants held the higher post at Chakradharpur Division on *ad-hoc* basis and hence their last pay drawn at that Division could not be protected. What the Respondents had done is they protected the basic pay in the lower grade fixed at a stage which the applicants would have drawn had they not been promoted on *ad-hoc* basis in grade -Rs. 1400-2300/-. This argument is fallacious. There can be no distinction between pay drawn in a higher post in an *ad-hoc* manner or a regular manner. Till he is reverted he is entitled to pay protection in the higher grade although he works *ad-hoc*. This is not a case of unilateral reversion by Government. This is a case of voluntarily accepting conditionalities of an inter-divisional transfer.

4. There are only three principles of pay fixation: on direct appointment to a post; on appointment to another post which is not higher; and on promotion/appointment to a higher post. The second principle (Swamy's F.R., S.R. Part-I) is applicable in the present case. As stated in Swamy's Handbook 1996, page 42 :

"2. On appointment to another post which is not higher. The pay will be fixed at the stage of the time-scale of the new post which is equal to his pay in the old post held by him on regular basis, if there is such equal stage in pay scale of the new post, and he will draw his next increment on the same date on which he would have drawn increment in the old post. If there is no such equal stage, his pay will be fixed at the stage next above his pay in the old post held by him on regular basis. He will draw his next increment in the new post after a qualifying period of 12 months. Pay on appointment to a non-functional Selection Grade post will also be regulated in this manner."

5. The C.A.T., Calcutta Bench in O.A. No. 76 of 1992 in *Jayanta Kumar Choudhury v. Union of India*, (date of Judgment 15.3.1993) protected the pay of an Electrical Chargeman promoted to Grade 'A' in the electrical branch at Sealdah. At his own request he was offered a post in Kanchanapara Workshop as Electrical Chargeman, Grade 'B' on his assenting to the bottom seniority as on that date. At Sealdah the applicant was getting a substantive pay of Rs. 1700/-, but in the new post at Kanchanapara his substantive pay was fixed at Rs. 1640/-. He was thus denied of the benefit of higher pay drawn by him. The Calcutta Bench upheld the claim of the applicant on the ground that according to the provisions of the Railway Establishment Code, the basic pay of a Railway servant who had been previously in employment of the concerned Railway, on a fresh appointment, cannot be less than his previous pay. If in the scale of pay of the new post there is no such stage, the basic pay is to be fixed at the next below stage and the difference be made up by allowing the person concerned a personal pay which is to be absorbed on getting subsequent increments. Thus it is clear that the applicants cannot be denied pay protection on the ground that they were holding the higher post on *ad-hoc* basis. I would therefore, allow the claim and direct the Respondents to protect the applicants' pay as per the last pay certificate

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issued by their respective Divisions in the manner discussed above. The Respondents are also directed to calculate the arrears while fixing the pay in the grade of Rs. 1200-2040/. The basic pay plus personal pay would begin from Rs. 1560/- and not Rs. 1410/- as at present.

The applications are allowed. No costs.

[25/96]

Applications allowed

Central Administrative Tribunal--Allahabad

The Hon'ble Mr. T.L. Verma, Member (J)

The Hon'ble Mr. D.S. Baweja, Member (A)

Indra Bhan Shukla & Ors.

—Applicants

Versus

Union of India & Ors.

—Respondents

O.A. No. 136 of 1991

Decided on 27.5.1996

Pay scales, Parity in scales—Applicants electricians enjoyed better scale of pay than Wiremen, case reviewed by successive expert bodies & Pay Commissions and ultimately Wiremen granted higher scale of pay—Applicants seek parity on historical grounds—CAT refuse to intervene in the decision of expert committees.

Cases Referred :

1. P. Savita & Others v. Union of India, Ministry of Defence, 1985 S.C. (L&S) 826
2. Bhagwan Sahai Carpenter v. Union of India & others, A.I.R. 1989 S.C. 1215.
3. S. Thiruvalluvar and others v. Union of India and others, 1995(31) A.T.C. 196.

Advocates :

For the Applicants : Mr. Bashisth Tiwari, Advocate.

For the Respondents : Mr. Anil Shalekar, Advocate.

IMPORTANT POINT

Tribunal should not interfere in the decision of expert bodies.

JUDGMENT

T.L. Verma, Member (J).—This application has been filed for issuing a direction to the respondents to place the applicant in the scale of pay Rs. 1200-1800 with effect from 1.1.1986 at par with the Wiremen.

2. The applicants were initially appointed as Electrician 'B' in the pay scale of Rs. 125-155/-. On the recommendation of 3rd Pay Commission, scale of pay of Electrician 'B' was revised to Rs. 260-400/-. The scale of pay of Wiremen 'B' as recommended by 2nd Pay Commission was Rs. 75-95 and that of Wiremen 'A' Rs.85-128/-. The Third Pay Commission, however recommended a common scale of pay of Rs. 210-290/- for both wireman A and B. The expert classification committee, which was constituted on the recommendation of 3rd Pay Commission, analysed the job contents of various categories of the Industrial employees and recommend different scales of pay for different categories and recommended common scale of pay of Rs. 260-400/- for both Electrician 'B' and Wireman. The Expert Classification Committee in its second recommendation however, raised the

Handwritten signature and notes:
T.C. Jeeth
and others

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1399/97

Date of Order : 24.10.97

BETWEEN:

R.Narasimha Murthy

.. Applicant.

AND

1. Sr.Divisional Personnel Officer,
S.C.Rly., Vijayawada Division,
Vijayawada, Krishna Dist.
2. Divisional Railway Manager, S.C.Rly.,
Vijayawada Division, Vijayawada,
Krishna Dist.
3. General Manager, S.C.Rly.,
Rail Nilayam, Secunderabad.

.. Respondents.

- - -

Counsel for the Applicant

.. Mr.B.Narasimha Sarma

Counsel for the Respondents

.. Mr.K.Siva Reddy

- - -

CORAM:

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

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

- - -

O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

- - -

Mr.M.C.Jacob for Mr.B.Narasimha Sarma, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA while working as Assistant Station Master in the scale of pay of Rs.1400-2300 in Guntakal division requested for inter divisional transfer to Vijayawada division under Rule 227(a) of I.R.E.C. Vol.I. He was transferred by proceedings No.G/P.676/1/IDRT/Vol.I, dated 7.5.96/11.7.96 to Vijayawada division and posted as Assistant Station Master in the scale of pay of Rs.1200-2040. At the time of his relief from

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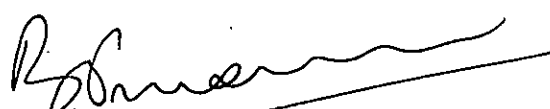
Guntakal division his pay was at the stage of Rs.1600/- in the scale of pay of Rs.1400-2660. Relying on the Rule 1313 (a) (2) and (3) of I.R.E.C. Vol.II the applicant requested the authorities to fix his pay at Rs.1600/- in the scale of pay of Rs.1200-2040. He submitted a representation in this connection dated 11.8.96. It is stated that the said representation is still to be disposed of.

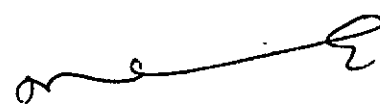
3. This OA is filed praying for a direction to the respondents to fix the pay of the applicant at Rs.1600/- in the scale of pay of 1200-2040 (RSRP) consequent to his request transfer from Guntakal to Vijayawada w.e.f. 17.7.96 as per Rule 1313 (a) (2) & (3) of I.R.E.C. Vol.II including payment of arrears by setting aside the proceedings of R-1 No.B/P.676/VI/ASM/IDT/Vol.20, dated 18.7.96 whereby his pay was fixed at Rs.1440/-.

4. As the representation of the applicant is still pending it is justifiable to remit this case to R-2 to dispose of his representation in accordance with the law keeping in view the judgement of this Tribunal in OA.1252/94 dated 14.11.94 (A-5 to the OA) and other judgement, ~~if any~~ enclosed to the OA.

5. The OA is ordered accordingly. No costs.

(Registry should send a copy of the OA along with judgement to R-2)

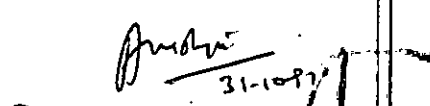

(B.S. JAI PARAMESHWAR)
Member (Judl.)
24.10.97


(R. RANGARAJAN)
Member (Admn.)

Dated : 24th October, 1997

(Dictated in Open Court)

sd


31-10-97
D.R.

OA.1399/97

Copy to:-

1. The Senior Divisional Personnel Officer, South Central Railway, Vijayawada Division, Vijayawada.
2. The Divisional Railway Manager, South Central Railway, Vijayawada Division, Vijayawada.
3. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
4. One copy to Mr. B. Narasimha Sarma, Advocate, CAT., Hyd.
5. One copy to Mr. K. Siva Reddy, Addl. CGSC., CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

srr

17/11/97
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

Dated: 24-10-97

ORDER/JUDGMENT

M.A./R.A./C.A.NO.

in
O.A.NO. 1399 / 97

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court

A/c copy to B 22
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
वैद्युत/DESPATCH
10 NOV 1997
हैदराबाद न्यायपीठ
HYDERABAD BENCH