

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.995/96.

DATE OF ORDER : 16-08-1996.

Between:

1. Sd. Nazeer Ahmed
2. N.V. Siva Ram ... Applicants

and

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

2. Divisional Railway Manager,
SC Rlys, Vijayawada Division,
Vijayawada, Krishna District.

3. General Manager, SC Railway,
Rail Nilayam, Secunderabad ... Respondents

Counsel for the Applicants : Shri B. Narasimha Sharma

Counsel for the Respondents : Shri D.F. Paul, SC for Rlys.

CORAM

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

(Oral Orders per Hon'ble Shri R. Rangarajan, Member (A)).

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There are two applicants in this O.A. The first applicant came to Vijayawada Division from Hubli Whereas the second applicant came to Vijayawada Division from Guntakal Division while they were working in the grade of Rs.1400-2300 in the earlier division. When they joined Vijayawada Division in the grade of Rs.330-560/1200-2040 on 28-10-85 and 11-09-84 respectively their pay which they were drawing in the earst while division was not protected in the grade of Rs.1200-2040. Hence they filed representation for protecting their last pay drawn in earstwhile division in Vijayawada Division in the grade of 1200-2040 at pages 11 and 12 of the O.A. It is stated that those representations are not replied aso far.

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2. Aggrieved by the above, they have filed this OA for protection of their pay in terms of the Rule 1313 of IREC Vol.II as directed in the case of the applicants in OA 1251/94.

3. In a similar OA No.713/96 it was directed by this Tribunal by the Judgement dt. 7-8-96 to dispose of the pending representations in case of the applicants therein. As the applicants in this OA have also submitted their representations and as their representations are still pending, a direction to dispose of the representations of the applicants in accordance with the law will meet the ends of justice.

4. In the result, the following direction is given:-
"Respondent No.2 should dispose of the representations of the applicants enclosed as Annexures - V and VI to the OA in accordance with the law taking due note of Rule 1313 of IREC Vol.II and the directions given in OA 1252/94 on the file of this Bench".

5. Time for compliance is three months from the date of receipt of a copy of this order. In case the applicants gets a favourable decision from the Respondent No.2, they are entitled for the arrears only with effect from 16-07-95 (This OA was filed on 16-07-96).

6. OA is ordered accordingly at the admission stage itself. No order as to costs.

CERTIFIED TO BB TRUE COPY

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R. Jechy
Court of Appeal
Court of Appeal*

// True copy //

South Central Railway

No.B/P.524/VI/SM/ASM/Vol.3.

ANNEXURE - //

Office General Manager,
(Personnel Branch, Vijaywada,
Dt: 15-11-1996.

MEMORANDUM

In compliance with the Judgements passed by the Honourable CAT/HYB in the OAs as mentioned, the pay of the following ASMs who had come on Inter Divisional Request Transfer from other divisions to BZA division on reversion from grade Rs.1400-2300 (RSRP) to grade Rs.1200-2040 (RSRP) as mentioned against each is refixed in grade Rs.1200-2040 (RSRP) duly protecting the pay drawn by them in grade Rs.1400-2300 (RSRP) in their parent divisions in terms of CPO/SC's Serial Circular No.95/96.

They are eligible for arrears from the dates shown against each as per Judgements pronounced in favour of the applicants by the Hon'ble CAT/HYB.

STATEMENT SHOWING THE PAY FIXATION OF ASMs WHO WERE JOINED FROM OTHER UNITS/RAILWAYS AND WHOSE FAVOUR JUDGEMENT DELIVERED BY THE HON'BLE CAT/HYB IN DIFFERENT OAs REGARD TO PAY PROTECTION IN ACCORDANCE WITH CPO/SC's S.C.No. 95/96.

Sl. No.	Name & Designation/ Station.	Date of promotion to grade Rs.1400- 2300(RSRP) Rs.425- 640 on payment division.	Pay which he was drawing on the date of relief on his parent division in gr. Rs.1400-2300.	Pay & Date Rs.	Pay already fixed on BZA grade Rs.1200-2040/ division in 1400-2300 from the grade Rs.1400- 2300 from BZA division in terms the date of of CPO/SC's No.95/96.	Pay Gr. Dt. Pay Gr. Date		Remarks	
						Rs.	(RSRP)		
13..	N.V. Sivaram, ECRC/BZA (Ex.ASM/PPM) (Ex.ETL division) O.A.No.995/96.	1400 7-9-89	1440 1-9-90	1350 1380 1410 1440 1470 1500	1200-2040 " " " " " "	26-04-91 01-06-91 01-06-92 01-06-93 01-06-94 01-06-95	1350+90 1380+60 1410+30 1440 1470 1500	1200-2040 " " " " " "	26-04-91. 01-06-91. 01-06-92. 01-06-93. (Further fixation will follow)at 01-06-95. RR

He is entitled for arrears,
if any, only from 18-07-95.

(Selected as ECRC posted to BZA, relieved on
19-04-96 at PPM).

Note: Further annual increments may be regulated for which they are entitled if any penalty already imposed and which is to be effected in the above cases may be notified, if necessary and to be implemented.

Sd/-
/Sr.Divl.Personnel Officer, Vijayawada.

18-07-95
S. C. J. P. R. M.
S. C. J. P. R. M.

No.B/P.524/VI/SM-ASM/Vol.3

SOUTH CENTRAL RAILWAYDRM/P/Office/BZA.,
Dated:13-05-1996.MEMORANDUM

In compliance with the Judgements passed by the Hon'ble Central Administrative Tribunal, Hyderabad in C.A.Nos.1094/95, 1121/95, 1207/95, 1424/95, 1586/95, 15 87/95, the pay of the following ASMs who had come on Inter Divisional Transfer from GTL Division, HYB Division and MYS Division, to BZA Division on reversion from grade Rs. 1400-2300 (RSRP) to gr.1200-2040 (RSRP) IS REFIXED IN GR.Rs.1200-2040 (RSRP) is revised in grade Rs. 1200-2040 (RSRP) duly protecting the pay drawn by them in grade Rs. 1400-2300 (RSRP) in their parent Divisions.

They are eligible for arrears from the dates shown against each as per the judgements pronounced in favour of the applicants by the Honourable CAT/HYB.

STATEMENT SHOWING THE PAY FIXATION OF ASMs WHO WERE JOINED FROM OTHER UNITS/RAILWAYS AND WHOSE FAVOUR JUDGEMENTS DELIVERED BY THE HONOURABLE CAT/HYB IN DIFFERENT OAs IN REGARD TO PAY PROTECTION IN ACCORDANCE WITH PARA 1313(a) (ii) (iii) OF IREC, Vol.II.

S.No.	OA.No	Name of the Design. before applicant/ CAT/HYB Employee.	Stn.	Pay which he was drawing on the date of relief on his parent division/ Railway.	Pay already fixed on BZA Divn. in gr. 1200-2040/ Rs.1400-2300 (RSRP) from the date of joining.	Pay now refixed in grade Rs.1200-2040/Rs.1400-2300 (RSRP) on BZA Divn. as per the directives of CAT/HYB.	Pay Rs. (RSRP)	Grade (RSRP)	Date	Date of eligible for Arrers as per the Judgement			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
1	to	11.											
12.	1587/ 95	D.Nageswara Rao, ASM/ (Ex.HYB Divn.)	GIP	1520 1400- 2300	1400- 1-8-92 1350 1200- 2040	28-08-92 01-05-93 1530 1410 1440 1480	1500+20PP 2040 01-05-94 1560 1640 1400- 26-07-95 2300	1200- 2040	28-08-92 01-08-93. 01-08-94. 1400- 26-07-95. 2300	*			
		* He is eligible for arrears only from 01-12-1994 awards.											
13.	1587/ 95	K.S.S. Vara Prasad Babu. (Ex.HYB.Divn.)	ASM/ ANV	1480 1400- 2300	1400- 1-5-93 1350 1200- 2040	20-10-93 01-06-94 1500 1440 1400- 22-12-94 1560 1480 2300	1470+10PP 2040 1600	1200- 2040 1400- 2300	20-10-93. 01-05-94. 22-12-94. 01-12-95.	*			

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1	2	3	4	5	6	7	8	9	10	11	12	13	14
14.	1587/ 95	T. V. V. S. Narayana, (EX.HYB Divn.)	ASM/ BTTR	1520	1400- 2300	1-7-92	1350	1200-- 2040	28-08-92	1500+20PP	1200- 2040	28-08-92	*
		* He is eligible for arrears only from 01-12-94 onwards.					1380	"	01-05-93	1530	"	01-07-93.	
							1410	"	01-05-94	1560	"	01-07-94.	
							1440	"	01-05-95	1600	"	01-07-95.	
							1480	1400- 2300	04-11-95	1680	1400- 2300	04-11-95.	
15.	297/ 96	M. V. S. Gurunath, (EX.HYB Divn.)	ASM/ BTTR	1520	1400- 2300	1-7-92	1350-	1200- 2040	28-08-92	1500+20PP	1200- 2040	28-08-92.	*
		* He is eligible for arrears only from 01-12-94 onwards.					1380	"	01-05-93	1530	"	01-07-93.	
							1410	"	01-05-94	1560	"	01-07-94.	
							1480	1400- 2300	28-12-94	1640	1400- 2300	28-12-94.	
							1520	"	01-12-95	1680	"	01-12-95.	
16.	29 7/ 96	D. Vidya Sagar, (EX.HYB.Divn.)	ASM/ BTTR	1520	1400- 2300	01-07-92	1350- 2040	1200- 2040	13-08-92	1500+20PP	1200- 2040	13-08-92.	*
		* He is eligible for arrears only from 01-12-94 onwards.					1380	"	01-05-93	1530	"	01-07-93.	
							1410	"	01-05-94	1560	"	01-07-94.	
							1480	1400- 2300	09-12-94	1640	1400- 2300	09-12-94.	
							1520	"	01-12-95	1680	"	01-12-95.	

NOTE : Further annual increments may be regulated for which they are entitled, if any penalties already imposed and which are to be effected in the above cases may be modified, if necessary and to be implemented.

Sd/-

(S. TAMILCHOLAI) APO/T
/Sr. Divisional Personnel Officer,
Vijaywada.

// True copy //

~~Count~~ ~~for each~~

SOUTH CENTRAL RAILWAY

Headquarters Office
Personnel Branch
Secunderabad

No.P(R)481/IV

Dt. 20-08-1996.

ALL CONCERNEDPERSONNEL BRANCH SERIAL CIRCULAR
NO.95/1996

Sub: Fixation of pay of employee on transfer from one post to another on their own request.

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Reference have been received from Divisions/Units seeking clarifications on fixation of pay of railway employees who are transferred on their own request from one post to another post carrying lower time scale of pay than the previous post. In the light of the instructions contained in ACB 19 to IREM (Railway Board's Circular No. P(B)11/91/Misc/2, Dt.24-02-1995 - S.C. Railway Serial Circular No.99/1995) and ACB.14 to IREC/Vol.II (Railway Board's Circular No.P(B)1/89/PR.1/1, Dt.12-12-1991 - S.C.Railway serial Circular No.177/1991), the following clarifications are issued for guidance.

1 (a) If concerned employee holding the higher post substantively on regular basis is transferred 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 pay drawn in such higher post should be protected.

(b) In respect of an employee who was transferred at his own request as above prior to 1.1.1989, if he had been confirmed in that particular higher grade he can be treated as holding the post in higher grade substantively. In respect of others i.e., after 1.1.1989, if the employee having been appointed/promoted to the post on regular basis, held the post continuously for a minimum period of two years, he is deemed to have held the post substantively (Ref. S.C.R. Serial Circular No.30/89).

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2. Examples: 1

(a) For example, Mr. ABC, Chargeman-A on pay Rs. 1750/- in scale Rs. 1600-2660 in the Division 'X' is transferred on his request to the post of Chargeman-B in scale Rs. 1400-2300 of Division 'Y'. Each Division constitutes a separate seniority unit in respect of both these categories of posts. Mr. ABC is a substantive holder of the post of Chargeman-A (Rs. 1600-2660).

(b) Since the pay of Mr. ABC in the post of Chargeman-A (1600-2660) at the time of transfer to the post of Chargeman-B (1400-2300) is Rs. 1750/- and less than maximum of time scale of pay of new post in grade Rs. Rs. 1400-2300, the pay drawn in higher post in grade Rs. 1400-2300, the pay drawn in higher post should be protected. The pay protection will have to take into account the number of years of service rendered in the higher grade in order to identify the stage at which the pay should be fixed in the lower post and the difference, if any between such stage and pay of the higher post should be allowed as personal pay absorbable in future increments as illustrated below:-

- (i) Pay in the post of Chargeman-B (i.e. 1400-2300) when promoted to the post of Chargeman-A (Rs. 1600-2660) .. Rs. 1520/-
- (ii) Pay, Mr. ABC would have drawn had he continued as Chargeman-B on Division 'X' i.e. on the date of his transfer to Division 'Y' .. Rs. 1640/-
- (iii) Pay of Mr. ABC in the post of Chargeman-A at the time of joining on transfer to Division 'Y' (i.e. Rs. 1400-2300) .. Rs. 1750/-
- (iv) Pay to be fixed in the post of Chargeman B (Rs. 1400-2300) on joining the post in Division 'Y' pay as at (b) a& personnel Pay being (iii - ii) .. Rs. 1640/- + Rs. 110/- (pp)
- (v) Date of next increment in the post of chargeman-B : On completion of 12 months qualifying service from the date the pay Rs. 1640/- has fallen due.
- (vi) When the turn of Mr. ABC comes up for promotion to the post of Chargeman-A (Rs. 1600-2660) based on seniority position assigned in Chargeman-B (Rs. 1400-2300) category in Division 'Y' his pay shall

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be fixed on the promoted post² grade under normal rules. Vis. Rule. 1313(1)(a)(1).

3. EXAMPLE - 2

(a) If the concerned employee, holding higher post substantively on regular basis is transferred from that higher post at his own request 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.

(b) For example, Mr. GDE, a Chargeman-B (Rs. 1400-2300) while drawing pay Rs. 1760/- was promoted on regular basis to the post of Chargeman-A on pay Rs. 1850/-. He after holding the post of Chargeman-A, for 3 years requested for transfer to the post of Chargeman-B (Rs. 1400-2300) for reasons personal to him. While he was drawing pay at Rs. 2000/- (Rs. 1600-2660), his request for transfer to lower grade post was agreed to and office order was issued accordingly. The transfer did not involve change of seniority unit.

(c) In the circumstances as presented above, it is to be held that it is a case of an employee seeking reversion of a post from which he was promoted. Thus, it is a case of reversion. Therefore, his pay in the post of Chargeman-B (Rs. 1400-2300) should be fixed at Rs. 1900/- that is the pay what he would have drawn had he not at all been promoted to the post of Chargeman-A (Rs. 1600-2660).

4. EXAMPLE - 3

(a) If the concerned employee, holding the higher grade post substantively on regular basis is transferred from that higher post at his own request and the pay drawn in such higher post is more than maximum of the scale of pay of lower post, his pay in the new post (lower grade post), should be fixed as maximum of the scale of pay of new post (lower grade post) in accordance with rule 1313 (RB 22) (I) (a)/IREC, Vol. 1

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(b) For example, Mr. MNC, a Chargeman-A on pay Rs.2420/- in scale Rs.1600-2660 is transferred at his request to the post of Chargeman-B in scale Rs.1400-2300 from Division 'X' to Division 'Y'. Each division forms a separate seniority unit in respect of both these categories. Mr. MNC is a substantive holder of the post of Chargeman-A (Rs.1600-2660) in Division 'Y'.

(c) In the above case, the pay of Mr. MNC, on joining the post of Chargeman-B (Rs.1400-2300), shall be fixed at Rs. 2300/- ie. at the maximum of the time scale of Rs. 1400-2300. No personal pay is allowed.

(d) When Mr. MNC is promoted to the post of Chargeman-A (Rs.1600-2660), his pay in the promoted post/grade should be fixed in the promoted post of grade under normal Rules via. Rule 1313(i)(a)(i).

5. In the cases, where an employee directly recruited to a higher grade and confirmed in that grade seeking transfer to a lower grade, the pay in the lower grade should notionally be arrived at as if he had been recruited to that grade and the difference so notionally arrived at and the pay what was actually drawn should be treated as personal pay (subject to a maximum of lower grade) to be absorbed in future increments.

6. These provisions would apply to all cases to be settled on or after the date 24-02-1995. Past cases, if any, decided otherwise than in accordance with the above guidelines need not be re-opened.

7. This issues in consultation with FA & CAO/SC.

Sd/-

(S. VEERA RAJU)

for Chief Personnel Officer.

~~Mr. Jecm
Corred for approval~~

Annexure

18

1997(1)CAT

Nalinikanta Sahoo & Others v. Union of India & Ors. (Cuttack)

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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; *Tirth Raj v. HPSEB and Others*, (1987) 4 SCC 634; *Bhagwan 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 13; *U.S. Menon v. State of Rajasthan*, AIR 1968 SC 81; *D.S. Nakara and others v. Union of India*, AIR 1983 S.C. 150; *P. Navitar 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.

[46/96]

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. Pushpanjali, S. Jena, P.K. Nayak, 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

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 15-A) 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) projected the pay of an Electrical Charge man promoted to Grade 'A' in the electrical branch at Sealdah. At his own request he was offered a post in Kanchanapara Workshop as Electrical Charge man, 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

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. Bawea, Member (A)

Indra Bhan Shukla & Ors.

—Applicants

Versus

Union of India & Ors

—Respondents

O.L. 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 interfere in the decision of expert committees.

Leges Referred

1. P. Savitri & 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. Bashi Th Tiwari, Advocate.

For the Respondents : Mr. Amit 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 exportation 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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH
AT HYDERABAD.

O.A.No.1530/97

Between:

N.V.Sivaram

.. Applicant

and

The Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada Division,
Vijayawada, Krishna District & 2 others .. Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

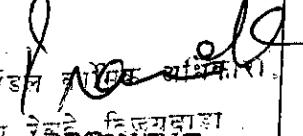
I, Mrs.Pramila H. Bhargava, wife of Sri Rajat Bhargava, aged about 32, occupation: Government Service do hereby Affirm and state as follows:

I am the Sr.Divisional Personnel Officer, South Central Railway, Vijayawada in the Office of the 2nd Respondent herein and dealing with the subject matter and as such I am well acquainted with the facts of the case. I am filing this reply statement on behalf of all the Respondents as I am authorised to do so. The material averments in the O.A. are denied save those that are specially admitted hereunder. The applicant is put to strict proof of all such averment except those that are specifically admitted hereunder:

In reply to various averments of the O.A., it is submitted that:

- 1) The applicant herein was working in grade Rs.1400-2300(RSRP) on Guntakal Division and had come on reversion as ASM in the lower grade of Rs.1200-2040 (RSRP) to BZA division on Inter Divisional request transfer. The pay in the lower grade of Rs.1200-2040(RSRP) on joining BZA division on reversion was fixed at a stage which would have been drawn by him had he continued in the recruitment grade of Rs.1200-2040(RSRP) on his parent division.


Assistant Personnel Officer
S.C. RAILWAY
VIJAYAWADA


वाराण्सी मुद्रा विभाग
द. म. रेस्ट्रेटर विजयवाडा
Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA

The applicant herein had filed O.A.995/96 before the Hon'ble Tribunal replying upon this Hon'ble Tribunal judgment in OA No. 1252/94 (O.A. 1252/94 does not pertain to BZA division) for protection of pay drawn in higher grade of Rs.1400-2300 (RSRP) on his parent division on joining the lower grade post of ASM in scale Rs.1200-2040 (RSRP) on BZA division. The Hon'ble Tribunal directed the respondent Railway Administration to dispose of the representation in accordance with the rules taking due note of codal provisions i.e. para. 1313(a) 2 & 3 of IREC Vol.II and also taking due note of directions in the similar O.A.

2) In pursuance of the above orders, his case was examined with reference to the relevant rules and administrative instructions. In terms of Rule 1313(3), (after amendment circulated through Serial Circular No.177/91).

"When appointment to the new post is made on his own request and the maximum pay in the time scale of that post is lower than the pay in respect of the old post held regularly, the maximum shall be drawn as initial pay."

In respect of the applicant herein, it is submitted that the maximum pay in the time scale of the new post is not lower than the pay drawn in respect of old post and as such Rule 1313(3) is not applicable to the applicant. However, in terms of instructions issued by Railway Board's letter dated 24-2-95, (circulated under Serial Circular No.39/95), a new sub-para (3) is inserted under para 604 of the IREM(1989) which reads as under:-

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Assistant ATTESTOR Officer
S. C RAILWAY
VIJAYAWADA.

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वाराण्सी मंडल
DEPARTMENT OF PERSONNEL
द. स. रेत्ते, सिल्वरवाडा
Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA

" 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."

3) The provisions of the newly introduced sub-para were clarified by Serial Circular No.95/96, issued by S.C.Railway. In terms of the clarifications and examples cited in the above circular, the pay of the applicant was fixed at a stage in the lower grade which would have been drawn by him, had he continued in the same grade from the date of appointment duly allowing the difference between the pay drawn by him in the higher post on his parent division and the pay now fixed as personal pay absorbable in future increase of pay. For example, if an employee was drawing Rs.1440/- in the higher grade of Rs.1400-2300(RSRP) on his parent division and ~~if~~ his pay would have been Rs.1290/- in grade Rs.1200-2040(RSRP) had he continued in the same grade his pay was fixed at Rs.1290+150 in the lower grade of Rs.1200-2040(RSRP) even though the stage of Rs.1440/- is available in the lower grade post of Rs.1200-2040(RSRP).

4) The applicant herein contends that the instructions of the Railway Board's letter dated 24-2-95 (S.C.No.39/95) and the subsequent clarifications issued thereon by the S.C.Railway, under Serial Circular No.95/96 would come into force only from the date of issue of the said letter i.e. 24-3-95 and would not apply to the applicants who, had come on transfer earlier to the said date. In this connection, it is submitted that in terms of para 6 of SC No.95/96, the said provisions would apply

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Assistant Personnel Officer
S.C. RAILWAY
VIJAYAWADA.

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वारकरी मंडळ अधिकारी
द. म. रेलवे, विजयवाडा
Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA

IN THE CENTRAL ADMINISTRATION
TRIBUNAL AT HYDERABAD

O.A. NO 1530/97.

Between

N.N. Sivaram

-- Applicant

and

S. D. P. O, S.C.R,
Vijaynagar

-- Respondent

REPLY APPALAYAT FILED BY

RESPONDENTS

Filed on 17-12-97

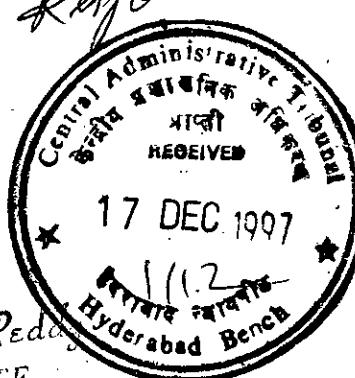
Filed

By

Commr for
Respondent

Received
17-12-97
For
K. Siva Reddy

K. Siva Reddy
ADVOCATE
3-4-873/2, BARKATPURA,
HYDERABAD-500 027.



May be filed
27-12-97

to all cases to be settled on or after 24-2-95 and past cases, if any, decided otherwise than in accordance with the said guidelines need not be re-opened. In case of the applicant herein, the pay fixation was taken up after 24-2-95 even though he had come on transfer prior to 24-2-95. The fixation of pay of the applicant based on the instructions contained in Board's letters dated 24-2-95 and the clarifications issued under SC No.95/96 is, therefore, in order.

5) It is submitted that the protection of pay is afforded in all such cases, but what is contested by the applicant is the manner in which pay is to be protected. It is understood that a reference has been made by the Headquarters Office to the Railway Board regarding the mode of protection of pay and reply is awaited. The cases would be reviewed in the light of instructions that may be received, if such a review is warranted.

For all the above stated reasons, it is prayed that the Hon'ble Tribunal may be pleased to dismiss the O.A. and pass such other order/orders as it deems fit in the facts and circumstances of the case.

Pradeep

कार्यालय सचिव कार्यालय अधिकारी

द. स. रेलवे, विजयवाडा

Sr. DIVISIONAL PERSONNEL OFFICE
S. C. RLY VIJAYAWADA

Sworn and signed this 10th day,

December at Vijayawada before me.

J.V.
Assistant Inspector Officer
S. C. RAILWAY
VIJAYAWADA.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

P.A. No. 1530 OF 97

DATE OF DECISION: 27-8-98

N.V. Sivaram

PETITIONER(S)

B. Narasimha Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS
Sr. Diuul. Personnel Officer
SC Rly, Vijayawada, and 2 others

RESPONDENT(S)

K. Siva Reddy

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE Mr. Justice D.H. Nasir, VC

THE HON'BLE Mr. H. Rajendra Prasad, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches

JUDGEMENT DELIVERED BY HON'BLE Mr. Justice DH Nasir, VC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

OA.1530/97

dt.27-8-98

Between

N.V. Sivaram

: Applicant

and

1. Sr. Divnl. Personnel Officer
SC Rly, Vijayawada Divn.
Vijayawada, Krishna Dist.

2. Divnl. Rly. Manager
SC Rly, Vijayawada Divn.
Vijayawada, Krishna Dist.

3. General Manager
SC Rly, Rail Nilayam
Secunderabad

: Respondents

Counsel for the applicant

: B. Narasimha Sarma
Advocate

Counsel for the respondents

: K. Siva Reddy
SC for Rlys.

Coram

Hon. Mr. Justice D.H. Nasir, Vice Chairman

Hon. Mr. H. Rajendra Prasad, Member(Admn.)

OA.1530/97

dt.27-8-98

Order

Oral order (per Hon. Mr. Justice D.H. Nasir, V.C.)

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

1. The applicant has prayed for fixing his pay at Rs.1440/- in the scale of pay of Rs.1200-2040(RSRP) with effect from 26-4-1991 with increment to the said amount every year as per rule 1313 of IREC, Vol.II consequent to request transfer from Guntakal division of SC Rly. to Vijayawada division instead of at Rs.1350 plus 90 PP with arrears from 16-7-95 as ordered in OA.995/96 dated 16-8-96. To declare the impugned proceedings No.B/P.524/VI/SM-ASM/Vol.3, dated 15-11-1996 fixing his pay at Rs.1350 plus 90 PP with effect from 26-4-1991 as illegal, arbitrary and contrary to rules. and declare the action of the respondents in applying the provisions of serial circular No.95/96 in the case fixation of his pay as arbitrary and illegal, and award costs.

2. The learned counsel drew our attention to the order passed in OA.70/97 by the Bench comprising Hon. Sri R. Rangarajan, M(A) and Hon. Sri B.S. Jai Parameshwar, M(J) dated 2-3-98 in which it is observed that the respondents submitted that they were awaiting for a clarification to the Railway Board's letter dated 2-12-1996 and the same was received, Wherein the following direction is issued :

"The pay of the applicant as ASM in Vijayawada division in the scale of pay of Rs.1200-2040 should be fixed at the

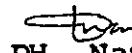
stage as he was drawing in Secunderabad division in the scale of pay of Rs.1400-2300 provided such a stage is available in the scale of pay of Rs.1200-2040 and that pay does not exceed the maximum of the pay of Rs.1200-2040. The other conditions laid down by the Railway Board in the letter dated 2-12-1996 should be scrutinised to see whether the applicant fulfils all the conditions as laid down to fix his pay at Rs.1460/- when he was transferred to Vijayawada division. The applicant is entitled for arrears if any from 1-4-1995 in accordance with the direction given in OA.809/96 dated 5-7-1996."

3. The learned counsel for the applicant submits that the above order passed in OA.70/97 by the Tribunal has already been implemented and that they have no objection if the present application is disposed of with the similar order. Hence, the present petition is disposed of with a direction to the Respondent to comply with the orders passed in OA.70/97 in respect of the present application as well.

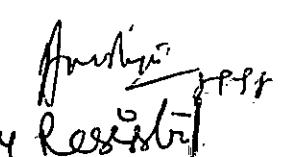
4. The order should be complied with within three months from the date of receipt of copy of this order.

5. The arrears shall be paid with effect from 16-7-95.


H. Rajendra Prasad
Member (Admn.)


D.H. Nasir
Vice Chairman

Dated : August 27, 98
Dictated in Open Court


Deputy Registrar

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879/96
TYPED BY

I COURT

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR:
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

DATED: 27-8-1998.

~~ORDER/JUDGMENT~~

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

in

O.A.No.

1530/97

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

p.v.m.

