

OA.No.170/00992/2015/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00992/2015

DATED THIS THE 28th DAY OF NOVEMBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

S.Ravi, aged 57 years
S/o.A.V.Sundaresan
Complaints Inspector/South Western Railway
General Branch/Mysore Divisional Office/Mysore-570 021.
Residing at: 9A, 2nd Main, Yadavagiri
Mysore-570 020.Applicant

(By Advocate Sri T.C.Govindaswamy)

Vs.

1. Union of India represented by
The General Manager
South Western Railway HQ, Hubli P.O.,
Dharwar District, Karnataka, PIN:580 020.
2. The Sr.Divisional Personnel Officer
South Western Railway
Mysore Division, Mysore-570 021.
3. The Divisional Railway Manager
South Western Railway
Mysore Division, Mysore-570 021.
....Respondents

(By Advocate Sri J.Bhaskar Reddy)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

From the submissions made in the OA and the reply statement, the facts of the case emerge as follows:

2. The applicant was initially appointed as an Assistant Station Master in the pay scale of Rs.330-560 w.e.f. 3.5.1982. Thereafter he was promoted as a Station Master in the pay scale of Rs.425-640 w.e.f. 14.12.1983. The said pay scale of Station Master was replaced w.e.f. 1.1.1986 by the scale of pay of Rs.1400-2300. While working as Station Master, the applicant was selected as a Junior Complaints Inspector(ex-cadre) in the same pay scale of Rs.1400-2300. He was further promoted as a Sr.Complaint Inspector in the pay scale of Rs.1600-2660 w.e.f. 14.8.1989. Following the 5th Pay Commission, the pay scale of Sr.Complaint Inspector and that of Station Master were given same replacement scale of Rs.5000-8000. The applicant also promoted as Station Master Gr-II in the pay scale of Rs.5500-9000 notionally w.e.f. 7.8.1997. He was repatriated back to his parent division on 18.8.2004. However on repatriation, the applicant was directed for medical examination for posting as Station Master Gr.II but he was declared unfit for the said post in medical classification AYE-TWO and certified fit in AYE-THREE and below. Therefore, a supernumerary post of SM-II in scale of Rs.5500-9000 was created w.e.f. 29.9.2004 i.e. The post in which the applicant was working prior to his medical de-categorization. The applicant was issued with a show cause notice on 20.2.2015(Annexure-A4) saying that on repatriation to Cadre post, the pay should have been fixed drawing the pay notionally in the cadre post and not based on pay drawn in ex-cadre post. Therefore it was proposed to revise his pay w.e.f. 20.8.2004 and recover the excess amount drawn. The applicant submitted representation on 13.3.2015(Annexure-A5) which was disposed of vide letter dated 13.7.2015(Annexure-A1) followed by refixation office order dated 13.7.2015(Annexure-A2). Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

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i. *Call for the records leading to the issue of Annexure-A1 letter bearing No.Y/P.524/I6th PC/SM/Vol.III dated 13.07.2015 and Annexure-A2 Office Order bearing No.T-CELL/T.36/2015 dated 13.07.2015, both issued from the office of the 2nd respondent, and quash the same;*

ii. *Direct the respondents to continue to grant the pay and allowances, as if Annexures A1 and A2 have not been issued at all.*

3. The applicant has contended that even after repatriation, he has been utilized only as Complaints Inspector, a post which he holds even now. The refixation goes back to 1995 and the contention of the applicant is that his pay was fixed w.e.f. 1.1.1996 in the substantive post with reference to the scale of pay of Rs.1600-2660 is factually incorrect. The pay as drawn and to be drawn w.e.f. 1.1.1996 was fixed only with reference to the substantive pay of Rs.1850 and fixed at the stage of Rs.5750/-. In addition, he submits that the issue of recovery comes under the purview of the decision of Hon'ble Apex Court in State of Punjab & Haryana vs. Rafiq Masih. More over since the scales of pay of Rs.5000-8000 and Rs.5500-9000 were merged w.e.f. 1.1.2006, the promotion granted to the applicant in the scale of Rs.5500-9000 has to be ignored and hence he will be entitled to 2nd financial upgradation under MACP scheme. Further in view of the fact that the applicant has completed 20 years of service w.e.f. 14.12.1983, he will be entitled to 3rd financial upgradation under MACP w.e.f. 1.9.2008. Therefore, he submits that the issue of show-cause notice and recovery is completely unjustified and he is entitled to the relief as stated above.

4. The respondents in the reply statement stated that on reporting to Mysuru Division, the applicant was granted proforma promotion in the scale of Rs.5500-9000 w.e.f. 7.8.1997 but his pay was fixed taking into account, inadvertently, the post of Complaint Inspector(Ex-cadre) instead of pay in the cadre post of station master in which the applicant was working prior to his

selection to the ex-cadre post. Therefore, the pay should have been fixed drawing the pay notionally in the cadre post and not based on the pay drawn in ex-cadre post and therefore, subsequently increments were also drawn. Therefore show cause notice was issued and based on his submission, the same was disposed of.

5. On the point raised by the applicant regarding financial upgradation under ACP and MACP, they submit that the applicant on completion of 20 years of service was eligible for two promotions/financial upgradations. Since the pay scale of Rs.5000-8000 and Rs.5500-9000 were merged w.e.f. 1.1.2006 and the same was replaced with a single pay band of Rs.4200, his promotion to the scale of Rs.5500-9000 was ignored and he was granted 2nd financial upgradation w.e.f. 1.9.2008. Further in terms of clarification issued by Railway Board letter dtd.27.6.2014(annexure-r1), he is not eligible for 3rd financial upgradation w.e.f. 1.9.2008. Since the pay was wrongly fixed, it should be corrected and excess amount is to be recovered.
6. The applicant has also filed rejoinder reiterating the submissions made already in the OA.
7. Heard the learned counsel for both the parties. Both sides have also filed written arguments also reiterating the facts already submitted in the OA and reply statement.
8. We have carefully considered the facts of the case and submissions made by either side. From the records and submissions made by either side, it seems that while the applicant was working as Station Master, he went to the ex-cadre post of Junior Complaints Inspector which was in the same scale of Rs.1400-2300. However, he was promoted to Sr.Complaint Inspector in the

OA.No.170/00992/2015/CAT/Bangalore Bench scale of Rs.1600-2660 w.e.f. 14.8.1989. However, it has also been submitted that both the scales of Station Master and Sr.Complaint Inspector were given a common replacement scale of pay of Rs.5000-8000 w.e.f. 1.1.1996. Thus it is evident that when the applicant joined the ex-cadre post, he was in the same scale of pay though he got higher scale i.e promotion to Sr.Complaint Inspector after some time. The scale of Sr.Complaint Inspector and Station Master became equal following the 5th pay commission. The applicant was also given notional promotion to the post of Station Master Gr.II w.e.f. 7.8.1997. Therefore it appears that in all the posts and on reversion also, the applicant has been working in the same pay scale all along. It is also noted from the submissions that the applicant continues to work as Sr.Complaint Inspector even after repatriation to the original cadre because he was medically unfit for becoming Station Master Gr.II. If he had been placed in the lower pay scale on reversion, then the refixation in the lower scale would have been appreciated. However, when the applicant had been working in the ex-cadre/cadre post in the same scale of pay all along, the question of refixation of his pay on his reversion should not have been raised that too after 11 years particularly more so when he continues to do the same work.

9. On detail consideration of the above facts, we are of the view that when a person is repatriated to the parent cadre in the same scale of pay, he is entitled to get same benefit as he enjoyed in the present scale of pay. Therefore, we quash Annexures-A1 & A2 orders dated 13.7.2015 and hold that the applicant is entitled to the pay being drawn by him prior to issue of the show cause notice. As regards the issue of MACP benefits is concerned, that is not part of the relief claimed and we do not inclined to deal with the said issue in the present OA.

10. Therefore, based on the above observation, we direct the respondents to restore the pay of the applicant to the level at which pay was being drawn by him prior to the issue of show-cause notice and issue necessary orders to that effect within a period of two(2) months from the date of receipt of copy of this order and also release the consequential benefits.

11. The OA is accordingly, allowed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00992/2015

Annexure-A1: A true copy of letter bearing No.Y/P.524/I/6th PC/SM/Vol.III dated 13.07.2015 issued by the 2nd respondent (served on 27.07.2015)

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Annexure-A2: A true copy of office order bearing No.-T-CELL/T.36/2015 dated 13.07.2015 issued by the 2nd respondent (served on 27.07.2015)

Annexure-A3: A true copy of Railway Board order bearing RBE No.101/2009 dated 10.06.2009

Annexure-A4: A true copy of Show Cause notice bearing No.Y/P.524/I/6th PC/SM/Vol.III dated 18/20.02.2015 along with its enclosure issued from the office of the 2nd respondent

Annexure-A5: A true copy of representation dated 13.03.2015, addressed to the 2nd respondent

Annexure-A6: A true copy of Railway Board order bearing RBE No.27/2009 dated 06.02.2009

Annexures with reply statement:

Annexure-R1: Railway Board letter dated 27.06.2014

Annexure-R2: Copy of Rule 1313 (FR-22) of IREC Vol-II
