

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00977/2014

Original Application No. 180/00979/2014

Original Application No. 180/00145/2015

Wednesday, this the 20th day of February, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

1. Original Application No. 180/00977/2014 -

Sudheesh V., aged 33 years, S/o. Velankutty, Sr. Assistant Loco Pilot/
 Southern Railway/Palakkad Junction, Residing at : Parakkalam,
 Kollengode PO, Palakkad District, Pin – 678 506. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town PO,
 Chennai – 600 003.
2. The Sr. Divisional Personnel Officer, Southern Railway,
 Palakkad Division, Palakkad – 678 002.
3. The Railway Board, Rail Bhavan,
 New Delhi – 110 001, represented by its
 Chairman. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

2. Original Application No. 180/00979/2014 -

1. K.S. Shiju Mon, aged 35years, S/o. Sambasivan,
 Assistant Loco Pilot/Southern Railway/Ernakulam Junction,
 Residing at : Kavanakudy House, Vadayampadi PO,
 Ernakulam District, Pin – 682 308.
2. S. Sunil Kumar, aged 31 years, S/o. Surendran,
 Assistant Loco Pilot/Southern Railway/Nagercoil Junction,
 Residing at : Nainakonathu House, Punnacadu,
 Perumpazhathur PO, Trivandrum, Pin – 695 126. **Applicants**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai – 600 003.
2. The Sr. Divisional Personnel Officer, Southern Railway, Palakkad Division, Palakkad – 678 002.
3. The Railway Board, Rail Bhavan, New Delhi – 110 001, represented by its Chairman.
4. The Divisional Personnel Officer, Southern Railway, Thiruvananthapuram Division, Thiruvananthapuram-695 014. **Respondents**

(By Advocate : Mrs. Girija K. Gopal)

3. Original Application No. 180/00145/2015 -

1. C.P. Praveen Kumar, aged 37 years, S/o. C.P. Krishnan, Sr. Assistant Loco Pilot/Southern Railway, Office of the Deputy Chief Electrical Engineer/Railway Electrification/Kannur, Residing at : Shanthi Nivas, Thimiri PO, Cheruvathur, Kasaragode District, Pin – 671 313.
2. Hareesh Babu P.M., aged 32 years, S/o. K. Kunhikrishnan Namboodiri, Assistant Loco Pilot/Southern Railway/Office of the Sr. Section Engineer/Carriage & Wagon/Mangalore Railway Station, Residing at : Koovaikunnath Illom, Chittannur, Vilayancode PO, Madoor via, Kannur District, Pin – 670 501. **Applicants**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai – 600 003.
2. The Sr. Divisional Personnel Officer, Southern Railway, Palakkad Division, Palakkad – 678 002.
3. The Railway Board, Rail Bhavan, New Delhi – 110 001, represented by its Chairman. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

These applications having been heard on 04.02.2019, the Tribunal on 20.02.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-977 & 979 of 2014 and 145 of 2015 have common points of fact and law involved and hence are being disposed of through this common order.

2. The applicant in OA No. 977 of 2014 is working as a Sr. Loco Pilot in the Palakkad Division of Southern Railway. Applicants in OA No. 180/979/2014 are working as Assistant Loco Pilots in Trivandrum Division of Southern Railway and the applicants in OA No. 180/145/2015 are presently working as Senior Assistant Loco Pilot/Assistant Loco Pilot in the Palakkad Division of Southern Railways. They all are aggrieved by the refusal on the part of the respondents to fix their pay as directed by the Railway Board in its order RBE No. 30/2014, dated 21.3.2014.

3. The reliefs claimed by the applicants are as under:

OA No. 180-977-2014 -

“(i) Call for the records leading to the issue of Annexure A1 and quash the same;

(ii) Declare that the applicant is entitled to come over to the revised scale of pay as per option with effect from 1.3.2006, the date of promotion of the applicant as Assistant Loco Pilot, and to have his pay fixed in terms of A2 Railway Board Order read with A3 fitment table and direct the respondents accordingly;

- (iii) Direct the respondents to fix the applicant's initial pay as an Assistant Loco Pilot with effect from 1.3.2006, applying A3 fitment table and direct further to grant all the consequential arrears of pay and allowances, arising therefrom;
- (iv) Award costs and incidental thereto;
- (v) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

OA No. 180-979-2014 -

- “(i) Declare that the applicants are entitled to come over to the revised scale of pay with effect from 1.3.2006, the date of promotion of the applicant as Assistant Loco Pilots, and to have their pay fixed in terms of A1 Railway Board Order read with A3 fitment table and direct the respondents accordingly;
- (ii) Direct the respondents to fix the applicants' initial pay as Assistant Loco Pilots with effect from 1.3.2006, applying A3 fitment table and direct further to grant all the consequential arrears of pay and allowances, arising therefrom;
- (iii) Award costs and incidental thereto;
- (iv) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

OA No. 180-145-2015 -

- “(i) Call for the records leading to the issue of Annexures A1 and A2 and quash the same;
- (ii) Declare that the applicants are entitled to come over to the revised scale of pay as per option with effect from the date of promotion of the applicants as Assistant Loco Pilots, and to have his pay fixed in terms of A3 Railway Board Order read with A4 fitment table and direct the respondents accordingly;
- (iii) Direct the respondents to fix the applicants' initial pay as Assistant Loco Pilots with effect from the date of promotion to the said post, applying A4 fitment table and direct further to grant all the consequential arrears of pay and allowances, arising therefrom;
- (iv) Award costs and incidental thereto;
- (v) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

4. For the sake of convenience, the pleadings, documents and record in OA No. 180/977/2014 are referred to in this common order.

5. The applicant was initially appointed as Trackman by direct recruitment on 4.10.2004. He was subjected to a General Departmental Competitive Examination for promotion to the post of Assistant Loco Pilot. The applicant having been selected was appointed as an Assistant Loco Pilot with effect from 1.3.2006. The scale of pay attached to the post of Assistant Loco Pilot was Rs. 3050-4590/-. The VIth Central Pay Commission's recommendations were accepted and implemented by the Government during August, 2008 with retrospective effect from 1.1.2006. The Railway servants were given an option to come over to the revised scale of pay with effect from 1.1.2006 or with effect from the date of promotion if the same were to be between 1.1.2006 and August, 2008. The applicant submitted that he had submitted an option to come over to the revised scale of pay with effect from 1.3.2006 i.e. the date on which the applicant got promotion as Assistant Loco Pilot. The respondents fixed the applicant's pay at the stage of Rs. 6,460/- plus GP Rs. 1,900/- w.e.f. 1.3.2006 as per the fitment table Annexure A3 applicable to the running staff. However, based on some clarifications, the applicant's pay was reduced and fixed as if he had opted for the revised scale of pay w.e.f. 1.1.2006. The applicant submitted representation in this regard to the respondents but it was rejected stating that the applicant would not be entitled to the benefit of Annexure A2 Railway Board order since from the service register it is seen that the applicant had not exercised any re-option

on the basis of certain Railway Board orders. Applicant submits that Annexure A1 is without application of mind and is not based on relevant considerations. The applicant claim that the question whether persons like the applicant are entitled to fixation of pay on option applying the fitment table applicable to the running staff was finally decided by the Railway Board vide its order dated 21.3.2014. The respondents have not granted the benefit to the applicant in accordance with the Railway Board order dated 21.3.2014. Aggrieved the applicant has filed the present OA.

6. Notices were issued to the respondents. They entered appearance through Shri Sunil Jacob Jose in OAs Nos. 180-977-2014 and 180-145-2015. Smt. Girija K. Gopal entered appearance on behalf of the respondents in OA No. 180-979-2014. Contesting the claim of the applicants, the respondents have filed reply statements in each case, more or less taking similar contentions. They submitted that the applicant had enjoyed the pay fixation from 1.1.2006 in VIth CPC scales which is clear from Annexure A5. The applicant had not produced any valid proof of having submitted an option switching over to the VIth CPC scales from the date subsequent to 1.1.2006. They further contended that the applicant had not switched over to the revised pay structure in VIth CPC scales from the date of promotion from 1.3.2006 either at the time of implementation of VIth CPC scales or when the employees who are running staff category were permitted twice to exercise re-option extending an opportunity till 31.12.2010 and thereafter till 31.3.2013. Hence, he is not entitled for pay fixation as per Annexure A3 tables applicable to running staff only in view of the clarifications issued by

Railway Board at Annexure A2. The option said to have been exercised by him at Annexure A6 is only a fabricated document. As no option was received from the applicant it was deemed that the applicant had elected to be governed by the revised pay structure w.e.f. 1.1.2006 as per the provisions under Rule 6(3) of the Railway Services (Revised) Pay Rules, 2008. Even otherwise options have not been called from the non-running staff like applicants and options were only available in the feeder category of running staff and the applicants herein are direct appointee from the non-running staff category. The running staff were granted opportunities for exercising options for fixation of their pay on posting as Assistant Loco Pilot in the years 2010 and 2013 having prior service as running staff. At present there is no provision for exercising option afresh for pay fixation based on Annexure A2. It is evident and clear that the applicant had accepted the pay fixation shown in Annexure A5 and he is drawing the same without any demur till the issue of Annexure A2. Now after 5 years and 8 months the applicant cannot contend that he is entitled to have his pay fixed with effect from 1.3.2006 after having drawn the pay fixed in Annexure A5 for all these years. Respondents pray for dismissing the OA.

7. Heard Mr. T.C. Govindaswamy, learned counsel appearing for the applicants, Mr. Sunil Jacob Jose, learned Standing Counsel appearing for the respondents in OA No. 180-977-2014 and 180-145-2015 and Mrs. Girija K. Gopal, learned Standing Counsel appearing for the respondents in OA No. 180/979/2014. Perused the records.

8. The short question to be considered in these OAs are whether the applicants can have their pay fixed as directed by the Railway Board in its order RBE No. 30/2014, dated 21.3.2014 at this stage.

9. The case of the respondents are that the applicants have never given an option pursuant to fixation of pay from 1.1.2006 as per 6th Pay Commission recommendations. There is a deemed clause that if the option is not exercised within a period of three months it will be deemed that they have opted for new pay structure from 1.1.2006. The applicants have never exercised their option and therefore, the respondents have invoked the deemed clause in favour of the applicants. It is further submitted that on implementation of the 6th CPC scales, the applicants have not opted and therefore, they are not entitled to pay protection as per Annexure A3 RBE No. 109 of 2008 dated 12.9.2008 which provides for detailed fixation tables (FTR 1-7) for each stage in each of the pre-revised scale of running staff only. The respondents have submitted that the applicants letter of option are not genuine rather termed it as a fabricated document. Even if it is presumed that the applicants did applied for change of option by the letters produced by them the benefit of fixation tables cannot be extended to them because they were not running staff. These circulars were applicable only to the running staff. Annexure A2 dated 21.3.2014 which the applicants rely in its paragraph 2.1 it is clearly mentioned that an employee getting promoted from a stationary post to the running post as Guard, during above period, was eligible to opt to continue in pre-revised pay structure until his

promotion as Guard and switch over to revised, pay structure after effecting the promotion. The simple meaning of the circular is that feeder running staff being promoted to Assistant Loco Pilot (running post) the benefit of the said circular is given. But the applicants who were selected through General Departmental Competitive Examination under the examination conducted by RRB got regular appointment as Assistant Loco Pilots. The applicants were not running staff who were promoted between 1.1.2006 to 31st August, 2008 to revise their original option exercised on account of promotion. The respondents have taken a stand that the applicants are not coming within the definition of the running staff. The counsel for the applicant has relied upon the judgment of the Bangalore Bench of the Tribunal in OA No. 827 of 2012 and connected cases wherein paragraph 5 it is mentioned as under:

“5. I have carefully considered the rival contentions and perused the pleadings available on record and RBE No.103/2008 dated 4.9.2008 and 108/2008 dated 11.9.2008 and the relevant RBE no.109/2008 dated 12.9.2008 (Annexure A8). On the admitted fact narrated in the earlier para, it is evident that the applicants were not in running category as on 1.1.2006, they got promotion as Goods Guard w.e.f. 16.9.2008/18.9.2008 respectively. I have carefully gone through the RBI No.103/2008 and 4.9.2008 which are applicable to all the categories of the Railways. The subsequent RBE No.108/2008 dated 11.9.2008 was issued on the subject, Railway Services (Revised Pay) Rules, 2008 – Schedules for Revised scales of pay. RBE No.109/2008 dated 12.9.2008 was issued only in the respect of running category. The contention of the applicants is that the said RBE No.109/2008 is applicable for their Revision of pay scale. The respondents contention is that the said RBE No.109/2008 has been issued to the employees those who are running staff as on 1.1.2006, hence the applicants have not been extended for the benefit of revised pay scale as per the said RBE. I have carefully gone through the RBE No.109/2008 in which there is no specific date that RBE No.109/2008 is applicable to the running staff as on 1.1.2006. The respondents admit that as per para-12 of the reply statement that the Hubli Division has erroneously fixed the pay as per Fitment Table for Running Staffs, so far that benefit has not been withdrawn from the employees. After careful consideration to RBE No.109/2008 when there is no specific date mention of the said RBE applicable to running to staff those who are working on 1.1.2006, the respondents have wrongly contended that the said RBE is not applicable to the applicants. I have gone through the RBE No.103/2008 dated 4.9.2008. The said RBE reads as under:

“Fixation of pay in the revised pay structure subsequent to the 1st day of January, 2006, - Where a Railway servant continues to draw his pay in the existing scale and is brought over to the revised pay structure from a date later than the 1st day of January, 2006, his pay from the later date in the revised pay structure shall be fixed in the following manner:-

(i) Pay in the pay band will be fixed by adding the basic pay applicable on the later date, the dearness pay applicable on that date and the pre-revised dearness allowance based on rates applicable as on 1.1.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable pay band. In addition to this, the grade pay corresponding to the pre-revised pay scale will be payable. Where the Railway servant is in receipt of special pay or non-practising allowance, the methodology followed will be as prescribed in Rule 7(1), (B),(C) or (D) as applicable, except that the basic pay and dearness pay to be taken into account will be the basic pay and dearness pay applicable as on that date but dearness allowance will be calculated as per rates applicable on 1.1.2006.”

The applicants are entitled for revised pay scale as per RBE No.109/2008 dated 12.9.2008 which are applicable to running staff from the date of their respective promotion.....” (emphasis supplied)

10. Thus the Bangalore Bench has clearly held that the benefit of option as per Fitment Table for Running Staff Fixation as per FTR table is applicable only to such running staff who are performing duties as running staff as on 1.1.2006. The counsel for the applicants has also drawn our attention to the judgment of the Karnataka High Court in No. 357 of 2014 and connected cases wherein it has been held as under:

“2. Heard the learned counsel for the parties. The applicants are running staff working under the petitioners. The applicants had exercised their option for re-fixing their pay from the date of their promotion as Goods Guard in terms of proviso (ii) of the Railway Board's letter dated 4th September, 2008. Accordingly, their pay was fixed at Rs. 11,170/- which includes the running staff also. Pursuant to Annexure-B dated 12th September, 2008 the applicants' pay was fixed in the pre-revised scale (S8) Rs. 4,500-7,000/-. Pursuant to the Railway Service (Revised Rules), 2008 which came into effect from 1st June, 2006, the fixation of pay is made applicable to all the categories of railway servants. Since the case of the petitioners was not considered for fixation of revised pay scale on the ground that they are not running staff, these petitions came to be filed.”

In paragraph 4 the Hon'ble High Court held as under:

“4. After hearing the learned counsel for the parties, the question whether the revised pay scale would be applicable to the running staff or the stationary staff is no more *res integra* in view of the clarification issued by the Railway Board. According to the notification, the applicants who are stationary staff are also entitled for revised pay scale on par with running staff. In view of the same, we do not find any merit in these petitions. Accordingly, the petitions are dismissed.”

11. The Hon'ble High Court has never held that the applicants who are appointee directly through the Railway Recruitment Board which is not even the feeder cadre post can be given the benefit of the above circular No. 30/2014 for submitting re-option. The applicants were not running staff or were not in the feeder category of Assistant Loco Pilots as on the cut off date. To our mind the benefit is extended to the running staff who were earlier Goods Guard i.e. the feeder post to the post of Assistant Loco Pilot who have been given the benefit of the other circular. The Annexure A2 circular never envisaged the benefit to other mode of promotions from the feeder category. The respondents have relied upon the judgment of this Tribunal in OA No. 53 of 2013 – ***Mahendra Singh Meena v. Union of India & Ors.***, dated 30.6.2016 to impress upon to distinguish whether the applicants are promotee or direct recruitee.

12. In view of the above this Tribunal is of the view that the applicants are not entitled to get their pay fixed with effect from the date of their promotion as Assistant Loco Pilots. Thus, the action of the respondents does not warrant any interference. Accordingly, the Original Applications are dismissed. No order as to costs.

13. MA No. 180/291/2017 in OA No. 180/145/2015 stands closed in view of the order passed in the above OAs. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00977/2014

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of letter bearing No. J/P.524/V/PR/Mech.VI PC Vol. II dated 25.9.2014, issued by the 2nd respondent.
- Annexure A2** – True copy of Railway Board order bearing RBE No. 30/2014 dated 21.3.2014.
- Annexure A3** – True copy of Railway Board order bearing RBE No. 109/2008 dated 12.9.2008.
- Annexure A4** – True copy of Memorandum bearing No. J/P.524/V/PR/VIth PC dated 22.4.2009 issued by the 2nd respondent.
- Annexure A5** – True copy of memorandum bearing No. J/P.524/V/PR/VIth PC dated 26.6.2009 issued by the 2nd respondent.
- Annexure A6** – True copy of form of option submitted by the applicant dated 25.10.2008.
- Annexure A7** – True copy of representation dated 16.7.2014 addressed to the 2nd respondent.
- Annexure A8** – True copy of a reminder dated 16.8.2014 addressed to the 2nd respondent.
- Annexure A9** – True copy of representation similar to A7 submitted to the Chief Personnel Officer, Headquarters Office, during the first week of October, 2014.

RESPONDENTS' ANNEXURES

- Annexure R1** – Railway Board's order dated 15.9.2006.
- Annexure R2** – Railway Board's order No. RBE 102/2010.
- Annexure R3** – Railway Board's order No. 6/2013.
- Annexure R4** – Relevant portion of notification communicating the provision of option.
- Annexure R5** – True copy of the option form and acknowledgment.
- Annexure R6** – True copy of First Schedule Part A, Section II of the notification.

Annexure R7 – True copy of the VIth PC pay fixation chart from 1.1.2006.

Original Application No. 180/00979/2014

APPLICANTS' ANNEXURES

- Annexure A1** – True copy of Railway Board order bearing RBE No.30/2014 dated 21.3.2014.
- Annexure A2** – True copy of representation submitted by the 1st applicant to the 2nd respondent dated 23.10.2008.
- Annexure A3** – True copy of Railway Board order bearing RBE No. 109/2008 dated 12.9.2008.
- Annexure A4** – True copy of Memorandum bearing No. J/P.524/V/PR/VIth PC dated 26.6.2009 issued by the 2nd respondent.
- Annexure A5** – True copy of representation dated 13.8.2014 submitted by the 1st applicant.
- Annexure A6** – True copy of representation dated 25.8.2014 submitted by the 2nd applicant.

RESPONDENTS' ANNEXURES

- Annexure R1** – True copy of letter No. E(P&A)II-2004/RS-28 dated 15.9.2006.

Original Application No. 180/00145/2015

APPLICANTS' ANNEXURES

- Annexure A1** – True copy of letter bearing No. J/P.220V/PR/Deputation dated 30.10.2014, issued on behalf of the 2nd respondent.
- Annexure A2** – True copy of letter bearing No. J/P.524/V/PR/Mech.VI PC Vol. II dated 12.9.2014 issued on behalf of the 2nd respondent.
- Annexure A3** – True copy of Railway Board order bearing RBE No. 30/2014 dated 21.3.2014.
- Annexure A4** – True copy of Railway Board order bearing RBE No. 109/2008 dated 12.9.2008.

- Annexure A5** – True copy of option submitted by the 1st applicant dated 27.10.2008.
- Annexure A6** – True copy of representation dated 19.7.2014 submitted to the 2nd respondent by the 1st applicant.
- Annexure A7** – True copy of representation dated 31.7.2014 submitted to the 2nd respondent by the 2nd applicant.
- Annexure A8** – True copy of undertaking dated 20.8.2014 submitted to the 2nd respondent by the 2nd applicant.

RESPONDENTS' ANNEXURES

- Annexure R1** – Copy of RBE No. 129/1993.
- Annexure R2** – Copy of office order dated 16.10.2006.
- Annexure R3** – Copies of extract of Service Register of the applicant No. 1
- Annexure R4** – Copies of extracts of Service Register of the applicant No. 2.
- Annexure R5** – Copy of Railway Board order RBE 103/2008.
- Annexure R6** – Copy of Railway Board's letter dt. 15.9.2006.
- Annexure MA1** – Railway Board's letter dated 15.10.1997.
- Annexure MA2** – Railway Board's letter dated 17.10.2001 being.

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