

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

OA/310/00479/2019

**Dated Wednesday the 3<sup>rd</sup> day of April Two Thousand Nineteen**

**CORAM :** HON'BLE MR. R. RAMANUJAM, Member (A)  
HON'BLE MR. P. MADHAVAN, Member (J)

B. Elumalai  
Senior Motorman, Token No. 159,  
PF No. 04768061  
Office of the Chief Crew Controller  
Chennai Central, Southern Railway  
Chennai Division ... Applicant

By Advocate M/s J. Senkuttyvan

VS

1. Union of India – Ministry of Railways  
Represented by Secretary, Railway Board  
New Delhi.

2. The Chief Personnel Officer  
Southern Railway  
Park Town, Chennai – 600 003.

3. The Senior Divisional Personnel Officer  
Southern Railway, Chennai Division  
NGO, Park Town, Chennai – 600 003.

**ORAL ORDER****(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))**

Heard. The applicant has filed this OA seeking the following reliefs :

"i. To set aside the order dated 05.02.2019 in order No. M/P353/CC/OA/1252/2018 passed by the 3<sup>rd</sup> respondent

ii. To direct the first respondent to examine the request of the applicant in accordance with the Railway Board Circular No. P(E)11/91/MISC/2(Pt) Vol. I dated 02/12/1996 and protect the pay of the applicant, Rs. 1320/- which he was drawing as Electrical Fitter Grade I in scale Rs. 1320-2040. "

2. The applicant is aggrieved by the impugned Annexure A15 communication dt. 05.02.2019 issued to him in pursuance to the order of this Tribunal in OA 1252/2018 dt. 25.09.2018, by which his request for pay protection in terms of a Railway Board letter dt. 02.12.1996 had been declined.

3. Learned counsel for the applicant would submit that when an employee is transferred from one railway zone to another on own request to a lower post, although he is granted bottom seniority in the new zone, his pay is protected. Accordingly, there is no reason why such protection should not be granted to the applicant who had held a higher post in the scale of Rs. 1320-2040 prior to being reverted to the scale of Rs. 950-1500 at his option. The mere fact that it was not a matter of transfer should make no difference for the application of policy regarding reduction of pay uniformly.

4. We have considered the plea at the admission stage.

5. This Tribunal while considering the applicant's plea for the same relief in OA 1252/2018 had made the following observation :

"6. We have considered the applicant's plea. It is not in dispute that the applicant's case for the same relief had been dismissed in OA 800/1996 and the RA also failed. The Railway Board circular dated 02.12.1996 appears to be in regard to persons transferred to a different seniority unit on request and the issue of its applicability in a case of a revised exercise of option for a different hierarchy after availing of the benefit of promotion in the existing channel does not seem to have been raised or answered specifically in the previous OA. It also appears that the applicant was granted a revised option to choose appointment as Electrical Assistant after he had already been upgraded in the category of Electrical Fitter. Although *prima facie* it seems to be a case of *res judicata*, we see no harm if the applicant is permitted to make a representation to the competent authority within a period of two weeks from the date of receipt of a copy of the order. On receipt of the said representation it is entirely for the competent authority to examine whether the Railway Board circular cited above could have been applied either in letter or spirit to a case of this nature. If it is felt that the protection guaranteed by the aforesaid circular for inter seniority unit transferees on request could be extended to a case of this nature, the respondents may take an appropriate decision in accordance with law and precedents, if any and pass a reasoned and speaking order within a period of three months thereafter. It is clarified that we have not expressed any views on the merits of the applicant's claim."

6. It would be clear from the above that the Tribunal had noted that the relief sought by the applicant *prima facie* appeared to be hit by the principle of *res judicata*. However, since a provision was available for pay protection for persons transferred to a lower post in a different zone, the applicant was permitted to make a representation, on receipt of which the competent authority was directed to examine whether the Railway Board circular dt. 02.12.1996 relied upon by the applicant could have been applied either in letter or spirit to a case of this nature. The respondents were directed to take an appropriate decision in accordance with law and precedents if any and pass a reasoned and speaking order.

7. The respondents have now passed the impugned order dt. 05.02.2019 wherein it is clearly stated that the applicant had not held any higher post in the scale of Rs. 1320-2040 as contended by him. He was reverted and placed only

in the scale of Rs. 950-1500 and appointed against 20% quota. It was not a case of voluntary transfer from a higher post to a lower post. It was a new appointment from the post of Technical Fitter Grade III to the substantive post of Technical Assistant. The applicant had opted for the same as the running allowances permissible for the post of Technical Assistant was the main attraction for him. He had been granted 30% running allowances during his career. Now, the applicant is working as Senior Motorman and drawing a pay of Rs. 78,800/- which pay he would not have drawn had he chosen to continue as Technical Fitter Grade III in the scale of Rs. 1320-2040.

8. It is clear from the above that the applicant had not made any sacrifice in opting for a different channel and, therefore, we are unable to fault the respondents in not being able to apply the provisions of the Railway Board letter dt. 02.12.1996 to the applicant's case. In any case, the circular is not directly applicable to the applicant and it was only directed that the respondents may consider if the same could be applied in spirit. Rejection of a claim by the competent authority in such circumstances could not become the subject matter of another OA as no claim is made out by the applicant of any wrong doing by the respondents.

9. OA is misconceived and is accordingly dismissed.

**(P. Madhavan)**  
Member(J)

**03.04.2019**

SKSI

**(R. Ramanujam)**  
Member(A)