

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00941/2015

Wednesday, this the 10th day of July, 2019.

CORAM

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

K.Manoharan, 52 years
S/o Kuttappan
Mail Guard,
Quilon, Southern Railway.
Residing at "Souparnika",
Edavattom, Velliman P.O.,
Kollam-691 511.

Applicant

(Advocate: Mr.Martin G.Thottan)

versus

1. Union of India represented
by the General Manager
Southern Railway, Chennai-600 003.
2. Divisional Personnel Officer
Southern Railway, Trivandrum-695 014.

Respondents

(Advocate: Mr.Sunil Jacob Jose)

The OA having been heard on 5th July, 2019, this Tribunal delivered the following order on 10.07.2019:

ORDER

By Ashish Kalia, Judicial Member

Through this OA, the applicant seeks the following reliefs:

- (i) Declare that the applicant is entitled to have his pay stepped up on par with his Junior I. Fazuludeen Kunju with effect from 10.8.2007 as at A3 memorandum, with arrears.*
- (ii) Quash Annexure A2 letter.*

2. The applicant who was promoted as a Mail Guard in Pay Band Rs.9300-34800 with Grade Pay Rs.4200/- sought information under RTI Act 2005 on stepping up of his pay on par with his junior I. Fazuludeen Kunju, Senior Passenger Guard in PB Rs.9300-34800+GP. As the reply was not satisfactory, an appeal was made, which was disposed of by letter dated 19.2.2014 assuring positive action in the matter. In the meanwhile, I, Fazuludeen Kunju, the junior, was also promoted as Mail Guard on 30th August, 2013, which raised his pay further above the applicant's pay in the above said pay band and GP. The applicant received a communication from the respondents on 7.7.2015 rejecting the plea for stepping up on the ground that Sri Fazuludeen Kunju was senior and drawing more pay in Palakkad Division. Though he lost seniority, his pay remained above that of the applicant on his inter divisional request transfer to Trivandrum Division in the year 2002 and hence stepping up of pay is not admissible to the applicant. The applicant submitted that the stand taken by the respondent in their above above said letter Annexure A2 is not correct.

3. Sri.Fasaludeen was comparatively senior to the applicant when he was in Palakkad Division. But when he joined Trivandrum Division, he was ranked junior to the applicant as per rules. As on 1.1.2006, the crucial date for switching over to the revised pay structure under the 6th Pay Commission, the basic pay of the applicant who was in the scale of Rs.5000-8000 was Rs.5750/- and the basic pay of the said junior who was in the scale of Rs.4500-7000 was also Rs.5750/-. Even after the said junior was promoted to the scale of 5000-8000 on 10.8.2007, his pay never exceeded that of the applicant. The said pay fixation became redundant when it was re-fixed with effect from 1.1.2006 in

terms of Railway Board's letter No.40/2012 dated 23rd March, 2012 which granted one increment on 1.1.2006 in the pre-revised scale as a one time measure to those who were due to get their annual increment between February to June, 2006. As per the memorandum issued on 27.7.2012, the applicant's name was at Sl.No.27 and I. Fasaludeen Kunju at SL.No.31. It may be seen that after adding one increment in the pay revised scale on 1.1.2006, the applicant's pay was Rs.5900 in the scale of 5000-8000 and of the said junior was Rs 5875 in the pay scale Rs.5500-7000. But the latter's pay exceeded the applicant's pay with effect from 10.8.2007 on promotion to the Pay Band Rs.9300-34800+GP 4200. This disparity widened when he was promoted as Mail Guard subsequent to Annexure A3 dated 27.7.2012. Thus he is praying for stepping up of his pay for curing this anomaly, which was rejected vide Annexure A2 letter dated 7.7.2015. Feeling aggrieved, he has approached this Tribunal.

4. Notices were issued to the respondents whereupon Sri Sunil Jacob Jose , Standing Counsel for Railway, put up appearance and filed reply statement. It is submitted that there is no anomaly in the fixation of pay of the applicant. The contention raised by the applicant that he was receiving a pay higher than the other person as on 1.1.2006 is not correct. The pay of the applicant as on 1.7.2006 and 1.7.2000 are as under:

<u>Applicant</u>	<u>Date</u>	<u>Fazuludeen Kunju</u>
13010+4200 (Rs.17310)	01.07.2006	Rs.12910+2800 (Rs.15710)
13530+4200(Rs.17730)	01.07.2007	Rs.13390+2800(Rs.16190)

5. It is further submitted that on 10.8.2007, Sri Fazuludeen Kunju was promoted to GP 4200. He was allowed the benefit of fixation on promotion by

adding 3% of pay in PB +GP and accordingly his pay was fixed at Rs.13880 +GP Rs.4200/- which comes to Rs.18080/-. The benefit received by the junior employee on clear entitlements do not make a senior employee entitled to the same. There is no such rule permitting the same and is inadmissible in law. The requirements and conditions enumerated at Annexure A4 Railway Board Notification dated 4.9.2008 are as follows:

“Note 10: In cases where a senior Railway servant promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after 1st day of January, 2006. the pay in the Pay Band of the senior Railway servant should be stepped up to an amount equal to the pay in the Pay Band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Railway servant subject to the fulfillment of the following conditions, namely:

(a) Both the junior and the senior Railway servants should belong to the same cadre and the post in which they have been promoted should be identical in the same cadre.

(b) The pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) The senior Railway servants at the time of promotion should have been drawing equal or more pay than the applicant.

(d) The anomaly should be directly as a result of the application of the provisions of Rule 1313 (FR 22) of Indian Railway Establishment Code, Volume II or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.”

6. It is further stated that in the lower post Sri Fazuludeen had been drawing more pay than the applicant all along till the applicant was promoted to Senior Goods Guard in the pay scale Rs.5000-8000 on 13.12.2005. Thus it transpires that as on 1.3.2005, the junior employee was receiving higher pay than the

senior (applicant). As on 1.3.2006, the pay of the junior was Rs.5875/- whereas the applicant's pay was only Rs.5750/- meaning thereby lesser pay than the pay of the junior. Since the junior's pay in the pre-revised scale was higher than the pay of the applicant, Note under Rule 10 is not to be invoked in the present case. Hence the applicant is not entitled for the up-gradation. The claim of the applicant is that Sri Fazuludeen Kunju is his junior and is drawing more pay than that of him with effect from 1.1.2006 when his pay should have been stepped up in accordance with Railway Board's Circular Annexure A4.

7. The fact remains that the junior Sri.Fazuludeen Kunju was drawing higher pay in his previous department than that of the applicant. When he sought inter divisional transfer, his pay was protected which was from the day one higher than the pay of the applicant.

8. Stepping up of pay is permissible only against those officials who are juniors in the feeder category and getting lesser pay and subsequently if the junior gets higher pay, then the senior he is entitled for getting his pay stepped up, which is not the case here. Though the name of Sri Fazuludeen is shown below the applicant in the seniority list after inter divisional transfer, but his pay was protected, meaning thereby his seniority is lost but his initial pay would remain as it is. Sri Fazuludeen was drawing from the day one, higher pay than the pay of the applicant. If the applicant is really aggrieved by this, then he should have put forth the claim from the day one when he joined the said post but he put forth his claim only w.e.f. 1.1.2006 on the pretext that after re-fixation of pay, his pay should be protected. We are not convinced with the argument of the applicant in the present application for the simple reason that

though Sri Fazuludeen is shown junior to him, he was drawing higher pay from day one. So the first condition is not fulfilled and so the senior is not entitled for stepping up of pay vis-a-vis his junior who was drawing lesser pay initially. Thus the applicant's case for stepping up of pay fails on the threshold.

9. In view of the above facts and circumstances of the case, we are of the view that present application has no merit whatsoever and the same is liable to be dismissed. Accordingly the OA is dismissed with no order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of the letter No.V/P.Co-ord/RTI/2013/1388/PB dated 19.2.2014.
- Annexure A2: Copy of the letter No.V/P.524/II/Fixation/Fds/Vol.V dated 7.7.2015 issued by the 2nd respondent.
- Annexure A3: Copy of the memorandum No.V/P.524/II/VI/Vol.VI PC/Guards dated 27.7.2012.
- Annexure A4: Copy of the extract of Note 10 under Rule 7 of the Railway Services (Revised Pay) Rules 2008, issued by the President.