

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application Nos. 180/00289/2018, 180/200/2019,
180/00097/2019, 180/00783/2018, 180/00199/2019,
180/203/2019

Friday, this the 8th day of November, 2019

CORAM:

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

O.A No.180/00289/2018

Lakshmidevi.V.K
 W/o.Late Sri.Narayanan.P
 ACCA.AC, SSE Office, Southern Railway
 Trivandrum Division, Trivandrum **Applicant**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
 General Manager
 Southern Railway, Park Town
 Chennai – 600 003
2. The Senior Divisional Personnel Officer
 Southern Railway
 Trivandrum Division
 Trivandrum – 14 **Respondents**

(By Advocate : Mr.P.R.Sreejith,ACGSC)

O.A No.180/00200/2019

P.Chandran
 A/C Coach Attendant (Retd)
 Southern Railway, Palghat Division
 Residing at Pazhayamkuzhi House
 Kanayam P.O, Shornur, Palghat **Applicant**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
 General Manager
 Southern Railway, Park Town
 Chennai – 600 003

2. The Senior Divisional Personnel Officer
 Southern Railway
 Palghat Division, Palghat **Respondents**

(By Advocate : Mr.S.Radhakrishnan)

O.A No.180/00097/2019

1. P.T.Ramesh Kumar, Pointsman
 Southern Railway
 Trivandrum Division
 Section Engineers Office
 Punnappara, Alleppey

2. A.G.Ramachandran
 Pointsman, Southern Railway
 Trivandrum Division
 TI Office, Trichur **Applicant**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
 General Manager
 Southern Railway, Park Town
 Chennai – 600 003

2. The Senior Divisional Personnel Officer
 Southern Railway
 Trivandrum Division
 Trivandrum – 695014 **Respondents**

(By Advocate : Mr.V.A.Shaji,ACGSC)

O.A No.180/00783/2018

1. A.Ramachandran
 Server/Peon, Divisional Office
 Trivandrum Division, Trivandrum

2. M.Moideen Abdul Khader
 Server/Peon, Divisional Office

Trivandrum Division, Trivandrum

..... **Applicants**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
General Manager
Southern Railway, Park Town
Chennai – 600 003
2. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum – 14

..... **Respondents**

(By Advocate : Mr.Sunil Jacob Jose)

O.A No.180/00199/2019

K.Sivadasan
S/o.Kitta, Technician Grade-III (Retd)
Southern Railway, Salem Division
Residing at Puliyanakad House
Pulinelli P.O, Kottayi, Palakkad – 678 572

..... **Applicant**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
General Manager
Southern Railway, Park Town
Chennai – 600 003
2. The Senior Divisional Personnel Officer
Southern Railway
Palghat Division, Palghat
3. The Senior Divisional Personnel Officer
Southern Railway, Salem Division, Salem

..... **Respondents**

(By Advocate : Mr.Millu Dandapani)

O.A No.180/00203/2019

M.B.Ramachandran
Chief Train Clerk (Retd.)
Southern Railway, Palghat Division

Residing at Chandralayam, Kizhakkethudiyil
 Vennayur, Pallickal P.O
 Malappuram

..... **Applicant**

(By Advocate : Mr.Siby J.Monippally)

V e r s u s

1. Union of India rep. by
 General Manager
 Southern Railway, Park Town
 Chennai – 600 003
2. The Senior Divisional Personnel Officer
 Southern Railway
 Palghat Division
 Palghat

..... **Respondents**

(By Advocate : Mr.S.Radhakrishnan)

These applications having been heard on 6.11.2019 the Tribunal on 8.11.2019 delivered the following:

O R D E R

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

Original Application Nos. 180/00289/2018, 180/200/2019, 180/00097/2019, 180/00783/2018, 180/00199/2019 and 180/203/2019 have common points of fact and law involved and are being disposed of through this common order.

2. In all these Original Applications, the applicants were formerly Commission Bearers. Later, by virtue of Apex Court judgment in ***T.I.Madhavan and Others v. Union of India and Others*** in Writ Petition

No.191/1986, they were absorbed in regular Group D services of the Railways. Applicants are seeking 50% of the period of their engagement as Commission Bearers to be reckoned along with the length of their regular service for all service benefits including ACP/MACP and pensionary benefits.

3. This is the second round of litigation in O.A Nos.200/2019, 203/2019 and 199/2019. At the First instance, when they approached this Tribunal, through a Common Order in O.A No. 417/2013 and connected matters dated 31.8.2017, this Tribunal had directed the respondents to extend the benefits as granted to the applicants in O.A No.417/2013 and connected cases to these applicants also as the above mentioned order of this Tribunal was confirmed by the Hon'ble High Court concerned and Hon'ble Supreme Court of India. In those cases, the question considered by this Tribunal was whether the applicants are entitled to count 50% of their service as Commission Bearers/Vendors from the date of their initial engagement till their regular absorption in service for the purpose of calculation of pension and gratuity. But only gratuity alone was granted to the applicants by the Railways. Hence, they have approached this Tribunal again. In O.A Nos.289/2018, 180/783/2018 and 97/2019, this is the first round of litigation and the applicants are praying for a direction to extend the benefits as granted in O.A 417/2013 and connected cases to them also as they are all similarly situated. Learned counsel for the applicant produced an order of this Tribunal in O.A No.536/2018 dated 30.7.2019 wherein the respondents were directed to reckon 50% of the applicants service as

Commission Bearers from the date of their initial engagement till their regular absorption in service for the purpose of re-fixation of pay and other service benefits including MACP and arrears etc. thereto and same shall be reckoned for the purpose of calculating the pension and pensionary benefits also.

4. Brief facts of each of the Original Applications are as follows:

In O.A 180/203/2019, applicant is a retired Chief Trained Clerk who entered the service of the Railways as Commission Bearer. The reliefs sought for in O.A are as follows:

“ a) To direct the respondents to revise all pensioner benefits including leave salary and fixation of pay to the applicant in accordance with the declaration of law.

b) Grant such further and other reliefs as the nature and circumstance of the case may require.

”

In O.A 180/199/2019, applicant entered the services of the railways as Commission Bearer and later was regularised and retired as Technician Grade-III. The reliefs sought for in O.A 180/199/2019 are as follows:

“ a) To direct the respondents to grant MACP and fix the pay by taking into account 50% of commission bearer service revise all pensioner benefits to the applicant in accordance with the declaration of law.

b) To revise the pension in accordance with prayer A

c) Grant such further and other reliefs as the nature and circumstance of the case may require.”

In O.A 783/2018, applicants, who are presently working as Server/Peon, are aggrieved by the inaction of the respondents in not reckoning their service as Commission Bearer and salaried Commission Bearer for the purpose of their service benefits including MACP in accordance with the law declared by the Hon'ble Supreme Court of India. The reliefs sought for in O.A 180/783/2018 are as follows:

“ a) To direct the respondents to refix the salary of the applicants, grant MACP and arrears, increments thereto by taking into account 50% of their commission bearer service.

b) Grant such further and other reliefs as the nature and circumstance of the case may require.”

In O.A 180/97/2019, the applicants, who are presently working as Pointsman in Trivandrum Division. The reliefs sought for in O.A 180/97/2019 are as follows:

“ a) To declare that 100% services of the applicants from the date of entry into Railway, as Commission Bearer shall be reckoned for all service benefits including pensionary benefits and MACP, arrears thereto.

b) To direct the respondents to calculate all service benefits including the pension benefits in accordance with prayer A.

c) Grant such further and other reliefs as the nature and circumstance of the case may require.”

In O.A 180/200/2019, applicant is a retired A/C Coach Attendant. It is submitted that gratuity alone was granted to the applicant instead of

extending all service benefits including MACP as directed by this Tribunal in O.A 998/2016 and as confirmed by Hon'ble High Court as well as Hon'ble Supreme Court. The reliefs sought for in O.A 180/200/2019 are as follows:

- a) To direct the respondents to fix the pay by taking into account 50% of commission bearer service revise all pensioner benefits to the applicant in accordance with the declaration of law.
- b) Grant such further and other reliefs as the nature and circumstance of the case may require.

In O.A 289/2018, applicant is the widow of late Sri.Narayanan.P who entered the services of the Railways as Commission bearer and later regularised. He died on 24.12.2000. It is submitted that the respondents are liable to reckon salaried commission bearer services of the husband of the applicant for all service benefits including family pension on the basis the declared law by Hon'ble Supreme Court. The reliefs sought for in O.A 180/289/2018 are as follows:

- a) To declare that 100% services of the applicant's husband from the date of entry into Railway, as Commission Bearer shall be reckoned for all service benefits including fixation, family pension benefits and MACP, arrears thereto.
- b) To direct the respondents to re-determine the service benefits in accordance with prayer A.
- c) Grant such further and other reliefs as the nature and circumstance of the case may require.

5. The respondents have filed reply statements wherein they have

disputed the claim made by the applicants and submitted that the applicants' service prior to regularisation was reckoned for the purpose of pension and terminal benefits as per the directions of this Tribunal by considering the analogy of Clause (v) of Rule 14 of the Railway Service (Pension) Rules 1993. However, there is no provision to reckon the service for the purpose of pay fixation or Career Progression Schemes.

6. Heard learned counsel for the applicants and learned counsel for the respondents in each Original Application and perused the documents.

7. The issue involved is covered by the orders of this Tribunal in O.A No.417/2013 and connected cases. In that case, an identical question was considered and this Tribunal issued a direction to the Railway Administration to count half the service rendered by the applicants in the above case as Commission Bearer/Salaried Commission Bearer before their regular absorption while calculating pension and other terminal benefits on the analogy of the provisions contained in Indian Railway Establishment Code that half the service rendered by the casual labourers who have joined on temporary status till regular absorption on the post are entitled to count the period for pensionary purpose. In the aforesaid order, this Tribunal relied upon the decisions of this Tribunal in O.A 440/2003, 311/2010 and a decision of the Madras Bench of this Tribunal in O.A 360/2011. In all these cases, the orders passed by this Tribunal were not interfered with when those orders were challenged before the High Court concerned.

8. In view of the decision of this Tribunal in O.A No.417/2013 and connected cases, this Tribunal is of the view that the applicants in these present cases are also entitled to the same benefits as their case is similar in nature. The respondents are directed to extend similar benefits to the applicants in these cases as well. In respect of O.A Nos.200/2019, 203/2019 and 199/2019, it is contended that only gratuity alone was granted to the applicants during their first litigation. It is made clear that the respondents shall, in terms of this order, re-fix the pay and other service benefits including MACP and arrears etc thereto and same shall be reckoned for the purpose of calculating the pension and pensionary benefits also. This order shall be issued by the railway authorities within a period of three months from the date of receipt of a copy of this order. Applicants are directed to produce requisite proof of the period of engagement as Commission Bearer/Vendor before the respondents within a period of one month from the date of receipt of a copy of this order which shall be duly acted upon by the authorities.

9. These Original Applications are allowed as above. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures

O.A 289/2018

Annexure A1 - Photostat copy of the pension payment order

Annexure A2 - Photostat copy of the Death Certificate dated 11.1.2001

Annexure R1 - Agreement executed by one of the Commission Bearers, as specimen

Annexure R2 - Orders of Hon'ble Supreme Court in WP No.191/86

Annexure R3 - Judgment of Hon'ble Supreme Court in K.V.Baby's cases reported in (1998) 9 SCC 252

Annexure R4 - Order No.2003/TG-III/639/13/SR passed by the Chairman/Railway Board

Annexure R5 - Rules 14(xiv) 24 and 31 of the Railway Services (Pension) Rules, 1993

O.A 200/2019

Annexure A1 - Photostat copy of the judgment in O.A No.998/2016 dated 31.8.2018

Annexure R1(a) - A true copy of the Memorandum No.J/P.535/III/MES/Court Case dated 30.8.2018

Annexure R1(b) - A true copy of the order dated 24.2.2006 in O.A No.440/2003 passed by the CAT, Ernakulam Bench.

Annexure R1(c) - A true copy of the order dated 4.6.2014 in O.A No.417/2013 and connected cases.

O.A 783/2018

Annexure A1 - A photostat copy of the judgment of Hon'ble CAT, Ernakulam in O.A No.934/2017 dated 8.12.2017

Annexure R1 - Proforma agreement executed by the Commission Bearer

Annexure R2 - Orders of Hon'ble Supreme Court in WP No.191/86

Annexure R3 - Judgment of Hon'ble Supreme Court in K.V.Baby's cases reported in (1998) 9 SCC 252

Annexure R4 - Order No.2003/TG-III/639/13/SR passed by the Chairman/Railway Board

Annexure R5 - Rules 14(xiv) 24 and 31 of the Railway Services (Pension) Rules, 1993

O.A 97/2019

Annexure A1 - Photostat copy of the Security Deposit Receipt dated 17.6.1982 issued by Southern Railway

Annexure A2 - Photostat copy of the Security Deposit receipt dated 16/6/1982 issued by Southern Railway

Annexure R1 - Agreement executed by one of the Commission Bearers, as specimen

Annexure R2 - Orders of Hon'ble Supreme Court in WP No.191/86

Annexure R3 - Judgment of Hon'ble Supreme Court in K.V.Baby's cases reported in (1998) 9 SCC 252

Annexure R4 - Rules 14(xiv) 24 and 31 of the Railway Services (Pension) Rules, 1993

Annexure R5 - Order No.2003/TG-III/639/13/SR passed by the Chairman/Railway Board

O.A No.199/2019

Annexure A1 - Photostat copy of the representation dated 10/11/2017

Annexure A2 - A photostat copy of the judgment in O.A No.998/2016 dated 31.8.2018

Annexure R1 - Agreement executed by one of the Commission Bearers, as specimen

Annexure R2 - Orders of Hon'ble Supreme Court in WP No.191/86

Annexure R3 - Judgment of Hon'ble Supreme Court in K.V.Baby's cases reported in (1998) 9 SCC 252

Annexure R4 - Rules 14(xiv) 24 and 31 of the Railway Services (Pension) Rules, 1993

Annexure R5 - Order No.2003/TG-III/639/13/SR passed by the Chairman/Railway Board

Annexure R6 - Memorandum No.SA/P 353/VII/GS/ELECT issued by DPO/SALEM

Annexure R7 - Order of this Tribunal in O.A No.440/2003

Annexure R8 - Order of this Tribunal in O.A No.417/2013

O.A 203/2019

Annexure A1 - A photostat copy of the judgment in O.A No.453/2016 dated 31.8.2017

Annexure R1(a) - A true copy of the office memorandum no.J/P.535/VIII/TNC/Court Case dated 3.9.2018.

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