

Higher replacement scale of  
pay

**GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
RAILWAY BOARD**

.....

RBE No. 81/2002,

No. F(E)III/99/PN1/20.

NEW DELHI

Dated: 5.06.2002

**The General Managers & FA&CAOs,  
All Zonal Railways and Production Units.**

**Sub:** High Court/Madras judgement dt. 21.3.2002 allowing the W.P. No. 19760/2001 filed by Railway Administration against CAT/Chennai order dt. 23.7.2001 in OA No. 778/2000 (S. Kalyana Sundaram, Retd. ADRM/MAS).

.....

In continuation of Board's letter of even number dt. 27.8.2001 and 7.1.2002 circulating CAT/Mumbai Bench judgement dt. 25.6.2001 and CAT/PB/New Delhi judgement dt. 15.10.2001 respectively, yet another judgement dt. 21.3.2002 of High Court/Madras allowing W.P. No. 19760 filed by Railway Administration against CAT/Chennai order dt. 23.7.2001 in OA No. 778/2000 on the same issue in the above referred cases is circulated for information and guidance.

  
(S. SREERAM)  
Dy. Director Finance (Estt.) III.,  
Railway Board.

DA: As above.

Copy to:

**EDPC-I, DPC, EDV(E), DS(D), EDE(Res), EDE, JS, JS(G), JS(E), Branches  
E(G), ERB-III, E(O) I, II, III & (CC), PC-III, IV, V, E(P&A) I, II & ERB-I.**

Copy to:

Smt. Ganga Murthy, Director (Pension),  
Department of Pension & Pensioners' Welfare,  
3rd Floor, Lok Nayak Bhavan, Khan Market,  
NEW DELHI-110 003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 21.03.2002

CORAM :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM  
and

THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No.19760 of 2001  
and W.M.P. No.29087 of 2001

1. Union of India, rep. by the  
Secretary, Railway Board,  
Rail Bhavan, New Delhi.

2. The Chief Personnel Officer,  
Southern Railway,  
Chennai-3.

.. Petitioners

vs.

1. The Registrar,  
Central Administrative Tribunal,  
Chennai Branch, Chennai-4.

2. S. Kalyanasundaran.

... Respondents

PRAYER : Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a Writ of Certiorari calling for the records of the first respondent relating to its judgment in O.A. No.778 of 2000 dated 23.7.2001, quash the same and pass suitable orders.

ORDER : This Writ Petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof and the counter and reply affidavits filed herein and the records relating to the impugned order made in O.A. No.778 of 2000 on the file of the first respondent dated 23.7.2001, and upon hearing the arguments of Mr. V.G. Suresh Kumar for Mr. V.R. Gopalan, Advocate for the petitioners, and of Mr. K.S. Ramananda, Advocate for the second respondent, the Court passed the following Order:-

O R D E R

( Order of the Court was delivered by P. SHANMUGAM, J. )

Respondents before the Central Administrative Tribunal namely the Union of India and the Chief Personnel Officer, Southern Railway are the petitioners before us.

2. The second respondent herein filed O.A. No.778 of 2000 before the Central Administrative Tribunal praying for



order to quash the reply given by the C.P.O. 79. Piy. Chennai under his letter No. 2150 SPO/Pne. 1.1.96 of 21.12.99 and to direct the authority to fix his pension on 1.1.1996 at Rs. 9,200/- in the scale of Rs. 18400-22400 being the pay of the post of ADRM which post the applicant held as a regular measure as per the guidelines given by the Government in connection with the revision of pension on account of the recommendations of the Fifth Pay Commission and also to pay the arrears. The Tribunal, by the impugned order dated 23.7.2001, granted the relief as prayed for. The writ petition is against this order.

3. The facts of the case are stated below :

The second respondent was holding the substantive post of Deputy Chief Signal and Telecommunication Engineer in the Construction Division of the Railways. By an office order dated 29.2.1988 issued by the General Manager, he was promoted to officiate as Additional Divisional Railway Manager, Madras service on the afternoon of 29.2.1988 due to superannuation. Subsequently, the second respondent retired from service on superannuation on 30.6.1988. As per the revised pension payment order dated 8.3.1999, his pay at the time of retirement was shown as Rs. 4,950/- (4500-4700) and as per the Fifth Pay Commission scale, it stood revised to Rs. 14300-18300. His pension as on 1.7.1996 was fixed at Rs. 7,950/-. As against this fixation, he filed a representation dated 15.4.1999 stating that the said revision was not in conformity with the Railway Board's orders since according to him, his pension should be fixed at 50% of the minimum of pay of Rs. 18,400/- in the revised pay scale namely Rs. 18400-500-22400 fixed for Additional Divisional Railway Manager because he held the post of ADRM(O) Madras on the date of his retirement namely 30.6.1988 and therefore, he requested that the pension should be fixed at Rs. 9,200/- + D.A. By a reply dated 21.12.1999, which was impugned in the O.A., the Chief Personnel Officer, Southern Railway rejected the said representation of the second respondent, holding that his pay scale at the time of retirement was Rs. 4500-5700 and the corresponding Fifth Pay Commission scale was Rs. 14300-18300. He was also informed that he was not promoted to the Senior Administrative Grade of Rs. 5900-6700 and therefore, he cannot be granted the corresponding scale of Rs. 18400-22400 as per the Fifth Pay Commission.

4. The Tribunal accepted the plea of the second respondent that his pension is entitled to be fixed in the equivalent replacement pay scale of the officiating post of ADRM. The Tribunal also held that the second respondent was empanelled for promotion to the grade of ADRM and according to the Tribunal, he was promoted to the post.

5. Learned counsel appearing on behalf of the petitioners assailed the order of the Tribunal, inter alia, contending that the second respondent was not promoted to the Senior Administrative Grade by the Railway Board and that he was only directed to officiate as ADRM. According to him, the second respondent is entitled to the scale of pay in the Selection Grade of Junior Administrative Officer, which post

he was holding. He further submitted that the post of ADRM was upgraded to the scale of Rs.5700-6700 (now revised Rs.18400-22400) only on 29.2.1988, whereas the second respondent had retired from service on 30.6.1988 itself, prior to the said upgradation and therefore, on the date when he retired from service, i.e. On 30.6.1988, the post of ADRM was only in the lower scale of pay. He further submitted that if the case of the second respondent is accepted, it will lead to innumerable such requests from persons similarly placed who were officiating in any higher post while in the lower scale of pay and it will lead to lot of problems to the Railways.

6. Learned counsel appearing on behalf of the second respondent, while opposing the writ petition, submits that the second respondent was promoted as ADRM and therefore, he was entitled to draw the scale as ADRM subsequently upgraded. According to him, the second respondent was empanelled for promotion and only thereafter, he was promoted to the post of ADRM and therefore, he should be given the equivalent replacement pay scale with effect from 1.1.1996 and his pension revised accordingly at Rs.7,200/- in the pay scale of Rs.18400-22400.

7. We have heard the counsel and considered the matter carefully.

8. From the above facts, it is clear that the second respondent was holding the substantive post of Deputy Chief Signal and Telecommunication Engineer in the Construction Division of the Railways and that he was ordered to officiate as ADRM by the General Manager on 29.2.1988. He was officiating in that capacity till 30.6.1988. It is not in dispute that the authority to promote him to the post of ADRM is the Railway Board and there was no order of promotion from the Railway Board. Inasmuch as the then ADRM was retiring on 29.2.1988, the second respondent was directed to officiate in that post from the same day. As a matter of fact, the Tribunal has observed as follows :

"But, it is astonishing to find as to how the order dated 29.2.1988 was issued promoting the applicant to the post of ADRM by the General Manager, Headquarters, Chennai. Surely, such an action cannot be taken without the concurrence of the Railway Board. There is no dispute on the fact that the General Manager is not the competent authority to promote the second respondent and that though the second respondent was empanelled, the selection and the appointment order has to be issued only by the Railway Board which has not been issued in the case of the second respondent."

Thus, it is clear that by this order, the General Manager cannot promote the second respondent to the post of ADRM and at the same time, direct him to officiate in the said post. Therefore, we are clear in our mind that the second respondent was not promoted and that he was not holding the post of ADRM in that capacity.

9. Inasmuch as the second respondent was not holding the post of ADRM on a regular basis in the Senior



Administrative Grade, he is not entitled to seek for a revision of upgraded pay of the ADRM of Rs.5900-5700. The second respondent has not sought for a declaration or for a direction to promote him to the post of ADRM and then fix the scale in that post and a further direction for fixing the revised scale of pay in the upgraded post. Having retired with the lien on the original post of Deputy Chief Signal and Telecommunication Engineer, the second respondent cannot take advantage of his officiation in the post of ADRM as if it is on a regular basis in order to claim the fixation of pension.

10. As per Rule 9(9) of the Fundamental Rules applicable to Central Government servants, a Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Central Government may, if it thinks fit, appoint a Government servant to hold a lien, which means that even in order to officiate, the authority competent to make substantive appointment alone can allow a Government servant to officiate in a vacant post. The Central Civil Services Pension Rules 1972, which are made applicable to the servants of the Railways, provide for the qualifying service under Rule 13. As per this rule, the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed when he is either substantively or officiating in a temporary capacity, provided that the officiating or temporary service is followed without interruption with the substantive post. In this case, the second respondent has not obtained a substantive appointment in the post of ADRM.

11. In ARUN KUMAR CHATTERJEE VS. SOUTH EASTERN RAILWAY (A.I.R. 1985 S.C. 482), while pointing out the distinction between the words a officiating and a temporary, their lordships held in reference to the Railway Establishment Manual that officiating in the ordinary connotation is generally used when a servant having held one post permanently or substantively is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on the substantive post, i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word temporary usually denotes a person appointed in civil service for the first time and the appointment is not permanent but temporary, i.e. for the time being without any right to the post. The Central Administrative Tribunal, in O.A. No.449 of 2000 dated 25.6.2001 in reference to another case relating to the Railways, under similar circumstances, has taken the view that the applicants who had retired before a post had been upgraded cannot be said to have held the post at the time of their superannuation. There should be a positive act of selection in the upgraded post. The Tribunal, in that case, repelled the argument that the appointment was a mere formality and that empanelment is sufficient. The said judgment squarely applies to the facts of this case, since admittedly the second respondent was not promoted to the post of ADRM.

12. It is further seen that the Railway Board has issued a clarification dated 20.9.2001 regarding the

post/scale of pay held by a retired Government servant thereby clarifying that the expression away in the revised scale of pay of the post last held by the pensioner shall mean the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of his retirement. Therefore, the claim of the second respondent that he was holding the post of ADRM and that on the upgradation of the post subsequently to his retirement, he is entitled to get his pension fixed to his scale of pay of the upgraded post cannot be sustained.

13. For all these reasons, we hold that the order of the Tribunal is unsustainable and liable to be set aside and is accordingly set aside. The pension of the second respondent is entitled to be fixed at 50% of the minimum in the corresponding Fifth Pay Commission scale of Rs.14300-18300 and not at Rs.18300-22400 as claimed by him. The writ petition is allowed. However, there will be no order as to costs.

Index : Yes/No

Internet : Yes/No  
ab

(P.S.M.J.)

(F.M.I.K.J.)

21st March, 2002.

Sd/-

Assistant Registrar

/ True Copy /

for Sub. Assistant Registrar *B. Sakthi Bani* 4/4/2002

To

1. The Secretary,  
Railway Board,  
Union of India,  
Rail Bhavan,  
New Delhi.

2. The Chief Personnel Officer,  
Southern Railway,  
Chennai-3.

3. The Registrar,  
The Central Administrative Tribunal,  
Chennai Branch,  
Chennai-104.

+One CC to Mr.V.R.Gopalan, Advocate  
payment of charges SR No.17611.

dv

P. SHANMUGAM, J.

and

F.M. IBRAHIM KALIFULLA, J.

Writ Petition No.19750 of 2001

D

0011460

WP 1/11/00/1/1

SP

SC

DV

HIGH COURT OF MADRAS	
S. R. No.	12611
Carbon Copy	2/3/2002
Application returned	200
Application submitted	200
Copy made ready	200
Copy delivered	200
V. Chandrasekhar	
Section Officer	
Current Section	