

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Writ Petition No.23405 of 2016

T.A.Ramanathan

... Petitioner

Vs

1. Union of India, Rep by its Secretary,
Ministry of Railways,
Railway Board, Government of India,
New Delhi.
2. The General Manager,
Southern Railway,
Park Town, Chennai 600 003.
3. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600 003.
4. The Divisional Railway Manager,
Tiruchchirappalli Division,
Southern Railway, Trichy.
5. The Divisional Personnel Officer,
Tiruchchirappalli Division,
Southern Railway, Trichy.
6. The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 6th respondent, made in O.A.No.663 of 2012, dated 27.04.2015, quash the same and consequently, direct the respondents 1 to 5, to revise and re-fix the basic pay of the petitioner at Rs.1350/- with effect from the date of independent duty as Goods Guard i.e., from 26.10.1988 and to extend all other consequential service and pecuniary benefits including retirement benefits arising thereto.

For petitioner : Mr.L.Chandrakumar
For respondents 1 to 5 : Mr.V.G.Sureshkumar

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this petition is to an order of the Central Administrative Tribunal, Madras Bench, Chennai, made in O.A.No.663 of 2012, dated 27.04.2015, by which, the Tribunal has dismissed the original application, seeking re-fixation of the basic pay of the petitioner, at Rs.1350/- with effect from the date of independent duty as Goods Guard i.e., from 26.10.1988, with consequential pay and other benefits.

2. Short facts leading to the filing of the instant writ petition are that petitioner joined Tiruchirappalli Division of Southern Railway as a Pro-Signaller in the scale of pay of Rs.260-430 on 14.11.1977 and after successful completion of training was absorbed as Signaller in the year 1978 and thereafter, promoted as Senior Signaller in the year 1986 in the scale of pay of Rs.1200-2040. However, since the posts of Signaller were rendered surplus, he was re-deployed as Goods Guard in the same scale of pay.

3. The petitioner has further submitted that after having followed the procedure for appointing him as Goods Guard, he was subjected to the prescribed training from 04.07.1988 to 03.08.1988, under Batch No.62 and after successful completion of the training, which consisted of both theory and on the job training, followed by written examination and viva voce, he was redeployed. On redeployment, he was promoted as Senior Goods Guard, without any promotional benefits and further, promoted as Passenger Guard in the year 1993 and in the year 2004, as Senior Passenger Guard, which was designated as Mail Guard in September, 2011.

4. It is the further case of the petitioner that when the post of Goods Guard carries higher responsibility and prior to redeployment, he was subjected to a positive act of selection, both written as well as viva-voce and he was also subjected to class room training at the Zonal Training Centre, Tiruchirappalli and on-line job training at different yards and therefore his basic pay should have been fixed at Rs.1,350/-, with effect from the date of independent duty as Goods Guard i.e., 26.10.1988, as provided in Rule 1313 (FR 22)(1)(a)(1) R-II of the Indian Railways Establishment Code.

5. The petitioner has further submitted that though the post of Senior Signaller to the post of Goods Guard was promotion, in terms of Para 211(1) of the Indian Railways Establishment Manual; that absorption in the post of Goods Guard was done, pursuant to a positive act of selection, as directed in Para 213 of the Indian Railways Establishment Manual and Railway Board's letter No.PC-IV/92/NC/JCM/4 (Committee 9), dated 24.05.1999, which enunciates, fixation of pay, under Rule 1313(1)(a)(1) on appointment, from one post to another, carrying identical scales of pay, when the promotional posts have duties and responsibilities of greater importance, than those of the feeder posts and both posts form the part of the AVC of the employee for further promotion to higher grade and movement from feeder category to promotional post, involves an act of selection (written exam with or without viva-voce, Trade Test or Aptitude Test etc.), he should have extended with the eligible statutory pay fixation.

6. It is the further case of the petitioner that one Mr.R.Pandian, similarly placed like him, preferred O.A.No.717 of 2006 before the Tribunal, which allowed the Original Application, against which, the respondents therein filed W.P.No.30151 of 2007, before this Court and the same was dismissed, vide order, dated 25.02.2010. Thereafter, Special Leave petition in S.L.P. (Civil) No.12847 of 2010 was preferred before the Hon'ble Supreme Court and same was dismissed on 30.08.2010.

7. The petitioner has further submitted that after several representations, the Divisional Personnel Manager, Tiruchchirapalli Division, Southern Railway, Trichy, 5th respondent herein, has sought clarification in March' 2000 from the Chief Personnel Officer, Southern Railway, Chennai, third respondent herein, who in turn, by placing reliance on the Circulars issued by the Railway Board in the years 1999 and 2001, rejected his claim and communicated the same to the petitioner on 06.11.2002. Thereafter, he sent representations, dated 14.09.2010 and 15.10.2011, to the General Manager, Southern Railway, Chennai, 2nd respondent herein and Secretary, Ministry of Railway, Railway Board, New Delhi, 1st respondent herein, respectively, seeking benefits of fixation on postings from Senior Signaller to Goods Guard, involving higher responsibilities and since there was no response from the said respondents, he preferred O.A.No.663 of 2012, before the Central Administrative Tribunal, Madras Bench, Chennai, for re-fixation of his basic pay at Rs.1350/-, with effect from the date of independent duty as Goods Guard i.e., from 26.10.1988, with consequential pay with other benefits.

8. Before the Tribunal, the respondents have filed a detailed reply and submitted that consequent on being rendered surplus in the cadre of Signallers, the petitioner, who was working as Senior Signaller, was posted as Goods Guard, with effect from 07.07.1988, in the scale of pay of Rs.1200-2040. The petitioner was sent for training from 04.07.1988 to 03.08.1988 and on successful completion of initial training course, he was posted as Goods Guard, on regular basis with effect from 21.10.1988. The petitioner took charge of independent duty on 26.10.1988 and hence, his pay was fixed at Rs.1290/-, with effect from 26.10.1988. On 15.10.1993, the petitioner was promoted as Passenger Guard in the scale of pay of Rs.1350 - 2200 and his pay was fixed at Rs.1560/-, w.e.f. 01.04.1994. Subsequently, on 01.04.1995, his pay was fixed at Rs.1600/- and on 01.04.1996, his pay was fixed at Rs.1640/-.

9. According to the respondents, petitioner's case is different from the case of Mr.R.Pandian, since in that case, Mr.R.Pandian was granted, pay benefit after subjecting him to a positive process of selection for appointment to the post of Goods Guard, for which, the Senior Ticket Collector post was a feeder category, whereas, in the case of the petitioner, he was rendered surplus in the post of Signaller and he was absorbed in the post of Goods Guard, without being subjected to the positive act of selection.

10. Before the Tribunal, while explaining the various pay fixation given to the petitioner, consequent to the implementation of the Vth and VIth Pay Commission recommendations, the respondents have pointed out that petitioner's pay has been regulated, as contained in Para 604 Vol I of IREM and this aspect was clearly explained in the Office Order No.Pl(O)/81188, dated 07.07.1988. As per the instructions contained in the Railway Board's letter No.E(NG) II/671RE1I58, dated 29.04.1968, on the subject of fixation of pay to the staff rendered surplus and absorbed in alternative posts, the pay of the employees, including the petitioner has been regularised, as per the instructions given therein, viz.,

"When staff recruited through Railway Recruitment Board are rendered surplus and when appointment is from the higher to a lower or equivalent alternative post, increments equal to the number of years of service rendered in the post from which the Railway servant has been rendered surplus, should be given in the post in which he has been absorbed. If the appointment is to an alternative post carrying an identical time scale, pay should be fixed under the normal rules".

The respondents have enclosed the relevant instructions, issued by the Railway Board and the Master Circular No.22, before the Tribunal.

11. After careful consideration of the rival contentions and considering the facts and circumstances of the case, the Central Administrative Tribunal, Madras Bench, Chennai, vide order, dated 27.04.2015, in O.A.No.663 of 2012, held as follows:

"7. We have carefully considered the rival contentions and perused the material on record. Admittedly the applicant while working as Senior Signaller in the scale of pay of Rs.1200-2040 was rendered surplus and as per the extant instructions he was absorbed in the equivalent post of Goods Guard carrying the same scale of pay and his pay was fixed at Rs.1290/- in the scale of Rs.1200-2040 with effect from 26.10.1988 in accordance with the rules and the instructions as given under the provisions of Para 604 of IREM. A reading of the relevant instructions as contained' in the Railway Board instructions E(NG)II/67/RE 1/58 dated 29.04.1968 in which it is stipulated that in the case of employees who are rendered surplus and absorbed in the alternate post and the appointment is to an alternate post carrying identical time scale, pay should be fixed under the normal rules. Again the same instructions are contained under Rule 2023 (FR 27) of IREC. Based on a careful reading of the pay fixation particulars furnished in the record we find that the respondents have correctly fixed the pay of the applicant in this case upon his absorption to the post of Goods Guard. The applicants contention that he was subjected to a positive act of selection is contrary to the facts and his contention that he has undergone prescribed training does not carry much force since any appointment in the alternate post would necessarily require the employee to undergo the prescribed training. Hence we find that the applicant's case cannot be equated with that of R.Pandian dealt with by this Tribunal in O.A.No.717/2006, who was subjected to positive act of selection for promotion to the post of Goods Guard. In the light of the above, we find that the contentions raised in the OA are devoid of merit. Accordingly the OA is dismissed."

12. Being aggrieved by the said order of the Tribunal dated

27.04.2015, the petitioner filed the instant writ petition, on the following grounds,

(i) Impugned denial of fixation of pay on petitioner's promotion to the post of Goods Guard, involving greater duties and responsibilities, is in gross violation of Rule 1313 (FR 22) (I) (a) (1) R-II of the Indian Railways Establishment Code, which stipulates that a Railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more, hence the order of the Hon'ble Tribunal is liable to be set aside.

(ii) In as much as the cadre of Signallers is one of the feeder categories for the promotional post of Goods Guard and Goods Guard post involves higher duties and responsibilities, denying due fixation of pay benefits upon absorption by way of redeployment from the post of Senior Signaller to the post of Goods Guard on qualification after the petitioner being subjected to a positive act of selection is in violation of Railway Board's letter No. PC-IV/ 89/ RSRP/2 dated 10.09.1992 and therefore, the order of the Tribunal is liable to be set aside.

(iii) Post of Goods Guard carries higher duties and responsibilities and the petitioner was subjected to a selection process; denying due benefits of fixation of pay upon appointment to the post of Goods Guard with higher responsibility is in gross violation of principles of Good Conscience, Fair-play, and, justice and therefore the order of the

Tribunal is liable to be set at naught.

(iv) Denial of benefits of pay fixation by the respondent, citing a Railway Board lette No.PC-IV/92/NC/JCM/4(Committee-9), dated 24.05.2009, is unsustainable in law, since in Para 4 of the said letter, it is postulated that if any other categories fulfilling the criteria mentioned in Para 1 of the letter i.e., "the promotional posts have duties and responsibilities of greater importance than those of the feeder posts and both posts form the part of the AVC of the employee for further promotion to higher grade and movement from feeder to promotional post involves an act of selection (written exam with or without viva-voce. Trade Test or Aptitude Test etc.)" come to the notice of the individual Railway Administrations, specific proposals containing the relevant details may be sent to Railway Board for further examination.

(v) Permitting benefit of pay fixation in terms of Rule 1313 (FR 22) (1) (a) (1) R-II of the Indian Railways Establishment Code, to certain categories and denying the same, to other similarly placed categories, tantamount to discrimination and therefore, impermissible in law.

(vi) Insofar as the order No.PC-IV/89/RSRP/2, dated 10.09.1992 issued by the Railway Board, under Rule 123 of the Establishment Code, providing for fixation of pay to those promoted from one post to another post and denying such benefit to the petitioner, is in violation of the mandatory provision made under Rule 123 of the Establishment Code. Facts in issue in the case of the petitioner and in the case of R.Pandian are similar, identical and therefore, the petitioner is privileged to avail the benefit of fixation, as ordered in favour of R.Pandian and denial of the same to the petitioner alone is denial of legitimate expectation and violative of Article 14 of the Constitution of India."

13. Heard the learned counsel for the parties and perused the materials available on record.

14. The main grievance of the writ petitioner is that his basic pay ought to have been fixed under Rule 1313(FR 22)(1)(a)(1) R-II of the Indian Railways Establishment Code, on being absorbed as Goods Guard at Rs.1,350/- and not Rs.1,200/- as fixed now under the provisions of Paragraph 604 of the Indian Railways Establishment Manual Volume I.

15. Before we delve into the facts of the instant case, it is useful to refer to the above said provisions viz., Rule 1313(FR 22)(1)(a)(1) R-II of the Indian Railways Establishment Code and Paragraph 604 of the Indian Railways Establishment Manual Volume I. Rule 1313(FR 22)(1)(a)(1) R-II (erstwhile FR 22 C) of the Indian Railways Establishment Code reads thus:

"Where a Railway servant holding a post, other than a tenure post, in a substantive, temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis, the Railway servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Railway servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty-five, whichever is more."

Paragraph 604 of the Indian Railways Establishment Manual Volume I reads as under:

"604. In case of transfers from one railway department to another including transfer from a Government department, following general principles should be observed:-

(a) TRANSFER FROM A HIGHER TO A LOWER POST

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(a)(i) Temporary employees.-In such cases the benefit of completed years of service in the higher post may be given for purposes of advance increments in the lower post to which railway servant is appointed, provided, of course, that does not exceed the pay drawn in the higher post at the time of transfer. In case the appointment to the lower post involves appointment to a regular cadre with immediate or future prospects of absorption as a permanent railway servant, care should be taken to see that grant of advance increments does not come into conflict with the pay fixed for other railway servants in the cadre. In such cases, normally, it may be preferable to fix the pay at the minimum of the time-scale, and to grant, subject to the approval of the Railway Board, a personal pay equal to the appropriate number of increments instead of fixing the pay at a higher stage in the time-scale, the personal pay being absorbed in future increments.

(ii) PERMANENT GOVERNMENT SERVANTS- In the case of permanent Government servants officiating in higher post and transferred to officiate in railway posts which are lower than the previous officiating posts, the previous

officiating service in the higher posts should be allowed to count for increments.

(b) TRANSFER OF TEMPORARY GOVERNMENT SERVANTS FROM ONE POST TO ANOTHER EQUIVALENT POST:- In such cases temporary Government servants may be given the advantage of completed years of service in the former posts for higher fixation of pay in the latter, provided that there is a reasonable prospect for the former posts to continue for a longer period and that the Government servant concerned would have continued to hold that post. In this case also, if the transfer is to a regular post in which chances of immediate or ultimate confirmation exist, it may be necessary in the interest of service of other railway servants to grant personal pay instead of a higher start. This personal pay will be absorbed in future increments."

16. Further, it is also useful to refer to paragraph No.19 of the Master Circular No.22, which deals with pay of Railway servants rendered surplus and absorbed in alternative posts. The said Paragraph No.19 reads thus:

"19. The pay of Railway servants rendered surplus and absorbed in alternative posts is fixed under the normal operation of rules and where the normal rules do not give sufficient relief, by grant of advance increments under Rule 2023 (F.R. 27) - R II.

Since the above orders do not provide sufficient relief in fixation of pay to the staff rendered surplus and absorbed in alternative posts, it has been decided by the Board as under:-

1. When staff recruited through RRB are rendered surplus:

a. When appointment is from a higher to a lower or equivalent alternative post:

Increments equal to the number of years of service rendered in the post from which the Railway servant has been rendered surplus should be given in the post in which he has been absorbed.

b. If the appointment is to an alternative post carrying an identical time scale:

Pay should be fixed under the normal

rules."

17. Keeping in mind the above said provisions, let us now consider the facts involved in the instant case. It can be seen from the records that the petitioner joined Tiruchirappalli Division of Southern Railway as a Pro-Signaller in the scale of pay of Rs.260-430 on 14.11.1977 and after successful training absorbed as Signaller in the year 1978. Subsequently, he was promoted as Senior Signaller in the year 1986 in the scale of pay of Rs.1200-2040.

18. As things stood thus, in the year 1986, posts of Signallers were rendered surplus and the petitioner who was working as a Senior Signaller was absorbed and posted as Goods Guard in the scale of pay of Rs.1200-2040 vide Southern Railway Office Order No.P1(O)/82/88, dated 07.07.1988. Paragraph Nos.3, 10 and 11, which are relevant, is extracted hereunder:

"3. The following Head Signallers in scale Rs.1400-2300 and Sr.Signallers in scale Rs.1200-2040 are posted as Goods Guards in scale Rs.1200-2040. They will be sent for training from 4.7.88 at ZTS/TRJ and will be posted to the stations on successful completion of training. They are medically found fit in class A.2.

....xxx....

6. TT.1229 Sri.T.A.Ramanathan Sr.Signaller/TRJ
2040

1200-

....xxx....

10. They will all rank junior most in the category/grade in which they are absorbed to all permanent, temporary/officiating staff without prejudice to their inter se seniority in signallers category, on the date of their absorption to the particular category and grade.

11. The fixation of pay in the absorbing grade will be regulated under the provisions of para 604 of IRE. Manual by granting increments to the extant of service in equivalent and higher grade vis-a-vis the grade in which they are absorbed, subject to the maximum of the scale of the absorbing grade not being exceeded. In case of staff who are confirmed in any particular grade, their substantive pay will be protected subject to the maximum of the scale of the absorbing grade not being exceeded."

19. Thereafter, the petitioner was sent for training from 04.07.1988 to 03.08.1988 and on completion of initial training course, he was posted as Goods Guard on regular basis with effect from 20.10.1988. The petitioner took charge of independent duty on 26.10.1988 and his pay was fixed at Rs.1290/- with effect from 26.10.1988. On 15.10.1993, he was promoted as Passenger Guard in the scale of pay of Rs.1350-2200 and his pay was fixed at Rs.1560/- w.e.f. 01.04.1994. Subsequently, on 01.04.1995, his pay was fixed at Rs.1,600/- and on 01.04.1996, his pay was fixed at Rs.1,640/-.

20. On 10.06.2007, the petitioner, sent a representation to the fifth respondent, seeking to fix his pay in terms of Rule 1313 FR 22(1)(a)(1) consequent to his absorption as Goods Guard from Senior Signaller. The fifth respondent vide his letter dated 23.08.2007, sent a reply stating that the benefit of pay fixation under Rule 1313 (FR 22) (1)(a)(1) is admissible only in the case of promotions ordered as Goods Guard in scale of Rs.1200-2040 (RPS) from the feeder category viz., Shunting Master / Senior Train Clerk / Switch Man in scale of Rs.1200-2040 (RPS). The said letter dated 23.08.2007 is extracted hereunder:

"Your representation dated 01.06.2007 has been examined in detail. It has been found that consequent to your absorption as Goods Guard from Sr.Signaller, your request to fix your pay in terms of Rule 1313 FR22(1)(a)(1) has already been dealt in detail and you have been replied vide this office letter No.T/P.481/II/Gds/TNCs dated 06.11.2002.

In terms of Railway Board's letter No.PC-IV/99/07/101-55-NDLS, dated 24.05.1999 and No.PC-IV/92/NC/JCM/4 Committee-9, dated 19.10.2001, the benefit of pay fixation under Rule 1313 (FR 22) (1)(a)(1) is admissible only in the case of promotions ordered as Goods Guard in scale Rs.1200-2040 (RPS) from Shunting Master / Sr.Train Clerk / Switchman in scale Rs.1200-2040 (RPS).

In view of the above, it is again advised that your request for fixation of pay under Rule (FR 22) (1)(a)(1) is not admissible."

21. From the above it is clear that the petitioner was absorbed as Goods Guard in an alternative job without undergoing any selection procedure consisting of written examination and perusal of records. As the post of Goods Guard requires training, the petitioner attended mandatory training from 04.07.1988 to 25.10.1988, at Zonal Training School,

Tiruchirappalli. It is also clear from the material on record that the petitioner was posted as Goods Guard in scale of Rs.1200-2040 as per his willingness. The petitioner was not selected through the positive act of selection and therefore his pay has been regulated as per the provisions contained in Paragraph 604 of the Indian Railway Establishment Manual Volume I viz., granting increments to the extent of service in equivalent and higher grade viz-a-viz the grade in which the petitioner was absorbed, subject to the maximum of the scale of the absorbing grade not being exceeded. Further, in case of staff, who are confirmed in any particular grade, their substantive pay was protected subject to the maximum of the scale of the absorbing grade not being exceeded. Further as per the instructions contained in Railway Board's letter No.E(NG) II/67/RE 1/58, dated 29.04.1968, when a staff recruited through Railway Recruitment Board are rendered surplus and when appointment is from the higher to a lower or equivalent alternative post, increments equal to the number of years of service rendered in the post from which the Railway servant has been rendered surplus, should be given in the post in which he has been absorbed. If the appointment is to an alternative post carrying an identical time scale, pay should be fixed under the normal rules. Thus, the petitioner's pay was correctly fixed in scale of Rs.1200-2040 following the appropriate rules.

22. Further the respondents have also informed the petitioner that in terms of the Railway Board's letter No.PC/IV/99/07/101-55-NDLS, dated 24.05.1999 and PC/IV.92/MC-/JCM/4 Committee-9, dated 19.10.2011, the benefit of pay fixation under Rule No.1313 (FR22) (1) (a) (1) R-II, is admissible only in the case of promotion ordered as Goods Guard in scale of Rs.1200-2040 (RPS) from Shunting Master / Senior Train Clerk / Switch man in scale of pay of Rs.1200-2040 (RPS) and therefore the petitioner's request for fixation of pay under the above Rule is not admissible.

23. Thus, we are of the considered view that the fixation of pay of the petitioner under the provisions of Para 604 of IREM and the Railway Board's instructions in E(NG)II/67/RE 1/58 dated 29.04.1968, is correct, as the petitioner was absorbed to the post of Goods Guard on being rendered surplus and not promoted to the post of Goods Guard after being subjected to the positive act of selection. Therefore, the prayer of the petitioner to extend the promotional benefits as given in Rule 1313 of IREC (FR 22) (1) (a) (1) cannot be countenanced and the same is liable to be rejected.

24. Before the Tribunal and this Court, reliance was heavily placed on R.Pandian's case by the appellant. The case of Mr.R.Pandian was that he was granted promotion from the post of

Station Master Grade-II to the post of Section Controller after subjecting him to a positive process of selection involving written examination and verification of records. As his pay was not fixed under Rule 1313(FR 22) (1)(a)(1) R-II of the IREC, he filed O.A.No.717 of 2006 before the Central Administrative Tribunal, Chennai and the Tribunal directed to fix the pay of Mr.R.Pandian under Rule 1313(FR 22) (1)(a)(1) R-II of the IREC. Aggrieved over the same, Union of India, the respondent therein, filed a writ petition before this Court in W.P.No.30151 of 2007 and a Hon'ble Division Bench of this Court concurred with the views taken by the Tribunal and dismissed the writ petition. In paragraph No.15 the Hon'ble Division Bench has held as follows:

"15. But, same is not the situation in the case on hand. Here, though the first respondent/employee was granted 'promotion', after subjecting him to a process of selection, to a post carrying higher duties and responsibilities, just for the reason that both the posts are carrying the same scale of pay, he has been denied the monetary benefit attached to such a 'promotion'. The reasons assigned by the Administration that their proposal to grant monetary benefits to the employee has not been approved or recommended by the Railway Board cannot be appreciated, since such a rejection made on the part of the Railway Board does not seem to be on sound principles of service jurisprudence."

25. Thereafter, the matter was taken up before the Hon'ble Supreme Court by filing S.L.P.(Civil) No.12847 of 2010, challenging the order of this Court. The Hon'ble Supreme Court dismissed the special leave petition. The operative portion of the said order reads as follows:

"In our view, the Tribunal had rightly interpreted Rule 1313 of the Railway Establishment Code and directed that the pay of the respondent, who had been promoted from the post of Station Master Grade-II to the post of Section Controller be re-fixed from the date he assumed higher responsibilities, i.e. 23.11.2003 and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. The special leave petition is accordingly dismissed."

26. According to us, the case of Mr.R.Pandian is clearly distinguishable on facts. In that case, Mr.R.Pandian was

promoted to the post of Section Controller from the post of Station Master Grade-II, which is a feeder category to the post of Section Controller after subjecting him to a positive process of selection involving written examination and verification of records. But in the instant case, as discussed and concluded in the earlier part of this order, the appellant, who was working as Senior Signaller was not promoted to the post of Goods Guard. There was no selection conducted, he was merely absorbed on being rendered surplus and provided with alternative post viz., Goods Guard, carrying identical scale of pay. The post of Senior Signaller is not a feeder category to the post of Goods Guard. Therefore, the case of Mr.R.Pandian is clearly distinguishable and will not apply to the facts and circumstances of the instant case.

27. In view of the foregoing discussion, we do not find any infirmity or illegality in the order of the Tribunal warranting interference at the hands of this Court. Accordingly, the impugned order of the Central Administrative Tribunal, Chennai made in O.A.No.663 of 2012, dated 27.04.2015, is sustained.

In the result, writ petition fails and accordingly it is dismissed. No order as to costs.

skm

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
Union of India,
Ministry of Railways,
Railway Board, Government
of India, New Delhi.

2. The General Manager,
Southern Railway,
Park town,
Chennai - 600 003.

3. The Chief Personnel Officer,
Southern Railway,
park Town
Chennai - 600 003.

4. The Divisional Railway Manager,
Trichy Division,
Southern Railway, Trichy.

5. The Divisional Personal Officer,
Trichy Division, Southern Railway,
Trichy.

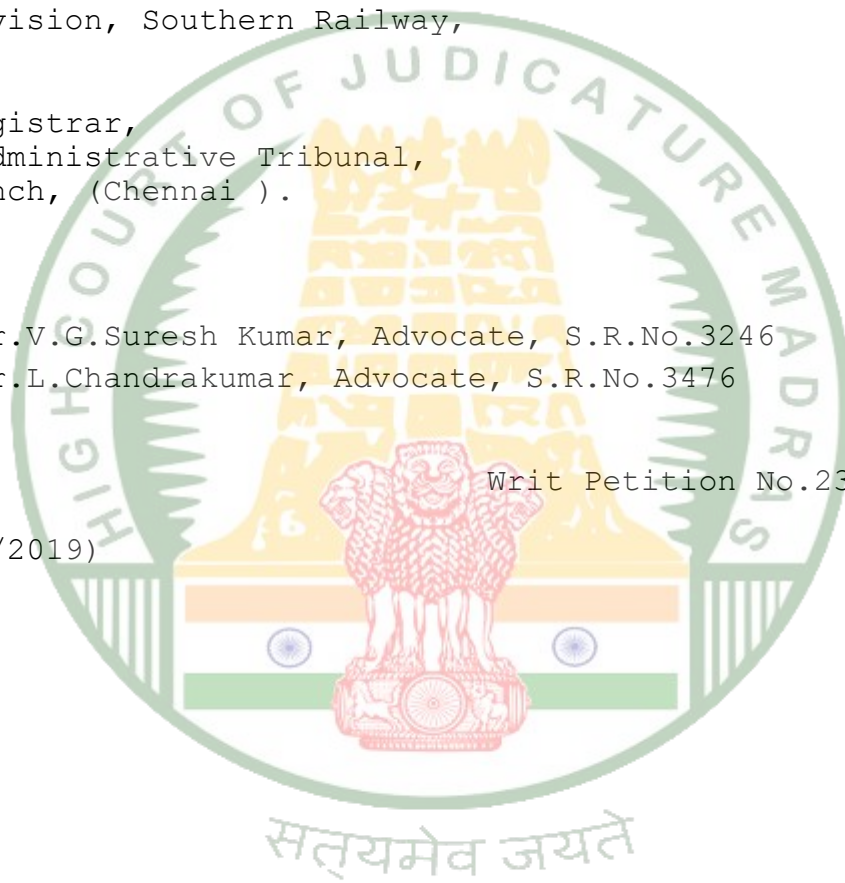
6. The Registrar,
Central Administrative Tribunal,
Madras Bench, (Chennai).

+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No.3246

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.3476

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