

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS:BILASPUR

Original Application No.203/00283/2017

Bilaspur, this Tuesday, the 19th day of November, 2019

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE SHRI B.V. SUDHAKAR, ADMINISTRATIVE MEMBER

Karan Singh Thakur
S/o Late Gokul Singh Thakur
Aged 67 yrs. Ex. PM-A SEC Rly.
BMY Charoda R/o Mahamai Para
In front of Deepak Provision
Ward No.26 Rajnandgaon
District Rajnandgaon 491441 (CG)

-Applicant

(By Advocate-**Shri B.P. Rao**)

V e r s u s

1. Union of India,
Through : The General Manager
S.E.C. Railway, Bilaspur Zone
Headquarter's Office
Bilaspur 495004 (CG)

2. The Sr. Divisional Personnel Officer
S.E.C. Railway, Raipur Division
DRM's Office Raipur 492004

3. The Sr. Divisional Finance Manager
S.E.C. Railway Raipur Division
DRM's Office Raipur 492004

- Respondents

(By Advocate-**Shri R.N. Pusty**)

ORDER (Oral)

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the action of the respondent-department for non revising of his pension as per 6th and 7th Pay Commission and letter dated 09.03.2017 (Annexure A/10) whereby his request of pay fixed medical allowance has been regretted.

2. The applicant has prayed for the following reliefs:-

“8.1 That, the Hon’ble Tribunal be pleased to call for records of Applicant’s case from the possession of the respondents for its kind perusal and to decide the grievance of the poor applicant.

8.2 That, Hon’ble Tribunal be pleased to pass an Order, directing the respondents to revise the Applicant’s Pension as per RBE No.181/2008 under Sixth Pay Commission and also under Seventh Pay Commission Recommendations, along with Arrears with 12% interest thereon.

8.3 That, the Hon’ble Tribunal be pleased to set aside the Respondents Letter dated 09.03.2007 (Annexure A-10) and to pass any Order, directing the respondents to grant Fixed Medical Allowance to the Applicant from 3.8.2004 onwards in terms of relevant Railway Board Orders RBE No.65/1999, RBE No.92/2010, RBE No.146/2014 along with Arrears along with 12% Interest thereon.”

3. Precisely the case of the applicant is that the applicant was appointed as Sub-Porter in the Railways on 08.06.1971 and was regularized, and elevated to Pointsman-A (PM-A) and was posted under Chief Yard Master, Bhilai Marshling Yard, Bhilai. On account of mental imbalance and illness, applicant remained absent from duties and was taken treatment from private doctors, but he was treated as unauthorized absent from 05.03.2002 to 21.11.2002 and after issuance of charge sheet vide memo dated 18.02.2003 and ex-parte departmental enquiry was conducted and the applicant was imposed with a punishment of removal from service without sanction of any compassionate allowance vide punishment order dated 02.08.2004. A copy of punishment order was not served properly but it has been pasted on the notice board. A copy of punishment order has been provided to the applicant on 24.11.2014 after making representation under Right to Information Act, which is annexed as Annexure

A/1. The applicant preferred statutory appeal on 07.12.2014 whereby applicant has admitted the alleged charge of remaining unauthorized absent and in view of his 33 years long service with the Railways, requested for modification of punishment so that he can be entitled for compassionate allowance/pension. A copy of applicant's appeal dated 07.12.2014 is annexed as Annexure A-2. After considering the appeal, the respondent No.2 has modified the punishment of Removal from service without sanction of any compassionate allowance into compulsory retirement w.e.f.02.08.2004. A copy of service discharge memo dated 30.11.2015 is annexed at Annexure A/3. Thereafter the respondents released Pension Payment Order dated 30.04.2016 but with a mistake instead to mention "Retired Railway Servant/Pensioner" , "Deceased Railway Servant" has been mentioned as such pension and other service benefits have not been released by Pension Payment Authority (i.e. Bank). Thus on pointing out this mistake the respondent No.3 issued revised PPO dated

03.10.2016. A copy of aforesaid PPO dated 30.04.2016 and PPO dated 02.05.2016 are filed at Annexure A/4 and A/5.

4. On an application under RTI Act, the Pension Payment Authority (Bank) vide letter dated 25.11.2016 informed the applicant that he has been paid Pension w.e.f.03.08.2004 along with arrears upto 30.09.2016 i.e. 6,13,552/- less TDS Rs.565447/- has been paid upto 30.09.2016, and it is also informed in that letter applicant's basic pension as on 01.01.2006 was Rs.2943/-. A copy of aforesaid letter dated 25.11.2016 is annexed as Annexure A/6. On receiving the said information the applicant moved his representations on 01.02.2007 addressed to respondents Nos.2 and 3 requesting therein that as his pension was fixed as per 5th Pay Commission pay scale therefore prayed for revision of his pension as per 6th and 7th Pay Commission revisions. A copy of representation dated 01.02.2017 is annexed at Annexure A/7. It has been further submitted by the applicant that although in the PPO

dated 30.04.2006 (Annexure A/4) there is no mention regarding grant of fixed medical allowance, but in the subsequent PPO dated 02.05.2016 (Annexure A/5) by mentioning that the applicant has not opted for fixed medical allowance and opted for REHLS with OPD facilities, denied for payment of fixed medical allowance to the applicant. Thereafter applicant moved an application dated 03.03.2007 stating therein that he has not filled up the pension papers except putting his signature on the specified place and pension papers were filled up by Welfare Inspector, who under misguidance might have stated that applicant has not opted for FMA and opted for REHLS with OPD facilities, but the fact that applicant never said to the Welfare Inspector to that effect and as he never opted for REHLS with OPD facilities and thus by submitting his fresh relevant undertaking for fixed medical allowance, requested for payment of FMA w.e.f.03.08.2014. A copy of applicant's application dated 03.03.2017 along with undertaking for FMA is filed as

Annexure A/8 and Annexure A/9. The said application has been disposed of by the respondents vide office letter dated 09.03.2017 stating therein that applicant has given undertaking that he will not willing to avail Fixed Medical Allowance as such same is mentioned in the PPO and in terms of Estt. Rule No.100/2002 unless a change in residential address other than mentioned in the PPO, the pensioner is not entitled for fixed medical allowance and therefore in case if there is any change of address of the applicant, then on producing relevant documents necessary action may be taken at that time. A copy of letter dated 09.03.2017 is annexed as Annexure A/10.

5. The respondents have filed their reply to the Original Application. It has been submitted by the replying respondents that the applicant while working to the post of Pointsman (PM-A) under Chief Yard Master Bhilai Marshlingh Yard BMY the applicant was imposed punishment removal from Railway Service without grant of compassionate allowance for his misconduct of

unauthorized absent. Further on appeal to the appellate authority the punishment removal from service was modified into compulsory retirement w.e.f.02.08.2004. On 30.04.2016 P.P.O. was issued by fixing pension Rs.2943/- reduced pension Rs.1943/- after considering 40% commutation value of pension. While issuing the said P.P.O. inadvertently it was mentioned as deceased employee instead of compulsory retirement. Accordingly after rectifying the error on 02.05.2016 revised PPO with a clear endorsement as compulsory retirement w.e.f. 02.08.2004 was issued in favour of the applicant. A copy of said PPO date 02.05.2016 is annexed at Annexure R/1. Thereafter again the pension of the applicant was revised as per the extent rules treating the case of the applicant Pre-2006 retirement. According to the recommendation of 6th Pay Commission on 07.04.2017 revised PPO was issued in favour of the applicant revising the pension from Rs.2943/- to Rs.4435/-. Regarding the claim of the applicant for fixing his pension according to the

recommendation of 7th Pay Commission, the respondents submitted that the case of the applicant is under process with other retired railway employee it will be sorted out as per extant rule. Regarding fixed medical allowance the respondent-department has submitted that the applicant has not opted for fixed medical allowance and has opted for REHLS with OPD facilities and was misguided by the Staff Welfare is absolutely incorrect. The respondents have specifically submitted that before filling up the said prescribed format the concerned Staff Welfare Inspector has informed him about the schemes of REHLS i.e. with OPD/without OPD. The prescribed option form was exercised by the applicant in present of his immediate incharge i.e. (unit supervisor) and the same was countersigned by his controlling officer for availing with OPD facilities. It is upon on the beneficiary who has to exercise the option for availing benefits under the said scheme. The applicant has not made any appeal or objection to the Railway respondent before its finalization.

A copy of option exercised by the applicant is annexed as Annexure R/2. Since the applicant did not opt for without OPD facilities under RELHS scheme. The applicant might have interested in getting the benefit of with-OPD facility and there is no justifiable and genuine reasoning made against his claim for not exercising option without OPD facility. Now the applicant cannot claim for change of benefits of without OPD benefit which is against the instruction contained in RBE No.115/99 circulated in Estt. Sr. No.115/99.

6. Heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

7. From the pleadings it is admitted that the applicant was appointed as Sub Porter in the Railways and thereafter was regularized and elevated to Pointsman-A (PM-A) and was posted under the Chief Yard Master Bhilai Marshling Yard Bhilai. It is also admitted fact that the charge sheet was served upon the applicant and ex-parte enquiry was

done and the applicant was imposed with the punishment of removal from service without sanctioning of compassionate allowance vide order dated 02.08.2004. It is also admitted fact that the applicant has filed statutory appeal whereby the punishment order was modified into compulsory retirement w.e.f.02.08.2004. It is also admitted by both the parties that earlier PPO issued on 30.04.2016 but later on the mistake was rectified and fresh PPO dated 03.10.2016 was issued.

8. In the instant case the main issue for consideration before us is regarding the grant of fixed medical allowances.

9. The contention of the applicant is that in PPO dated 30.04.2016 (Annexure A/4), there is no mention regarding the grant of fixed medical allowance. But in substance PPO dated 02.05.2016 it has been mentioned that the retired employee has not opted for fixed medical allowance and opted for REHLS with OPD which amounts to denial of fixed medical allowances to the applicant. The

contention of the applicant is that the applicant has not filled up the pension paper except putting his signature on the specified place and pension papers were filled up by Welfare Inspector who under misguidance might have stated that applicant has not opted for FMA and opted for REHLS with OPD facilities. It has been further submitted by the replying respondents that before filling up the said prescribed format the concerned staff Welfare Inspector has informed him about the schemes of REHLS i.e. With OPD/without OPD. As the applicant has opted for REHLS with OPD facilities and not opted FMA he had not made any appeal or objection to the railway respondent before its finalization.

10. The contention putforth by the applicant that he has only signed the document is unsustainable in the eye of law especially when this document has been signed by the applicant in person, which has been countersigned by the controlling officer. So Annexure R/2 cannot be doubted. Moreover, this document has been prepared by the

authority during the course of the appointment of the applicant and it has inference of correctness unless otherwise proved by the alleging incumbent.

11. The contention of the applicant is that the Medical card was issued to the applicant on 28.01.2019 (Annexure A/20). Therefore, the question of availing any medical facility by the applicant from railway hospital does not arise. The applicant placed reliance on the RBE No.168/2009. The relevant para is as under:-

“3. Further, FMA and arrears of FMA would continue to be paid, earlier, to pensioners/ family pensioners only after submission of the enclosed undertaking form to the Pension Disbursing Authority (PDA) thereby implying that fulfillment of the following two conditions is mandatory for becoming admissible for FMA:-

(i) the pensioner/family pensioner is residing beyond 2.5 kms from the nearest health unit;

(ii) the pensioner/family pensioner is not availing the facility of OPD (except in cases of chronic diseases as mentioned in para 2 above).”

12. As per this Annexure A/19 if the pensioner /family pensioner resides beyond 2.5 km from the nearest health unit and he has not availed the facility of OPD except in chronic diseases, fixed medical allowance and arrear of

FMA would continue to be paid, earlier, to pensioners/family pensioners. From the pleadings the applicant is residing at Rajnandgaon where there is no railway hospital situated. As per Annexure A/17 the hospital at the nearest railway hospital is at Dongargarh which is 30 km from the Rajnandgaon. So the case of the applicant is covered under RBE No.168/2019. So, the arrear fixed medical allowance should be paid to the applicant w.e.f. 03.08.2004 (from the date of modification of punishment order).

13. Resultantly, this Original Application is allowed. Respondents are directed to pay the arrears of FMA w.e.f.03.08.2004 onwards to the applicant, within a period of 60 days from the date of receipt of a certified copy of this order, failing which the applicant shall be entitled for interest @8% . No costs.

(B.V. Sudhakar)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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