

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 857 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Devendra Nag, aged about 34 years, S/o Late Laba Nag, At – Talbhatapada, PO/PS – Khetarajpur, Dist.- Sambalpur – 768003 at present working as Jr. Gate Keeper, S.S.E., P.Way, Sambalpur.

.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Samanta Vihar, Rail Vihar, Chandrasekharpur, Bhubaneswar.
2. The Divisional Railway Manager, East Coast Railway, Sambalpur Division, Sambalpur.
3. The Divisional Railway Manager (P), East Coast Railway, Sambalpur Division, Sambalpur.
4. The Senior Section Engineer (SSE), East Coast Railway, P.Way, Sambalpur Division, Sambalpur.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.B.B.Patnaik, counsel

Heard & reserved on : 2.1.2020

Order on : 24.1.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985 has prayed for the following reliefs :-

- “(i) To quash the order dt. 10.3.2016 under Annexure A/8.
- (ii) To direct the Respondents to disburse the Grade pay of Rs.1800/- with consequential allowances in pay band of Rs.5200-20,200/- to the applicant retrospectively, when he acquired the induction training course.
- (iii) To pass any other order(s), direction(s) as this Hon'ble Court may deem fit and proper.”

2. The applicant had filed the OA No. 837/2010 claiming compassionate appointment and the said OA was disposed of vide order dated 3.2.2012 (Annexure-A/1) directing the respondents to consider the case. Accordingly,

the applicant was appointed on compassionate ground as a trainee sub-Gate Keeper without Grade Pay till he acquired the requisite qualifications or skills by way of retraining vide order dated 30.5.2012 (Annexure-A/2) specifying the condition as under (vide Note 1 of the order):-

“The above candidate will not be placed in regular Pay Band of Rs. 5200-20200/- (Grade Pay Rs. 1800) till he acquire the requisite qualification or skills by way of re-training etc. and the period of service spent in (-)1S pay will not be counted for any purpose. (Ref. Estt.Srl.No. 69/2012)”

Another order dated 16/17.07.2012 (Annexure-A/3) was issued thereafter, modifying the above condition as under:-

“The above candidate will not be placed in regular Pay Band of Rs. 5200-20200/- (Grade Pay Rs. 1800) till he acquire the requisite qualification and the period of service spent in (-)1S pay will not be counted for any purpose. (Ref. Estt.Srl.No. 69/2012)”

Thus the option of re-training in lieu of requisite qualification was removed in the order at Annexure-A/3. The applicant stated in the OA that he had to join accepting the above condition under compulsion due to indigent conditions and he completed the training on 13.12.2012 vide the certificate at Annexure-A/4 series of the OA.

3. The applicant submitted representation on 15.5.2013 and then on 3.12.2014 (Annexure-A/5 series) requesting for Grade Pay alongwith the Pay Band. Then he filed the OA No. 50/2016 which was disposed of with a direction to the respondents to consider and dispose of the representation vide order dated 4.2.2016. In compliance, the respondents have passed the order dated 10.3.2016 (Annexure-A/8) rejecting the applicant's case on the ground since the applicant did not possess the minimum educational qualification for the post, he was appointed as a Trainee with the Pay Band with no Grade Pay as per the Railway Board circular dated 9.12.2011 RBE No. 166/2011. Since the applicant failed to produce the requisite certificate, the request for Grade Pay was not allowed by the respondents.

4. The applicant has impugned the order dated 10.3.2016 (A/8) on the ground in the OA that as per the guidelines for compassionate appointment, he should have been allowed the Grade Pay after completion of the induction training and not allowing him Grade Pay was illegal. It is averred that the applicant completed training on 13.12.2012 after which the Grade Pay should have been allowed. It is also averred that the action of the respondents has resulted in violation of Article 14 and 16 of the Constitution of India.

5. Counter filed by the respondents opposing the OA states at para 10 as under:-

“The appointment of the applicant has been approved by the General Manager with relaxation in minimum educational qualification on consideration

of the exceptional circumstances in terms of provision in RBE No. 166/2011 (Railway Board's letter No. E(NG)-II/2011/RR-1/11 dated 09.12.2011) and his posting has been made accordingly. Further, as reiterated vide Para-5 of RBE No. 122/2014, persons engaged with relaxed qualification in terms of stipulation made in Railway Board's letter No.E(NG)-II/2011/RR-1/11 dated 09.12.2011 (i.e. RBE No. 166/2011), with remain in (-1S) pay band and continue to be governed under the provision contained in Para-2 of letter issued under RBE No. 166/2011 dated 09.12.2011 till they acquire the prescribed qualification.

Therefore, the applicant's appointment as a Trainee Gate Keeper in (-1S) without grade pay was correct as per extant rules. However, now the applicant has acquired the requisite minimum qualification of 10th pass which is a requisite to place a Railway employee in GP 1800/-. As per ADEN/ECoRly/SBP's O.O No. 54/2017 dated 10.10.2017, (Annexure-R/1) the applicant has been sanctioned with GP Rs.1800/- and has been placed at pay band Rs.5200-20,200/- (In Level-1 under 7th PC) in terms of RBE No. 208/2010. Accordingly, the pay of the applicant has also been re-casted as PB Rs.5200/-20,200/- with GP Rs.1800/- and fixation has also been as per 7th pay Commission with Level-1, Basic pay Rs.18,000/- w.e.f. 20.02.2017. The fixation of pay of GP Rs.1800/- has also been made entry in the Service Book of the applicant."

6. No Rejoinder has been filed by the applicant. Heard learned counsel for the applicant and the respondents who reiterated the contentions in the respective pleadings. A written note has also been filed by the applicant's counsel citing the following judgments, copies of which have been enclosed:-

- i) Nazim Ahmad -vs- King Emperor [AIR 1936 Privy Council 253(2)]
- ii) Y.V.Rangaiah & Ors. -vs- J. Sreenivasa Rao & Ors. AND State of Andhra Pradesh & Ors. -vs- J.Sreenivasa Rao & Ors. [AIR 1983 SC 852]
- iii) P.Mahendran & ors. -vs- State of Karnataka & Ors. AND Matteesh Y.Annigeri & Ors. -vs- State of Karnataka & Ors. [AIR 1990 SC 405]
- iv) Dr. Smrutisudha Pattnaik -vs- Acharya Harihar Regional Cancer Centre, Cuttack & Ors. [2017 (Supp.-1) OLR-607]

It is stated in the written note of the applicant that after joining of the applicant on 2.6.2012, the amendment to the appointment order by the order dated 16/17.07.2012 (A/3) is not permissible under law and rules. It is stated that the rule cited in the Counter is applicable for the direct recruitment through advertisement, but not for compassionate appointment.

7. The applicant's counsel has cited the judgment in the case of Nazir Ahmad (supra) to state that when the applicant joined on compassionate appointment, his terms and conditions cannot be modified by the order at Annexure-A/3 to the disadvantage of the applicant. The cited case was the appeal against a criminal conviction in which the dispute related to the manner of recording the confession of the accused which was not done as per the procedure specified under the law. The applicant has not produced any rule or provisions of law to prove that the modification to the appointment order to rectify any mistake cannot be done. The contentions in the Counter that the conditions stipulated in the order at Annexure-A/3 are as per the Railway Board circular RBE No. 166/2011, have not been contradicted by the

applicant. Hence, the original appointment order of the applicant dated 30.5.2012 (Annexure-A/2) was not in accordance with the RBE No. 166/2011 for which the respondents are entitled to rectify the mistake. Hence, the cited case of Nazir Ahmad (supra) is factually distinguishable.

8. Another judgment in the case of V.V. Rangiah (supra), related to the applicability of amended rule in selection if the vacancy has arisen prior to amendment. In this OA, by the time the appointment order of the applicant was issued on 30.5.2012 (A/2) by virtue of the Tribunal's order dated 3.2.2012 (A/1), the circular RBE No. 166/2011 was in place and no rule has been cited by the applicant in the OA to show that the RBE No. 166/2011 was not applicable to his case. Hence, the cited judgment will not be of any help to the applicant. Similarly in the case of P. Mahendran (supra), the rule was amended after issue of the advertisement for recruitment and before publication of select list by the Karnataka Public Service Commission. Applicability of the amended rule to the selection was the question in that case and it was held that the rule that was in force when the advertisement was issued will apply and the amended rule will have no application unless the amendment is done retrospectively. This judgment has no application to this OA which pertained to the condition stipulated for compassionate appointment and there was no question of applicability of amended rule.

9. In the case of Dr. Smrutisudha Pattnaik (Supra) cited by the applicant's counsel, the advertisement for selection was issued as per the Resolution dated 3.2.2014 of Government, but the selection was done as per a different Resolution. Hence, the said selection was held to be dehors the advertisement and direction was given by Hon'ble High Court to prepare the select list as per the Resolution dated 3.2.2014. In this OA, the condition stipulated for compassionate appointment to a post for which the applicant did not have requisite qualification was as per the Railway Board circular and there is no selection as per any advertisement is involved in this OA. Hence, the cited judgment is factually distinguishable.

10. We can examine the dispute in this OA from another angle. The condition as per the order dated 30.5.2012 (A/2) was that the applicant will not get the Grade Pay till he acquires the requisite qualification or skills by way of re-training. The applicant's case is that since he has completed the induction training as per the certificate at Annexure-A/4 series on 13.12.2012, he presumes that he has fulfilled the condition as per the order dated 30.5.2012. The induction training is the training provided before joining in a post. The certificate dated 13.12.2012 of the applicant shows that he has successfully completed the induction training. But the condition in the order dated

30.5.2012 is to acquire the skill by way of re-training. No document has been furnished by the applicant to show that the induction training is the same as the acquisition of skill by way of re-training. The certificate dated 13.12.2012 does not disclose if the applicant has acquired any skill. Hence, based on the materials on record, it cannot be said that the induction training is same as the re-training for acquisition of skill required in lieu of the requisite qualification for the post in which the applicant was appointed on compassionate ground and hence, the applicant has not fulfilled the condition as stipulated in the order dated 30.5.2012 (Annexure-A/2).

11. As stated in the Counter, the applicant has been allowed the benefit of the Grade Pay w.e.f. 10.10. 2017 vide order at Annexure-R/1 of the Counter after acquisition of the requisite qualification of 10th class pass. Under normal circumstances, the applicant would not have been provided with the appointment since he did not have the minimum prescribed qualification for the post. He was considered for compassionate appointment under a special relaxation as per the circular of the Railway Board RBE No. 166/2011. Hence, the applicant's claim not to follow one of the condition of the RBE No. 166/2011 is not tenable. Regarding loss of service of about 5 years, nothing prevented the applicant to acquire the requisite qualification immediately after the appointment. While he was appointed in 2012, he could acquire the requisite qualification for the post only in 2017 i.e. after a delay of 5 years. Hence, it will be incorrect on the part of the applicant to blame the respondents for loss of 5 years of his service. **Further, we take note of the fact that although the applicant is objecting to the condition stipulated in the order dated 16/17.7.2012 (Annexure-A/3), but the said order has not been impugned in this OA.**

12. In the circumstances as discussed above, we do not find any justification to interfere in the matter and the OA, being devoid of merit, is dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)