

**Reserved**  
**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING:GWALIOR**

**Original Application No.202/00446/2018**

Jabalpur, this Thursday, the 02<sup>nd</sup> day of January, 2020

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Ambuj Kumar Pandey  
S/o Late Dr. Narendra Kumar Pandey  
Aged 42 years  
Occupation Service as  
Assistant Audit Officer,  
R/o Quarter No.495  
A.G. Colony  
Shastri Nagar, Thatipur  
Gwalior M.P. 474011  
Mobile 8962787849

**-Applicant**

(By Advocate –**Ms. Somya Chaturvedi**)

**V e r s u s**

1. Union of India,  
Through the Comptroller and Auditor  
General of India 9  
Deen Dayal Upadhyaya Marg  
New Delhi 110124

2. Accountant General  
(General & Social Sector Audit)  
Madhya Pradesh Audit Bhawan,  
Jhansi Road,  
Gwalior M.P. 474002

**- Respondents**

(By Advocate –**Shri M.K. Sharma**)

*(Date of reserving the order:06.02.2019)*

## **O R D E R**

### **By Ramesh Singh Thakur, JM:-**

The applicant has filed this Original Application against the order dated 09.04.2018 (Annexure A/1) of the respondents whereby the benefit of past service rendered by the applicant in Railways has been refused to be added in the present service.

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

*“8.1 That, the action and order contained in Annexure A/1 may kindly be declared as illegal and the same may kindly be quashed.*

*8.2 That, the respondents may kindly be directed to extend the benefit of past service and pay protection to the applicant with payment of arrears for the service rendered with Indian Railways.*

*8.3 Any other suitable relief which this Hon’ble Tribunal may deems fit and proper in the circumstances of the case may also be given to the applicant along with cost of this O.A.”*

### **3. The facts of the case are that the applicant initially joined the service in Indian Railway with Government of India w.e.f 18.10.2004. At the relevant period of time, he was working as Assistant Station Master in Central**

Railway at Jalgaon Station of Bhusawal Division in the pay scale of Rs.9300-34800 + 4200 Grade Pay. He sought no objection certificate for applying to the post of Auditor in Combined Graduate Level Examination 2011. The Railway Administration granted the no objection certificate on 12.04.2011, the copy of which is annexed as Annexure A/2. After selection of applicant as Auditor, he was given the letter of appointment on 12.12.2012, the copy of which is annexed at Annexure A/3. Consequently applicant submitted his technical resignation to the Railway Authorities for joining the services of respondents as Auditor and his technical resignation was forwarded by the Station Manager Jalgaon vide letter dated 18.12.2012, the copy of which is annexed at Annexure A/4. The technical resignation was accepted by the Railway Authorities vide relieving letter dated 07.01.2013. The copy of relieving letter is annexed at Annexure A/5.

**4.** On joining the service as Auditor, the applicant submitted an application for counting of his past service of

Railway. The copy of application dated 05.02.2013 is annexed as Annexure A/6. The applicant submitted a reminder on 11.12.2013 and when no action was taken by respondents, he again submitted an application on 27.02.2014, the copy of which is annexed as Annexure A/7. The Assistant CAG issued a circular on 31.03.2014 regarding admissibility of joining time, joining time pay, transfer travelling allowance and protection of pay drawn in previous organization in case of appointment of incumbent to a post on direct recruitment basis in IA and AD. The copy of this circular dated 31.03.2014 is annexed as Annexure A/8. On the basis of this circular, the respondent No.2 communicated the applicant vide letter dated 25.06.2014, that his past service cannot be computed in the present service because he has come on a lower grade post from higher grade pay post on resigning voluntarily. Copy of this letter dated 25.06.2014 is annexed at Annexure A/9.

5. The Government of India, Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training), has issued an office memorandum dated 17.08.2016 by which consolidated guidelines regarding technical resignation and lien have been issued. Copy of office memorandum is annexed at Annexure A/10. As per Clause 2.4 of this office memorandum, in cases of appointment of a Government servant to another post in Government on acceptance of technical resignation, the protection of pay is given in terms of Ministry of Finance Office Memorandum dated 17.06.1965 read with proviso to FR 22B.

6. Considering the aforesaid office memorandum in case of another identical person namely Manoj Kumar Singh vs. Union of India and others in O.A. No.202/1012/2017 has allowed the claim of Manoj Kumar Singh remanding back the matter to the respondents to consider the case of applicant in the light of para 2.4 of office memorandum dated 17.08.2016 and to count his

past service with Railways and also to consider his case for protection of pay in accordance with the said instructions. Copy of the order passed in O.A. is annexed at Annexure A/11.

**7.** The Union of India assailed the order of this Tribunal before Hon'ble High Court of Madhya Pradesh Bench at Gwalior in Writ Petition No.3723/2017. The Hon'ble High Court vide order dated 17.07.2017 has affirmed the order passed by this Tribunal and dismissed the writ petition. Copy of order passed in W.P. No.3723/2017 is annexed at Annexure A/12. After dismissal of writ petition, the respondents passed the order granting the benefit of pay protection and counting of past service to the said Manoj Kumar Singh vide order dated 15.03.2018, the copy of which is annexed at Annexure A/13.

**8.** In another similarly situated case of Mr. Gyanendra and another vs. CAG and others in O.A. No.200/00029/2014, relying on the decision of Manoj

Kumar Singh, this Tribunal allowed the O.A. vide order dated 02.08.2017 holding the applicant entitled for pay protection and for counting their past services rendered in the Railway department. Copy of order of O.A. No.200/00029/2014 is annexed at Annexure A/14. The applicant submitted a representation on 22.02.2018 along with orders passed in cases of Manoj Kumar Singh and DOPT office memorandum and a statement showing the case of applicant being identical to that of Manoj Kumar Singh. Copy of representation is annexed at Annexure A/15. The respondents have rejected the representation vide order dated 09.04.2018 stating that the case of Manoj Kumar Singh is directed to be not treated as precedent by the letter of Headquarter dated 19.12.2017, hence the past service rendered by applicant cannot be counted in the present service. The action of respondents is clearly against the instructions of DPT and against the law laid down by this Tribunal duly affirmed by Hon'ble High Court.

9. Respondents have filed their reply wherein it has been submitted that the applicant had joined the respondent-department as on Auditor on 09.01.2013 in the grade pay of Rs. 2800/-. Before joining respondent-department applicant was working as Assistant Station Master in the Railway Department in the grade pay of Rs.4200/-i.e. higher post. Now the applicant is working as Assistant Audit Officer with the respondent No.2. After joining the service the applicant had submitted an application dated 05.02.2013 (Annexure A/6) for counting of his past service, which was rendered in Railways during the period 18.10.2004 to 07.01.2013. In response to his application, clarification to count his past service of the railway department for fixation of pay and carry forward of leave was sought from headquarters (respondent No.1) vide letter dated 21.03.2013 (Annexure R/1). Reminders were also issued vide letter dated 15.07.2013 (Annexure R/2) and letter dated 11.02.2014 (Annexure R/3) to get guidance from Headquarters (respondent No.1) in the case.

In response to letters mentioned, respondent No.1 vide circular dated 31.03.2014 had provided guidelines to regulate the entitlements for joining time, joining time pay and protection of pay that shall be admissible to the direct recruits as per provisions of FRSR. As per point 'iv' and 'v' of guidelines which is reproduced as under:-

- i. Protection of pay drawn in Pay Band against the post held in the previous organization shall be admissible only to such direct recruits who had applied through proper channel for appointment to the post in this department after tendering technical resignation and were holding a post in the previous organization either with same or lower grade pay.
- ii. No joining time, joining time pay, transfer travelling allowance and protection of the pay shall be admissible to such direct recruits who were holding a post with higher grade pay in their previous organization and have joined the lower post in this department on their own volition. Pay of such

direct recruits shall be fixed at the entry pay prescribed under Section II of Part A under the First Schedule of CCS (Revised Pay Rules), 2008 in terms of FR 22 (1)(b).

Accordingly, the applicant was informed vide letter dated 25.06.2014 (Annexure A/9) that his services rendered to the Railway department cannot be counted in view of the headquarter circular dated 31.03.2014. Clause 2.4 of the DOPT's memorandum dated 17.08.2016 (Annexure A/10) states about protection of pay on technical resignation from one Government post to another where the pay fixed in new post is less than his pay in the post he holds substantively. But this memo does not clarify anything about resignation on same, lower or higher grade pay. The headquarters Circular referred in Point 2 is very clear on this clause 3(iv) and 3(v) clearly defines that such direct recruits who had applied through proper channel for appointment to the post in this department after tendering technical resignation and were holding a post in the

previous organization either with same or lower Grade Pay, will be eligible for protection of pay. The applicant submitted an application dated 22.02.2018 to count his past services on the same grounds as of Shri Manoj Kumar Singh. But vide letter dated 19.12.2017 it has clearly stated that the case of Manoj Kumar Singh should not be treated as precedent. Accordingly, the applicant was informed vide letter dated 09.04.2018 (Annexure A/1). The applicant joined the service in this department on lower Grade pay hence he cannot be granted the benefits of technical resignation.

**10.** Heard the learned counsel for both the parties and have perused the pleadings and documents annexed with the O.A.

**11.** The learned counsel for the applicant heavily relied upon the order dated 02.08.2017 passed by this Tribunal in O.A. No.200/00029/2014. On perusal of said order dated

02.08.2017, relevant paragraphs of the same are reproduced as under:-

**“9.** *The solitary issue that arose for our consideration is whether the applicants are entitled for the benefit of pay protection and also to count their past services for grant of other benefit while working on the post of Auditor.*

**10.** *As submitted by the applicants, who are appearing in person, this issue has already been settled by coordinate Bench in the case of **Manoj Kumar Singh** (supra) vide order dated 20.03.2017 in which one of us [Member (J)] was author. In that case, the issue involved was identical and respondents were also same. While relying upon the communication dated 24.10.2012 from the office of Principal Accountant General (General and Social Sector Audit) Madhya Pradesh, Audit Bhawan, Jhansi Raod, Gwalior, coupled with the OM dated 17.08.2016 issued by the nodal ministry DOPT, the O.A was allowed in terms of clause 2.4 of the OM dated 17.08.2016. The relevant para of the order in the case of **Manoj Singh** (supra) reads as under:*

*“8. We have given our thoughtful consideration to the entire matter. A conjunctive perusal of pleading, make it clear that before joining the post of Auditor with the respondents, his technical resignation was accepted by the Railways, as they have indicated the same to the Principal Accountant General (General and Social Sector audit) Madhya Pradesh, Audit Bhawan, Jhansi Road, Gwalior vide their communication dated 24th*

*December 2012. Once they have accepted his technical resignation then the respondents cannot be allowed to say that his past service rendered with the Railways cannot be counted for pensionary and other benefits. This also finds quote from the latest OM dated 17.08.2016 issued by DOPT under Clause 2.4 where they have impressed upon that if a government servant join the another Government department after tending technical resignation then he is entitled for grant of pay protection and counting of his past service for qualifying service . The same is read as under:-*

*2.4 Pay Protection, eligibility of past service for reckoning of the minimum period for grant of Annual Increment*

*In cases of appointment of a Government servant to another post in Government on acceptance of technical resignation, the protection of pay is given in terms of the Ministry of Finance OM NO.3379-E.III(B)/65 dated the 17th June, 1965 read with proviso to FR 22-B. Thus, if the pay fixed in the new post is less than his pay in the post he holds substantively, he will draw the presumptive pay of the pay he holds substantively as defined in FR-9(24). Past service rendered by such a Government servant is taken into account for reckoning of the minimum period for grant of annual increment in the new post/service/cadre in Government under the provisions of FR 26 read with Rule 10 of CCS (RP) Rules, 2016. In case the Government servant rejoins his earlier posts, she will be entitled to increments*

*for the period of his absence from that post.”*

**11.** *In the light of the above communication dated 24.12.2012 and clause 2.4 of OM dated 17.08.2016, there leaves no doubt that if an employee submits technical resignation before joining the new department, his pay of protection is to be given in terms of Ministry of Finance OM dated 17.06.1965.*

**12.** *Accordingly, the O.A is allowed. The impugned order dated 06.11.2013 (Annexure A-1 and A-2 collectively) is hereby quashed and set aside. The applicants are held to be entitled for pay protection and counting their past services in the Railways. Let the above exercise be carried out within a period of two months from the date of receipt of certified copy of this order. No costs.*

**12.** In view of above, we are of the opinion that the instant case is covered by the order dated 02.08.2017 passed in O.A. No.200/29/2014, in which the same and similarly issue has been dealt with by this Bench. So the instant case is also liable to be accepted by us. Moreover, the law has been settled by this Tribunal in O.A. No.200/29/2014 and this is a law settled in rem so the stand taken by the replying respondents regarding judgment that it is not a precedent, is not sustainable in the eyes of law.

**13.** Accordingly, this Original Application is allowed. The impugned order dated 09.04.2018 (Annexure A-1) is quashed and set aside. The applicant is held to be entitled for pay protection and counting the past services in the Railways. Let the said exercise be carried out within a period of two months from the date of receipt of certified copy of this order. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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