CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Original Application No.21/731/2019

Hyderabad, this the 27th day of February, 2020

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

C.G. Kumar, S/o. Pullanna, aged 41 years,
Occ: Senior Assistant Loco Pilot,
O/o. The Chief Crew Controller,
South Central Railway, Gooty Depot,
Guntakal Division, Gooty RS.

… Applicant

(By Advocate: Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Rep. by
The Secretary, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railways, Rail Nilayam,
Secunderabad.

3. The Principal Chief Electrical Engineer,
South Central Railway,
Rail Nilayam, Secunderabad.

4. The Chief Motive Power Engineer,
General manager's Office, 2nd Floor,
Rail Nilayam, South Central Railway,
Secunderabad.

5. The Senior Divisional Electrical Engineer (TRSO),
South Central Railway, Guntakal Division,
Guntakal.

… Respondents

(By Advocate: Mr. T. Sambasiva Rao, Proxy counsel
for Mr. V. Vinod Kumar, SC for Railways)

ORDER (ORAL)
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the decision of the respondents in not permitting the applicant to perform running duties and thereby denying the associated allowances.

3. Brief facts are that the applicant was involved as Assistant Loco Pilot (for short "ALP) in Signal Passing At Danger (for "SPAD") at Koppal resulting in removal from service by the Disciplinary Authority and on appeal, it was reduced to that of reduction of pay with allied consequences. On reinstatement, he was subjected to the mandatory medical test and on being graded as A-1 under medical standards, applicant continued to work as ALP for 2 ½ years without any untoward incident. However, on issue of the Railway Board letter dated 9.11.2016, which stipulates that the running staff involved in SPAD be subjected to aptitude test and on clearance of the same, employees concerned are to be allowed to perform running duties. Applicant failed to clear the test as per proceeding dated 15.09.2017 and hence was utilized in unspecific stationary duties allowing minimum mileage allowance. Aggrieved that the applicant is not being allowed to work in the running cadre the OA has been filed.

4. The contentions of the applicant are that the Railway Board letter dated 9.11.2016 in regard to SPAD is prospective in nature and is not applicable to ALP which post the applicant holds. Besides, after the SPAD, applicant was allowed to perform duties of ALP after being medically

cleared, which he did successfully for nearly 2 ½ years. By misinterpreting the Railway Board letter cited, applicant has been unnecessarily subjected to aptitude test and posted to stationary duties for failing the test which led to unwarranted adverse financial consequences to the applicant.

5. Respondents in the reply statement while confirming the removal and reinstatement of the applicant in view of being involved in SPAD, took the stand that as per Railway Board letter dated 9.11.2016 it was not just the applicant but 39 staff members, involved in SPAD have been subjected to the aptitude test and since the applicant failed to clear the test he was engaged in stationary duties by allowing minimum mileage due. Respondents contend that the ALP is expected to handle the Loco in emergency and in other circumstance detailed in charter of duties referred to in Fly Leaf No.9/2012. Therefore, one need not entertain any doubt that the Railway Board letter dated 9.11.2016 equally applies to the ALPs just as it applies to the Loco Pilot. After SPAD, employees are subject to medical test and on clearing the same are engaged in running duties hitherto the issue of Railway Board letter under reference. With the latest instruction of Railway Board in letter dt. 9.11.2016, the applicant has to clear the aptitude test prescribed, in order to safeguard aspects related to safety. Applicant, being unsuccessful in the aptitude test, cannot, for sure, be engaged in running duties.

6. Heard both the counsel and perused the pleadings on record.

7. I) Ld. counsel for the applicant made a vain attempt to claim that the Railway Board letter dated 9.11.2016 is not applicable to ALPs but such a submission did not impress the Tribunal since the subject head of the letter unquestionably refers to running staff. ALP comes under the ambit of the running staff and hence to state that the said letter does not include ALP lacks the steam power to drive the engine of his avowed argument. In fact, the Fly Leaf referred to by the respondents is the last nail driven on to the coffin of the argument of the counsel, since it elaborates, in no uncertain terms, that the applicant has to take over the role of Loco Pilot in emergency and in certain other specified circumstances. Hence, the submission made in this context by the Ld. Counsel for the applicant is bereft of sound logic.

II) Thus, after the demolition of one of his averments, without giving up, Ld Counsel for the applicant submitted across the bar a letter dated 24.02.2020 issued by the respondents in regard to the appeal made by the applicant for running duties, wherein it was clarified that the Railway Board letter under reference is not applicable to the applicant and that he can be engaged for running duties on complying with certain provisos stated therein. This clarification clinches the issue. Based on this clarification, applicant can be called upon to perform running duties, for which he approached the Tribunal to intervene on his behalf.

III) Continuing his effort to advance the cause of the applicant, Ld. Counsel for the applicant submitted one another letter issued by the Central Railway Zone dated 04.12.2012, wherein running allowance has been allowed. The said letter reads that "*Division are advised that Running staff*

utilized in stationary duties are entitled for pay element of 30% / 120 KM Running Allowance for duties performed in a month, inclusive of rest days." The same need necessarily to be extended to the applicant following the observations of the Hon'ble Apex Court in a catena of judgments, extracted hereunder:

a) Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

b) Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

c) V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

*d) In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346,** the Apex Court has referred to the decision in the case of State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747, as under:*

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

IV) Moreover, it is interesting to note that the applicant after the SPAD was allowed to perform running duties for nearly 2 ½ years on clearing the prescribed medical test. Suddenly, with the advent of the Railway Board letter dated 9.11.2016, which became an albatross around the applicant's neck, respondents indulged in a knee jerk reaction of subjecting the applicant to the aptitude test resulting in the pitiful story of the applicant presented in paras *supra*. When one could ably perform the running duties for nearly 2 ½ years, the respondents ought to have reckoned this aspect and got the much needed clarification, which they, of course, did but, alas after the tragedy of disengaging the applicant from running duties. Well, it appears, that the respondents were dazed in deciding as to what to do first, disengage and seek clarification or the vice versa. Respondents choose the line of least resistance and play safe, the infamous age old undying bureaucratic practice, by adopting the riskless option to disengage till clarification is received. Reminds of the famous conundrum as to whether it is the chicken or the egg being the first. This is where administrative acumen comes to the fore given the environmental contours of operational aspects of the respondents organisation. To further this view point, Ld. Counsel for the applicant pleaded that the respondents often are hard pressed for running staff, which, in a way, adversely affects mobility of the trains in terms of they running late inviting the wrath of the general public. Therefore, in the said circumstances the respondents should have gone slow and enforced the directions laid in letter dtd. 9.11.2016 of the Railway Board after being lucid on the same as was administratively and

operationally required. Unfortunately, it was not to be and therefore, the litigation calling upon the Bench to resolve.

V) The Ld. counsel for the respondents was equally aggressive in defending the decision of the respondents by rebutting the submissions of the Ld. Counsel for the applicant, in avowing that safety is paramount and therefore, the Railway Board instructions contained in the legendary letter cited, rang loud and clear requiring imperative action without any semblance of hesitation. After failing the test prescribed as per the letter dated 9.11.2016, crying hoarse by the applicant that he was disengaged from running duties should not be a source of misplaced sympathy, since safety of passengers and Railway assets get prioritised over the claim made. With his vast experience in the respondents organisation, the Ld. counsel for the respondents narrated certain gory details of accidents which occurred causing loss of life and astronomical damage to railways assets to drive home the point that safety can be no issue of compromise. Albeit, serious in content to hear, but the letter issued by the respondents dated 24.02.2020 makes it indubitably explicit that the Railway Board signorma does not apply to the applicant. Moreover, one need to note that the applicant did perform running duties after the SPAD for quite a long time. Forget not that an administrative instruction, as per law, will have prospective effect, unless specified to the contrary with valid reasons. Ultimately, after reams of paper were exhausted in internal correspondence the final outcome let out by the respondents, as was expected after a rational analysis, was that the letter dated 9.11.2016 is inapplicable to the

applicant. In effect, the Railway Board letter was, thus, later clarified to have posterior effect. In addition, Central Railway Zone letter, as an angel gift, spoken about in the above paras, has paved the path to pay the eligible running allowances for running staff engaged in stationary duties.

VI) Thus, in view of the aforesaid deliberations, there can be no other outcome but to direct the respondents to engage the applicant in running duties on conforming to the provisos laid down in the letter dated 24.02.2020 and also pay the running allowances with consequential benefits thereof, if any, as has been allowed by the Central Railway vide letter dated 04.12.2012 for the period for which the applicant was utilized in duties other than running duties. Time calendared to implement is 3 months from the date of receipt of the copy of this order.

VII) With the above direction, the OA is allowed to the extent indicated above. No costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/