

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00588/2018**

Reserved on: 20.01.2020
Pronounced on : 22.01.2020

C O R A M

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER**



Braj Bihari Prasad, aged about 38 years, S/o Late Yugal Kishore Prasad, resident of Qr. No.E/154/1, East Colony, P.O. & P.S.- Chakradharpur, District- West Singhbhum.

.... Applicant

By Advocate: - Mr. M.A. Khan

-Versus-

1. Union of India through General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Divisional Railway Manager, South Eastern Railway, PO & PS- Chakradharpur, District- West Singhbhum, Jharkhand- 833102.
3. Divisional Railway Manager, South Eastern Railway, PO & PS- Chakradharpur, District- West Singhbhum, Jharkhand-833102.
4. Sr. Divisional Personnel Officer, South Eastern Railway, PO & PS- Chakradharpur, District- West Singhbhum, Jharkhand- 833102.

.... Respondents.

By Advocate: - Mr. Prabhat Kumar

**ORDER
[ORAL]**

Per Dinesh Sharma, A.M.:- In the instant OA, the applicant has prayed for directing the respondents to grant the Grade pay of Rs. 4200/- from the date of his de-categorisation on medical ground as per para-1307 of IREM circulated vide Estt. Sr. No. 122/1999 with arrears. He has also requested for directing the respondents to give suitable post to the

applicant similar to his counterpart who were also medically decategorized from the post of Electric Driver Shunter.

2. The case of the applicant is that under Para 1307 of IREM as it stood before it was amended by Board's letter dated 30.04.2013 the Running Railway Staff on de-categorization should have been given Grade Pay equivalent to the stationary staff which in his case was Rs. 4200/- (in terms of Estt. Sr. No. 122/11 and 123/15. The applicant has also argued that another person has been appointed as Office Superintendent on decategorization and given Grade Pay of Rs. 4200/- while the applicant has been denied similar consideration and hence, this OA.



3. A written statement has been filed by the respondents in which they have denied the claim of the applicant. According to them, the applicant is claiming higher Grade Pay than what he was drawing at the time of his medical decategorization. The respondents have cited the case of Shoaib Alam Vs. UOI [OA 216 of 2013(R)] where this Tribunal had categorically mentioned that it could not find any provision in the scheme provided in the IREM which could allow the Tribunal to direct giving higher Grade Pay upon de-categorization. It is stated that the para 1307 and 1308 of IREM Vol. I have been amended as per Advance Correction Slip no. 224 vide Railway Boards letter dated 30.04.2013, and now it is clearly stated that there will be no change in the Grade Pay while fixing pay on de-categorization. The written statement also states

that an error has been committed in case of one Shri Mukesh Kumar who was erroneously posted as Office Superintendent. This error is being corrected and the Department should not be forced to commit another error because of this reason.

4. A rejoinder has been filed by the applicant in which he has stated that the amendment in the IREM in the year 2013 was with prospective effect and it should not have been applied in the case of the applicant. He has again claimed discrimination against him when compared with other employees placed in similar position.



5. We have gone through the pleadings and heard the arguments. During the course of arguments, learned counsel for the applicant brought to our notice a letter dated 20.05.2015 where the Railway Board has stated that their letter dated 30.04.2013 will have prospective effect from the date of issue unless stated otherwise. The learned counsel also argued that Shri Mukesh Kumar about whom the respondents have stated that his appointment as OS has been done erroneously is still working in the same capacity and, therefore, the applicant should also be given higher Grade Pay as requested.

6. After going through the pleadings and hearing the arguments, we find that the main issue is whether the applicant can be granted higher Grade Pay of Rs. 4200/- as claimed by him on ground of para no. 1307 of IREM (before it was amended on 30.04.2013) read with Estt. Sl. No. 123/15. These two provisions are re-produced below:-

Para 1307 of IREM

“ 1307- Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorized running staff:- In order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorized running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of Scale of Pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing, the same may be replaced by the equivalent existing scale of pay. ”

Estt. Sr. No123/2015

“ Consequent upon implementation of scales of pay recommended by the Sixth Central Pay Commission, equivalence of grades of running staff with that of stationary staff for the purpose of promotion to the posts in stationary categories where both running and stationary staff are eligible and are considered together was advised in terms of Board's letter number E(GP) 2005/2/87 dated 25.04.2011 (RBE No. 53/2011). However, taking cognizance of requests from various quarters including the Federations, a Committee was constituted to examine the issues arisen on account of implementation of these instructions. Now, taking note of the recommendations of the Committee, it has been decided that for the purpose of determining the eligibility of the candidates for promotion/selection to Group 'B' posts, the grades of running staff may be equated with those of the stationary staff as indicated below:-

Designation	Scale of Pay applicable (VI CPC)	Scale to stationary post to which should be equated (VI CPC)
Loco Pilot (Mail/Exp)	PB-2+GP Rs. 4200+1000 addl. allowance	PB-2+ GP Rs. 4600
Loco Pilot (Passenger)	PB-2+GP Rs. 4200+500 addl. allowance	PB-2+ GP Rs. 4600
Loco Pilot (Goods)	PB-2+GP Rs. 4200	PB-2+ GP Rs. 4600
Loco Pilot (Shunting)-I (NF)	PB-2+GP Rs. 4200	PB-2+ GP Rs. 4200
Loco Pilot (Shunting)-II	PB-1+GP Rs. 2400	PB-2+ GP Rs. 4200
Sr. Asstt. Loco Pilot (NF) (80%)	PB-1+GP Rs. 2400	PB-2+ GP Rs. 2400
Asstt. Loco Pilot (20%)	PB-1+GP Rs. 1900	PB-2+ GP Rs. 2400
Mail/Express Guard	PB-2+GP Rs. 4200+500 addl. allowance	PB-2+ GP Rs. 4600
Sr. Passenger Guard	PB-2+GP Rs. 4200	PB-2+ GP Rs. 4600
Sr. Good Guard(NF)	PB-2+GP Rs. 4200	PB-2+ GP Rs. 4200
Goods Guard	PB-1+GP Rs. 2800	PB-2+ GP Rs. 4200



3. It has further been decided that for equating running staff in the erstwhile scale of Rs. 5500-9000 (now in PB2+ GP Rs. 4200) with stationary staff in scale of Rs. 6500-10500 (now GP Rs. 4600), the running staff in erstwhile scale of Rs. 5000-8000 (now GP Rs. 4200) shall be placed below running staff in erstwhile scale of Rs. 5500-9000 (now in PB2+GP Rs. 4200)."

7. On the other hand, the respondents have based their argument on the basis of the amendment made in the above paragraph

by Advance Correction Slip no. 224 which runs as follows:-



" ADVANCE CORRECTION SLIP NO. 224

1) Substitute the following the existing paragraph 1307:

2) 1307. **Reckoning of element of Running Allowance for the purpose of fixation of pay of disabled/medically unfit running staff:**

While determining pay for the purpose of fixation of pay of medically unfit running staff in an alternative (stationary) post, an amount equal to such percentage of basic pay representing the pay element of running allowance as may be in force from time to time, may be added to the existing pay in Pay Band and the resultant figure (ignoring the fraction of rupee, if any) rounded off to the next multiple of 10 would be the pay in the Pay Band in the alternative post with no change in the Grade Pay of substantive post, in suitable alternative post."

The respondents have also cited this Tribunal's judgment (quoted supra) in favour of their contention that the Grade Pay of a de-categorized staff cannot be higher than what he was getting before such medical de-categorization.

8. A plain reading of above will make it clear that para 1307 of IREM as it stood before amendment did not mention anything about the Grade Pay. It did mention that if the scale of pay which is arrived at by adding such percentage of pay in lieu of running allowance as may be in force is not identical with the scale of pay already existing the same may



be replaced by the equivalent existing scale of pay. The applicant wants us to find this equivalence from the Board's Estt. Sn. 123/15. We agree with the contention of the respondents that this communication which is entirely for the purpose of determining equivalence in the context of eligibility of candidates for promotion/selection to Group B post cannot be applied in the context of fixing Grade Pay while decategorizing running staff. In this matter, it is also not possible for us to defer from this Tribunal's finding in the earlier case of Shoiab Alam (supra) where it is categorically stated. "it would be quite an anomalous situation if an employee contends that he should get higher grade pay once he become unfit or disable." Thus, we are satisfied that the claim of applicant for grant of higher Grade Pay than what he was getting before medical decategorization is not supported even by the rules as this stood before these were specifically amended to clarify that there will be no change in the Grade Pay.

9. Regarding the claim of the applicant for similarity of treatment with another person (Shri Mukesh Kumar), the respondents have already stated that this was done erroneously and therefore similarity of treatment cannot be claimed as a matter of right. However, we notice that there are other persons who are medically de-categorized after the applicant who, though they are getting the same Grade Pay as the applicant, has been designated as Senior Clerks while the applicant continues to be designated as Junior Clerk. This, prima facie, appears to

be a discriminatory treatment. Hence, while denying the request of the applicant for grant of higher Grade Pay than what he was getting at the time of his medical decategorization, we dispose of this OA with the direction to the respondents to consider re-designating the applicant as Senior Clerk if other persons similarly placed have been given that position within three months of receipt of this order. No order as to costs.



[M.C. Verma]
Judicial Member

[Dinesh Sharma]
Administrative Member

Srk.