

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.318/2018

Dated this the 11th day of January 2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

Shri Pravinkumar,
Son of Shri Sureshprasad Chorasiya,
Age:36 years,
Working as Goods Guard
In the office of the respondents,
Residing at :C/o Anilkumar Sharma,
House No.4, Ravi Park,
Andh Ashram Road,
Surendranagar – 363 001.

...Applicant

(By Advocate Mr.M.S.Trivedi)

Vs.

1. Union of India through
The General Manager,
Western Railway, Churchgate,
Mumbai – 400 020.
2. The Divisional Railway Manager,
O/o DRM, Western Railway,
Rajkot Division, Kothi Compound,
Rajkot – 360 001.

.....Respondents

(By Advocate Mr.M.J.Patel)

O R D E R (Oral)

Per: A.K.Dubey Member (A)

1. The applicant has approached this Tribunal seeking the following reliefs:-

“(A) That the Hon'ble Tribunal be pleased to allow this petition.

(B) That the Hon'ble Tribunal further be pleased to quash and set aside the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional decision, action and communication

No.ET/P/19 dated 25.05.2018 issued by the respondent No.2 rejecting the claim/request of the applicant to give / grant him benefit of seniority and pay/allowances as per his merit order given by RRB of select/list panel position of the post of Goods Guard in the scale of Rs.4500-7000 / 5200-20200 + GP Rs.2800/- as per provisions of IREM.

- (C) *That, the Hon'ble Tribunal further be pleased to direct the respondents to consider the claim of the applicant regarding pay fixation from the date of entry in Railways i.e., 16.11.2015 and consequential benefit thereon and to get seniority as per provisions of para 304 of the IREM.*
- (D) *Such other and further relief/s as may be deemed just ad proper in view of the facts and circumstances of the case may be granted."*

2. The applicant has contended that the order of the Respondents in the Western Railway letter No.ET/P/19 dated 25.05.2018 (Annex.A1) rejecting his request to club the seniority as per RRB panel due to delay in sending for initial and practical training in subsequent batches and revision of basic pay should be quashed and his pay fixation should take effect from the date of his entry into service viz., 16.11.2015. The applicant contends that vide respondents letter dated 24.09.2015 (Annex.A2), he was offered the post of Goods Guard in the scale of Rs.5200-20200+GP 2800/-. Thereafter he was detailed for requisite training by the respondents and after the successful completion of the training, he got the posting as Goods Guard. He submits that as mentioned in the Memorandum No.Et/890/5 Vol.X dated 03.02.2016 (Annex.A/3), he underwent training at the Zonal Railway Training Institute, Udaipur from 16.11.2015 to 29.12.2015 and the practical training from 31.12.2015 to 31.01.2016 and after the waiting period of two days (01.02.2016 & 02.02.2016) joined as Goods Guard on 04.02.2016. On that day his pay under pre revised scale of PB2 +2800 was fixed at Rs.11,360/- with next increment due on 01.07.2016 wherafter his pay was fixed at Rs.11,700/-. On 7th CPC recommendation, his pay was fixed at Rs.34,900/- but was subsequently reduced to Rs.34,100/-. The applicant represented

against it on 02.10.2017 (Annex.A/4) which was rejected vide impugned order dated 25.05.2018 (Annex.A1). He also represented on 07.04.2020 for fixing his seniority (Annex.A/5). However, his claims / grievances remained unaddressed, as his representation was rejected vide the impugned order.

3. The applicant relies on Railway Board's order in letter No.E/(NG)I-89/SR6/32/(PNM) dated 19.03.1993 i.e., Rule 303 of Rules Regulating Seniority of Railway Servants (Annex.A/6) in so far as his seniority in the grade is concerned. Similarly, he claims that reduction in pay is against the rules as also violative of principles of natural justice. He claims that his pay should be fixed w.e.f. 16.11.2015 and his seniority should be as per the provisions of IREM.
4. Respondents have filed their reply contending that the applicant along with 14 others was recommended by RRB and in turn, vide letter No.E/(R&T)1136/2/4/4 Goods Guard dated 30/4/2015, was allotted to DRM, Rajkot (Annex.R1). After completion of recruitment formalities, i.e., recruitment forms, attestation forms (Police Verification) on 02.08.2015, he was called for medical examination on 31.08.2015. After that he was directed to attend the course in the next available slot i.e., from 16.11.2015 to 29.12.2015, at ZRTI, Udaipur. Then he underwent the practical training from 31.12.2015 till 31.01.2016, as per office letter dated 30.12.2015 (Annex.R2). After the applicant had completed the initial and practical training, he was appointed as Goods Guard in the scale of Rs.5200-20200+GP2800/- vide memo dated 03.02.2016 (Annex. A/3). His pay on joining was fixed at Rs.11360/- in accordance with the notification in RBE No.103/2008 dated 4.9.2008 which was applicable at that time (AnnexR3). Later when VII CPC recommendations came into effect, the applicants' pay was revised in accordance with Rule 8 of Railway Services (Revised Pay)

Rules, 2016 (Annex.R4). Respondents have contended that after the training, the applicant joined as Goods Guard on 04.02.2016 and seniority was granted to him as per the provisions of para 303 of IREM. Respondent's reply also states that the applicant's police verification was not received in time (police verification being the pre-service condition for appointment in Railways which is mandatory), he was directed to initial training in next slot/batch. For candidates from the same RRB panel, but who qualify in the training in the subsequent batch, their seniority is assigned with reference to para 303 of IREM. This seniority issue had been considered by the respondents and he was replied accordingly. Respondents maintain that the applicant joined as goods guard on 04.02.2016 and his pay was fixed under Rule 8 of RBE 103/2008 dated 04.09.2008 (Annex.R3) and read with RBE 93/2016 dated 02.08.2016, (Annex.R4).

5. Heard the counsel for the applicant and the respondents. The records brought before us and the submissions clearly establish the following facts:-
 - (i) After completing the recruitment formalities, the applicant underwent his prescribed initial training at ZRTI (Udaipur from 16.11.2015 to 29.12.2015) followed by the practical training at SUNR from 31.12.2015 to 31.01.2016. The period from 01.02.2016 to 2.2.2016 was treated as waiting period.
 - (ii) His pay was fixed at Rs.11,360/- on 04.02.2016 which was the pay admissible for direct recruits as per provisions of Rule 8 in RBE No.103/2008 dated 4.9.2008 (Annex.R3) read with RBE 93/2016 dated 2.08.2016 (Annex.R4). On the next date of increment i.e., 01.07.2016, he received his increment taking his pay to Rs.11,700/- which was revised as Rs.34,900/-. Subsequently, this was reduced to Rs.34,100/-.

6. There was admittedly some delay in police verification. However, once, those requirements were fulfilled, the applicant was directed to undergo medical test. The letter of Respondents dated 24.09.2015 (Annex.A/2), advised the applicant to report for medical test. On the face of it, Annex. A2 indicates pre recruitment formalities. It clearly says that if the applicant was declared fit in the requisite category of medical test, he would be directed for training and appointment.
7. The memorandum dated 3.2.2016 (Annex.A/3) clearly mentions that the applicant (along with 4 others) had completed the initial training and practical training and then they were appointed as Goods Guard in the scale of 5200-20200+2800 GP on the pay Rs.11360/-. This appointment was still provisional as certain verifications still remained to be completed. This appointment was subject to few other stipulation too, as the Annex. A/3 reveals.
8. The applicant feels that he was belatedly sent for initial training and hence his seniority should count from before. Vide recommendation from RRB, his rank was 7th in 15 persons' list (Annex.R/1). For determining inter se seniority from the same recommendation list, Railways have their instructions in place vide Rule 303 (ref RRB letter No.E(NG)L-89/SR6/32(PNM) dated 19.03.1993.
9. From the above and particularly Annex.A/2, it is clear that after recommendation by the Railway Recruitment Board (RRB) and completion of pre-recruitment formalities such as police verification, medical test etc., the selected candidates are asked to undergo training. As revealed by the memorandum dated 03.02.2016 (Annex. A/3), the appointment on the post of Goods Guard was made only on 03.02.2016, with certain stipulations.

Evidently the appointment per se commenced from 03.02.2016 as memo dated 03.02.2016 (Annex.A/3) clearly establishes. As far as inter se seniority among 15 candidates recommended by the RRB is concerned, this has been assigned in accordance with the extant instruction of RBE Rule 303 of the Rules Regulating Seniority of Railway Servants (Annex. R/7). This course of action culminated in the respondent's memorandum No.ET/A/133 dated 26.02.2018 wherever the training period has been taken into account for pay fixation after training. (Annex.R/6).

10. On the basis of these incontrovertible records and documents presented before us and the rules applicable in such a case, the impugned order dated 25.05.2018 neither appears to be discriminatory nor suffering from any procedural or legal infirmity. Taking into account the factual matrix of the case, and after perusing the records and the facts submitted before us and listening to the counsel of both the parties, we find that the applicant has not been able to show any non compliance with the extant rules by the employer or discrimination against him or infirmity in the order of the respondents. We do not find any convincing or valid reason to interfere with the impugned order at Annex. A1. Accordingly, OA is dismissed. M.A. also stands disposed of. No Costs.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)