

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.352/2018

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 Vikaskumar,
Son of Shri Vinodkumar Goswami,
Age: 30 years,
Working as Goods Guard in the office
Of the DRM RTM,
Residing at : Nr.Masjid,
Chakan Bazar, P.O. Chakan,
Dist.Bihar – 804 404.

...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.
3. The Divisional Railway Manager,
O/o DRM, Ratlam Division,
Southern Railway Division,
Ratlam – 457 001.

.....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 hold/declare that the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action on the part of the respondents not giving seniority and consequential benefits like pay fixation from the date of joining and as per merit order of the select list prepared by the RRB, Mumbai, inaction on the part of the respondents not considering and not taking decision on applicant’s request/representation dated 02.10.2017, null and void ab initio and nullity in the eyes of law.

(C) That the Hon’ble Tribunal further be pleased to direct the respondents to give/extend the benefit of pay and get his pay fixed from the date of entry in Railways i.e., 16.11.2015 and consequential benefits thereon and to get benefit thereon and to get seniority as per provision of Para 303-308 of IREM by way of allowing the present petition.

(D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”

2. The applicant has contended that his request to rectify the incorrect reduction of pay (Annex.A/1) has remained unheaded. He contends that he was offered the post of Goods Guard vide respondent’s letter No.ET/789/0/5/Vol.X dated 31.08.2015 in the scale PB1+2800 GP. As per the reply of the respondents, he had completed recruitment formalities i.e., recruitment form, attestation forms (police verification) on 4.11.2015 and was called for medical examination on 5.11.2015. He cleared the

medical examination on 17.11.2015; his initial training took place from 16.11.2015 to 29.12.2015, at Zonal Railway Training Institute, Udaipur whereafter he underwent practical training from 31.12.2015 to 31.01.2016. 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/2), 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/1). He preferred a joint representation dated 22.01.2018 (Annex.A3) for fixation of pay taking training period into account. However, his claims / grievances remained unaddressed.

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/5) 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. After completion of recruitment formalities, i.e., recruitment forms, attestation forms (Police Verification) on 04.11.2015, he was called for medical examination on 05.11.2015. After that, he was directed to attend the initial training 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. 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/2). 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 (Annex R/1). 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.R/2). 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. Respondents maintain that the applicant

joined as goods guard on 04.02.2016 after the training and his pay was fixed under Rule 8 of Railway Services (Revised Pay) Rules 2016 notified vide RBE 103/2008 dated 04.09.2008 (Annex.R1) and read with RBE 93/2016 dated 02.08.2016, (Annex.R2) which is in order. Later, vide Memo No.ET/A/133 dated 26.02.2018 (Annex.R4) his pay was fixed by taking the training period into account.

5. Heard the counsel for the applicant and the respondents. The records brought before us and the submission 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 RBE No.103/2008 dated 4.9.2008 (Annex.R1) read with RBE 93/2016 dated 2.08.2016 (Annex.R2). 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. The memorandum dated 3.2.2016 (Annex.A/2) 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/2 reveals.

7. The applicant feels that his seniority should count from before. Vide recommendation from RRB, his rank was 11th in 15 persons' list (Annex.A/2). 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.
8. 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/2), 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/2) 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. A/5). At any rate,

their pay, were fixed vide Memo dated 26.02.2018 (Annex.R4) by taking the training period into account.

9. On the basis of these incontrovertible records and documents presented before us and the rules applicable in such a case, the action of the respondents neither appear 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, 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 or action of the respondents. We do not find any convincing or valid reason to interfere with this matter, particularly in view of Annex.R4. Accordingly, OA is dismissed. M.A also stands disposed of. No Costs.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)