

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/020/00029/2015**

**Date of CAV : 25.02.2021**

**Date of Pronouncement :03.03.2021**



**Hon'ble Mr. Ashish Kalia, Judl. Member**  
**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Karunakar S/o Manikyam,  
Age 48 years, Occ : Service (OS-II Elec Dept),  
R/o 12-13-133, Fifth Floor, Flat No.4,  
Pasha Hill Tower, Islam Street,  
Vijayawada-1.

...Applicant

(By Advocate : Mr.K.S.Murthy)

Vs.

1.Union of India, Rep by  
The General Manager,  
South Central Railway, Secunderabad.

2.Divisional Railway Manager,  
Vijayawada Division,  
South Central Railway, Vijayawada.

3.Senior Divisional Personal Officer,  
Vijayawada Division,  
South Central Railway, Vijayawada.

...Respondents

(By Advocate: Mr. N.Srinatha Rao, SC for Railways)

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**ORDER**  
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

**Through Video Conferencing:**

2. The O A has been filed challenging the proceedings dt. 10.01.2014 and the action of the respondents in fixing the pay of the applicant in PB-2 Rs.9300-34,800 with GP Rs.4200/-. He sought a consequential direction to fix his pay in PB-2 with GP Rs.4600/- from May 2010 as per proceedings dt. 24.05.2010.



3. Brief facts of the case are that the applicant, while working as Mail Driver (Loco Pilot Mail) in the pay band of Rs.9300- 34,800 with grade pay of Rs.4200, was medically de-categorised on 25.02.2010 and offered the alternative post of Track Loco Controller (TLC) with grade pay of Rs.4600 on 24.05.2010 in the same pay band. Later, on 5.7.2010 the grade pay was reduced to Rs.4200 against which the applicant protested on grounds of PWD Act, 1995. Applicant represented to consider him for the post of Office Superintendent (OS), which was conceded to and his pay was fixed with grade pay of Rs.4200 on 10.1.2014. Whereas one Sri Harikrishna, Goods Driver was similarly de-categorised in 2010, but granted the higher grade pay of Rs.4600. Applicant represented on 23.7.2014 and he was informed that there is no grade pay of Rs.4600 for the post of TLC as such. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the junior is drawing higher pay and the reduction of grade pay is arbitrary. Principles of Natural Justice and Articles 14 & 15 of the Constitution have been violated.

5. Respondents, while confirming the facts of the case, state that the applicant on being medically de-categorised was offered the post of TLC, on 17.5.2010, which he joined. On representing, the applicant was again considered and posted to the post of OS with pay in the pay band of Rs.9300-34,800 having grade pay of Rs.4200. The grade pay Rs.4600 was by mistake granted and therefore, the same was corrected as Rs.4200 on 5.7.2010. The post of TLC has no fixed scale and it is filled up by selecting staff on tenure basis from the running staff who have volunteered. The pay that will be drawn will be the same as was fixed in the earlier post. Applicant worked with the grade pay of Rs.4200 while working as Mail Driver and hence, has to be granted the grade pay of Rs.4200. Sri P.U.N.D. Hari Krishna was decategorised on 27.10.2010 and was offered the post of OS Gr.I in the pay band of Rs.9300 – 34,800 with grade pay of Rs.4600 by which time the applicant was absorbed in the alternative post of TLC. Screening committee met on different occasions and offered the post of OS–I to Sri Harikrishna and OS-II to the applicant. Having accepted the post of OS with grade pay of Rs.4200/-, the applicant is estopped from challenging the pay fixed. Respondents accept that it was a mistake in granting higher grade pay of Rs.4600 to Sri Hari Krishna and that the irregularity cannot be perpetuated.

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

7. I. The dispute is about reduction of grade pay of the applicant from Rs.4600 to Rs.4200. As seen from the facts, applicant while working as Mail Driver was drawing a pay in the pay band of Rs.9300 – 34,800 with grade pay of Rs.4200. On medical de-categorisation, he was posted as



TLC with higher grade pay of Rs.4600 in the same pay band. The respondents admit that this was a mistake they have done. When any employee is medically de-categorised, the pay of the employee is protected. The case of the applicant is a case of over protection by granting higher grade pay of Rs.4600. As per rules, the grade pay of the applicant of Rs.4200 drawn as Mail Driver has to be protected which the respondents should ensure. Instead, they granted a higher grade pay and the applicant is expecting the continuance of the higher grade pay, though not eligible, as per rules. Further, the post of TLC has no fixed pay scale, since it is incumbent on the pay of the employee, who joins the post. Hence, when the applicant was posted as TLC on medical de-categorisation, his grade pay of Rs.4200 drawn as Mail Driver should have been drawn, instead of Rs.4600. This mistake was corrected after the applicant was absorbed on 18.06.2010.



II. The comparison made with Sri Hari Krishna would not come to the rescue of the applicant as he was irregularly granted the higher grade pay of Rs.4600 on medical de-categorisation, as admitted by the respondents. Negative equality cannot be claimed to perpetuate further illegality, as observed by the Hon'ble Apex Court in *Pankjeshwar Sharma v. State of J&K*, [2020 SCC OnLine SC 984](#), decided on 3-12-2020.

*“In the said judgment the Hon'ble Apex Court was of the opinion that the appellants therein cannot be extended the same benefit as was wrongly extended to some others. Reliance was placed on Union of India v. Kartick Chandra Mondal, (2010) 2 SCC 422 wherein it was observed that if something is being done or acted upon erroneously, that cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be made the basis of further appointment and erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. Reference was also made to Arup Das v. State of Assam, (2012) 4 SCC 559.”*

Therefore, seeking higher grade pay of Rs.4600 by citing the case of Sri Hari Krishna would not work out for the applicant, since the respondents cannot be forced to repeat the mistake.



III. Further, the applicant contended that the provisions of the PWD Act have been violated. On de-categorisation, applicant was granted higher grade pay for which he was not eligible and on correcting the same, it cannot be a case to be construed as violative of PWD Act. If the grade pay fixed was less than Rs.4200 which was drawn as Mail Driver, then it would have been incorrect. However, in the present case, it is a case of self injury to the respondents by mistakenly granting ineligible higher grade pay and they need to take remedial steps to heal the injury, by granting the applicant of what he is eligible for i.e. Rs 4200. Therefore, the question of violation of PWD Act does not arise.

IV. The Ld. counsel for the applicant pleaded that the running allowance was not properly worked out while fixing the pay scale on medical de-categorisation. We have perused the OA, the challenge is to impugned order dated 10.1.2014 and the prayer was to grant the higher grade pay of Rs.4600 which was granted on joining the post of TLC. After joining the stationary post of TLC, the applicant ceases to be running staff as was pointed out in the letter dated 24.5.2010 of the respondents issued to the applicant as under:

*“As he is not medically decategorized and posted as TLC the tenure period of 3 years is not applicable to him. However, if his performance is not found satisfactory, in addition to action under DAR as he cannot be foot back to Running duties, he will be considered for alternative job following the rules applicable to medically decategorized employees. He is not eligible for any benefits specifically admissible for running staff, such as ALK, addition in*

*basic pay for computation of Retirement benefits etc., as the medically decategorised drivers are drafted to perform the duties of TLC, ceases to be running staff.”*

The impugned order under challenge dated 10.1.2014 speaks of posting the applicant, a medically de-categorised employee, as Office Supdt after the applicant sought a change. There is nothing mentioned about the running allowance in the memo which was challenged. Even in the relief sought, there was no issue related to the running allowance, which was prayed for. Therefore, the submission of the Ld. Counsel for the applicant in regard to running allowance is not relevant. Further, the applicant has accepted the post of OS with the grade pay of Rs.4200. Therefore, having acquiesced to accept the post, the Principle of Estoppel works against him to seek a change in grade pay as sought.

V. Thus, viewed from any angle, we do not find any merit in the OA. Hence, the OA is dismissed with no order as to costs.

**(B.V.SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

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