

Through Video Conferencing**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR****Original Application No.200/01076/2019**

Jabalpur, this Wednesday, the 13th day of January, 2021

**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER**

Jitendra Kumar Dhangar, S/o Shri Jawahar Lal Dhangar, D.O.B- 01-05-1974, retired employee Group (c), R/o House No.1040, Dwarika Mishra Ward, Chungi Chowki, Jabalpur – 482001 (M.P.) **-Applicant**

(By Advocate – Shri S.K. Nandy)

V e r s u s

1. Union of India through its General Manager, West Central Railway, Head Quarter, Opposite Indira Market, Jabalpur – 482001 (M.P).
2. Additional Divisional Railway Manager, Jabalpur Division, West Central Railway, Jabalpur – 482001 (M.P.).
3. Senior Divisional Personal Manager (Personal Branch), West Central Railway, Jabalpur – 482001 (M.P) **-Respondents**

(By Advocate – Shri Vijay Tripathi)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by order at Annexure A-1 and A-2 dated 06.09.2019, whereby the order regarding voluntary retirement of the applicant w.e.f. 23.08.2019 has been cancelled.

2. The applicant has sought for the following reliefs:



“8(i) Summon the entire record including service sheet of the applicant from the possession of the respondents for its kind perusal.

8(ii) Set aside the order dated 06.09.2019 (Annexure A/1) and other order dated 06.09.2019 (Annexure A/2).

8(iii) Further command the respondents to restore the order dated 22.08.2019 by which the applicant has been allowed to retire voluntarily by giving him the benefits as per RBE No.137/16 dated 29.11.2016.

8(iv) Further command the respondents to disburse all the retiral dues of the applicant and calculate his monthly pension as per the provisions of RBE No.137/16 dated 29.11.2016 by treating him to be employee of running category.

8(v) Any other order/orders, which this Hon’ble Court deems fit and proper may also be passed.”



3. The applicant was initially appointed on the post of Assistant Loco Pilot at Bilaspur Division and thereafter promoted as Loco Pilot Goods. Thereafter, the applicant opted for mutual transfer and he joined on a lower post of Assistant Loco Pilot at West Central Railway Jabalpur Division as per his request for mutual transfer. Subsequently, the applicant was promoted on the post of Loco Pilot Shunting in the month of March, 2014. The applicant was declared medically unfit to hold to the post of Loco Pilot Shunting vide order dated 20.05.2019 (Annexure A-3) and, therefore, his case was considered for offering him alternative employment and vide order dated 17.07.2019 (Annexure A-4), the applicant was recommended to be posted as Office Superintendent. In pursuance to the order dated 17.07.2019, an office order dated 24.07.2019 (Annexure A-5) was issued and the applicant was relieved from his duties of running category to join the post of



Office Superintendent and the applicant joined as such on 25.07.2019. The applicant preferred a representation dated 30.07.2019 (Annexure A-6) seeking voluntary retirement under the provisions of Railway Service (Pension) Rules, 1993 as also to grant him retiral dues as prescribed in RBE No.137/16 dated 29.11.2016. The request of the applicant was accepted by the respondent department and office order dated 22.08.2019 (Annexure A-7) was issued allowing the applicant's request for voluntary retirement. However, vide the impugned orders dated 06.09.2019 (Annexure A-1 & A-2), the respondents have cancelled the order dated 22.08.2019 by issuing notice as to why he should not be retired from the alternative post of Officer Superintendent.

4. The grievance of the applicant is that the provisions of RBE No.137/16 dated 29.11.2016 (Annexure A-8) provide that whenever a medically de-categorised running staff governed by RS(PR) 1993, who has rendered the prescribed qualifying service, opts for Voluntary Retirement either on his own or within a period of one month from the date of offer of the first alternative post, his pension may be computed with addition of 55% Pay Element. The applicant while preferring the representation dated 30.07.2019 has categorically disclosed about his status declaring him medically de-categorized from the post of Loco Pilot Shunter and thereafter his alternate posting on the post of Office Superintendent on

25.07.2019. Therefore, he is entitled to get all his retiral dues as per the provisions of RBE No.137/16 dated 29.11.2016.

5. On the other hand, the respondents in their reply, have submitted that the posting order of the applicant on the post of Office Superintendent was published vide order dated 19.07.2019 and the applicant has accepted the same and joined as such on 25.07.2019. After joining the new post of Office Superintendent on 25.07.2019, the applicant had applied for voluntary retirement vide application dated 30.07.2019 seeking voluntary retirement as per the provisions in RBE No.137/2016. The applicant signed the application showing his designation as Loco Pilot Shunting. Therefore, the same was processed by the Loco Running Section as per the provision in RBE No.137/2016 and the order of voluntary retirement was thus issued vide order No.1102/2019 dated 22.08.2019. However, when the said order of voluntary retirement was circulated to all concerned, it came to notice that the applicant had already accepted the offer of the alternate job and had taken over the charge of the offered post on the date earlier to the date of application for voluntary retirement. Accordingly, the process of voluntary retirement was cancelled vide order dated 06.09.2019 (Annexure A-1) and the applicant was informed to report the office immediately. The applicant had deliberately shown his designation as Loco Pilot Shunting (medical decategorised) in the application of voluntary retirement so that he can get the retirement benefit



as per provision in RBE No.137/2016. The applicant has also not reported to the Section after cancellation of his order for voluntary retirement.

6. The applicant has also filed rejoinder to the reply filed by the respondents, wherein it has been submitted that the applicant has not suppressed any material fact. It has also been submitted that once the respondents have accepted his request for voluntary retirement and the applicant was allowed to retire voluntarily by giving him retiral benefits as per RBE No.137/2016, the cancellation of order dated 22.08.2019 is bad in law.

7. We have heard both the parties and perused the pleadings and the documents available on record.

8. It is undisputed fact that the applicant was declared medically unfit in medical category 'Aye-one' and thereafter was offered alternative post of Office Superintendent vide office order dated 17.07.2019. It is also not in dispute that the applicant had accepted the post offered to him and he joined on 25.07.2019. Later on, the applicant had moved an application dated 30.07.2019 (Annexure A-6) seeking voluntary retirement as per the provisions contained in RBE No.137/2016, which *inter alia* provides for additional 55% pay element to the medically decategorised running staff opting for voluntary retirement. The relevant extracts of RBE No.137/2016 dated 29.11.2016 (Annexure A-8) read as under:



“Vide DC/JCM item no. 25/2004, PNM/NFIR Item No.8/2015 and PNM/AIRF Item No. 46/2012, recognised staff Federations have demanded that 55% of Pay Element be reckoned for computing retirement benefit for those running staff who have been medically decategorised and decide to take Voluntary Retirement instead of opting for redeployment in an alternative stationary post.

2. The issue has been examined in Board’s office, and it is observed that the issued is governed under the provisions contained in Board’s letter referred to above. To address the specific aspect brought out by Federations, it has been decided that whenever a medically decategorised running staff governed by RS(PR) 1993, who has rendered the prescribed qualifying service opts for Voluntary Retirement either on his own or within a period of one month from the date of offer of the first alternative post, his pension may be computed with addition of 55% Pay Element. This 55% benefit will be reckoned after deducting the 30% Pay Element fixation benefit if granted already as per Board’s letter dated 05-10-2011 referred to above.

3. In case such staff does not give option of Voluntary Retirement within the outer limit period of one month specified herein above, it will be deemed that the staff has accepted the alternative appointment offered and in this case, retirement benefits will be governed by extant instruction on the issue whenever he superannuates or opts for Voluntary Retirement thereafter.”

9. Perusal of the provisions contained in RBE No.137/20216 make it clear that the 55% of additional pay element is to be granted to those running staff who opts for voluntary retirement after medical decategorisation. It further provides that whenever a medically decategorised running staff opts for voluntary retirement either on his own or within a period of one month from the date of offer of the first alternative post, his pension may be computed with additional 55% pay element. The above arrangement has been made for computing 55% of pay element to the medically decategorised running staff, who decides to take voluntary retirement



instead of opting for redeployment in an alternative stationary post. The applicant was offered an alternative post of Office Superintendent on 17.07.2019 (Annexure A-4), which he had accepted the same and joined as such on 25.07.2019. Therefore, we are of the view that the benefit of additional 55% pay element for computing retirement benefit cannot be granted to the applicant especially when the applicant has accepted the alternative post offered to him. Thus, we do not find any illegality in the order dated 06.09.2019 (Annexure A-1 & A-2) passed by the respondents.

10. Accordingly, the Original Application is dismissed. No costs.

(Naini Jayaseelan)
Administrative Member

am/-

(Ramesh Singh Thakur)
Judicial Member

