

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 19th day of April 2005.

Original Application No. 1302 of 2001

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Subodh Kumar, S/o Sri K.N.P. Sharma
Senior Clerk, Posted at Chandauli Majhwar,
Under Divisional Railway Manager, E. Rly.,
MUGHALSARAI.

... Applicant

By Adv : Sri S. Ram

VERSUS

1. Union of India through General Manager,
Eastern Railway,
MUGHALSARAI.
2. Divisional Railway Manager,
Eastern Railway,
MUGHALSARAI.
3. Senior Divisional Personnel Officer,
Eastern Railway,
MUGHALSARAI.

... Respondents

By Adv : Sri K.P. Singh

ORDER

By K.B.S. Rajan, JM

What should be the scale of pay in respect of a medically incapacitated running staff on his being accommodated in some other posts is the question in this case. Deviating from the normal practice of explaining the facts of the case and thereafter going into the law on the subject, first the rule position is explained here and thereafter the facts of the case follow and ultimately the rule position is telescoped upon the facts of the case to arrive at the final decision.



Rule 1309 (iv) is the relevant rule and the same reads as under:-

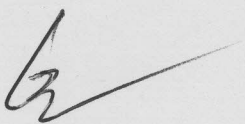
“While finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying ‘equivalent post’ (Board’s letter no. E (NG) II-77-RE 3-2 dated 2.9.77). All cases decided on or after 1.1.91/1973 may be reviewed and benefits as above given only if (a) there had been an acute hardship’ and (b) there should be no effect on others. (Board’s letter no. E (NG) II-79 RE 3/5 dated 22.5.1979). Even in such cases, the matter of payment in the equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise.”

The above rule has been re-considered and reconfirmed in the Railway Board’s letter dated 10.6.1994, which reads as under :

“Sub.: Identification of ‘equivalent posts for running staff on their medical decategorisation.

In terms of instructions contained in para 1309 (iv) of IREM 1989 edition while finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying the equivalent post.

As desired by NFIR in the PNM meeting held on 20/21.10.1993 the above instructions are reiterated for information and necessary action.”



Now, the facts of the case in a capsule ; the applicant was earlier employed as Electric Shunter in the scale of pay of Rs. 1200-2040/- and at a material point of time, his basic pay of Rs. 1620/-. The post of Electric Shunter carries apart from the basic pay and attendant allowances, also running allowances and this running allowance for the running staff, is quite sizable. The applicant was medically invalidated for performance of his duties as Electric Shunter. Consequent which, he was afforded an alternative post as Senior Clerk in the pay scale of Rs. 1200-2040/- and his basic pay was fixed at Rs 1638/- w.e.f. 28.10.1996. The applicant, not being satisfied with the above, stated to have several written applications on various dates from July, 97 to December, 2000 and having not got any favourable response, he has filed this application with the following main reliefs:

- (i) to quash the Establishment Office order no. 950 of 1996 dated 28.10.1996 and direct the respondents to post the applicant on alternative post of Head Clerk in the Scale of Rs. 1400-2300 from 28.10.1996 and pay all arrears of difference of salary and allowances accordingly.
- (ii) To grant any other and further relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

The respondents have contested the O.A. According to them, the rule provides for an increment of 30% in lieu of running allowance and accordingly, in the scale of pay of Senior Clerk (Rs. 1200-2040), the applicant was fixed at that stage, taking into account the extent of 30% in lieu of running allowance. According to them, the applicant is not entitled to higher pay scale and the amount in lieu of running allowances is to be added only to his basic pay.

The above contention has to be out rightly rejected. The rule as contained in 1309 (iv) of IREM as reaffirmed vide Railway Board's letter dated 10.6.1994 is unambiguous and crystal clear, right from the subject.



The subject is identification of the equivalent posts and the extent of 30% in lieu of running allowance " should be added to the minimum and maximum of the scale of pay", vide the aforesaid rule and Railway Board's letter. There is no reference to any basic pay in the aforesaid rule. Hence, the increment upto 30% has to be added to the minimum and maximum in the scale of pay and a post having such minimum and maximum in the pay scale should be identified. If this rule is telescoped upon the case of the applicant, it may be seen that the applicant at the relevant point of time was drawing a basic pay of Rs. 1260/- 30% of which works out to Rs. 378/- Even 30% of the minimum in the scale is worked out, the same comes to Rs. 360/-. Thus, when at the minimum and maximum scale, this increment is added, the scale of pay would be 1560-2370/-. The standard scale of pay approx. matching the above scale is thus, 1400-2300/-. It is this scale that the applicant has been claiming. The applicant had referred to a few cases wherein a Diesel Asstt. In the scale of Rs. 950-1500/- when medically incapacitated was afforded an alternative post in the scale of Rs. 1200-2040/-. Similarly another running staff working as Goods Guard in the scale of Rs. 4500-7000/- on being medically incapacitated was given an alternative post of Head Clerk in the scale of pay of Rs. 5000-8000/-. The respondents though made a bald denial in respect of the above averments, have not stated exactly what the scale of pay in respect of the aforesaid persons. They have only clarified that " they are different cases decided on the basis of recommendation of the screening committee which cannot be compared with the case of the applicant." This reason is hotly justifiable. Apart from not following the rules in correct perspective with the intents and spirit under lying this rule, a hostile discrimination has also been shown towards the applicant inasmuch as when other two similarly situated persons have been granted the higher pay scale, the applicant has been placed in a post with a lower pay scale. The decision of the respondents is therefore, unsustainable. The respondents are



duty bound to identify a post in the scale of pay of erstwhile 1400-2300/- (presently Rs. 4500-7000) and accommodate the applicant in the said post.

It is at this juncture that the ground reality has to be taken into account. The applicant has been posted as a Senior Clerk in end 1996 and though he has claimed that he should be posted in the pay scale of 1400-2300/- from 28.10.1996 and arrears of difference in pay be also allowed, we are not inclined to allow this O.A. in its entirety. The applicant is certainly be entitled to be accommodated in a post carrying the scale of Rs. 1400-2300/- (Pre revised), but his pay will be fixed only notionally upto the date of filing of this application (30.10.2001) and it is thereafter he is entitled to arrears of difference in pay and allowances. It is pertinent to here that the Apex Court in the case of Narendra Kumar Chandla Vs. State of Haryana (1994 27 ATC* had held that when a person is accommodated in a post in the wake of medical invalidation, his emolument should be protected. This spirit is intrinsic in rule 1309 (iv) of IREM.


The O.A. is partly allowed. The following directions are made :

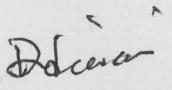
- (a) The respondents would identify a suitable post in the scale of pay of Rs. 4500-7000/- and accommodate the applicant on the said post.
- (b) The applicant's pay shall be notionally fixed in the aforesaid scale at the minimum of the above scale as of October, 1996, i.e. the date when he was given an alternative appointment and notional increment would be worked out till 31.10.2001. Thereafter, his pay would be fixed according to the notional increment earned w.e.f. 1.11.2001 and arrears of difference of pay and allowance from 1.11.2001 shall be worked out and the same shall be paid etc the applicant.
- (c) The applicant shall be placed in the seniority of the post so identified wherein he is accommodated at the bottom of the



seniority list as of 31.10.2001, which is the date of filing of the O.A.

- (d) This drill of fixing the seniority shall be after due notice to the affected persons in the seniority list.
- (e) The above said directions shall be complied, within a period of six months from the date of receipt of copy of this order.
- (f) Cost made easy.


MEMBER (J)


MEMBER (A)

/piyush/