



**Central Administrative Tribunal
Principal Bench**

OA No.1547/2020

This the 12th day of March, 2021

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Abhay Kumar S/o Shri Baijnath,
A101, Prateek Fedora, E-11,
Block D, Sector 61, Noida,
Gautam Budh Nagar, UP-201301

- Applicant

(Applicant in person)

VERSUS

1. Divisional Railway Manager/P,
DRM Office, Northern Railway,
State Entry Road, New Delhi-110055

2. Union of India,
Through Secretary,
Ministry of Railways,
Rail Bhawan, Raisina Road,
New Delhi-110001

- Respondents

(By Advocate: Sh. SM Arif)

ORDER (Oral)

Justice. L. Narasimha Reddy:

The applicant initially joined National Thermal Power Corporation (NTPC) as Engineer (Mechanical) on 04.08.2008. His services were confirmed in the grade of Rs.24900-50500 w.e.f. 04.08.2020. Thereafter, the applicant responded to an advertisement for selection to a post in Indian Railways Service Mechanical Engineers (IRSME), issued by the UPSC in the year 2009. He was selected and appointed as IRSME on



28.02.2011. At present, he is working as Senior Divisional Mechanical Engineer. He made a representation to the Director with a request to accord him the benefit of pay protection. It is stated that pay, which he was carrying in the NTPC before his selection/appointment in IRSME, was not protected. The Northern Railway passed an order dated 08.09.2020, rejecting the case of the applicant. It is stated that the benefit of pay protection is available only when the selection is by way of interview and not when it is through open competitive written examination. The applicant filed this OA, challenging the order dated 08.09.2020.

2. The applicant contends that the very purpose of protection of pay is to ensure that the employees, who are working in a PSU, are not put to loss when they join the other PSU or a Government department. He submits that the distinction made by the respondents was set aside by this Tribunal in its judgment dated 10.02.2017 in OA No. 3626/2012, following the judgment of the Hon'ble High Court of Delhi in WPC No. 5518/2004.
3. Today, we heard Shri Abhay Kumar, the applicant who argued the case in person, and Shri SM Arif, learned counsel for the respondents.
4. The issue in this case is in a very narrow compass. It is not in dispute that the applicant was working in NTPC in the pay scale of Rs.24900-50500, before he applied for the post of

IRSME, Railways. He was selected and appointed, but the pay was not protected.



It is true that the OM dated 10.07.1998 has maintained a distinction based on the method of selection/appointment of a member of service in one PSU, when he joins another PSU, in the context of pay protection. It is only when selection in the other PSU is purely on the basis of interview and not involving any open competitive examination, that such protection is extended. Where the selection is based upon the performance in the examination, the benefit was not extended.

6. The Hon'ble Delhi High Court held such distinction to be untenable, in WPC No. 5518/2004. Following the same, this Tribunal allowed the OA No.3626/2012 through a detailed judgment. The same situation obtains in this case also.

7. We, therefore, allow the OA and set aside the impugned order. We direct that the pay of the applicant shall be refixed, giving the benefit of pay protection, within a period of two months from the date of receipt of a copy of this order. However, the benefit shall be prospective and it shall not result any arrears.

There shall be no order as to costs.

(**MoHd. Jamshed**)
Member (A)

(**Justice L. Narasimha Reddy**)
Chairman