

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH) ALLAHABAD.

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C.A. NO.
TA. NO.

382/87

GE-499

Date of decision 5/11/1952

.....*Balraj Lal Dubey*.....Petitioner

.....*Sri H. B. Singh*.....Advocate for the petitioner

Versus

.....*U. D. I. & others*.....Respondent

.....Advocate for the Respondents

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CORAM :-

The Hon'ble Mt. *Maharaj Prasad, J. M.*

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the judgment ? *Y*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment ? *Y*
4. Whether to be circulated to all other Benches ? *Y*

[Signature]
, Signature

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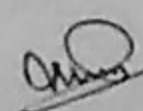
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Northern Railway, Allahabad. The applicant at the time of accident was getting the salary in the pay scale of Rs80-95 and as such he was entitled to his fixation of pay in the said pay scale. The applicant thereafter promoted to the post of Goods Clerk and was appointed as Assistant Goods Clerk on 26.2.1984 at Allahabad. The applicant represented for fixation of his pay as Goods Clerk in the scale of Rs260-430 as it was not correctly fixed. His representation was rejected on 1.10.1985 by the Senior Divisional Personnel Officer, Northern Railway, Allahabad. Thereafter the applicant represented to the Divisional Railway Manager, where upon the senior Divisional Commercial Superintendent got annoyed and passed an order on 29.9.1986 that the applicant should be spared from the post of Assistant Goods Clerk and to report to the Head Ticket Collector, Allahabad to work on special duty. The applicant has, therefore, challenged an order dated 1.10.1985 read with order dated 4.10.1986 before this Tribunal and also sought the relief for proper fixation of his pay claiming the difference of pay and allowances.

3. The respondents have filed reply and resisted the claim of the applicant.

4. We have heard the learned counsel for the parties and perused the record. It is admitted that the applicant was temporary Khalasi and then he was designated as Cleaner in the year 1958. He was promoted to officiate as Fireman Grade 'C' in the pay scale of Rs 80-95 on 27.10.1962. He met with an accident in the year 1966 and at

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that time he was drawing his salary Rs83/- per month. It is further admitted to the respondents that after being medically decategorised the applicant accepted alternative employment as Head Bearer (running room) in the grade of Rs75-89. The salary of the applicant was fixed at Rs89/- per month as Head Bearer (running room). The applicant was admittedly promoted on the post of Assistant Goods Clerk w.e.f. 1.3.1984 in the pay scale of Rs260-430-.

5. It has been contended on behalf of the applicant that the respondents treated the applicant in differently by not fixing the pay correctly interms of the Railway Board's order no. E(5)63/RS/14 dated 17.12.1963. This letter of the board is annexed with representation of the applicant which is marked as Annexure 3, which reads as under:-

"Once the alternative job has been offered and accepted by the temporary running staff. 50% of pay if they have retained prescribed scales and 40% of then pay if they have opted for the Authorised Scales, should be included in their former emoluments for the purpose of fixation of pay in the alternative appointment. These orders take effect from 17.12.1963."

6. The applicant submitted the representation for fixation of his pay which was rejected vide order dated 1.10.1985 by the Senior Divisional Personnal Officer , Northern Railway, Allahabad. By which the applicant was informed that the period during which the applicant worked as Head Bearer (running room) will not be counted for purpose of fixation of pay as Good Clerk in the pay scale of Rs 260-430.

7. The learned counsel for the applicant referred Government of India publication Master Circular on Absorption of Medically de-categorised

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Non-gazetted Staff in alternative Jobs of which para 10

is re-produced as under:-

"Fixation of pay of medically de-categorised staff:

- 10.1 The pay of a Railway servant who is medically de-categorised and absorbed in an alternative appointment will be fixed at a stage corresponding to the pay drawn in the post held in the parent department. If there is no such stage in the post in which he/ she is absorbed, he / she is to be given the stage below the pay previously drawn by him/her.
- 10.2 In the case of running staff, the last pay drawn in the parent cadre + percentage of this pay in lieu of the running allowance which is 30% at present is also protected. It is, however, subject to the condition that the employee is not entitled to a pay more than maximum of the absorbing grade though he might be drawing more pay in his parent department, if decategorisation had arisen on account of the causes mentioned in para 3(i) and 3(ii). However, if the medical decategorisation has arisen due to the causes mentioned in para 3(iii), 3(iv), 3(v) and 3(vi), the pay of the decategorised employee (in the case of running staff, pay + percentage of pay treated as emoluments in lieu of the running allowance) should be protected in the absorbing grade, the difference will be allowed as personal pay to be absorbed in future increase(s) in pay.
- 10.3 The pay of the medically de-categorised employees (in the case of running staff pay + 30% of pay in lieu of running allowance) falling under Groups (iii) to (vi) of para 3 above, and not in Group (i) & (ii) of the same para should be protected fully in the absorbing grade and if it exceeds the maximum of the absorbing grade, the difference will be permitted as personal pay to be absorbed in future increases.
- 10.4 If before medical decategorisation an employee is empanelled or trade tested and if the panel or trade test list is valid even at the time of decategorisation and vacancy arised in the parent department whilst the panel or the list is still in force, the decategorised employee must

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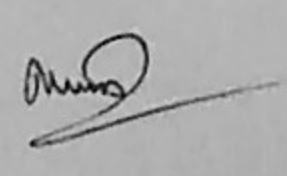
be considered for giving him the benefit of promotion which he would have received but for the decategorisation subject to the following conditions:-

- (a) the benefit will be admissible only cases where the medical decategorisation is owing to:-
 - (i) Accidents which arose out of and in the course of employment,
 - (ii) Accidental injuries received due to wilful act or negligence of co-employee.
- (b) the benefit will be admissible only if relevant panel (in the case of selection posts) or suitability list (in the case of non-selection posts) including posts filled through trade test is valid on the date from which the benefit is due.
- (c) the benefit will be limited only to the initial fixation of pay in the higher posts, no subsequent incremental benefit will be admissible."

8. The applicant was medically decategorised while he was performing his duties during the course of his employment, so his case is covered by sub para (iii) of para 3 of the above mentioned Master Circular. Therefore, he is entitled to get pay + 30% of the pay in lieu of the running allowance. It is a clear from the impugned order dated 1.10.1985 (Annexure A 4) while fixing the pay of the applicant in the pay scale of Rs 260/- per month on the post of Assistant Goods Clerk, 30% of the pay in lieu of the running allowance has not been included.

9. Thus in view of the discussion made above the application is allowed and the order dated 1.10.1985 read with order dated 4.10.1986 are quashed. The respondents no. 2 and 3 are directed to take fresh steps to re-fix the pay of the applicant within the period of four months from the date of the communication of this order. According to para 10 (2) (3) Government of India, Ministry of Railways

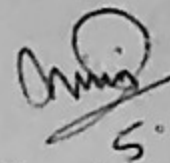
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(Railway Board) letter No. E (NG)I/90 RE 3/ E
dated 24.4.1991. The applicant is also entitled
to get difference of pay as the personal pay.
10. The application is accordingly disposed
of with no order as to cost.


5.11.92
Member (J)

DATED:- 5/11/Nov , 1992.

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