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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.525 of 2009

Amulya Prasad Dora Applicant

Vs

Union of India & Others Respondents

1. Order dated -16-08-2011.

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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Facts not in dispute are that after being selected through RRB/BBS, on 22.02.2005, the Applicant was appointed as Trainee Assistant Driver (Diesel/Electrical) in the scale of Rs.3050-4590/-. After successful completion of training course, he was allotted to Sambalpur Division and posted under Ch. Crew Controller/SBP vide order dated 26.12.2005. While working as such, he was sent for medical check in which he was declared unfit in A-1 but found fit in A-3 category and below vide letter dated 19.3.2009. On being declared medically de-categorized he was screened on 07.08.2009. On the basis of the report of the Screening Committee the name of the applicant was recommended for alternative posting as Tech.III in PB 1 + GP Rs.1900/- in Mechanical Department. Accordingly, vide order dated 20.08.2009, the applicant was given alternative appointment



in Mechanical Department in Tech III in PB 1 + GP Rs.1900/- and he was posted under the Senior Section Engineer (Carriage and Wagon)/Kantabanji. He joined at Kantabanji on 19.11.2009 as Tech.III. Subsequently he appealed for his posting against the post on medical de-categorization as Tech.III. The appeal of the applicant was considered and the result thereon was communicated to the applicant in letter dated 07.09.2009 (Annexure-A/4 to the OA/AnnexureR/1 to the counter). Being aggrieved by such order under Annexure-A/4 applicant submitted representation to his higher authority (DRM) on 9.9.2009 to reconsider his grievance as per the provision of Establishment Sl.No.122/99 with further request to give him alternative posting other than the post to which he was posted. Since no reply was communicated to him he reiterated his request again in representations dated 1.10.2009 and 14.10.2009. But the Applicant the DRM(P), ECoRly, Sambalpur rejected his request in letter under Annexure-A/8 dated 22.10.2009 without taking into consideration the relevant provisions of the Railway.

2. According to the Applicant, the scale of pay of Rs.3050-4590/- which the applicant was getting before being declared medically de-categorized was equated with the scale of pay of Rs.4000-6000/- and when establishment Sl.No.141 of 2000

12 provides that equivalent grade as scale of pay applicable for the running staffs equated with the scale of stationary post, rejection of the representation of the applicant without taking into consideration the provision amounts to non application of mind. Further contention of the Applicant is that Rule 1307 of Estt. Sl.No.122/09 provides that a medically de-categorized running staff absorbed in alternative employment shall get the scale of pay equal to such percentage of pay in lieu of running allowance as may be in force maybe added to the minimum and maximum scale of pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing the said may be replaced by the equivalent existing scale of pay. As per the Rule 30% running allowance to the minimum and maximum of pay scale should be added and accordingly the scale of pay shall be arrived at for a medical de-categorized staff and the scale of pay shall be equivalent to the scale of pay after adding 30% of running allowance to the scale of pay. But the Respondents rejected his representation without looking to the aforesaid provision and as such, the order of rejection is not sustainable and needs reconsideration. Next contention of the Applicant is that the authorities committed grave error by not placing him in the scale of pay of Rs.4000-6000/- for which post he was eligible as per the

rules because before he was medically de-categorized, his scale of pay was Rs.3050-4590/- and 30% running allowance, if added to the minimum and maximum of pay scale it comes to Rs.3, 965-5967 and the equivalent scale of pay is Rs.4000-6000/-. As such posting him in the present post is contrary to the Rules. Hence he has approached this Tribunal in the present OA in which he has sought to quash the order of rejection under Annexure-A/2 dated 20.8.2009 and to direct the Respondents to provide him suitable alternative appointment in the scale of pay of Rs.4000-6000/- with grade pay of Rs.2400/-.

3. Respondents in their counter at paragraphs and 9 stated as under:

- "8. That in reply to averments made in paras 4.5. of the OA it is humbly submitted that the Estt. Serial No. 141/2000 is no way related in his case. It is only meant for the purpose of promotion for the stationary categories where both running and stationary staff are eligible and considered together. The applicant's case is not coming within the purview of this rule hence denied.
9. That the averments made in para 4.6 of the Original Application are not correct.

In reply to the averments it is humbly submitted that the instruction contained in Estt. Srl.No.122/91 has been strictly followed by the Railway Administration. The above posting order dated 20.08.2009 was issued according to the Rule 1307 of Estt. Srl.No. 122/99. In order to determine the scale of pay for the purpose of absorbing a disabled/medically de-categorized running staff in the alternative employment, an

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amount equal to such percentage of pay lieu of running allowance as maybe in force may be added to the minimum and maximum of the scale of pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing the same may be replaced by the equivalent existing scale of pay.

According to the above rule, 30% running allowance has been added to the minimum i.e. $\text{Rs.}3050+915=\text{Rs.}3965/-$ and maximum i.e. $\text{Rs.}4590+1377=\text{Rs.}5967$. It is not reached to the next scale of pay i.e. $\text{Rs.}4000-6000/-$. Hence the existing pay scale i.e. $\text{Rs.}3050-4590/-$, 5th CPC) has been recommended by the Screening Committee and approved by the Competent Authority. Therefore, the applicant has been rightly absorbed in the alternative posting."

4. In stating so, it has been averred that keeping in view the extant ruling the applicant was absorbed in Mechanical Department as Tech-III in PB-I+GP $\text{Rs.}1900/-$ being equivalent existing scale of pay available in Mechanical Cadre, hence his claim to absorb in scale of pay $\text{Rs.}4000-6000/-$ (5th CPC) does not arise. Hence the Respondents have prayed to dismiss this OA.

The order of rejection under Annexure-R/1 dated 07.09.2009 reads as under:


"In reference to your appeal dated 20.08.2009 and 21.08.2009 it is to inform you that the fixation of pay in Tech III in PB 1 + GP $\text{Rs.}1900/-$ has been assessed as per provision 1307 of IREM Vol.I circulated under Estt. Srl.No. 122/99. There is no such identical scale of pay available after adding 30% running allowance to the minimum and maximum of pay scale so arrived $\text{Rs.}3965-5967/-$. The promotional grade laid

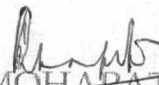
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down under Estt. Srl. No. 141/2000 in Rs.4000-6000/- of running staff whom are in scale Rs.3050-4590/- (RPS) and absorbed in Stationary post.

Moreover, the Estt. Srl.No.122/99 has not been superseded by Estt. Srl.No.141/2000 or correction to the manual provision of 1307 Vol.I is issued. So both the establishment serials and rule provisions are independent to each other. Thus the decision taken by the screening committee and approved by DRM/SBP and circulated vide this office O.O. No.Med.Decat/14/2009 dtd.20.08.2009 holds good. However, a reference has been made to CPO/ECOR/BBS on 24.6.2009 and who in turn has referred the matter to Railway Board for clarifications on 21.7.2009. On receipt of the decision the revision of pay, if any, arising will be under taken.

5. Since according to the Respondents, the matter has already been referred to the Railway Board for clarification and Railway Board having not been made as a party in this OA, we dispose of this OA with direction to the Respondent No.1 to expedite the matter so as to obtain the clarification from the Railway Board within a period of three months from the date of receipt of copy of this order. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)