

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 279/2012

Reserved on : 18.05.2016

Jodhpur, this the 27th day of May, 2016

CORAM

Hon'ble U. Sarathchandran, Judicial Member
Hon'ble Ms Praveen Mahajan, Admn. Member

Hanuman Singh S/o Shri Shiv Nath Singh, aged about 51 years, Resident of Near Badila Kua, Latiayo Ka Mohulla, Merta Road, Distt. Nagaur, at present employed on the post of Senior Clerk in Loco Lobby, Merta Road, JN, NWR, Distt. Nagaur.

.....Applicant

By Advocate: Mr J.K. Mishra.

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17.
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

.....Respondents

By Advocate : Mr Govind Suthar proxy counsel for Manoj Bhandari.

ORDER

Per U. Sarathchandran

Applicant was working as Diesel Mechanic under the respondent railway in the t5th CPC pay scale of Rs 3050-4590, in

29.04.1999 and was kept in the supernumerary post of Diesel Assistant upto 02.11.1999. Thereafter he was posted against supernumerary post as Shed Man vide Annex. A/5. Subsequently he was absorbed in a lower post of Clerk in the pay scale of Rs 3050-4590 and his pay was fixed on Rs 4590 = 1275 + PP vide Annex. A/6. Applicant states that the aforesaid fixation is done contrary to the relevant rules in the IREM. He submitted Annex. A/7 representation and requested for due fixation of pay, seniority and promotion in the grade of Rs 5000-8000. However, his request was turned down by Annex. A/1 communication. Applicant further states that he was ordered to be promoted to the post of Sr. Clerk in the pay scale of Rs 5200-20200 + 2800 G.P. vide Annex. A/8 order dated 22.11.2011. He is aggrieved for not having been given alternative employment in a stationary post equivalent to the post he had held before his decategorization. If that was done he would have earned his due increments. He further states that for no fault of his, he has faced humiliation, frustration and recurring financial loss. He, therefore, prays that:

- (i) That impugned order dated 26.11.2011 (Annex. A/1) may be declared illegal and the same may be quashed. The respondents may be directed to absorb the applicant on the post carrying the pay scale of Rs 4000-6000 (revised to Rs 5200-20200 +2400 G.P. under 6th CPC), from the date he was put to work as Shed Man or at least from the date a formal order of his absorption was issued on the post of Clerk i.e. dated 23.01.2006 and he may allowed all consequential benefits including due pay fixation, grant of increments, promotions thereof and the amounts of arrears of difference be paid to him along with marked rate of interest.

- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.

2. The Railway resisted this OA by contending that the applicant had been absorbed in a proper post with proper pay scale in accordance with the rules. They state that the application is barred by limitation as the applicant is assailing the validity of order passed in 2007. He became a Diesel Assistant in 1992 but he has been imposed a penalty of withholding of increment for a period of one year in 1994. Respondents further state that after declaring unfit for the post of Diesel Assistant, he was found suitable for the post of Clerk Mechanical in the grade of Rs 3050-4590 5th CPC (5200-20200 + GP 1900 6th CPC scale) after conducting a suitable trade test for his absorption in the alternative employment. He joined his duties as Clerk Mechanical on 27.01.2006 and he was given the benefit of pay fixation in that stationary post by adding 30% of running element in terms of para 1308 of IREM Vol. I. He had not raised any grievance at the time of fixation of his pay in 2006. Now he has approached this Tribunal after lapse of six years with the present OA. Respondents states that the applicant has not been reduced in rank nor he has been granted a lower pay scale. They respondents pray for rejecting the OA.

3. A rejoinder was filed by the applicant reiterating his contentions in the OA and also refuting the averments made in the reply statement. He states that the rule position narrated by the respondents was not valid then.

4. Heard both sides. Perused the record. It is not in the dispute that the applicant was medically decategorized from holding the post of Diesel Assistant w.e.f. 24.09.1999. The Indian Railway Establishment Manual (in short, IREM) has provisions for protection of the rank and pay of the employee when he became medically decategorized and is provided alternative employment or when he is placed in a supernumerary post till alternative employment is given on any other post. The relevant paras of IREM which governs the field reads :

"1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with same pay scale and service benefits.

1306. Steps to be taken for finding alternative employment:-

XXX

2. The office concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disable/medically incapacitate Railway servant has been found suitable and a post with same scale of pay as was attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.

1308. Fixation of Pay : The pay of the disabled/medically decategorized Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring

While applicant was working as Diesel Assistant he was in the 'running category' entitled to receive running allowance. Respondents contend that while granting him the alternative employment as Clerk Mechanical the financial benefits like running allowance were taken into consideration while fixing his pay in tune with para 1308 page 13 of IREM 1989 edition. The relevant portion of IREM relied on by the respondents reads :

"The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage correspondent to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically decategorization. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowance as may be in force. If the basic pay so arrived at does not correspond to any stage in the absorbing grade the pay may be fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly, if the pay so arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the minimum and the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowance and House Rent Allowance should be allowed on pay plus Personal Pay, if any, in the absorbing grade." **(emphasis supplied)**

Applicant is presently posted as Senior Clerk in the stationary post by way of alternative employment. He contends that the aforequoted provision of para 1308 of IREM relied on by the respondents have not been fully implemented in his case and that he is still denied of the pay and allowances alongwith increments he would have earned had he been continuing in the post of Diesel Assistant prior to his decategorization.

5. Medical decategorization of running staff on the ground of visual impairment or insufficient or inadequacy acquired during the course of employment has now been well taken care of in the IREM by providing suitable alternative employment without any reduction in rank and pay enjoyed by the employee prior to his decategorization. This situation has been given statutory recognition in the 'The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' (in short, PWD Act) which is a legislative measure brought in after the aforequoted provisions in the IREM. PWD Act was enacted by the parliament on the basis of an international legal instrument i.e. "Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region" wherein India is signatory, to implement the said Proclamation. The PWD Act treats impairment of vision (low vision) as 'disability' conferring the persons with such disability the benefits of the Act. Section 47 of PWD Act reads :

"47. Non-discrimination in Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may having regard to the type of work carried on in any establishment by notification and subject to such conditions if any as may be specified in such notification exempt any establishment from the provisions of this section."

In terms of the above provisions, it is illegal to dispense with or reduce in rank an employee who acquires a disability during his service. The pay scale and service benefits of such persons after acquiring disability is protected by the aforesaid provision in the PWD Act.

6. In the instant case, it is not in dispute that the applicant has acquired low vision standards during his employment and therefore, undoubtedly he is entitled to protection of his rank, pay and other service benefits which he had been enjoying at the time of acquiring such disability. The provisions in section 47 of the PWD Act are mandatory as has been held by the Apex Court in *Kunal Singh v. UOI* (2003) 4 SCC 524 and *Anil Kumar Mahajan v. UOI* 2013 (6) SLR 786 and also in *Bhagwan Das v. Punjab State Electricity Board* (2008) 1 SCC 579. Undoubtedly the respondent-railway in this case also is bound by the provisions in section 47 of PWD Act, besides the aforequoted provisions already contained in IREM. Nevertheless, Section 47 of the PWD Act does have a supervening effect over the aforesaid provisions in the IREM

which are more or less identical to the provisions in section 47 of the PWD Act.

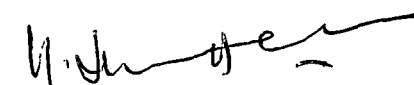
7. Respondents contend that at the time when the applicant was given alternative employment on stationary post of Clerk Mechanical protection of the pay and allowances enjoyed by him in the post of Diesel Mechanic was given to him. But the applicant refutes this. It is now settled law by the Apex Court in *Union of India v. B. Benerjee* (2003) 6 SLR 607 (SC) that for decategorized Loco staff if the allowances in lieu of kilometerage (ALK) is protected in the pay of the alternative employment, grant of additional ALK is not justified. Therefore, it is clear that once the running allowance or a portion of it is included in the pay element in the alternative employment applicant is not entitled to any further claim of it. It is worth noticing that the protection of pay and allowances is to be ensured only at the time when the decategorized persons are given alternative employment. It is not a matter to be subsequently observed in the future progression of the career in the alternative post. Therefore, if the applicant had been adequate protection of pay and allowances and other service benefits he had been enjoying on his medical decategorization in the alternative employment, the duty of the respondent railway ends there. Any fluctuations and vicissitudes

the post in which he was absorbed by way of alternative employment has to be borne by the applicant because after a long lapse of time there is no point of return for him to the post from which he was medically decategorized.

8. Therefore, we are of the view that the respondents should be given a direction to verify whether the applicant had been given protection of the pay and allowances including the running allowance and the rank he had been enjoying in the cadre of Diesel Assistant when he was given alternative employment as Clerk Mechanical on 27.01.2006. If such protectionary measures envisaged in section 47 of the PWD Act read with para 1308 at page 13 of IREM 1989 edition are not given to the applicant in the alternative employment so given, respondents shall re-fix his salary by protecting the pay, rank and other service benefits the applicant had been enjoying in his previous post with all consequential effects in the present post, which would ordinarily have a cascading effect till his retirement. Ordered accordingly.

9. The OA is disposed with the above directions. Parties shall suffer their own costs.


[Praveen Mahajan]


[U. Sarathchandran]