

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

DATED, THE 31ST DAY OF OCTOBER, 1986

Application No.334 of 1986(T)
(W.P.No.14287 of 1980(S))

Present

The Hon'ble Shri Ch. Ramakrishna Rao : Member (Judl.)

The Hon'ble Shri L.H.A. Rego : Member (AM)

Shri R. Govindarajulu,
Senior Mechanical Instructor,
System Technical School,
Southern Railway,
Bangalore-560023.

... Applicant

(Shri S. Vasanthakumar, Advocate)

The General Manager (Personnel),
Southern Railway,
Head Office,
Park Town,
Madras-600003.

... Respondents

(Shri Venugopal, Advocate)

This case came up for hearing before Court-II.

Shri L.H.A. Rego, Member (AM)(R) made the following:

O R D E R

The matter pertains to Writ Petition No.14287/1980(S) filed in the High Court of Judicature Karnataka and transferred to this Bench under Section 29 of the Administrative Tribunals Act 1985 (as amended), wherein the petitioner prays mainly, for an appropriate writ or order to be issued to the respondent, to sanction and disburse 20 per cent of his pay as special pay, as admissible under the Railway Board Regulations and that the impugned order dated 28.3.1980 issued by the Chief Personnel Officer, Southern Railway, Madras denying him special pay as above, be set aside as illegal and invalid.

..../-

2. The facts of the case giving rise to the petition are briefly as follows. The petitioner joined as Mechanical Engineering Apprentice on 1.6.1943 in the then South Indian Railway, which later in 1947, came to be redesignated as the Southern Railway, under the new administrative set-up. He was promoted as Loco Foreman in Grades 'C', 'B' and 'A' in 1956, 1959 and 1962 respectively. He was made substantive as Loco Foreman Grade 'A' in the pay scale of Rs.450-571(AS). The petitioner is seen to have rendered more than 25 years of service in the Railways as on 15.8.1968, i.e. the date preceding his absorption in an alternative post as a result of his medical decategorisation.

3. The petitioner states that, owing to a defect in his vision, he opted for a medical check-up, consequent to which he was rendered medically unfit for the posts in A-3 and B-2 categories in the Railways but was certified fit for the posts in A-3 and B-2 categories in the Railways but was certified fit for the posts in C-1 and C-2 categories. He was therefore absorbed as Mechanical Instructor (MI for short) in the Systems Technical School, Bangalore with effect from 16.8.1968, in the pay scale he was last drawing.

4. The petitioner was granted leave from 6.3.1968 to 15.8.1968 pending his absorption in an alternative post as MI. The petitioner contends, that according to the Railway Board Letter No.D(S) I-55 CPC/194 of 18.10.58 (Board Letter for short) addressed to the General Managers of Railways (All), in regard to the standardisation of scales of pay, applicable to the instructorial staff of Railways, he is entitled to special pay in the alternative post viz that of MI, in terms of para 2(a) of the Board Letter, but he has been denied benefit of the same despite repeated representations to the authorities

concerned.

5. We have given due thought to the pleadings of both sides and have also examined carefully the material placed before us in this respect. It is pertinent to know the contents of the Board Letter on which the learned counsel for the petitioner lays stress for claiming special pay in the alternative post, in which the petitioner was absorbed, after he was declared medically unfit for certain categories of posts in the Railways. The same are reproduced below:

"Sub: Instructorial Staff on Railways Standardisation of scales of pay."

The Board have had under consideration the question of standardising the scales of pay applicable to the Instructorial staff on Railways - whether in training schools/Centres/Institutes including technical staff training centres in workshops or elsewhere and have decided as under:-

1. Each Instructor's post should be in a specific scale of pay. If the post is filled by staff drawn from Departments it should be filled by the selection from among persons either in the same scale or in the scales upto 2 steps lower than the scale allotted to the Instructor's post. It should not be filled by an employee who is drawing or is eligible to draw pay in a higher scale in his parent department.

2. The pay of the incumbent is fixed as under:

- a) He should be given the pay of the post or the pay which he would have drawn from time to time if he had been on duty in his parent line plus 20% thereof (subject to minimum of Rs.30/- P.M. as special pay whichever is more beneficial to him) subject to a maximum of Rs.100/- vide Board's letter No.P.63/SP-I AP of 10-7-1963).
- b) If he is recruited directly as an Instructor and has no connection with any other post he should be given the pay of the post.

3. The post of Instructors should be treated as ex-cadre posts which when filled by employees serving in other departments should be regarded as tenure posts. The employees drawn from another department should retain lien and suspended lien in his parent cadre and should return to it on completion of tenure.

4. Where posts of Instructors have not been allotted specific scales of pay this may be created according to worth of charge from which the staff are generally drawn.

The above orders are in supercession of all the existing orders on the subject and have the

sanction of the President."

6. The counsel for the petitioner contends, that his client falls within the category specified, in para 2(a) of the Board Letter, as he was not directly recruited to the post of MI, but was drawn from the Department and therefore, he is entitled to special pay as stipulated in the Board Letter. Rebutting this contention, the learned counsel for the respondent states, that the petitioner has severed his lien in his parent cadre on absorption in an alternative post as MI, consequent to his having been medically decategorised as above. The petitioner is therefore deemed to have been directly recruited to this post and his pay is regulated in terms of para 2(b) of the Board Letter.

7. Our attention has been drawn to Rule 152 of the Indian Railway Establishment Code Vol I (Revised Edition 1971) (Code for short) relating to termination of service of a railway employee, on account of inefficiency, resulting from his failure to conform to requisite standards of physical fitness. For ready reference, this Rule is extracted below:

"152. Termination of service on account of inefficiency due to failure to conform to the requisite standard of physical fitness.- A railway servant who fails in vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies but not incapable of performing other duties, should not be discharged forthwith but should be granted leave in accordance with rule 2237A-R. During the period of leave so granted, such a railway servant must be offered some alternative employment on reasonable emoluments having regard to his former emoluments. Further, the extraordinary leave portion of the leave granted in accordance with rule 2237A-R should not be cut short purely on account of his refusing the first offer which is made to him, but he must be discharged if he does not accept "one or more offers during the period of his leave."

..../-

- 5 -

8. A plain reading of the above Rule reveals, that a railway servant in the event of his failure in vision test or otherwise of his becoming physically incapable of performing the duties of the post assigned to him but not being incapable of performing other duties should be dealt with sympathy by providing him suitable alternative employment, on reasonable emoluments, with due regard to the emoluments drawn by him earlier. Having severed his lien in his parent cadre, consequent to his absorption in the alternative post namely that of MI, on medical decategorisation, the petitioner cannot be said to fall within the purview of the category specified in para 2(a) ibid, as contended by the counsel for the petitioner. Read with para 3 ibid, this category is seen to relate to the employees, coming from other departments to the post of Instructor, by way of deputation for a limited tenure, whereafter, they are liable to be repatriated to their parent department. It is for such category of employees, that para 2(a) ibid, stipulates grant of special pay, which appears to be of the nature of deputation allowance. In the case of the petitioner, however, there is no prospect of his returning to his parent cadre from his post of MI, as he has been permanently absorbed in this post, severing his lien in his parent cadre, consequent to his having been medically decategorised. According to para 3 ibid, the post of MI is to be treated as an ex-cadre post, which when filled by employees serving in other departments, is to be regarded as a tenure post. Such employees drawn from other departments, do not sever their lien in their parent cadre and are repatriated on completion of their tenure. The petitioner is therefore to be deemed as a direct recruit to the post of MI, in terms of para 2(b)

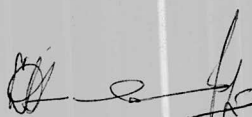
.../-

ibid, read with Rule 152 of the Code.

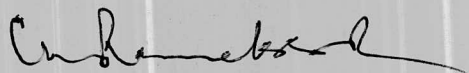
9. The case of one Shri Srivatsava, of the North Eastern Railway in Gorakhpur, cited by the petitioner as similar to his, wherein the former is said to have been granted special pay of 20%, despite having been declared medically unfit, does not appear to be wholly identical, as the counsel for the respondent states that Shri Shrivatsava on medical decategorisation, was first absorbed as Power Controller and later posted as Instructor with special pay of 20%, under the provisions of para 2(a) ibid ostensibly retaining his lien on the post of Power Controller.

10. Rule 152 of the Code provides for absorption in a suitable alternative employment on reasonable emoluments on medical decategorisation. We notice, that the petitioner has been granted the maximum benefit by fixing his emoluments equivalent to the pay drawn by him last in the post from which he was medically decategorised. He can thus have no grievance that he has been put to financial loss in the alternative employment given to him. The contention of the petitioner, that the instructions in the Board Letter have been misinterpreted by the respondent to his disadvantage is ill-founded.

11. We, therefore, find no merit in the application and dismiss the same accordingly. No order as to costs.



(L.H.A. Rego)^{21.10.1986}
Member (AM)
31.10.1986



(Ch. Ramakrishna Rao)
Member (JM)
31.10.1986