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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.310/95

Date of Order: 5.7.96

BETWEEN :

M.S.Zama Khan

.. Applicant.

AND

1. Chief Personnel Officer,
S.C.Rly., Secunderabad.
2. Divisional Railway Manager (M.G.),
S.C.Rly., Hyderabad.
3. Senior Divisional Mechanical Engineer,
M.G.Division, S.C.Rly., Sec'bad.
4. Divisional Mechanical Engineer,
S.C.Rly., M.G., Hyderabad Division,
Secunderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.S.Lakshma Reddy

Counsel for the Respondents

.. Mr.V.Bhimanna

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

J U D G E M E N T

{ Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) }

Heard Mr.S.Lakshma Reddy, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA was appointed as a Khalasi on 1.5.64. He was promoted as a Fireman Gr.'C' on 5.2.80. While he was working as a Fireman 'C' he was found unfit for A-1 medical category, but found fit for C-1 category. Due to the unfit certificate of the medical department he was put out from footplate duties from 30.4.83 to 12.12.83. As per the proceeding No.IRE/24/LGD/MG dated 12.12.83 issued by Loco Foreman, Lalaguda the applicant was instructed to report for duty as Peon under the Assistant Mechanical Engineer, Purna on or before 14.12.83.

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On the date of relief from the post of Fireman 'C' the applicant was drawing pay of Rs.226/- as per the proceedings dated 12.12.83. He reported for duty in the new place and joined as Peon at A.M.E. Office, Purna on 14.12.83. The applicant submits that later he was punished for certain misconduct but he was putback to the post of Peon once again and on his posting back as Peon his pay was restored to the original pay of Rs.226/- as fixed at the time of his engagement on account of medical unfitness. The applicant submits that his pay in the alternative post had to be fixed as per paragraph 1309 (iv) read with 1313 (2) (b) of the Railway Establishment Manual at the time he joined as Peon from the ~~higher~~ post of Fireman 'C'. Later he was promoted as Senior Office Boy/Peon in the grade of Rs.775-1025 by R-2. The applicant further submits that if his pay was refixed in accordance with the rules quoted above his pay while on promotion would also be different. He had submitted a representation for fixation in accordance with the rule. One of his representations dated 4.5.94 is at page-7 of the OA. It is stated that no reply has been given to this representation.

3. This OA is filed praying for a declaration that the action of the respondents in not adding 30% of the running allowance as a part of his pay on his absorption in the alternative post of Peon in the scale of Rs.750-940 (RSRP) (Rs.196-232) after medically decategorised from the post of the running staff of Fireman 'C' in terms of para 1309 (iv) read with 1313 (2) (b) of Railway Establishment Manual is totally illegal, without jurisdiction and violative of Articles 14 and 16 of the Constitution of India and for a consequential direction to fix his pay in terms of the above said rule when he joined as Peon with all consequential benefits such as arrears of pay from the date of absorption in the alternate post with interest etc.

4. Reply has been filed resisting the prayer. The reply

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does not touch the reasons for not fixing the pay in accordance with the aforesaid provisions in the Railway Establishment Manual. Two reasons have been given in para 5 of the reply in regard to the contention of the applicant that he was put to heavy loss while ~~fixing his~~ pay in the alternate post carrying lower pay scale and not allowing 30% of running allowance as part of the pay at the time of his absorption. These two reasons as stated earlier is not at all satisfactory and gives no reasons for not adhering to the provisions of the manual.

5. In view of the above I have directed one of the Senior Officers of the Railway to present in the court and explain this case. Mr. Rao, CPO (A), SC Railway, Mr. N.V. Ramana Reddy, Sr. DPO, Hyderabad Division and Smt. Lakshmi Chaudhari Sr. PO in charge of Loco running staff were present in ~~the court~~ ^{Court} on 5.6.96 to explain this case. They submitted a note in this connection stating that the applicant should come in any one of the groups 3, 4, 5 & 6 of the recommendations made by the Railway Labour Tribunal 1971 (Group-2 for short) to get the protection of pay in absorbing grade beyond the maximum of absorbing pay as personal pay in terms of Railway Board Lr. No. E (NG) I 86 RE 3/3 dated 9.4.86. The medical decategorisation of the applicant falls under the Group 1 and 2 (Group-1 for short) of para 5 of the RLT award and hence he is not eligible for protection of pay as prayed for.

6. Before analysing this case it is necessary to reproduce the relevant para of IREM in regard to the fixation of pay of medically decategorised staff especially the running staff. Para 1313 gives the necessary instructions in regard to the fixation of pay of medically decategorised staff including the loco running staff. The para is reproduced below. The portion which are relevant for the running staff is underlined for emphasis:-

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"On absorption in an alternative post, the pay of the railway servant decategorised on account of circumstances which did not arise out of and in the course of his employment will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorisation. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. For running staff, the fixation will be based on basic pay plus a percentage of such pay in lieu of running allowance as may be in force.

(2) In other cases viz. (i) and (ii) of para (1) above, on absorption in an alternative post, the pay of the railway servant will be fixed at a stage corresponding to the pay previously drawn in the post held in a substantive capacity or the officiating pay if he is absorbed, he may be given the stage just below the pay previously drawn by him. Medically unfitted railway servants absorbed in another category on a lower pay may, on subsequent promotion to higher posts, be allowed, by the grant of advance increments, the same or near about the same pay as may have been drawn by them, before being declared medically unfit, in their original appointment, including officiating appointment, if it is certified that but for being medically incapacitated the railway servants would have continued in the officiating appointment and would have normally been confirmed against the post, if the post was a temporary one sanctioned for a period of one year or more, would have held the post for the duration of the currency of the same.

(b) In cases of decategorisation under circumstances arising out of and in the course of employment the pay of a decategorised employee (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically decategorised employee should be allowed on pay plus personal pay as admissible in the absorbing grades".

7. As per the above paragraphs it is evident that the pay of the running staff in the alternate post can be fixed at a higher stage than the maximum of the pay in the absorbing category if the medical decategorisation arises out of and in course of employment. In all other cases even for the running staff fixation of pay above the maximum is not permissible. It is also stated in the above para that the higher fixation if it exceeds the maximum of the absorbing grade the difference may be allowed as the personal pay to be absorbed in future increments/increase in pay.

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8. The learned standing counsel further stated that there are six clauses in groups 1&2. The six clauses as mentioned above are as follows:-

- 1) Decategorisation arising out of natural causes, such as ageing process, deterioration in visual acuity, including colour perception, in the ordinary course of nature;
- 2) Decategorisation arising out of injuries received owing to negligence of an employee himself or decategorisation arising out of lack of personal hygiene, want of ordinary care in regard to health by an employee, or arising out of noxious habits of an employee, such as addiction to drink, drug, smoke etc. and arising out of failure to take ordinary and proper precautions in performance of duties by an employee;
- 3) Decategorisation arising out of accidents arising out of and in the course of employment;
- 4) Decategorisation arising out of contraction of an occupational disease, i.e. disease peculiar to the service in which duties are performed;
- 5) Decategorisation arising out of accidental injuries received owing to wilful act or negligence of a co-employee;
- 6) Decategorisation directly arising out of breach by the railway administration of any provision of law or statutory rule—

9. As stated earlier clauses 1&2 comes under Group 1 and clauses 3 to 6 comes under Group 2. The running staff coming under Group-1 are not entitled for higher fixation above the maximum of the pay adding 30% of the running allowance whereas the loco running staff coming under Group-2 are entitled for higher fixation above the maximum of the absorbing grade. The above distinction, it is submitted by the respondents, is due to the fact that the decategorised running staff coming under Group-2 were decategorised due to the circumstances arising out of the course of the employment, whereas the employees coming under Group-1 are decategorised due to natural causes. When the decategorisation had occurred due to natural causes they cannot claim any extra benefit from the railways. Only if the

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decategorisation had taken place due to reasons connected with their working in the course of and out of employment they are entitled for higher fixation. The applicant herein is coming under Group-1 and hence ^{he} is not entitled for higher fixation.

10. I have heard both the learned counsels. The main reasons advanced for denying the higher fixation in terms of above manual provision for the applicant herein is that he comes under Group-1 and the causes in the Group-1 had not arisen due to circumstances arising out of and in the course of employment. The medical decategorisation had occurred due to natural causes. He has been decategorised from the category of A-1 to C-1 ^{due} to ~~deterio-~~ ^{deterio-} ~~ration~~ of the eye sight due to ageing and other factors and has nothing to do with the reasons which ^{and} ~~are~~ enumerated under Group-2.

11. For clarity purpose the causes under Group-1 is once again reproduced below ~~even~~ at the cost of repetition :-

1) Decategorisation arising out of natural causes, such as ageing process, deterioration in visual acuity, including colour perception, in the ordinary course of nature:

2) Decategorisation arising out of injuries received owing to negligence of an employee himself or decategorisation arising out of lack of personal hygiene, want of ordinary care in regard to health by an employee, or arising out of noxious habits of an employee, such as addition to drink, drug, smoke etc. and arising out of failure to take ordinary and proper precautions in performance of duties by an employee;

12. From the above it is stated that the compensation of higher fixation is not permissible due to decategorisation arising out of natural causes such of ageing process, which affected the visual acuity, including colour perception, in the ordinary course of nature. Higher emoluments is also not applicable to those decategorisation arising out of injuries received owing to negligence of an employee himself or decategorisation arising out of lack of personal hygiene etc. No

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where it has been brought out with scientific reasoning in the reply or at the time of argument that the eye sight of applicant herein were downgraded from the category of A-1 to C-1 due to natural causes.

13. Loco running staff have to be very vigilant throughout^{out} their duty period to avoid accidents. They have to look forward all the time for catching the aspect of signals and obstruction enroute and repeats the same to the driver while on duty on foot plate. Any slackness on the part of the Fireman in performing the above duty may result in serious accidents. Further a loco running staff have to perform their duties at all weather conditions whether it be summer season, rainy season etc. They are also affected by the environmental changes while on foot plate. Emission of smoke from engine and coal dusts from steam engines and dusty atmosphere while running at high speed also to be encountered by them in the course of their duty. These environmental problems faced by them during the course of duty may also reason for the deterioration of eye sight or premature loss of vision partially. No medical report indicating such causes will not cause of deterioration of vision has been brought to my notice. An opinion of the Senior Medical Superintendent, Hyderabad 4.7.96 was produced to state that the deterioration of vision of the applicant herein is due to natural causes only and not due to injury on duty nor because of occupational hazard as per records. No elaboration had given to substantiate the statement of the Medical Superintendent. Mere assertion that the loss of vision of the applicant is not due to causes of occupational hazards but due to ageing process cannot be a reason to come to the conclusion that the vision of the applicant had deteriorated due to natural causes. Though I enquired from the Officer Sri Sukumaran who was present in the court today, to state the reason why the deterioration could not have occurred due to occupational hazards as enumerated above he could not give me any satisfactory reply^{nor} he



could show any recorded reasons to come to that conclusion.

14. In my earlier examination of the senior officers of the S.C. Railway named above in para-5 ⁹ supra, asked them to show me the reasons as recorded in the file of the railway board to differentiate between Group-1 and Group-2 on the basis of the RLT award 1971. No file of the Board has been brought today by Sri Sukumaran. However he submitted a note purported to be the extract of the recommendation of the RLT-Award 1971 in this connection and relied on para 2.33, 2.44 and 2.42 of the note to state that the reasons are recorded by the RLT Commission and those reasons are acceptable to the railways. Paras 2.33, 2.44 and 2.42 are reproduced below:-

2.33 In para 2.33, the RLT is of the opinion that if decategorisation has its origin in causes under groups 3,4,5&6 (Group-2) then the decategorised employee must be given treatment different from that of an employee in whose case decategorisation has its origin in groups 1&2 (Group-1). However, in so far as decategorisation, has taken place due to causes under groups 3,4,5 & 6 having regard to the fact that the employee is not alone to be blamed for misfortune of decategorisation, it is not just and proper that he alone should be made to bear the full brunt of disastrous consequences of decategorisation. The correct principle that should be applied in such cases should be that consequences of misfortune should equitably be shared between the Rly. Administration and the categorised employee.

2.44 As regards the first two groups of decategorised employee, in my opinion the scheme of decategorisation as embodied in rule 152 of the Establishment Code Vol.I and Chapter XXVI of the Establishment Manual, is mainly fair and just. Subject to a consideration of some other problems which concern such decategorised employees which may show ways and means to alleviate their hardships, in my opinion, no change is needed in the scheme and the same may be retained.

2.42 For the above reasons, I have come to the conclusion that, in the last four groups of cases of decategorised employees, their emoluments must be fully protected by way of grant of personal pay by granting them such proportions of emoluments as are not permissible to them in the alternative employment. However, so far as dearness, house rent and city compensatory allowances are concerned, they would be subject to such variations as are made from time to time which are applicable to railway employees in the parent department from which the concerned railway employee is decategorised.

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15. A perusal of 2.33 of the RLT recommendation will definitely indicate even to a casual reader that there are no reasons attributed for differentiating Group-1 and Group-2. It only says that medically decategorised running staff under Group-2 are eligible for higher fixation where as those coming under Group-1 are not eligible. It further adds that the consequences of misfortune of the decategorised staff under Group-2 should be equitably shared between the railway administration and employees and it does give any such concession to the loco running staff coming under Group-1 for reason best known to the commission. It does not scientifically differentiate between employees of Group-1 and Group-2 to come to the conclusion that employees of Group-1 are not entitled for the compensation. Para 2.44 and 2.42 quoted above also do not indicate any reason for differentiating the two groups of employees. The differentiation is invidious. No satisfactory and cogent scientific reasons on the basis of extensive studies had been brought out to differentiate between the groups of running staff coming under Group-1 and 2. The hazards enumerated for the employees coming under Group-2 is equally applicable to the employees coming under Group-1 for reasons of their day by day working. Hence I feel that there is no need to differentiate between the medically decategorised employees of the running cadre and all of them are to be treated on equal footing and all the medically decategorised running staff have to be absorbed in alternate category in the higher fixation as per manual provision irrespective of the reason for medical decategorisation.

16. The second clause under Group-1 of the recommendation is also very vague. The reasons given in this clause cannot be ascertained by anybody with precision and accuracy. In any case as the applicant was not given higher fixation adding 30% running allowance due to the deterioration of vision as he is reported to be coming under the first clause of Group-1 further analysis of the second clause under Group-1 not necessary for this case.

17. It is an admitted fact that the running staff are discharging their duties in difficult conditions and they are also classified as sensitive category. If some extra benefit can be given to them nobody need to grudge on this account. As a matter of fact granting same extra benefit will definately encourage the staff to opt for this profession willingly and the response for coming to this job may be encouraging. From this angle also differentiation between Group 1 & 2 for fixation of pay when they are medically decategorised is to the disadvantage of railway working.

18. Further the manual provision does not emphatically indicate that the fixation has to be done as per the classification of the Railway Board in terms of letter dated 9.4.86. The manual clearly provides for loco running medically decategorised staff for higher fixation even above the maximum of the absorbing scale in the alternate post by adding 30% of the pay as equivalent to running allowance and adjusting the higher fixation as per rule. When no such clearcut provision exists in the manual, which though not issued under Article 309 of the Article, is sacred in so far it relates to the establishment rules, it is not permissible to create such differentiation by executive orders. As the manual is silent in regard to the regrouping it has to be held that the respondents cannot make such regrouping by executive letters without amending the manual and for that reasons also the relief asked for in this OA has to be allowed.

19. In view of the discussion as above a direction has to be given to the respondents 1-3 to fix the pay of the applicant in accordance with the Establishment Rule referred to above without making any differentiation between the decategorised running staff coming under Group 1&2. The applicant was decategorised in the year 1983 and he approached this Tribunal by filing this OA only on 6.9.95. Hence it has to be held that the applicant has approached this Tribunal belatedly. Hence a direction has also to be given to the respondents to pay him the arrears in pursuance of the above direction one year before.

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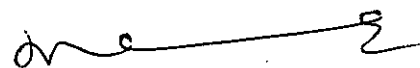
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the filing of this OA as per practice followed in this Tribunal.

20. In the result, the following direction is given.

R 103 should fix the pay of the applicant strictly in accordance with the provisions of the IREM para 1313 (2) (b) when he was initially absorbed as Peon on 14.12.83 without making any classification as per the railway board letter dated 9.4.86. If the applicant is entitled for any arrears due to the above fixation, the same should be paid to him from only one year prior to filing of this OA i.e. from 6.3.94 (this OA was filed on 6.3.95) Time for compliance is 4 months from the date of receipt of a copy of this order.

21. The OA is ordered accordingly. No costs.

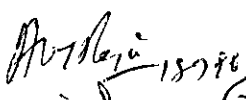


(R. RANGARAJAN)
Member (Admn.)

Dated: 5th July, 1996

(Dictated in Open Court)

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Dy. Registrar (J)

OA 316/95

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN, M.A.

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DATED: 5/7/96

ORDER/JUDGEMENT
O.A. NO./R.A./C.P. No.

in

O.A. NO. 316/95

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