

THE CENTRAL ADMINISTRATIVE TRIBUNAL 28

JAIPUR BENCH, JAIPUR

ORDER SHEET

APPLICATION NO.: _____

Applicant (S)
Advocate for Applicant (S)

Respondent (S)
Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p style="text-align: center;">27/11/2012</p> <p style="text-align: center;">Case allowed in the request of Respondent (S) / Applicant (S) / Both / None</p> <p style="text-align: center;">12/12/2012</p> <p style="text-align: right;">Sd/- (Sd/-) m Officer</p> <hr/> <p style="text-align: center;">12-12-2012</p> <p>Mr. C.B. Sharma - counsel for applicant - Mr. S.K. Saini - counsel for respondents</p> <p style="text-align: center;">Heard the learned counsel for the parties.</p> <p style="text-align: center;">The OA stands disposed of by a separate order for the reasons dictated therein.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <p>Anil Kumar (Anil Kumar) Member (A)</p> </div> <div style="text-align: center;"> <p>12. S. Rathore (Justice K.S. Rathore) Member (J)</p> </div> </div>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 229/2009

Jaipur, the 12th day of December, 2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Suresh Kumar Chaudhary son of Shri Ram Narayan Chaudhary,
aged about 30 years, resident of Village and post Dekva, Tehsil
Sawaimadhopur and presently working as Assistant Station
Master Devpura, District Sawaimadhopur.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, Northern Zone,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad
(U.P.).
3. Union of India through General Manager, North Western
Zone, North-Western Railway, Jaipur.
4. Divisional Railway Manager, North Western Railway,
Jaipur.

... Respondents

(By Advocate : Mr. S.K. Saini)

ORDER (ORAL)

The applicant has filed this OA praying for the following
reliefs:-

- "(i) That the respondent no. 1 and 2 be directed to fix
the pay of the applicant in the scale of Rs.9300-
34,800/- w.e.f. 01.01.2006 on the recommendation
of Sixth Pay Commisison as per old scale Rs.5000-
8000 and to allow due arrears of pay and allowances
w.e.f. 01.01.2006 to 31.08.2008 by modifying the
orders dated 21.02.2007 and 19.06.2007 at
Annexure A/3 and A/5.
- (ii) That the respondent No. 2 be further directed to
delete the condition No. 4 of order dated 19.06.2007
(Annexure A/5) as regard to condition of reversion

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with all consequential benefits with the further directions to transfer service record of the applicant without any delay, as the same is to be transferred within 10 days as per Railway Board letter dated 25.08.1984 reiterated vide letter dated 13.04.2007 (RBA No. 14/2007).

- (iii) That respondent No. 4 be directed to allow the pay and allowances to the applicant as per pay fixation on the basis of scale of Rs.5000-8000/- or to protect the pay by allowing grade pay Rs.4200/- instead of Rs.2800/- and further to allow bottom seniority in North Western Railway in the scale of Rs.5000-8000/- (9300-34800/-) with all consequential benefits by modifying the order dated 28.06.2007 at Annexure A/6.
- (iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (v) That the costs of this application may be awarded."

2. The learned counsel for the applicant submitted that relief no. 1, as claimed by the applicant has been sanctioned by the respondents. He further submitted that the relief no. 2, as prayed by the applicant, cannot be allowed by the respondents. With regard to relief no. 3, he submitted that the applicant has been granted the pay band of Rs.9300-34800/- by the respondents, and therefore, only part relief with regard to allowing grade of Rs.4200/- instead of Rs.2800/- remains to be sanctioned by the respondents. Thus, he limited his arguments in the present OA only to this part of the relief.

3. Learned counsel for the applicant argued that the applicant was appointed as Assistant Station Master in the scale of Rs.4500-7000/- after due selection process in Moradabad Division of Northern Railway. The applicant in the year 2003

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while working in the scale of Rs.4500-7000/- made request for inter railway transfer from Northern Railway to North Western Railway i.e. from Moradabad Division to Jaipur Division.

4. That while working in Moradabad Division, the applicant was promoted in the scale of Rs.5000-8000/- vide order dated 25.02.2005. He was allowed due fixation of pay and the applicant was drawing pay at the stage of Rs.5450/- in April, 2007 prior to his transfer to Jaipur Division.

5. In Pursuance of inter-railway transfer, applicant was relieved from Northern Railway to join North Western Railway. The applicant was allowed to join Devpura Station, Sawaimadhopur Division, North Western Railway. While fixing his pay, the respondents allowed grade pay of Rs.2800/- to the applicant as against correct grade pay of Rs.4200/-. The applicant represented to the competent authority to allow him grade pay of Rs.4200/-. He further argued that the applicant is actually entitled the grade pay of Rs.2800/- but the difference of grade pay Rs.4200/- and grade pay of Rs.2800/- that is Rs.1400/- be added to the basic pay and accordingly his pay be revised. Learned counsel for the applicant submitted that the respondents be directed to give grade pay of Rs.4200/- instead of Rs.2800/- to the applicant.

6. Learned counsel for the applicant further submitted that in similar case of Shri Akhilesh Kumar Meena, ASM-BIM of the

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Western Railway, the same benefit has been allowed vide order No. E/T/773/2 Vol. I dated 02.12.2009.

7. On the other hand, learned counsel for the respondents argued that in case of inter railway transfer, an employee should have been posted in the lower grade pay as per his bottom seniority and the pay ought to have been fixed considering the grade in which he has been allowed to work at new division and in considering this provision, the applicant was allowed in old pay scale of Rs.4500-7000/-, new revised pay scale of Rs.5200-20,200/- in the grade pay of Rs.2800/- and that exercise was completed by the Railway keeping in view of the provisions of Para 312 of the IREM, 1989 and Railway Board's Circular dated 14.02.2006. He further submitted that after receipt of record from the Moradabad, the benefit of pay protection has been awarded to the applicant in consequence of the Railway Board's letter dated 14.02.2006. As per the applicant was working in Moradabad Division as on 01.01.2006 (date of implementation of 6th Pay Commission), the pay of the applicant has been fixed by the Moradabad Division w.e.f. 01.01.2006 Rs.9580+4200 GP, 01.07.2006 Rs.10000+4200 GP, and thereafter from the date of joining of the applicant on this Division i.e. 21.06.2007, his band pay has been fixed by protecting his basic pay drawn at Moradabad Division i.e. Rs.10,000/- but as per Rule, Grade Pay can only be allowed Rs.2800/- according to his Pay Band Rs.5200-20,200/- in which applicant joined on this Division as per his own request transfer application. He further submitted

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that the representation dated 07.03.2009 and 10.03.2009 have not been received but the other representation received in the office where he prayed for pay fixation. The delay was because of non availability of the service record and same has been given immediately after received of the record from the Moradabad. The copy of the pay fixation dated 13.10.2009 is submitted and marked as Annexure R/2.

8. Learned counsel for the respondents further argued that it is not accepted that applicant should have been given the pay of Rs.5000-8000/- as he himself exercised his willingness for reversion from the aforesaid grade to Rs.4500-7000/- at the time of sparing him from Northern Railway, Moradabad to North Western Railway, Jaipur and accordingly, his pay has been fixed. He further submitted that the applicant has no liberty to change his version as this act has been prescribed by virtue of 'Rule of Estoppels' and after long delay of two years, the objections raised by the applicant is having no substance or force in the eye of law. He, therefore, submitted that the present OA has no force and it should be dismissed with costs.

9. Heard the learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued tht the applicant's pay should have been fixed in the pay band of Rs.9300-34,800/- with Grade Pay of Rs.4200/- as he was working in the scale of Rs.5000-8000/- at the time of his being relieved from Northern Railway to North Western Railway. He

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submitted that the respondents granted the pay band of Rs.9300-34800/- to the applicant but have not given grade pay of Rs.4200/-. During arguments, he admitted that the applicant is entitled to the grade pay of Rs.2800/- after inter-railway transfer from Northern Railway to North Western Railway. The difference of grade pay of Rs.4200/- and grade pay of Rs.2800/- that is Rs.1400/- be added to the basic pay of Rs.9300-34800/-. Learned counsel for the respondents argued that the pay of the applicant on joining to Jaipur Division in North Western Railway has been fixed by protecting his basic pay, drawn at Moradabad that is Rs.10,000/- but as per rule, Grade Pay can only be allowed Rs.2800/- according to his pay band of Rs.5200-20200/- in which applicant joined to this Division as per his own request transfer application. He further submitted that the applicant himself exercised his willingness for reversion from the pay scale of Rs.5000-8000/- to Rs.4500-7000/- at the time of sparing him from Northern Railway, Moradabad to North Western Railway, Jaipur and accordingly his pay has been fixed. Therefore, now the applicant cannot raise any objection regarding the fixation of his pay. The applicant himself opted for being absorbed in the scale of Rs.4500-7000/- instead of Rs.5000-8000/- on his inter railway transfer from Northern Railway to North Western Railway. After the 6th Pay Commission, the pay scale of Rs.4500-7000/- was substituted to Pay Band of Rs.5200-20,200/- in which the applicant is entitled for grade pay of Rs.2800/-, which has been sanctioned to the applicant by the respondents. The applicant has already been given the pay band of Rs.9300-

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34800/- by the respondents. Thus the respondents have protected his pay scale drawn at Moradabad. We find no infirmity/illegality in the action of the respondents in allowing the grade pay of Rs.2800/-. Thus we find no merit in the present OA.

10. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

K. S. Rathore

(Justice K.S.Rathore)
Member (J)