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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.01.2012

MA 346/2011 (OA No. 52/2009)

Mr. P.P. Mathur, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

MA 346/2011

The applicant has filed this MA for restoration of the OA, which was dismissed in default on 17.10.2011. We are satisfied with the reasons stated in the MA. The OA is restored to its original number.

The MA stands disposed of.

OA 52/2009

Heard. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 10th day of January, 2012

ORIGINAL APPLICATION No. 52/2009

CORAM :

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

A.K. Khurana son of Shri Narain Dass Khurana aged about 63 years, resident of 79, Himmatnagar East, Tonk Road, Jaipur. Retired from the post of Chief Loco Inspector, Jaipur Division, North Western Railway, Jaipur.

... Applicant

(By Advocate : Mr. P.P. Mathur)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, Jaipur Division, North Western Railway, Jaipur.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

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

"It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this Original Application, call for entire record relating to the case and grant the following relief:-

- a) Quash and set aside the impugned order dated 7.7.2008 (Annexure A/1) and allow the benefit of personal pay to the tune of Rs.2240 to the applicant on the post of Loco Inspector. The re-fixtion may be accordingly ordered with all consequential benefits. The arrears thus accruing due to the difference after enhancement after recalculation may be directed to be paid by the respondents.
- b) That the respondents may be directed to pay the interest on delayed payment at the rate deem fit by the Hon'ble Tribunal. Cost of and

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incidental to this original application may be awarded in favour of the applicant.

- c) Any other order or direction, which this Hon'ble Tribunal deem fit in the facts and circumstances of the case may also be allowed in favour of the applicant.

2. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the applicant is aggrieved by the reduction of pay on promotion to the higher post of Loco Inspector whereas the similar benefit has been given to the other person namely Pooran Chand Morwal, who worked as Loco Inspector in Abu Road under Ajmer Division. He further argued that office of respondent no. 1 had allowed the benefit of personal pay in principle but the Finance Department of the respondents had objected to refixation and grant of personal pay beyond the maximum of the grade. He further argued that the applicant is entitled to the benefit of 30% of the basic pay of the lower grade, which was being paid to him as a running allowance under circular dated 11.12.1992. That the applicant was promoted from the post of Passenger Mail Driver (Pay Scale Rs.6000-9800) to the post of Loco Inspector (Pay Scale Rs.6500-10500) vide order dated 02.08.2000 (Annexure A/2). That the applicant was receiving basis salary of Rs.9800/- in the grade of Passenger Driver. That while working on the running post, the applicant enjoyed the benefit of mileage allowance and also the benefit of other allowances including Leave Salary etc. The staff working on the running post

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thus enjoyed the benefit of salary almost equivalent to basic salary plus 30% of basic salary. That as per the norms of the respondents, the salary of the applicant should have been fixed by giving the benefit of 30% of the basic salary. Thus the salary of the applicant should have been Rs.9800 + 30% of 9800 i.e. $9800 + 2940 = 12,740/-$. However, the respondents fixed the applicant's salary at Rs.10,500/- which is the maximum of the pay scale of Rs.6500-10500/-. Thus anomalous situation arose whereby the promotion resulted in reduction in pay. That the applicant represented before the respondents on 01.11.2000 and 23.07.2007 (Annexures A/4 and A/5 respectively). He also mentioned in representations that one person namely, Pooran Chand Morwal was given the benefit of personal pay to meet out the anomalous situation where on promotion on the stationary post the salary of the incumbent get reduced. He further argued that Para 1308 of Railway Board letter dated 29.04.1999 provides for giving personal pay to the employees who get adjusted on an alternative post in view of medically decategorisation. He further argued that the provisions of IREC 1305 (FR 9) (23) also provide~~s~~ for personal pay. Therefore, he argued that the applicant may be allowed to the tune of Rs.2240 as personal pay on the post of Loco Inspector and his pay may be accordingly refixed.

3. On the contrary, learned counsel for the respondents argued that provisions of Para 1308 of the Railway Board

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letter dated 29.04.1999, as quoted by the applicant in his OA, are applicable for fixation of pay of disabled/medically decategorized railway servants only. Accordingly any claim of parity at par with Pooran Chand Morwal is without any substance. The applicant's pay has been correctly fixed at Rs.10,500/-, which is the maximum of the scale in which the applicant has been promoted. Since there are no orders, therefore, this fixation does not include personal pay. He further argued that granting of personal pay to the applicant is not possible in the absence of any rule to this effect. He further argued that reduction of total emoluments cannot be said to be reduction in pay especially when the promotion post is not a running post. He further argued that employees working in running post when medically decategorized and adjusted in alternate equivalent post are entitled to pay protection even by granting personal pay and since the applicant's claim is not at par with them, he cannot be given the benefit of running allowance beyond the maximum of pay of the grade. He further argued that the claim of the applicant on parity with Pooran Chand Morwal is without any substance. Therefore, the applicant is not entitled to any relief and the OA being devoid of merit be dismissed.

4. Having heard the rival submissions of the parties and after careful perusal of the documents, it is clear that the applicant prior to his promotion was working on the post of Passenger Mail Driver in the pay scale of Rs.6000-9800 and

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since this post was a running post, he was entitled to get running allowance. It is not disputed between the parties that at the time of promotion, the applicant was drawing Rs.9800/- basis pay + running allowance but while fixing in the higher grade, the applicant was fixed at Rs.10,500/- which is the maximum of the promotional scale (Rs.6500-10,500). The respondents have not been able to clarify either in their written statements or during oral arguments as to why the case of the applicant is not similar to that of Pooran Chand Morwal. We have gone through the order of fixation issued by the respondents dated 25.01.2000, which was given to us by the learned counsel for the applicant during oral arguments. This order also does not indicate under which rule Pooran Chand Morwal has been sanctioned personal pay of Rs.3077/- over & above the highest of the scale of Rs.6500-10500. This order also does not indicate whether Pooran Chand Morwal belonged to medically decategorized person and his case was covered under the provisions of Para 1308 of IREC. Even during the oral arguments, learned counsel for the respondents could not clearly state that Pooran Chand Morwal belong to medically decategorized.

5. Therefore, in the interest of justice, we deem it proper to direct the respondents to re-consider the case of the applicant particularly with reference to the pay fixation of Pooran Chand Morwal and pass a reasoned and speaking order. This exercise shall be completed by the respondents

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within a period of three months from the date of receipt of a copy of this order.

6. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

K.S. Rathore

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