

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1172/2013

New Delhi this the 06th day of March, 2017

Hon'ble Sh. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Jaibeer Singh,
S/o Sh. Sarhit Singh,
R/o H. No. F-258, Gali No. 5,
Ganga Vihar, Near Gokalpuri,
Delhi-94.

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Applicant

(through Sh. R.K. Jain)

Versus

1. Union of India through
General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. The Divisional Personnel Officer,
Northern Railway,
Baroda House, New Delhi.

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Respondents

(through Sh. Kripa Shankar Prasad)

ORDER (ORAL)

Mr. Shekhar Agarwal, Member (A)

The applicant was working as a Head Constable under ASC/RPF when he was medically de-categorized. He approached this Tribunal by filing OA No. 1993/2012 seeking protection of his pay as well as grade pay for the post on which he was posted before medical de-categorization. This OA was disposed of by this Tribunal on 01.06.2000 and directions were given to the respondents to

decide the representation of the applicant within two months. Accordingly, the respondents passed a speaking order dated 17.08.2012 which has been impugned in this OA.

2. Learned counsel for the applicant has submitted that the applicant after medical de-categorization was posted as Carpenter Grade III and thereafter adjusted against Carpenter Grade II. His basic pay has been protected. The respondents have however granted him grade pay of Rs. 2400 instead of Rs. 2800 which he was drawing earlier.

3. In the impugned order, the respondents have submitted that the basic pay of the applicant has been protected. However, he will be considered for grant of grade pay of Rs. 2800 on regular basis whenever his turn comes for promotion to the post of Carpenter Grade I as per seniority.

4. We have considered aforesaid submissions. Learned counsel for the applicant has relied on IREM 1308 which reads as follows:-

"1308. Fixation of Pay (other than Running Staff):

The pay in Pay Band of the disabled/medically unfit Railway servants (other than Running Staff) will be fixed in the alternative post as previously drawn in the post held by them on regular basis before acquiring disability."

He has also relied on the judgment of Hon'ble High Court of Delhi in case of Rajinder Singh Rana Vs. UOI & Anr. [WP (C) No. 10729 of 2009 decided on 8.9.2010] in Para 10 of which the following has been laid down:

"10. We may also make a reference to the judgment of the Apex Court in Kunal Singh Vs. Union of India, AIR 2003 SC 1623 also relied upon by the co-ordinate bench in the aforesaid case, where also the issue of the benefit accrued to a disabled person has been discussed. In the said case, the Apex Court observed as under:

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure

employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

5. In our opinion, the pay and grade pay which the applicant was drawing before de-categorization were required to be protected in terms of IREM relied upon by the applicant. Thus the impugned order is unsustainable being in contravention of the provisions of IREM 1308 extracted above.

6. Accordingly, this OA is allowed. The impugned order dated 07.08.2012 is hereby quashed and set aside. The respondents are directed to grant grade pay of Rs. 2800/- to the applicant w.e.f. the date of medical de-categorization with consequential arrears. They shall also pay interest at GPF deposit rates from the date this grade pay was denied till the date of actual payment. These

benefits shall be given to the applicant within three months from the date of receipt of certified copy of this order. No costs.

(Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

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