

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2413/2013
MA 1837/2913
MA 1838/2013

Reserved on: 21.10.2016
Pronounced on: 25.10.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Pradeep Kumar Senger
S/o Shri Sher Singh
R/o B-154, New Panchwati
Near Bhatia Mod, G.T. Road,
Ghaziabad (U.P.)

....Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
Through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway, DRM's Office
State Entry Road, New Delhi.
3. The Divisional Personnel Officer
Northern Railway, DRM's Office
State Entry Road, New Delhi.

.... Respondents

(Through Shri Kripa Shankar Prasad, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was initially appointed as Elect. Assistant Driver (Assistant Loco Pilot) in the scale of Rs.3050-4590 with effect from 28.11.2000. The applicant was declared medically

unfit for the post of Elect. Assistant Driver and was placed against the supernumerary post with effect from 30.11.2004 vide order dated 24.12.2004.

2. The applicant was found suitable for the post of TTE in grade Rs.4000-6000 by the competent authority vide order dated 3.05.2007 and was sent for training with effect from 1.06.2007 to 12.07.2007. After successful completion of training, the applicant was redeployed as Senior TCR in the scale of Rs.4000-6000 with effect from 1.11.2007. Vide order dated 26.02.2008, his pay was fixed at Rs.4600/- + 48 as Personal Pay after adding 30% of basic pay in view of running allowance while posting from running cadre to non-running cadre. After the 6th CPC report, the pay of the applicant was fixed as under:

As on 1.01.2006	7260+1900 GP
1.07.2006	7542+1900 GP
1.07.2007	7832+1900 GP
1.11.2007 (Date of redeployment on alternative post) after adding 30% of previous post in respect of running allowance	10250+2400GP
1.07.2008	10630+2400GP

3. The grievance of the applicant is that the above pay fixation is wrong and his pay should be fixed as under:

As on 1.01.2006	7260+1900 GP
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1.07.2006	7540+1900 GP
1.07.2007	7830+1900GP=9730
1.11.2007 (Date of redeployment on alternative post) after adding 30% of pay of previous post in respect of running allowance	30% of 9730=2919 30%+basic+GP 2919+7830: 10749 (i.e. 10750 10750+2400GP
1.07.2008	11150+2400GP

4. On making representations, the applicant was informed in March 2012 (Annexure A-1) that pay fixation on de-categorization and absorption in Sr. TCR cadre adding 30% running allowance, has been checked and found correct. Being aggrieved by this, the applicant has filed the present OA seeking the following reliefs:

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order declaring to the effect that the fixation of the pay of the applicant as on 1.11.2007 while his deployment on alternative post is illegal, arbitrary, against the rules and against the principles of natural justice and consequently pass an order directing the respondents to fix the pay of the applicant as on 1.11.2007 at the stage of Rs.10750+2400GP with all the consequential benefits and further fixation, including arrears of difference of pay and allowances.
- (ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dt. 12.09.2009 and pay fixation done on the service book of the applicant as on 1.11.2007.
- (ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents not to treat the posting of the applicant to the post of Sr.TTE in grade of Rs.4000-6000 as promotion, and consequently, pass an order directing the respondents to consider and to grant the 1st financial upgradation in the GP of Rs.2800/- w.e.f.

28.11.2010 with all the consequential benefits including the arrears of difference of pay and allowances."

5. The respondents in their reply have stated that on 30.04.2013, the Ministry of Railways (Railway Board) has issued the following clarification regarding fixation of pay of disabled/ medically unfit running staff on being appointed against alternative (stationary) posts in revised (6th CPC) pay structure:

"Consequent upon implementation of revised pay structure inter-alia involving merger of various pre-revised scales and comprising running Pay Bands & Grade Pay based on recommendations of 6th Central Pay Commission, a question has arisen regarding methodology for fixation of pay of medically unfit running staff on being posted/ appointed against stationary posts. The matter has, accordingly, been considered by the Ministry of Railways (Railway Board) and based on the recommendations of a Committee constituted for the purpose, it has been decided that while determining pay in Pay Band for the purpose of fixation of pay of medically unfit running staff in alternative (stationary) post, an amount equal to such percentage of basic pay (pay in Pay Band + Grade Pay) representing pay element of running allowance as may be in force from time to time may be added to the existing pay. Pay Band and the resultant figure (ignoring the fraction of rupee, if any) rounded off to the next multiple of 10, would be the pay in the Pay Band in the alternative post with no change in the Grade Pay of substantive post, in suitable alternative post. An illustration in this regard is enclosed as Annexure-I.

3. For this purpose, Para 1307 and 1308 of Indian Railway Establishment Manual, Volume-I (Revised Edition-1989) First Re-print Edition-2009 may be amended as per Advance Correction Slip No.224 enclosed as Annexure-II."

It was further pointed out that Rules 1307 and 1308 of Indian Railway Establishment Manual, Volume-I were amended as follows:

- "1. Substitute the following for the existing paragraph 1307:

1307 : Reckoning of element of Running Allowance for the purpose of fixation of pay of disabled/ medically unfit running staff

: While determining pay for the purpose of fixation of pay of medically unfit running staff in an alternative (stationary) post, an amount equal to such percentage of basic pay representing the pay element of running allowance as may be in force from time to time, may be added to the existing pay in Pay Band and the resultant figure (ignoring the fraction of rupee, if any) rounded off to the next multiple of 10 would be the pay in the Pay Band in the alternative post with no change in the Grade Pay of substantive post, in suitable alternative post.

2. Substitute the following for the existing paragraph 1308:

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."

6. It is argued on behalf of respondents that according to these clarifications, in such cases, pay would be fixed in the pay band in the alternative post with no change in grade pay of substantive post, in suitable alternative post. Therefore, while the pay of the applicant would be fixed at Rs.10750/- instead of Rs.10250/-, the Grade Pay would be Rs.1900/- (Grade Pay of substantive post) instead of Rs.2400/-. Thus, the overall pay would not change, namely, it will be Rs.10750/- + 1900 instead of Rs.10250/- + 2400/-.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. The sum and substance of what has been argued by the learned counsel for the respondents is that in case of the applicant, whereas he would be drawing as Senior TCR Grade Pay of Rs.1900/- i.e. the Grade Pay attached to the post of Elect. Assistant Driver, the other Senior TCRs would be drawing the Grade Pay of Rs.2400/- because that is the Grade Pay for a normal Senior TCR. In other words, two employees doing the same work would be drawing different Grade Pay because of letter dated 30.04.2013. On the face of it, this is an absurd proposition and, therefore, has to be rejected outright.

9. We, however, looked closely at the contents of the letter dated 30.04.2013. All that this letter says is as follows:

“that 30% running allowance will be worked out based on 30% of pay in the (Pay Grade plus Grade Pay) and whatever figure is arrived at, the pay will be fixed in the Pay Band of the suitable alternative post rounded off to the next multiple of 10 and no change will be made in the Grade Pay, and not 30% of pay in Pay Band rounded to the next multiple of 10 and the pay in the Pay Band of the alternative post and 30% of Grade Pay rounded off to the next available Grade Pay and then granted new Grade Pay. For example, the latter would mean that for the

present pay of say Rs.12470/- + Grade Pay of Rs.4200/-, the pay would be fixed as Rs.16210/- (rounded off to the next 10) and the Grade Pay would increase to Rs.4200/- plus 30% of Rs.4200/- = Rs.5460/- and the nearest Grade Pay being Rs.5400/-, he would get the Grade Pay of Rs.5400/-. The clarification states that the pay in the new pay band will be pay in existing pay grade + Grade plus 30% of that amount rounded off to next 10. The Grade Pay of Rs.4200/- will be same i.e. Rs.4200/-.

10. Thus, apart from the fact that the contention of the learned counsel for the respondents is unacceptable on the ground that two employees doing the same work cannot get different Grade Pays, we feel that the learned counsel for the respondents has also wrongly interpreted the letter dated 30.04.2013. The OA, therefore, succeeds and the respondents are directed to fix the pay of the applicant as on 1.11.2007 at the stage of Rs.10750+2400/- Grade Pay with all consequential benefits including arrears of difference of pay and allowances. We fix a time frame of three months from the receipt of a copy of this order for implementation of our directions. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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