

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3680/2015

Order Reserved on: 25.05.2017
Order pronounced on 29.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Kuldip Kumar
Aged 59 years
S/o Sh. Tek Chand
Retired as Mail Guard
From Northern Railway, Delhi Division
r/o 180, A-5/B, Shanti Kunj, SFS Flats
Paschim Vihar,
New Delhi – 63. ... Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

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

(By Advocate: Shri Shailendra Tiwary)

ORDER**Hon'ble Shri V. Ajay Kumar, Member (J):**

The applicant, a retired Mail Guard of the respondents-Northern Railway, filed the OA questioning the orders dated 22.07.2015, and 10.03.2015 in rejecting his claim for adding the benefit of Running Allowances to his pay while fixing his pension.

2. The brief facts, as gathered from the pleadings, are that the applicant while working as Mail Guard, was declared as medically de-categorized for the post of Guard but was not redeployed on any alternative post and has been retired from the same post of Mail Guard, voluntarily, w.e.f. 03.03.2015. When his pension was fixed without adding the 55% benefit of running allowance, he preferred representations but the same were rejected by the impugned order dated 22.07.2015.

3. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri Shailendra Tiwary, the learned counsel for the respondents, and perused the pleadings on record.

4. Shri Yogesh Sharma, the learned counsel appearing for the applicant, submits that as per the orders of the Railway Board, issued from time to time, a medically de-categorized running staff is entitled for fixation of his pay by addition of 55% pay element of running allowance for the purpose of fixation of his pension. Since the applicant was also a medically de-categorized running staff, and was

voluntarily retired, even before appointing in any alternative post, i.e., while in a supernumerary post of Mail Guard, he is also entitled for fixing his pay for pension by adding the 55% pay element of running allowance.

5. The learned counsel placed reliance on a judgement of a coordinate bench of this Tribunal at Ernakulam, in OA No.272/2014, dated 1.10.2014.

6. Per contra, the learned counsel for the respondents, Shri Sahilendra Tiwary, would submit that in view of Annexure R1, letter dated 08.01.2013, an employee though a medically decategorized running staff but who is no more a running staff, and who retired voluntarily or on superannuation, not entitled for adding the benefit of pay element of running allowance while fixing his pay for pension.

7. The learned counsel for the respondents further submits that the applicant in OA No.272/2014 was retired prior to the issuance of letter dated 08.10.2013, and hence, the said decision of the Ernakulam Bench, has no application to the facts of the present case.

8. It is not in dispute that certain categories of medically decategorized running staff are entitled for addition of the pay element of running staff allowance while fixing their pay for the purpose of fixation of pension. It is also not disputed by both the counsel that the percentage of the pay element of running allowance which is in force as on the relevant date is 55%. Whether the applicant falls within the

said category is to be seen with reference to the relevant orders of the Railway Board.

9. RBE No.138/2011 dated 05.10.2011, pertaining to fixation of pay of medically de-categorized running staff while kept on supernumerary post and granting of benefits of running allowance to them, reads as under:

"The question of fixation of pay of medically decategorised running staff for the period from the date they are declared unfit till their final absorption in alternative appointment i.e. the period during which they are kept on supernumerary posts for want of suitable alternative posts due to which it has not been possible to adjust the employees concerned immediately, has been engaging attention of the Board for quite some time.

2. The matter has been considered by the Board and it has been decided that the pay of medically decategorised running staff while they are kept on supernumerary posts i.e. from the date, they are declared medically unfit till the date they are absorbed in suitable alternative posts, needs to be suitably fixed by addition of the pay element of running allowances as may be in force. Their pay during this period will be fixed based on their pay in Pay-Band and Grade Pay plus element of running allowance as may be in force. As such, supernumerary posts wherever found necessary may be created at appropriate level. After fixation of pay in such a manner, no allowance in lieu of kilometerage shall be admissible.

3. However, it is reiterated that there should be minimum delay in redeploying medically decategorised running staff against alternative posts. Serious efforts should be made to locate suitable alternative posts for such staff immediately and at the most within a period of three months. Any unreasonable delay must be avoided. It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find a suitable job for him.

4. The instructions for fixation of pay of medically decategorised running staff on their absorption in suitable alternative posts will be issued separately.

5. This issue with the concurrence of Finance Directorate of Railway Board."

10. Letter dated 08.10.2013 (Annexure R1 to the counter filed by the respondents), where-under certain queries with regard to 55% pay

element to medically de-categorized Drivers who retired voluntarily or on superannuation, reads as under:

"It may be recalled that WR in their letter dated 17-0502011 had raised the following queries:

"It may kindly also be clarified as to how the settlement of medically decategorised running staff is to be done in case of Loco Running Staff:

- (a) If retired (voluntarily or superannuation) while working on special supernumerary post before posting on stationary post.
- (b) If retired (voluntarily or superannuation) while working on special supernumerary post due to non acceptance of offer of posting in a stationary post".

The above queries have already been addressed to by Board's letter No.E(NG)-1/2009/RE-3/9 dated 5-10-2011. In this letter it has been stated that the pay of medically decategorised running staff while they are kept on supernumerary posts i.e. from the date, they are declared medically unfit till the date they are absorbed in suitable alternative posts, needs to be suitably fixed by addition of the pay element of running allowance as may be in force. As per Board's letter No.E(P&A)-II/2005/RS-34 dated 26-12-2008, the pay element for specified benefits excluding retirement benefits for the running staff is 30%. After such pay fixation of the erstwhile running staff who are medically decategorised, the question of reckoning of pay element again does not arise.

Therefore, when a running staff is medically decategorised, he is placed on supernumerary post and his pay is fixed after adding 30% pay element from the date he was medically decategorised. If such an employee who is no more a running staff retires voluntarily or on superannuation, his settlement should be done without any further reckoning of pay element."

11. Clarification letter dated 29.11.2016, (Annexure RE-1 to the rejoinder of the applicant), reads as under:

"Vide DC/JCM item no. 25/2004. PNM/NFIR Item No. 8/2015 and PNM/ AIRF Item No. 46/2012, recognised staff Federations have demanded that 55% of Pay Element be reckoned for computing retirement benefit for those running staff who have been medically decategorised and decide to take Voluntary Retirement instead of opting for redeployment in an alternative stationary post.

2. The issue has been examined in Board's office. and it is observed that the issue is governed under the provisions contained in Board's letter referred to above. To address the specific aspect brought out by Federations, it has been decided that whenever a medically decategorised running staff governed

by RS(PR) 1993. who has rendered the prescribed qualifying service. opts for Voluntary Retirement either on his own or within a period of one month from the date of offer of the first alternative post. his pension may be computed with addition of 55% Pay Element. This 55%, benefit will be reckoned after deducting the 30% Pay Element fixation benefit if granted already as per Board's letter dated 05-10-20 II referred to above.

3. In case such staff does not give option of Voluntary Retirement within the outer limit period of one month specified herein above. it will be deemed that the staff has accepted the alternative appointment offered and in this case, retirement benefits will be governed by extant instruction on the issue whenever he superannuates or opts for Voluntary Retirement thereafter.

4. The period of one month to opt for Voluntary Retirement for those medically decategorised running stall who have already been offered the alternative posts. will start from the date of issue of this letter.

5. The above clarification shall take effect from the date of issue of this letter.

6. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

7. Please acknowledge receipt."

12. As per the orders issued by the Railways, from time to time, as reiterated in RBE No.138/2011 dated 05.10.2011, *"the pay of medically de-categorized running staff while they are kept on supernumerary post, i.e., from the date, they are declared medically unfit till the date they are absorbed in suitable alternative post, needs to be suitably fixed by addition of the pay element of running allowance as may be in force."* With an intention to reduce the financial burden on the Railways by way of fixing the pay of the medically de-categorized running staff after adding the element of running allowance, the Railways in the said RBE Circular itself stated that there should be minimum delay in redeploying the medically de-categorized running staff against the alternative post.

13. The letter dated 08.10.2013 has not stated anything contrary to the RBE Circular dated 05.10.2011. The contention of the respondents that the last sentence in the letter dated 08.10.2013, i.e., *"If such an employee who is no more a running staff retires voluntarily or on superannuation, his settlement should be done without any further reckoning of pay element"*, disentitle the applicant from his claim is untenable, in view of the clear language employed in RBE Circular dated 05.10.2011. That is why the Railway Board in its clarificatory letter dated 29.11.2016, observed that the issue of reckoning of 55% of pay element for computing retirement benefits for those running staff who have been medically de-categorized and decide to take voluntary retirement, instead of opting for redeployment in an alternative stationary post, is governed under the provisions contained in Board's letter dated 05.10.2011 and accordingly, reiterated whenever a medically decategorised running staff governed by RS (PR) 1993, who has rendered the prescribed qualifying service, opts for voluntary retirement either on his own or within a period of one month from the date of offer of the 1st alternative post, his pension may be computed with addition of 55% pay element.

14. The contention of the respondents that the said letter dated 29.11.2016 is applicable prospectively, has no force, as the same is a clarification to the Board's letter dated 05.11.2011, but not a fresh decision.

15. The Ernakulam Bench of this Tribunal in **K.S.Gopalakrishnan** (supra) after considering an identical issue with reference to the very same circulars, i.e., RBE 138/2011, dated 05.10.2011 and 08.10.2013 and also the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, held as under:

"14. In this O.A, applicant was admittedly decategorized on 22.9.2012 as he was found unfit in 'Aye-one' category. Under Section 47 of the PWD Act, he could be kept on a supernumerary post or some other post without reduction in rank and service benefits. What Section 47 protects is the rank, pay and the service conditions the employee, who had acquired disability during service, enjoyed prior to this acquiring the disability. Therefore, this Tribunal is of the view that any Railway Board instructions per contra will be of no effect in view of the mandatory provisions of Section 47 of the PWD Act. Therefore, it goes without saying that the contention of the Railways that soon after his medical declassification on 2.9.2012 applicant cannot be treated as Loco Pilot (Mail) and cannot be given the benefits enjoyable by him, had he not acquired the disability of low vision is untenable. Therefore, though the application for voluntary retirement and its acceptance by the Railways took place after medical decategorization, so long as the applicant was on supernumerary post he could not be deprived of the service benefits he would have enjoyed had he not acquired the disability of low vision during his service.

15. Therefore, this Tribunal is not inclined to accept the contention of the respondents Railway. The respondents are directed to consider the case of the applicant as if he was a serving Loco Pilot (Mail) with all available service benefits including 55% basic pay to be reckoned as running allowance for the purpose of calculation of his pay for the pension. Respondents shall consider refixing of his pension in the light of the law as stated above in this order. This exercise shall be completed within two months from the date of receipt of a copy of this order. Ordered accordingly. No order as to costs."

16. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed and set aside, and consequently the respondents are directed to fix the basic pay of the applicant for the purpose of pension by adding 55% pay element of running allowance with effect from due date, with all consequential benefits, however, without any interest. This exercise shall be

completed within three months from the date of receipt of a copy of this order. No order as to costs.

(V. Ajay Kumar)
Member (J)

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