

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00318/2016

Wednesday, this the 19th day of September, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

George P.J.,
S/o.Jacob,
Voluntarily Retired as Passenger Guard,
Trivandrum Division, Southern Railway.
Residing at Qtrs No.140B, C/o.Sangeeth George,
Near QAC Road, Kollam – 691 001. ...Applicant

(By Advocate – Mr.Martin G Thottan)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai – 600 003.
2. Financial Advisor and Chief Accounts Officer (Pension),
Southern Railway, Headquarters Office, Park Town,
Chennai – 600 003.
3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town, Chennai – 600 003.
4. The Divisional Railway Manager,
Trivandrum Division, Southern Railway,
Thiruvananthapuram – 695 014.
5. The Senior Divisional Finance Manager,
Trivandrum Division, Southern Railway,
Thiruvananthapuram – 695 014.
6. The Divisional Personnel Officer,
Trivandrum Division, Southern Railway,
Thiruvananthapuram – 695 014. ...Respondents

(By Advocate Ms.K.Girija)

.2.

This Original Application having been heard on 12th September 2018, the Tribunal on 19th September 2018 delivered the following :

ORDER

O.A.No.180/318/2016 is filed by Shri.George P.J., voluntarily retired Passenger Guard, Trivandrum Division of Southern Railway. The reliefs sought by him is a direction to the respondents to revise his pension by adding an additional quantum of 55% of the basic pay drawn by him under the Railway Services (Revised Pay) Rules, 2008 to the pay in the pay band at the time of his retirement for the purpose of computation of his pension and other retirement claims and consequential benefits thereof.

2. Having been initially appointed on 1.8.1984, the applicant had been promoted as Assistant Guard with effect from 1989 and worked in the category till 1994. Thereafter he was promoted as Goods Guard and in 2003 was again promoted as Passenger Guard. As is known, all these categories belong to the running staff segment.

3. With effect from 26.10.2005 he was declared medically decategorised and was fitted against a supernumerary post pending accommodation in an alternative post. His pay was refixed by adding 30% of his basic pay on being charged against a supernumerary post in accordance with the Railway Board Order RBE No.138/2011 issued under letter dated 5.10.2011 (Annexure A-1). His pay in the supernumerary category was fixed as per Annexure A-2 Memorandum dated 18.11.2013 at Rs.23040/- plus grade pay

.3.

Rs.4200/- On not being allotted a suitable alternative posting, the applicant applied for voluntary retirement and retired from the service of the respondents on 15.7.2014. A copy of the PPO issued in his favour dated 7.11.2014 is at Annexure A-3. The Railway Board issued a letter No.E(P&A)II-2005/RS dated 26.12.2008 (Annexure A-4) wherein it was stated as follows :

2. The President is pleased to decide that the pay element in Running Allowance for running staff would be 30% of the basic pay under the Railway Services (Revised Pay) Rules, 2008 for computation of the specified benefits excluding retirement benefits. For the purpose of computation of retirement benefits of running staff, an additional quantum of 55% of basic pay under the Railway Services (Revised Pay) Rules, 2008 would be reckoned.

4. The applicant alleges that denying this provision the Railway calculated only 30% of the basic pay and not 55% which he was entitled to as a Passenger Guard which is a 'running category'. He had not been accommodated in alternative posting and was continuing in the supernumerary post of a Senior Guard which was a running staff category. Besides under the relevant provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 there cannot be any discrimination in Government employment as far as person acquiring a disability is concerned and he ought to have been granted the same pay scale and service benefits as if he had not been medically decategorized. A copy of the Railway Board's order dated 30.4.2013 in this context is at Annexure A-5.

.4.

5. As grounds it is pointed out in the O.A that the Railways had revised the pay element in running allowance in the Railway Services (Revised Pay) Rules, 2008 wherein the running allowance for running staff would be 30% of the basic pay under the revised rules and for the purpose of computation of retirement benefits of running staff, an additional amount of 55% of the basic pay under the afore-quoted Rules would be reckoned. Had the applicant not been medically decategorized, he would have been eligible for these full benefits. It cannot be argued that he was not holding an alternative post on decategorization, as it was due to the failure on the part of the respondents that he was not accommodated in such a post. The failure of the respondents to grant the applicant his eligible pension is contrary to the specific benefits due to a person with disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and violative of the fundamental rules guaranteed to the applicant under Articles 14, 16 and 21 of the Constitution of India.

6. By way of reply statement, the respondents have countered the claims of the applicant. On retirement prior to absorption in the alternative post his pension had been fixed by adding 30% of his pay element as per Rule 25(i) (d) of Rules for Payment of Running and other Allowances to the running staff on the Railways, 1981 treating him as a medically decategorized Senior Passenger Guard. Thus his pension was fixed at a higher level than what he was drawing as a Senior Passenger Guard. This has been done by adding

30% of the pay as pay element in running allowance and this refixation had been done as per the provision contained in para 1307 and 1308 of IREM, Vol.I (Revised Edition, 1989). Thus the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has not been violated as 30% of the applicant's pay element has been added to his last pay. The respondents in the reply statement goes on to quote the following contents of the Railway Board's letter No.E(P&A) II-2004/RS-5 dated 8.10.2013 which reads :

“...the pay of medically decategorized running staff while they are kept on supernumerary posts ie. 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 inforce. As per Board's letter No.E(PA&)II/2005/RS-34 dated 26.12.2008, the pay element for specified benefits excluding retirement benefits for running staff is 30%. After such pay fixation of the erstwhile running staff who are medically decategorized, the question of reckoning of pay element again does not arise.

Therefore, when a running staff is medically decategorized, he is placed on supernumerary post and his pay is fixed after adding 30% pay element from the date he was medically decategorized. 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.”

7. Based on the above and as per para 2 of Annexure A-1, once pay is suitably fixed by addition of pay element of running allowance as may be in force, no allowance in lieu of kilometerage shall be admissible after fixation of pay in such a manner. Respondents also chose to make a distinction on the applicability of Annexure A-4 submitting that the addition thereof are applicable only to the running staff who are retiring on superannuation of voluntary retirement while working as running staff. In this case the applicant had been accommodated in a supernumerary post pending

availability of suitable alternative post. Taking into account the fact that he had belonged to an erstwhile running category his pay had been fixed by adding 30% of pay element of running allowance and he cannot claim for further reckoning of the pay element as set out in Annexure R-1 and this position is clarified in Annexure R-1 document.

8. Shri.Martin G Thottan appeared for the applicant and Smt.K.Girija appeared for the respondents. The controversy in this case is well set out. The applicant, belonging to 'running staff' category had been medically decategorized and was accommodated in a supernumerary post pending grant of appointment in an alternative post. However, he retired before he could be thus posted. The applicant claims the support of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which reads as follows :

"47. Non-discrimination in Government employments.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided 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:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until, a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

9. Based on the above, applicant claims that he is entitled to full benefits which would have been his, if he had not been medically decategorised. He contests the fixation granted to him reckoning only 30% of his pay and claims that 55% of his basic pay ought to be taken into account and his pension refixed accordingly. Shri. Martin G Thottan brought to our attention two orders of this Tribunal, namely, O.A.No.180/381/2015 dated 4.7.2017 and O.A.No.180/504/2017 dated 2.4.2018 where identical issues were considered. In both these cases also the applicants therein were decategorised running staff who had been medically decategorised and this Tribunal had ruled in favour of the applicants stating that they would be eligible for the higher percentage while computing pension. By way of illustration the operative part of the order in O.A.No.180/504/2017 is quoted below :

5. In this case, as observed earlier, both the applicants continued to be in the post of Guard of the category they belong to, in a supernumerary capacity, without extracting any work from them. Nevertheless, their pay and allowances cannot be reduced until they are shifted to some other posts with the same pay scales and service benefits. As they retired from service holding supernumerary posts, the same pay scale and service benefits attached to the post of Guard cannot be denied to them. Hence, this Tribunal is of the view that the applicants are entitled to the reliefs sought in this OA.

6. Accordingly, while quashing and setting aside Annexure A1 and A5, the respondents are directed to re-compute the pensionary benefits of the applicants by adding 55% of the pay element of the applicants who have retired from the supernumerary post of Guards and to revise the pension with consequential benefits. Revised Pension Payment Order shall be issued within two months from the date of receipt of a copy of this order. The OA is allowed as above. No order as to costs.

10. Smt.K.Girija submitted that both the orders in the O.As referred to have not attained finality, both having been stayed by the Hon'ble High Court of Kerala. From her side, she argued that this issue had been gone into detail by the Hon'ble Supreme Court in its judgment in **Union of India & Ors. v. B.Banerjee 2013 (10) SCC 265**. As we can see the root of the issue which is the split up of the 55% into 30% and remaining has been examined thoroughly. The judgment examines Rule 902 (v) of the Indian Railway Establishment Manual – Vol.I (Revised Edition 1989) which defines running allowance as follows :

(v) “Running Allowance” means an allowance ordinarily granted to running staff in terms of and at the rates specified in these rules, and/or modified by the Central Government in the Ministry of Railways (Railway Board), for the performance of duties directly connected with charge of moving trains and includes a “Kilometrage Allowance” and “Allowance in lieu of kilometrage” but excludes special compensatory allowances.”

11. Rule 903 of IREM makes the distinction clear by stipulating that 30% of the running staff is required to be treated as representing the pay element in the running allowance. The Hon'ble Apex Court goes on to rule as follows :

9. From the provisions of the Running Allowance Rules, extracted above, it is abundantly clear that only a specific category of employees in the Railways like Drivers, Motormen, Firemen, Guards, Assistant Guards etc. who constitute the running staff and such staff who are directly connected with the movement of trains perform running duties. Running Allowance under the Rules is required to be paid only to the running staff who are engaged in the performance of duties directly connected with the movement of trains and such allowance includes kilometerage allowance or allowance in lieu of kilometerage (ALK). While kilometerage allowance is to be paid for performance of actual running duties, the allowance in lieu of kilometerage (ALK) is to be paid to such members of the running staff who are temporarily required to perform stationary duties. The rules

also make it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the Running Allowance. Those members of the running staff who are employed on non-running duties are paid the aforesaid 30% of the basic pay if such non-running duties are performed at the headquarters whereas in case such non-running dutes are performed by the running staff at outstations they are required to be paid ALK at the rates prescribed by Rule 907(b). It is thus clear that no Running Allowance ie. either kilometerage allowance or allowance in lieu of kilometerage is contemplated for any staff, including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running Allowance of either description is required to be paid only to members of the running staff who are directly engaged in actual movement of trains or such staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties. The respondent does not fall in either of the above two categories.

10. The retention of decategorized Drivers working as Crew Controllers in the original cadre of Drivers by the Railway Board's Circular No.9/98 dated 9.1.1998 and their entitlement to Running Allowance (ALK) has to be understood in the above context. The aforesaid inclusion, which is wholly fictional, cannot confer any benefit contrary to the express provision of the Running Allowance Rules inasmuch as a decategorised Driver working as a Crew Controller is not a member of the running staff or engaged in performance of running duties as defined by the provisions of Running Allowance Rules. The above position has been made abundantly clear by the Railway Board Circular No.12/2004 dated 14.1.2004, details of which have already been noticed.

11. There is yet another aspect of the matter which would require a mention. Under Rule 903 of the Running Allowance Rules, as noticed above, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorised Driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as is evident from the rejoinder affidavit of the Union. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified.

12. We, therefore, hold that the High Court was not justified in issuing the impugned directions for grant of ALK to the respondent. The order of the High Court dated 20.6.2011 is therefore set aside and the appeal is allowed.

12. Smt.K.Girija submitted that the orders issued by this Tribunal in the two O.As are to be considered as *per incuriam* as they had not taken into account the categorical orders of the Hon'ble Supreme Court quoted above. Reckoning of 30% of the basic pay of the running staff is adequate compensation enough for the medically decategorized personnel who are on supernumerary/alternative posting and this has been clearly stipulated in Annexure R-1 document. Further on the question of entitlement of the applicant to the benefits laid down in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Hon'ble Supreme Court in the very same judgment has ruled that providing 30% of the pay element is adequate compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

13. Shri.Martin G Thottan submitted that the circumstances considered by the Hon'ble Supreme Court are distinct from those of the applicant as well as the applicants in the O.As considered. In that the applicant before the Hon'ble Supreme Court had been accommodated in the alternative post of Crew Controller who had only stationary duties whereas the applicant herein continued in the supernumerary post of Senior Passenger Guard which was a running category.

14. The facts of the case and the pleadings made by both the learned counsel have been considered in detail. The applicant, on being medically decategorised, was accommodated temporarily in a supernumerary post unconnected with the “performance of duties directly connected with charge of moving train” (Rules 902). His pay was fixed adding 30% of the basic pay representing pay element in the Running Allowance and this was added to his pay. The categories in which he functioned is different from that of the appellant before the Hon'ble Supreme Court. But both were fulfilling only the stationary duties at the time of retirement. While category such as the applicant herein is entitled to an allowance in lieu of kilometerage, he is not entitled to running allowances *per se* as clearly stated in the judgment of the Hon'ble Apex Court. In so far as the compliance with the Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is concerned also the Apex Court has ruled that addition of 30% of the basic pay amounts to compliance. I am not getting into the controversy whether the orders of this Tribunal had been *per incuriam* but it remains a fact that the judgment of the Apex Court on the relevant subject had not been brought before this Tribunal nor considered by it while allowing the O.As referred to.

.12.

15. After having considered the issue in proper perspective this Tribunal comes to the conclusion that the O.A has no merit and is liable to be dismissed. Ordered accordingly. No costs.

(Dated this the 19th day of September 2018)

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

asp

List of Annexures in O.A.No.180/00318/2016

1. **Annexure A1** – True copy of the letter No.E(NG)I-2009/RE-3/9 dated 5.10.2011 (RBE No.138/2011).
2. **Annexure A2** – True copy of the Memorandum dated 18.11.2013.
3. **Annexure A3** – True copy of the Pension Payment Order No.0604210798 dated 7.11.2014.
4. **Annexure A4** – True copy of the RBE No.202/2008 issued by the Railway Board dated 26.12.2008.
5. **Annexure A5** – True copy of the Railway Board's order dated 30.4.2013.
6. **Annexure A6** – True copy of the representation dated 24.7.2015 sent to the 6th respondent.6
7. **Annexure R1** – True copy of the Railway Board's letter No.E(P&A)II-2004/RS-5 dated 8.10.2013.
