

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00504/2017

Monday, this the 2nd day of April, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member

1. A.K.Guljense, aged 61 years
S/o John Abben
Retired Sr.Passenger Guard (SNP)
Southern Railway
Trivandrum Division.
Residing at "Kichus"
Mangad Nagar 122, Mangad, Kollam.
2. P.N.Vijayan, aged 61 years
S/o P.Narayanan
Retired Mail Guard (SNP), Southern Railway
Trivandrum Division.
Residing at JCRA 163
Jawan Cross Road, Ponekkara
AIMS Post Office, Kochi.

Applicants

(By Advocate: M/s Varkey & Martin)

Versus

1. Union of India represented by
the General Manager, South Railway
Park Town, Chennai-600 003.
2. The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum-14.
3. The Senior Divisional Personnel officer
Southern Railway, Trivandrum-14

(By Advocate: Mr. Sunil Jacob Jose)

This Original Application having been heard on 26.03.2018, the Tribunal delivered the following order on 02.04.2018:

ORDER

Applicants are retired Guards from the Trivandrum Division of Southern Railway. While working on the post of Guards, they were medically de-categorized on account of disability. Till alternative employment, they were kept on supernumerary posts as per the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [for short, the PWD Act] and as per the provisions of chapter 13 of the Indian Railway Establishment Manual, they were kept on supernumerary posts without any drop in emoluments. They retired from service while being so posted on the supernumerary posts without getting absorbed to any alternative posts. The grievance of the applicants is that they have not been given the special benefit of pension payable to the running staff by adding 55% of pay element in terms of the Railway Servants (Pension) Rules 1993.

2. Respondents filed a reply statement contending that as per Annexure R2 Railway Board instructions dated 8.10.2013 the medically de-categorized running staff is entitled to 30% of pay element for being reckoned to the specific benefits excluding the retirement benefits and therefore the erstwhile running staff who were medically de-categorized cannot question the reckoning of pay element again after adding 30% of pay element from the date they were medically de-categorized. According to the respondents 30% of pay element was reckoned and the applicants are not entitled to reckon 55% of pay element as prayed for.

3. Heard the learned counsel appearing for both sides and perused the records. Sri Martin G.Thottan, learned counsel for the applicants, referring to a decision of this Bench dated 4.7.2017 in OA 381/2015 submitted that as the applicants continued to remain on supernumerary posts till their retirement, they are entitled to

reckon the benefits of the posts from which they retired as holders of supernumerary posts and in terms of Railway Services (Pension) Rules 1993 and that, they are entitled to their pension by adding 55% of the pay element, they being running staff on supernumerary posts. Sri Martin further argued that the situation referred to Annexure R2 is entirely different because it involved medically de-categorized running staff who were provided alternative employment in other stationary posts having the same grade and pay in the Railway. He submitted that in the case of the applicants, since they continued to remain on supernumerary posts as Guards, they have to be treated as running staff and hence 55 % of the pay element has to be taken into account while fixing the pension.

4. The subtle difference between keeping a medically de-categorized person in supernumerary post and posting him in alternative employment after medical de-categorization is that in the former situation, he continues to be in the same post he was holding at the time of medical de-categorization in a supernumerary capacity. In the case of applicants, they continued in the post of Guards but without being called upon to do the duties of Guard. In terms of Section 47 of PWD Act if it is not possible to adjust the employee who acquires disability while in service to any other 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. Section 47 reads as under:

“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."

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.

(U. Sarathchandran)
Judicial Member

Annexures filed by the applicants:

Annexure A1: Copy of the Memorandum bearing No.V/P.11/II/SNP-Guards dated 18.11.2013.

Annexure A5: Copy of the letter bearing No.V/P.626/PA 2016/165/CGS dated 9.12.2016.

Annexure A2: Copy of the pensioner's identity card of the first applicant.

Annexure A3: Copy of the pensioner's identity card of the 2nd applicant.

Annexure A4: Copy of the representation submitted by the 1st applicant to the third respondent.

Annexures filed by the respondents:

Annexure R1: Copy of the Railway Board's letter No.RBE No.138/2011 issued under No.E(NG)I-2009/RE-3/9 dated 5.10.2011.

Annexure R2: Copy of Railway Board's letter No.E(P&A)II-2004/RS-5 dated 8.10.2013.