

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1188 of 2013

Reserved on: 26.10.2018

Order pronounced on: 01.11.2018

Between:

K. Panduranga, S/o. late K. Ramaiah,
Aged about 74 years, Occupation: Rtd. Goods Guard,
G.P. No.3762, P.F.No.02071551,
PPO No.A/PEN/RLYS/GTL 59061113016,
H. No. 13/183-B-1, Vijaya Nagar Colony,
Kasapuram Road, Guntakal, Anantapur District,
Andhra Pradesh – 515 801.

...Applicant

And

1. Union of India, Rep. by its General Manager,
South Central Railway, Rail Nilayam, IV Floor,
Secunderabad, Andhra Pradesh – 500 071.
2. The Senior Deputy General Manager,
Rail Nilayam, Secunderabad, Andhra Pradesh – 500 071.
3. The Chief Personnel officer,
Rail Nilayam, Secunderabad,
Andhra Pradesh – 500 071.
4. The Divisional Railway Manager,
South Central Railway, Guntakal Division,
Anantapur District, Andhra Pradesh – 515 801.
5. The Additional Divisional Railway Manager,
South Central Railway, Guntakal Division,
Anantapur District, Andhra Pradesh – 515 801.
6. The Senior Divisional Personnel Officer/ Guntakal,
(Earlier it was Divisional Office, Personnel Branch),
Divisional Railway Manager's Officer, Personnel Branch,
South Central Railway, Guntakal Division,
Anantapur District, Andhra Pradesh – 515 801.
7. The Senior Divisional Finance Manager,
(Earlier it was Senior Divisional Accounts Officer),
South Central Railway, Guntakal Division,
Anantapur District, Andhra Pradesh – 515 801.

...Respondents

Counsel for the Applicant ... Mr.G. Venugopal Reddy

Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The grievance of the applicant is non revision of his pay and allowances in terms of the 5th Pay Commission Recommendations and nonfeasance on the part of the respondents in respect of letter dated 13-04-2010 of the sixth respondent as also various representations submitted by the applicant.

2. The facts of the case are that the applicant joined the respondents' organisation as Trade Apprentice on 13.4.1959, worked as Mechanic (Steam Loco Shed) and grew up the career ladder as B Grade Charge Man in 1993 and was placed in the stage as Master Craftsman (MCM) in the erstwhile scale of Rs 1400 - 2300 and worked till 1996. Based on a meeting between the staff union and the respondents on 15.3.1994, the staff of steam loco shed were redeployed and in the process the applicant was declared suitable for Goods Guard vide lr dt 17.1.1995 of R-6. He was sent for training vide letter dt. 5.6.96 commencing from 06.06.1996 which led to a lower pay throughout his career. Staff unions represented to R-4 on the issue and the correct pay was drawn to others vide lr dt 19.1.1998 but not to the applicant. The pay scale of the Goods Guard when the applicant was redeployed from MCM to Goods Guard in 1996 as per IV pay commission was Rs 1200-2040 as per Railway Services Revised Pay (RSRP). Thus, the pay scale of the applicant prior to redeployment was higher than the pay scale when he was placed on redeployment. The pay drawn by the Applicant at the time of redeployment was Rs.6754. The applicant completed

his training on 1.10.1996 and absorbed in the scale of pay Rs 1200-2040. The pay scale of Rs 1400 - 2300 was replaced by a revised scale of Rs 5000 – 8000 while that of 1200 – 2040 by Rs 4500-7000 from 1.1.1996 to 28.11.1996. The Respondents have afforded pay fixation protecting the pay drawn before redeployment, but kept the difference in pay as personal, without the same being absorbed in the future increment. The claim of the applicant is that his pay on redeployment was not correctly fixed and in addition, no running allowance was paid to him though the same is admissible to the Goods Guards. Hence the present O.A is filed, ventilating his grievance seeking justice.

3. According to the applicant, in the case of similarly placed persons namely Sri D.Munaiah & Sri P. Manjunath pay fixation cases were favourably disposed by this tribunal vide orders dt 28.4.2007 and 8.8.2008. As per rule indicated in lr dt 13.4.1992, personal pay shall not be included in the rate of pay. Though the pay scale of the Goods Guard was lower than that of MCM since the authorities informed that there will be pay protection if one were to opt for Goods Guard from the MCM, the applicant believing so, has opted for Goods Guard. Applicant continuously approached the respondents to set right the wrong fixation on 29.12.1997, 21.4.1998 and through the District Legal Services Authority on 1.12.2002. On directions of the Dist. Legal Services Authority R-6 directed to pay the balance of Rs.3000 vide lr dt 19.7.2001 and though R-6 issued order vide lr dt 17.10.2001 to pay, it is not being paid on grounds that the applicant is due to the respondents towards scooter advance. Thereafter the applicant issued a number of legal notices and made representations to the respondents from 2005 onwards upto 2013 but his grievance was not resolved as the respondents indulged in giving vague and improper replies. Therefore he pleads that this tribunal should come to his rescue.

4. The Respondents submitted that consequent to closure of Steam loco shed where the applicant working as MCM in the scale Rs 1400- 2300 found him suitable in Goods Guard vide lr dt. 29.11.1996. and on completion of training from 6.6.1996 to 12.7.1996, his pay was drawn in the same scale of Rs 1400- 2300 till his absorption as Goods Guard. On being absorbed as Goods Guard on 29.11.1996 the pay was drawn as was eligible for Goods Guard with pay protection. **The applicant is not eligible for running allowance as he moved from non –running post to running post and that this allowance is permitted only to those who move from running to non-running category.** As per Railway Board lr. dt 17.10.1997 the pay scale of Rs 1400-2300 of MCM and that of Goods Guard pay scale of Rs 1200-2040 were revised to Rs.4500 - 7000. Subsequently Railway Board revised the pay scale of MCM to Rs.5000- 8000 from Rs.4500- 7000 vide lr. dt 30.11.1998. Accordingly the revised pay of the applicant was regulated and settled following rules on the subject. From the date of his absorption as Goods Guard on 29.11.1996 the applicant's pay was fixed in the scale of Rs.4500- 7000 and that since he moved from non running to running cadre, the 30 % running allowance was not added to the basic pay as per Railway Board letter dt 23.3.1976 and Sl. Circular 50/76. Further as per Railway Board letter dt.23.9.2012, Personal Pay shall be absorbed in future increments. Based on the said order the increment due on 1.6.1997 was granted and pay fixed at Rs.6250 in the pay scale of Rs.4500-7000 which became the basis for drawing applicant's pension w.e.f 30.4.1998. In regard to the amount of Rs.3000 to be paid as claimed by the applicant it was clarified vide lr dt 19.7.2001 that a sum of Rs.4537 was due from the applicant and that he is still due to the respondents after deducting Rs.3000 claimed. Thus the respondents claim that the pay of the applicant was correctly fixed and paid.

5. Heard the counsel and perused the documents on record.
6. The main contention of the applicant is that on administrative grounds when he was redeployed as Goods Guard from MCM his pay has to be protected in accordance with the rules and in addition, he having joined as Goods Guard, which carries running allowance as well, he is entitled to the same during the period he was so posted. However, in this regard, the respondents have indicated at para 6 of the reply statement, consequent to the pay scale of the MCM being revised to Rs 5000-8000 vide lr. dt 30.11.1998, the pay of the applicant revised from 1.1.1996 till his absorption as Goods Guard on 29.11.1996 as under:

Period	Post	Scale	Pay
01-01-1995	MCM	1400-2300	1950
01-01-1996	MCM	5000-8000	6050
01-06-1996	MCM	5000-8000	6200 (increment)
29-11-1996	Goods Guard	4500 – 7000	6125+75 (PP)
01-09-1997	Goods Guard	4500 – 7000	6250 (increment)

At the very outset, it has to be clarified that when an employee is afforded alternative job due to administrative contingencies, his past pay is required to be protected. If he was, prior to redeployment, in a cadre with the entitlement of running allowance, and his redeployment is in a cadre in which running allowance is not admissible, his pay protection would be such that his pay would be incremented by 30% of the running allowance, and the same would be treated as pay in the redeployed post, and pay fixation would be at that stage, if there be one, or in a lower stage, the difference being held as personal pay, absorbable in future increment. No running allowance is available in the alternative post. Instead, if an individual gets redeployed from a post which does not carry any running allowance, to a post that carries a running allowance, then his pay in the redeployed post shall have to be fixed by protecting his pay as in

the above case and in addition, he would be entitled to the running allowance. In the instant case, the applicant belongs to the second category.

7. The respondents claim that since he has been redeployed from non-running post to running post the applicant is not eligible in terms of Railway Board letter dt 23.3.1976. The executive instruction cannot overrule the statutory provisions on the subject. **Para 901 of IREM provides for running allowance to Goods Guard. Provisions of IREM are statutory in nature as held by the Apex Court in CA No. 9176 of 2018 in Prabhat Ranjan Singh vs R.K Kushwaha decided as recently as 07-09-2018.** Further, the running allowance has to be considered as part of the emoluments in calculating the pension as per Rule 2544 of the IREC. This was upheld by the Honourable Supreme Court in Chairman, Railway Board vs C.R. Rangadhamaiyah in CA Nos.4174 of 1995-82 of 1995 etc. Since the element of running allowance is provided for in respect of the post of Goods Guard, it has to be paid once the applicant has been redeployed as Goods Guard albeit he would not have been entitled to the same prior to his induction as Goods Guard. It should be further kept in mind that the applicant has been shifted on administrative grounds and it was not his choice as such. Once he has been given the designation of Goods Guard and placed in the scale of Goods Guard then all the attendant allowances to the post of Goods Guard become his entitlement. Thus, in regard to drawal of running allowance the action of the respondents is against rules and hence illegal. Regarding personal pay, which was granted due to the necessity of moving the applicant from a higher pay scale to that of a lower one, it has to be absorbed in future increments and cannot be shown separately all through. As per the statement above, the personal pay seems to have been absorbed in future increment, though the respondents have not been able to clarify the same. As regards the amount of

Rs.3000 to be paid as per District Legal Services Authority's order, it was properly clarified that the applicant owes an additional amount of Rs.1537 towards interest on scooter loan taken by the applicant. Hence the claim of the applicant to this extent is incorrect. Therefore the OA succeeds only in respect of the claim relating to the entitlement to running allowance from the date of the appointment of the applicant as Goods Guard. It is accordingly declared.

8. The claim of the applicant includes arrears of pension as well. The applicant retired more than a score of years ago. In so far as arrears of pay and allowances the same tantamounts to money suit for which there is a period of limitation. In the case of ***Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13*** and ***Shiv Dass vs Union of India, (2007) 9 SCC 274*** limiting the arrears to three years anterior to the date of filing of the application. However, when it comes to the question of family pension, the Apex Court has held in the case of ***S.K. Mastan Bee v. General Manager, South Central Railway, (2003) 1 SCC 184***, as under:

“ We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact that her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1-4-1992. ”

The case of pension leans towards family pension in this regard. Thus, the law laid down by the Apex Court in the case of S.K. Mastan Bee (supra) will be applicable in the case of the applicant herein.

9. In view of the foregoing discussion, the Respondents are directed to -

- i) Work out the pay and allowances due to the applicant right from the time he was redeployed as Goods Guard protecting his pay drawn last while he was serving in the Loco Shed, in accordance with the provisions of Rule viz., absorption of the personal pay in future increment. In addition he became entitled to the grant of running allowance for the period he served as Goods Guard.
- ii) After working out the pay on the date of retirement on the above lines, his pension shall be worked out treating a part of the running allowance as a part of emoluments as per rules and revised PPO issued.
- iii) The difference between the pension admissible and that drawn shall be worked out and the same released to the applicant
- iv) Time calendared for execution of this order is 4 months from the date of receipt of a copy of this order.

10. In the result, the OA is allowed as above. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 1st day of November, 2018

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