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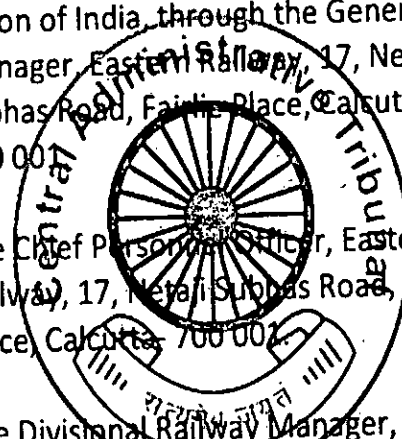
No. OA. 350/00049/2014

Date of Order: 27th March 2018Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Hema Charan Mondal, son of late
Aghnu Mondal, aged about 64 years,
by occupation: retired Railway Employee,
residing at Village : Rakudi, P.O. Ghorlas,
via Rohini, P.S. Jasidih, District- Deoghar,
Jharkhand, Pin: 814152.

.....Applicant.

-versus-

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1. Union of India, through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Fairlie Place, Calcutta-700 001.
 2. The Chief Personnel Officer, Eastern Railway, 17, Netaji Subhas Road, Fairlie Place, Calcutta-700 001.
 3. The Divisional Railway Manager, Asansol Division, Eastern Railway, Asansol, District- Burdwan, Pin: 713 301.
 4. The Sr. Divisional Personnel Officer, Asansol Division, Eastern Railway, Asansol, District- Burdwan- 713301.
 5. The Sr. Divisional Engineer (Cordn), Asansol, District- Burdwan - 713301.
 6. The Sr. Section Engineer (P.Way), Sitarampur, Asansol Division, Eastern Railway.
 7. The Assistant Engineer /Line, Asansol, District- Burdwan.
 8. The Sr. Divisional Finance Manager, Asansol, Division, Eastern Railway, Asansol, District- Burdwan.
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9. The Office Superintendent, office of the Assistant Engineer/Line, Asansol Division, Eastern Railway, Asansol, District- Burdwan.

.....Respondents.

For the Applicant : Mr. B. Bhushan, Counsel

For the Respondents : Mr. A. K. Guha, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved by non-receipt of pay fixation in the scale of Rs. 5200-20200/- with Grade Pay of Rs. 2800/- with effect from 01.07.2006, the applicant has approached the Tribunal under Section 19 of Administrative Tribunal Act, 1985, seeking the following reliefs:

"8(A) Do issue mandate upon the respondents, their men, agents and each of them to forthwith ~~revoke~~ ^{recall} and/or withdraw the purported speaking order dated 20.09.15 (should be 13) and not to give any further effect to the same;

(B) Do issue mandate upon the respondents, their men and agents and each of them to forthwith fix at Rs. 5200/- In Pay Band of Rs.5200-20200/- G.P. of Rs. 2800/- w.e.f. 1.7.2006 and pay all the arrears thereof with 18% interest on the total sum thereof;

© Set aside and quash the impugned Memo dated 11.8.2011 and not to give any or further effect to the same;

(D) Issue direction upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant lis before this Learned Tribunal for kind perusal and on such perusal do conscionable justice to the applicant;

(E) Grant cost of this proceeding to the applicant;"

2. Heard learned counsel for applicant as well as learned counsel for respondents and examined the pleadings as well as documents on record.

Written note of arguments have been submitted by both the applicant and respondents respectively.

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3. The case, in brief, is as follows:

That the applicant was engaged as Casual Gangman in the year of 1968 and CPC substitute status was given to him on 21.10.1978; he was regularized as Trackman(Gangman) in 1989; thereafter, the applicant was promoted to the post of Sr. Trackman on 01.05.2006 and further promoted and posted as Permanent Way Mistry (PWM)/Permanent Way Supervisor (PWS) with effect from 01.07.2006 in the scale of pay of Rs. 4500-7000/- wherein the basic pay of the applicant was fixed at Rs. 4500/- with effect from 01.07.2006.

That, on the recommendation of 6th CPC, he was given the corresponding scale of pay in Pay Band of Rs. 5200-20200/- with Grade Pay of Rs 2800/- in which basic pay of the applicant was fixed at Rs. 12,220/- and the applicant retired on such basic pay on 30.09.2009.

That, although the basic pay of the applicant on promotion to the post of PWS should have been fixed in the Pay Band of Rs. 5200-20200/- on 01.07.2006 in 5th CPC, his pay was actually fixed at Rs. 4125/- in Pay Band of Rs. 2750-4400/- as Sr. Trackman in 5th CPC.

That, the applicant represented to the authorities to remove the anomalies in his pay fixation but his prayer was turned down on 11.08.2011 consequent to which the applicant had filed an OA. 1160 of 2011 which was disposed of on 25.06.2013 with certain mandatory directions upon the respondents. The respondents, however, rejected his legitimate prayer and claim by a speaking order which was communicated to him on 23.9.2013. Challenging the same, the instant application has been filed on the ground of lack of justifiability of the action of the respondents in this regard.

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4. Per contra, learned counsel for respondents argued that the applicant, while working as Sr. Trackman, had applied for the post of Supervisor/P.Way (PWS) carrying a pay scale of Rs. 4500-7000/-. As the post of PWS belongs to the safety category, once found suitable in the written test as well as medical examination, the PWS are subjected to the successful completion of promotional course training as well as practical line training followed by viva-voce test.

That, after qualifying in all such tests and training, an Office order was issued on 31.10.2008 in which the applicant was promoted to the post of PWS and he took independent charge of the said post with effect from 01.11.2008. That the applicant was booked for promotional line training from 02.04.2008 to 17.05.2008, found suitable in the viva-voce test held on 05.08.2008 and was finally posted Supervisor (P.Way) with immediate effect from 31.10.2008 along with other candidates. That the applicant had reported for in line training with effect from 01.07.2006 and the he was spared by JE(P.Way)/JSME to JE(P.Way)/Sitarampur for line training, and not for promotion to the post of Supervisor (P.Way). Hence, the question of receipt of any promotional benefits does not arise during line training period with effect from 01.07.2006.

That the applicant had taken charge of Supervisor (P.Way) independently on 01.11.2008 consequent to which promotional benefits was given from 01.11.2008 in pay band of Rs. 5200-20200/-. That the applicant continued to earn annual increment upto the month of October, 2008 which was adjusted at the time of 6th CPC fixation and over payments made to him for wrong fixation of pay was recovered from arrear payment as due to him for of 6th CPC.

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That, in compliance with CAT(Kolkata) order dated 25.06.2013 passed in OA. 1160 of 2011, specific speaking order was passed, aggrieved by which the applicant has filed the instant application.

5. Issue:

The only issue which requires to be resolved in order to adjudicate upon the instant application is whether the speaking order (Annexure A-13 to the OA) was issued in accurate compliance with the Tribunal's order dated 25.06.2013 in OA. 1160 of 2011.

6. Findings:

The limited issue herein is confined to the point wise conclusion of the respondent authorities in the speaking order (Annexure A-13 to the OA); ad-seriatim, these are as follows:

"Item 1:- As per Rly Bd's letter No. PC-V/2006/Misc/5 dated 17.04.2006 (RBE No. 48/06) & GPO/E.R./KKK/SSK No. 58(05)/2006 during the training period, in service candidate will be treated as Railway Servant on duty and will be eligible for all the allowances and privileges on the basis of their substantive cadre pay of the post held before being sent on training as per provision of relevant rules. Accordingly fixation of pay of the applicant was in order and the applicant was entitled for scale of Rs. 5200-20200/- + GP Rs. 1800/- only w.e.f 01.07.2006 to 31.10.2008.

Item 2:- All due arrears were paid to the applicant. Only higher pay which was charged erroneously from the date of line training has been recovered from the 6th P.C. arrears pay of the applicant like others staff of similar case.

Item 3: As per Rules before completion of training candidate/staff is not eligible for holding the independent post of P.Way Supevisor. And during training applicant is eligible for pay of the post held before training i.e. Rs. 2650-4000/- (5th Pay Commission) or Rs. 5200-20200/- + 1800 GP (6th Pay Commission). All due amount as per above pay has been paid to the applicant, so further payment of arrear pay does not arise.

Item 4: Noted."

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As the comments/observations on Item No. 2 is a matter of record and as contentions at Item No. 4 are as noted by the respondent authorities consequent to the quashing of the order dated 11.08.2011 impugned in OA. 1160 of 2011, our findings are limited to Item No. 1 & 3 respectively.

- (i) To reiterate the conclusions arrived at by the respondent authority on Item No. 1 & 3, the same are reproduced below:

"Item 1:- As per Rly Bd's letter No. PC.IV/2006/Misc/5 dated 17.04.2006 (RBE No. 48/06) & CPO/E.Rly/KKK's SI No.. 58 (05)/2006 during the training period, in service candidate will be treated as Railway Servant on duty and will be eligible for all the allowances and privileges on the basis of their substantive cadre pay of the post held before being sent on training as per provision of relevant rules. Accordingly fixation of pay of the applicant was in order and the applicant was entitled for scale of Rs. 5200-20200/- + GP Rs. 1800/- only w.e.f 01.07.2006 to 31.10.2008.

Item 3: As per Rules before completion of training candidate/staff is not eligible for holding the independent post of S.Way Supervisor. And during training applicant is eligible for the post held before training i.e. Rs. 2650-4000/- (5th Pay Commission) or Rs. 5200-20200/- + 1800 GP (6th Pay Commission). All due amount as per above pay has been paid to the applicant, so further payment of arrear pay does not arise."

To arrive at their conclusion, the respondent authorities have relied on RBE No. 48/2006 as communicated vide Srl. No. 58(05)/2006.

RBE No. 48/2006 as communicated vide Srl No. 58(05)/2006 dated 17.05.2006 (as annexed in R-10 to the reply) are reproduced below:

"Serial No. 58(05)/2006
No. E.505/0/2/PLB/III

Kolkata, dated 17.05.2006

Sub: Admissibility of pay/stipend and PLB etc. to the in-service candidates undergoing apprenticeship/training on the Railways.

Copy of Railway Board's letter No. PC IV/2006/Misc/5 dated 17.4.2006 (RBE No. 48/2006) on the above mentioned subject is forwarded for information, guidance and necessary action.

Signature

Copy of Railway Board's letter No. PC IV/2006/Misc/5 dated 17.4.2006 (RBE No. 48/2006) addressed to the General Managers, All Indian Railways and others.

Sub: Admissibility of pay/stipend and PLB etc. to the in-service candidates undergoing apprenticeship/training on the Railways.

Apprenticeship training is required to be successfully completed before appointment against certain specified Group 'C' working posts/absorption in service on the Railways. There are different situations wherein candidates who are already in Railway service are also required to undergo such apprenticeship training before appointment against higher Group 'C' posts. Various entitlements of the apprentices/trainees during such period have been prescribed in the Indian Railway Establishment Code and Indian Railway Establishment Manual as further clarified/modified through specific orders issued by the Ministry of Railways (Railway Board). However, doubts have been expressed by some of the Railways/Federations regarding interpretation on some of the issues such as admissibility of PLB etc. in different situations, as also giving option to such candidates to draw either stipend or pay of their working cadre post during such period.

2. Accordingly, a review of the existing system has been undertaken by the Board and it is decided that stipend/Pay and allowances of in service candidates (viz. Railway Servants) selected for higher posts on the Railways and undergoing apprenticeship/training before absorption/appointment against such posts may be regulated as follows:

- (a) Railway servants, who fulfill the terms and conditions of recruitment to various categories of apprentices as applicable to outsiders and allowed to compete for appointment as such along with outsiders without relaxation of educational qualification (with/without age relaxation) in open competitions through RRB against direct recruitment quota will be governed by the provisions contained in Rule 1905(Chapter XIX) of IREM Vol. II (1990). They will also be entitled to the other allowance/privileges as specifically laid down in above chapter.
- (b) In-service candidates appointed as apprentices against an earmarked quota for them (viz. inter apprentices), but not covered by (c) below, will be treated as Railway servants on duty and will be governed by the provisions of Rule 1311 (FR-20) R-II (1990-reprint). During such training/apprenticeship, they will be eligible for all the allowances and privileges (including TA/DA & PLB) on the basis of their substantive cadre pay of the post held before being sent on training as per the provisions of relevant rules.

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More specifically paragraph 2(b) states that, inservice candidates appointed as apprentices against an earmarked quota but not covered by (c) below will be treated as Railway servants on duty and will be governed by the provisions of Rule 1311 (FR-20) R-II (1990-reprint). During such training/apprenticeship, they will be eligible for all the allowances and privileges (including TA/DA & PLB) on the basis of their substantive cadre pay of the post held before being sent on training as per the provisions of relevant rules.

The interpretation of Rule 1311 (FR-20) as annexed at R-9 to the reply is as follows:

"(2) Interpretation of certain expressions used in F.R. 20 (Rule 1311))- The expressions "the pay of any officiating appointment" occurring in F.R. 20 (Rule 1311) should be taken to mean "the pay which the Government servant drew in the post which he held substantively" and "the pay which the Government servant drew in the post in which he officiated" respectively. In neither case is there any restriction on the kind 'pay' to be drawn, and the expressions should therefore be held to include special pay, if any, which the Government servant drew in the post which he held substantively or in an officiating capacity."

The respondents accordingly issued an Office order dated 11.08.2011 and 09.10.2012 annexed as Annexure R-8 and R-11 to the reply respectively.

(ii) Annexure A-1 to the OA is an Office Order dated 20.06.2006 which states as follows:-

"No. E/E.21/Supvr/P.Way/Pt. I

Asansol, dt. The 20th June, 06.

SSE/P Way/DGR/JSME/STN & Yd/UDL

Sub: Line Training for the post of Supvr (P Way)
In Sc Rs. 4500-7000/- (RSRP).

On being declared medically fit in A-3 the following Sr. Trackman in Sc. Rs. 2750-4400/- who have been found suitable for the post of Supvr. (P.Way) in Sc. Rs. 4500-7000/- (RSRP) vide this office letter of even number dt. 01.05.06 are booked for line training at the place noted against each.

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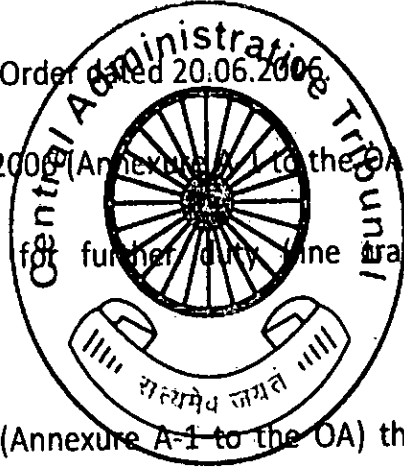
Sl. No.	Name S/Sri	Desig/Stn	Booking for line training under
1.	Subal Chandra Gorai	Sr. Trackman/DGR	SSE/P. Way/Yd/UDL
2.	Sri Hemacharan Mondal	Sr. Trackman/JSME	SSE/P Way/STN

This has the approval of the competent authority.

For Sr.Divl. Personnel Officer
Eastern Railway, Asansol"

It is deciphered from the above Annexure A-1 to the OA that the applicant was only "found suitable" for the post of Supervisor (P.Way) and was "booked for line training" in the Officer Order dated 20.06.2006. Nowhere is there any whisper of being posted substantively on promotion as Supervisor (P.Way) in the said Office Order dated 20.06.2006.

Again, on 29.06.2006 (Annexure A-1 to the OA) the applicant was spared and directed to report for further duty (line training) by the concerned respondent authority.



On 01.07.2006, (Annexure A-1 to the OA) the applicant reported as a PWS in the scale of Rs. 4500-7000/- and the said report is reproduced verbatim below:

"To,
The Section Engineer (P.Way)
Eastern Railway, Sitarampur,

Sub: Joining Report for the post of PWS.

Ref: Sr. DPO/ASN's letter No. E/E.21/Supvr/P.Way/
PTI date 20.06.2006.

Sir,

In reference quoted above I am reporting myself as a PWS in Scale Rs. 4500-7000/- on and from 01.07.06 under your kind control.

[Handwritten signature]

This is for your kind information and necessary action please.

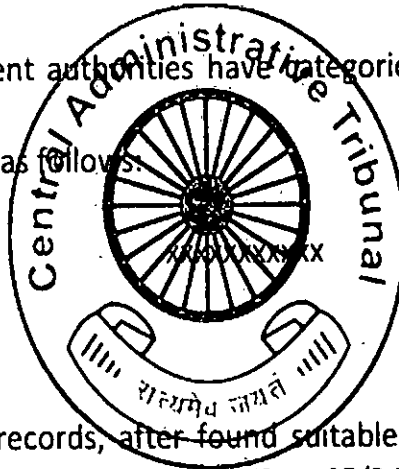
Yours faithfully,

Hemacharan Mondal
PW Supervisor/STN
Date: 01.07.06."

While reporting, the applicant has referred to the respondent's order dated 20.06.2006 wherein it was stated that who have been found suitable for the post of Supervisor (P.Way) in the scale of Rs. 4500-7000/- vide this office letter dated 01.05.2006 are "booked for line training".

In response to the applicant's representations which commenced from 09.06.2009, the respondent authorities have categorically stated on 11.08.2011 (Annexure A-4 to the OA) as follows:

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On records, after found suitable in written test, you were booked to attend line training of PWS at SE/P.Way/STN w.e.f. 1.7.06 and thereafter you were also booked for training of PWS at ZTRS Bhuli period from 2.4.08 to 15.8.08 after completion of Bhuli training you also appeared viva-voce test on 16.7.09 before the Selection Board. These were the part and procedure of selection of PWS from Gr. 'D' post before publishing the posting order by the competent authority. Competent authority had published his posting order of PWS in this context on 31.8.2008 and also had taken over the independent charges of PWS on 1.11.08. Accordingly your pay has been fixed on and from 1.11.08 as PWS as per rule.

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Analyzing the above statement, the following is established:

- (a) That the applicant was booked for attending line training of PWS with effect from 01.07.2006.

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(b) That he was booked for training of PWS at ZTRS Bhuli from 02.04.2008 to 15.08.2008.

(c) That as directed the applicant appeared in viva-voce test on 16.07.2009 before the Selection Board.

(d) Having participated in such selection process his posting order was finally issued and published on 31.08.2008 and

(e) That the applicant had taken over independent charges of PWS on 1.11.2008.

Accordingly his pay has been fixed on and from 1.11.2008 as PWS as per rules.

(iii) It is further ascertained that the relief as sought for in paras – B, C & D in the instant application are same as those sought for in paras- 8(A), (B) and (C) in OA. 1160 of 2011 which have been deliberated upon by the Tribunal while issuing its order dated 25.06.2013. The only relief that is left to be decided upon in the instant OA is as to whether the speaking order (Annexure A-13 to the OA) deserved to be rescinded/recalled or to be withdrawn with the directions as not to be given any further effect to with reference to the applicant.

Nowhere the applicant has challenged RBE No. 48/2006 as communicated vide Srl. No. 58(05)/2006 dated 17.05.2006; the said RBE categorically states that during training/apprenticeship, trainees will be eligible for all the allowances and privileges on the basis of their substantive cadre pay of the post held before being sent on training as per the provisions of relevant rules.

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Clearly all documents as annexed collectively as Annexure A-1 to the OA refer to his deputation on training and do not confirm his substantive appointment to the promotional post.

Hence, in the absence of challenge to the Rules based on which the Respondents concluded on Item Nos 1 & 3 of the speaking order so impugned, we are unable to conclude that the order dated 20.06.2006 (A-1 to the OA) is a promotion order whereby the applicant was entitled to get the pay scale of Rs. 5200-20200/- as claimed in the instant application.

(iv) During hearing, learned counsel for applicant also mentioned that although the applicant was asked to report on 01.07.2006 and performed his duties accordingly, the fact that the respondents delayed his training was against principles of equity and justice as because the applicant was not responsible for the delayed completion of the training process. In their written notes of argument, however, the respondents have stated that overdrawn amounts have been recovered from other staff similarly circumstanced as that of the applicant (Annexure A & B to the written notes of argument of the respondents). Hence no discrimination has been established among the employees promoted vide order dated 20.06.2006.

7. It is a settled principle of law that if any promotion is made subject to eligibility conditions, promotees are not entitled to get promotional benefits without fulfillment of such eligibility conditions.

In **Roop Chand Adlakha vs. Delhi Development Authority AIR 1989 SC 307**, the Hon'ble Apex Court has held as follows in the context of qualifications for promotion- "what qualifications are to be prescribed for what posts are

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essentially matters of policy and unless the provision is shown to be arbitrary, capricious or to bring about grossly unfair results, judicial policy should be one of the judicial restraint."

The Hon'ble Apex Court has also in **J. Rangaswamy vs. Government of Andhra Pradesh & Ors. (1990) 1 SCC 288**, observed that the qualifications prescribed must have some nexus with the post and as held in **R. Prabha Devi & Ors. vs. Government of India AIR 1988 SC 902**, "a person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion."

In the instant case, line training, training for PWS and viva-voce were part and parcel of selection of PWS from Gr. 'D' post, hence, unless such qualifications were fulfilled, the applicant could not claim any right to substantive promotion.

Hence, in our considered view, the CA is fit to be dismissed and is hence dismissed on merit.

Parties will bear their respective costs.

(Dr. Nandita Chatterjee)
Member (A)

(Manjula Das)
Member (J)

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