



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.O.A.1436 of 2013

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Ms. Jayati Chandra, Administrative Member

TAPAS CHAKRABORTY

VS.

UNION OF INDIA & ORS.  
(E. RLY.)

For the applicant : Mr. B.R. Das, counsel  
For the respondents : Mr. P.B. Mukherjee, counsel

Order on : 7.4.16

O R D E R

Ms. Bidisha Banerjee, J.M.

Heard ld. counsel for the parties.

2. This is the second journey of the applicant to this Tribunal, his case in a nutshell being as under:-

While discharging his duties in a permanent capacity w.e.f. 08.04.2002 as Loco Pilot(Mail) which was a running category post, the applicant fell seriously ill and was hospitalized on 21.08.2011. He underwent a surgical treatment for cerebral ailment at R.N. Tagore International Institute of Cardiac Sciences. He was discharged from hospital on 06.09.2011 with advice for two months' rest. He tendered application for voluntary retirement on 09.12.2011. whereafter he was sent for special medical examination on 20.12.2011, he was found fit in A-1 category of vision test with glasses as required for running duties, but as per psychiatric advice, he was declared fit as per para 574 of Indian Railway Medical Manual (IRMM), 2000 vide certificate dated 20.12.2011.

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Voluntary retirement was granted to him w.e.f. 31.03.2012 and during the interregnum he continued to be on leave.(page 14, Annexure A-11 of rejoinder). Although he was under an impression that his retirement benefits would be calculated on par with a running staff, he was surprised to find that the benefits were calculated treating him as a non-running staff by adding only 30% pay element of his basic pay while not computing 55% of pay element towards pension, which resulted in loss of settlement dues and reduction of pension to a considerable extent. He, therefore, prayed for settlement dues and pension fixation as a running staff.

3 The earlier round of litigation in O.A.No.252 of 213, seeking the similar benefits, was disposed of with a direction upon the respondents to consider his representation dated 14.12.2012. In the present O.A. the applicant would seem aggrieved as the Sr. D.P.O., Eastern Railway rejected his prayer on the ground that he was declared medically unfit and he ceased to be a running staff and, therefore, not entitled to retirement benefits on par with running staff in terms of CPO/KKK's Srl. No.119 of 2011. The reliefs sought for in the present O.A. being as follows:-

"(i) Rescind, recall, withdraw and/or set aside the order being Annexure A-1;

(ii) Revise and/or amend the PPO No.02063914412 dated 20.07.2012(Annexure A-2) so as to calculate the Last Pay for Pension on the basis of pay element for running allowance taken as 55% of pay including Grade Pay;

(iii) Recast all the pensionary and retiral benefits on the basis of last pay for pension revised as above;

(iv) Treat the period from 20.12.2011 to 31.3.2012 as compulsory wait for alternative employment and draw and pay the leave encashment dues for the period of 103 days from 20.12.2011 to 31.3.2012;

(v) Pay all the arrears on account of reliefs(ii) to (iv) as above with suitable interests thereon, forthwith;

(vi) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (v), above;

(vii) Pass such other order/orders and/or direction/directions as deemed fit and proper.

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(viii) Costs."

4. The ld. counsel for the applicant would argue that the respondents having never issued any formal order in regard to his medical decategorisation, could not deprive the applicant of his rightful pension and settlement dues as a running staff.

5. The ld. counsel for the respondents, on the contrary, would dispel the argument and submit as follows :

That the applicant tendered voluntary retirement on the ground of ailment of his wife, which request was accepted after three months of notice period in terms of Para 1803 (B) of Indian Railway Establishment Code (IREC), Vol.2. Meanwhile, he was declared unfit for his present category with effect from 20.12.2011 and ceased to be a running staff from that date. According to the respondents, there was no question of arranging special supernumerary post as the applicant was not waiting for alternative appointment, rather, he applied for voluntary retirement from his service and, therefore, he was treated as non-running staff whose settlement benefits were calculated on the basis of the pay fixation for such decategorisation as per rules. In support of his contention, the ld. counsel invited our attention to a copy of the CPO's circular dated **01.02.2012** embodying the provisions of **RBE 138/2011** on "Fixation of pay of Medically decategorised running staff while kept on supernumerary posts- Granting benefit of Running Allowance".

6. Therefore, the short question to be determined would be whether the present applicant was medically decategorised prior to his retirement or whether he was a running staff when he retired and accordingly would be entitled to pensionary benefits on par with a running staff.

7. We have given our anxious consideration to the materials on record. In order to examine the rights of a medically decategorised staff we would first advert to the text of procedure of Medical decategorisation :

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The provisions of Railway Medical Manual which govern the treatment of Medically decategorised Staff, would read as under:-

**"1301.** A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

**1302. Classification of Railway Servants declared medically unfit** - Railway servants acquiring disability during service and declared medically unfit are divisible into two groups:

(i) Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the 'C' medical category; and

(ii) Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

**1303.** The railway servants both in group(i) and group(ii) of Para 1302 cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the employee concerned was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located."

**1304.** Disabled Medically decategorised staff to be absorbed in posts they can adequately fill: - In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

**1305.** Absorption in posts identified for employment of physically handicapped persons/creation of supernumerary posts. The Railway servants falling in group (i) mentioned in para 1302 i.e. those who are declared unfit even for the lowest medically category, may be absorbed in a post/category identified as suitable for employment of physically handicapped persons and fresh recruitment to that post/category from

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open market from amongst physically handicapped withheld. In case the alternative post is not carrying the requisite pay scale, a supernumerary post may be created in appropriate scale of pay and the employee adjusted against the same keeping the lower grade post vacant by withholding fresh recruitment thereto. The supernumerary post so created to accommodate a disabled/medically incapacitated employee shall stand abolished as soon as a suitable post in the appropriate scale is found for the Railway servant concerned or the post is vacated by him for other reasons, whichever is earlier.

**1306. Steps to be taken for finding alternative employment :-**

1. With a view to determine the categories in which the disabled/medically decategorised Railway servant is suitable for absorption, a committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the disabled/medically decategorised Railway servant was working, the Railway servant's immediate officer being one of the members of the committee. After the committee has examined the Railway servant and determined his suitability for certain categories of posts, the officer under whom the Railway servant was working will proceed to take further action to find suitable alternative employment for him.
2. The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with same scale of pay as was attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.
3. It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own unit/division, office, workshop etc. and a register with the details as mentioned in sub-para (6) below will be maintained for this purpose.
4. If there is no immediate prospect of employment in his own unit/division, office, etc., the name of the Railway servant with particulars as given in sub-para (6) below will be circulated to all other offices or establishments where suitable employment is likely to be found.
5. Nothing in the previous paragraphs, however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the Railway servant concerned and must contain full particulars of his service and must be forwarded to the officer to whom addressed or to the authority competent to make the appointment. The result of the application must be intimated to the Railway servant.
6. A register containing the names of all Railway servants declared medically unfit and to be absorbed in alternative post will be maintained by Headquarters, Divisional and other extra-Divisional offices. These registers will contain not only the names of the staff of the particular division, etc., but also the names notified to the unit Officer concerned by other unit/offices. This will not, however, absolve officers under whom the Railway servant was last working from continuing their efforts to find suitable employment for the

disabled/ medically decategorised employee. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows:

- i. Serial number.
- ii. Date on which incapacitated.
- iii. Name and Father's name.
- iv. Post last held on regular basis with scale of Pay and rate of pay.
- v. Educational qualifications . If no educational qualifications, then general remarks regarding knowledge of English, regional language etc.
- vi. Medical category in which placed.
- vii. Details of special supernumerary post till absorption in alternative appointment (Para 1303).
- viii. Date from which absorbed in alternative appointment.
- ix. Nature and category of alternative appointment.
- x. Scale of Pay of the alternative post and the pay fixed at.
- xi. Details of supernumerary posts, if any after absorption in Alternative appointment (Para 1305).
- xii. Remarks.

7. If and when a Railway servant is absorbed in an alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On receipt of such intimation, his name will be deleted from the registers.

8. Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no disabled medically incapacitated Railway servant who is suitable for the post is available. If any such disabled/ medically incapacitated employee is available, he will be given preference over all other categories of staff for appointment.

**1307. Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorised running staff :-** In order to determine the same scale of pay for the purpose of absorbing a disabled/ medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of Pay of the running staff. If the scale of Pay so arrived at is not identical with the scale of Pay already existing, the same may be replaced by the equivalent existing scale of pay.

A bare perusal of the provisions would exemplify and demonstrate that a running staff has to be medically decategorised first, a suitable alternative accommodation has to be located for him and he has to be posted with element of running allowance added to his basic pay. The respondents have failed to produce any scrap of paper to show that for this particular applicant they had scrupulously followed the provisions under Rules 1301-1307 supra. Further it would be noted that the aforesaid provisions do not specifically deny reckoning of 55% pay element towards pension of a decategorised running staff.

8. The CPO's circular dated **01.02.2012** cited by the respondents, would specify the following :-

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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."

This circular tends to take away the accrued retiral benefits of a running staff but only if he is "a medically decategorised running staff" and adjusted against "a special supernumerary post" with 30% pay element, and not otherwise.

9. We have noted from the medical certificate dated 20.12.2011 that the applicant was found fit in A1 with glasses i.e. fit for running duties but according to psychiatric advice he was declared fit according to Para 574 of Indian Railway Medical Manual (I.R.M.M.), 2000. Para 574 ibid runs as under:

574. List of posts in which staff having recovered from mental diseases should not be employed:-

- (a) Any duty which will entail the charge of a locomotive or a moving vehicle, for example Driver, shunter, Guard etc.,
- (b) Any duties connected with locomotives or moving vehicles where interference by the employee in charge may result in disaster.
- (c) Any duties connected with signaling.
- (d) Any duties in connection with running trains which would subject the individual to great mental strain for example, "control duty".
- (e) Any technical duties involving more than ordinary strain and self control.
- (f) Any duties connected with the travelling public which demand a firm control over temperament for example, Platform inspector, assistant station master, Booking clerk, Ticket collector, etc.,.
- (g) Any duties which involve a higher financial responsibility than ordinary clerical duties, for example Pay clerk, Cash witness, etc..
- (h) Any duties in which loss of control or a relapse of the disorder may result in loss of life and damage to the property.
- (i) Any other employment in the Railways, which although not specified above, is considered by the head of the department or the Divisional Railway Manager to be unsuitable for the Railway employee who has been subject to mental instability and is quite possibly liable to recurrence.

Section I- Medical Examination and Certification of Assault cases and Other Medico-legal Cases

No records were placed to suggest that the applicant was ever referred to any Mental Hospital or that he recovered from any "mental diseases" to bring him within the ambit of Para 574 (ibid) or even that the special Medical Examination on that count to declare him unfit in terms of Para 574 (ibid) was conducted by experts in the field. Be that as it may, no documents suggest that he was medically decategorised, or offered any alternative adjustment against a non-running post nor kept on a supernumerary post with pay element of 30%.



On the contrary, we noted that the service certificate that was issued to him on 31.07.2002 i.e. after his retirement bore his designation as "Ex LMP" (Ex Loco Pilot), which essentially would exemplify that he was never declassified prior to his retirement. Therefore, inarguably and indubitably, the applicant was never treated as a non-running staff before, during or even post retirement. He was allowed to retire voluntarily and his leave was regularized for the period he was absent prior to his retirement. As he was never placed on a supernumerary post on a pay adding 30% of pay element from the date he was allegedly medically decategorised, which placement was sine qua non to applicability of Board's clarificatory order dt. 8.10.13 supra, such circular could not be invoked only to deprive him of his accrued service benefits and retiral benefits.

10. That apart as already indicated in the foregoing paras, the respondents despite their tenuous effort failed to substantiate with convincing supporting documents that the applicant was medically decategorised and adjusted against a supernumerary post with 30% pay element prior to his retirement. Their submission that the applicant was medically decategorised prior to his voluntary retirement could not be countenanced.

11. Now let us examine how far issuance of the Railway Board's circular dt. 8.10.13 was justified. The provisions of Section 47 of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (referred to as PD Act in short) would read as under:-

*"47. Non-discrimination in Government employment-*

- (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."

(Extracted with supplied emphasis for clarity )

The aforesaid explicit positions would clearly mandate the authorities to protect "**pay scale and service benefits**" of a medically decategorised staff who acquired any disability during his service. On the question whether pension is a condition of service we would advert to the law propounded in **State of M.P. -vs- Shardul Singh [(1970) 1 SCC 108]** where Hon'ble Apex Court has held as under :

*"The expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension, etc."*

It is therefore trite that 'pension is not an ex-gratia payment but it is a payment for past services rendered' and the most practical *raison de'tre* for pension is the inability to provide for oneself due to old age. Pension is, thus, paid as a compensation for past satisfactory service and to avoid destitution in old age, as well as, as a social welfare or socio-economic measure of justice.

In the case of Smt. **Poonamal & Ors. -vs- Union of India & Ors. [1985 SCC (L&S) 802]** Hon'ble Apex Court observed :

*"Pension is not merely a statutory right but it is the fulfillment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right."*

In view of the above, the term "service benefits" should also include the applicant's right to receive pension on his retirement which he would be entitled to as a running staff and which ought to be protected in view of S.47 supra, as there is nothing to indicate that the applicant as a Government servant would not come under the aegis of the Act. The mandatory provisions

of the Act would always have an overriding effect on any Railway Board's instructions issued taking a contrary view, as in 8.10.13 supra. Therefore even on medical de-categorisation of a running staff his right to receive pension with 55% pay element ought to be protected in terms of S.47 of the PD Act.

12. We have noted the decision of Hon'ble Supreme Court reported in **Kunal Singh vs Union of India and Another [(2003)4 SCC 524]** where the Hon'ble Apex Court had adopted the same judicial technique to provide relief to a policeman, whose left leg was amputated on account of gangrene and was invalidated by authorities. The excerpts of the judgment would read as under :

"9. .... It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

10.   xxx                                   xxx                                   xxx                                   xxx

11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads: -

"72. Act to be in addition to and not in derogation of any other law. - The provisions of this Act, or the rules made there under shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued there under, enacted or issued for the benefits of persons with disabilities."

(emphasis supplied)

13. The Hon'ble Apex Court in the case of **Union of India vs. B. Banerjee** [(2013)10 Supreme Court Cases 265] while deciding the applicability of pay and allowances of medically decategorised running staff, held as under:-

"14. 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 of India. 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."

14. In regard to correctness of Railway Board's order dt. 8.10.13 issued contrary to the provisions of PD Act we note that in **State of Orissa -vs- Mamata Mohanty** [2011 (3) SCC 436] the Hon'ble Apex Court held as follows :

"It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in **Ram Ganesh Tripathi & Ors. v. State of U.P. & Ors., AIR 1997 SC 1446** came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under:

"The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit..... This order is also deserved to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents....."

(emphasis added)

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Hon'ble Court further added the following :

*"The submissions on behalf of the respondents that government orders/circulars/letters have been complied with, therefore no interference is called for, is preposterous for the simple reason that such constitutional mandate are just to be ignored in terms of the judgment of this Court in Ram Ganesh Tripathi."*

In view of the said decision the Board's circular dt. 8.10.13 which runs contrary to the provisions of PD Act supra, should be ignored.

15. In view of the foregoing discussions, we would hold the following :

(i) As no scrap of paper would manifest that the applicant was ever formally decategorised prior to his retirement and adjusted against a supernumerary post with 30% pay element, Railway Board's order dt. 8.10.13 would not apply to the applicant.

(ii) In view of the decision in **Mamata Mohanty** (supra), Board's order, as cited by the respondents should be ignored.

(iii) In terms of S.47 (ibid) of PD Act the applicant would be entitled to protection of pay and all service benefits including 'Pension'.

(iv) Therefore irrefutably and indubitably, the applicant would be entitled to protection of his pay, emoluments and service benefits including reckoning 55% of his basic pay as running allowance for pension, on par with a running staff, at least in terms of explicit provisions of S.47 (ibid) of PD Act if not otherwise.

(v) There is absolutely no reason and/or justification in depriving him of his due pensionary benefits which he earned by virtue of his service as a running staff only because he had to prematurely retire.

16. The application is therefore allowed.

17. The respondents are directed to reckon 55% of the pay element towards pension of the applicant as he would be entitled as a running staff, with all consequential benefits, with effect from the due date.

18. No order is passed as to costs.

(JAYATI CHANDRA)  
MEMBER (A)

in

(BII HA BANERJEE)  
MEMBER (J)