

Reserved

**Central Administrative Tribunal,
Allahabad Bench, Allahabad**

Original Application No.330/01126/2016

Pronounced on 20th May, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Raghunath Singh Kushwaha s/o Sri Mansha Ram
Kushwaha r/o B-74, Deen Dayal Nagar, Nandanpura,
District- Jhansi.

Applicant

By Advocate: Sri S.M. Ali

Versus

1. Union of India through General Manager, Head Quarter, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Personnel Officer, North Central Railway, Jhansi.
4. Senior Divisional Finance Manager, North Central Railway, Jhansi.

Respondents

By Advocate: Sri P.K.Mishra proxy for Sri P.Mathur

ORDER

HON'BLE MR.JUSTICE BHARAT BHUSHAN, MEMBER(J)

Applicant, Raghunath Singh Kushwaha, has filed this Original Application (O.A.) for the following reliefs:-

- i) To issue order or direction in the nature directing the respondents to release the entire dues after grant 55% running allowance under rules and law.
- ii) to issue order or direction in the nature directing the respondents to pay the difference of

payment along with 12% interest after add the 55% running allowance.

iii) to pass any such/other order as deem fit in the facts and circumstances of the case.

iv) issue award cost of the petition.

2. Applicant, a Goods Guard in pay scale of Rs. 4500-7000, subsequently up-graded Rs. 5200-20200+2800/- was medically decategorised vide office order No. 17 of 2009 dated 4/6.11.2009. Admittedly, he was kept on a supernumerary post in the same pay band. Applicant, subsequently retired on 30.11.2013.

3. The claim of applicant is that he was not given any alternative post as contemplated under the Rules. Therefore, after his retirement, he is entitled of inclusion of 55% running allowance and fixation of pension on that basis. Respondents have merely given him benefit of 30% running allowance for pensionary benefits.

4. The respondents have claimed that applicant was medically decategorised and admittedly he was kept on supernumerary post. Thereafter, he was subjected to screening along with several other employees of medical decategorised staff of Jhansi Division. This list is available on record as Annexure CR-I where the name of applicant Raghunath Singh Kushwaha figure at Sl.No. 10 which indicates that he was given the post of Senior Clerk in Operating Department in the grade pay of Rs. 2800/-.

Office order 672/2012 (Annexure CR-II) also indicates the same fact.

5. The respondents say that as soon as the applicant was posted as Senior Clerk, he made a representation to the effect that the post of Senior Clerk is not suitable for him and made a request for his posting in Commercial cadre. This request was denied by the department. The applicant continued to press this request for his posting by sending numerous letters dated 28.7.2010, 12.11.2010, 4.2.2011 and 27.4.2011. The department says that applicant was working as Goods Guard in pay band Rs. 5200-20200 + 2800 G.P., while post of ACTI requires two years training prior to his posting. However, the applicant was to attain superannuation prior to or during the training itself and as such, his request for this particular posting was not accepted.

6. The applicant retired on 30.11.2013. His pension was fixed on the basis of 30% running allowance while the applicant claims 55% running allowance.

7. Heard Sri S.M. Ali advocate for applicant and Sri P.K. Mishra brief holder for Sri Prashant Mathur, advocate for respondents.

8. Most of the facts are admitted in this O.A. Applicant was indeed, medically found unfit for working as Goods Guard and therefore, medically decategorised vide office order No. 17 of 2009 dated 4/6.11.2009. Admittedly,

thereafter, he was kept on supernumerary post. Now, there is a difference in the version of both parties. Applicant says that he was never given suitable/alternative post in the same pay band while respondents say that applicant was subjected to screening along with several other medically decategorised staff on 31.5.2012 and selected for the post of senior clerk Operating G.P. 2800. The result of the screening of medically decategorised staff of Jhansi Division is available on record as Annexure CR-I where the name of applicant Raghunath Singh Kushwaha figure at Sl. No. 10.

9. Office order dated 672/2012 dated 9.10.2012 (Annexure CR-II) also indicates that applicant was indeed asked to join as Senior Clerk. Therefore, this Tribunal cannot accept the contention of applicant that no suitable post in the same pay band was offered to the applicant. The fact of the matter is that applicant was posted as Senior Clerk in Operating department vide office order No. 672/2012 dated 9.10.2012 in the same pay band + 30% running allowance. Applicant has asked for posting in Commercial cadre. Post in Commercial cadre requires two years training prior to posting. Meaning thereby the applicant would have attained superannuation prior to or during the training itself. Therefore, department/respondents were correct in not acceding to his request. It

is pertinent to point out that the date of retirement of applicant was 30.11.2013. In any case, the employee cannot choose a particular post. He can request for posting in the same basic pay and pay band but cannot seek a specific post.

10. Para 5 of affidavit of applicant dated 4.3.2019 indicates that applicant was seeking posting on the post vacated by transfer of one S.K. Litoriya. This claim was not acceded. Department has to post people in accordance with rules and requirement of the department considering the norms of efficiency.

11. It is also pertinent to point out that Railway Board has issued a detailed directions in this regard. Relevant portion of RBE No. 138/2011 dated 5.10.2011 is reproduced as below:-

"Sub:- Fixation of pay of medically decategorised running staff while kept on supernumerary posts- Granting benefits of running allowance- Regarding.

The question of fixation of pay of medically decategorised running staff for the period from the date they are declared unfit till their final absorption in alternative appointment i.e. the period during which they are kept on supernumerary posts for want of suitable alternative posts due to which it has not been possible to adjust the employees concerned

immediately, has been engaging attention of the Board for quite some time.

2. The matter has been considered by the Board and it has been decided that the pay of medically decategorised running staff while they are kept on supernumerary posts i.e 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 in force. Their pay during this period will be fixed based on their pay in Pay-Band and Grade Pay plus pay element of running allowance as may be in force. As such, supernumerary posts wherever found necessary may be created at appropriate level. After fixation of pay in such a manner, no allowance in lieu of kilometerage shall be admissible."

12. The aforesaid Railway Board order clearly indicates that medically decategorised running staff has to be kept on supernumerary posts from the date, they are declared medically unfit till the date they are absorbed in suitable alternative posts. It further says that on supernumerary post, the employee will not be entitled of any kilometerage. The rules say that 55% running allowance is not payable to such medically decategorised employee. The available record clearly demonstrate that applicant

was indeed not only medically decategorised but he was also put on supernumerary post by respondents. As soon as, he was put on supernumerary post, the Railway Board order RBI No. 138/2011 dated 5.10.2011 came into play. The record further reveals that applicant was subjected to screening and thereafter selected for the post of Senior Clerk. The fact that applicant was not happy with this posting and claiming posting in Commercial cadre, is irrelevant for the purpose of this O.A. The letter of applicant filed with Supplementary Affidavit annexed as Annexure No.SA-7 clearly indicates that applicant was more keen in finding a position in Commercial department rather than giving his contribution on the post on which he was selected by screening committee. This Tribunal is convinced that this O.A. is devoid of any merit. Accordingly, O.A. is dismissed. No order as to costs.

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-

