

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

Original Application No. 1349 of 2013

Reserved on: 13.03.2019

Pronounced on: 05.04.2019

Between:

K. S. Murali Krishna,
S/o. Nagayya, Aged 42 years,
Occ: Junior Engineer (Drawing),
O/o. The Divisional Mechanical Engineer,
Diesel Loco Shed, Vijayawada Division,
South Central Railway, Vijayawada,
R/o. H. No. 31-3-1A, Maruthi Nagar,
Vijayawada – 520 004.

... Applicant

And

1. Union of India, rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,
Secunderabad Division, Sanchalan Bhavan,
South Central Railway, Secunderabad.
4. The Senior Divisional Personnel Officer,
Vijayawada Division, South Central Railway,
Vijayawada.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

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

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

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

2. The OA is filed for not fixing the pay of the applicant properly.

3. Applicant joined the respondents organisation as Traction Asst. on 10.3.1997 in the scale of Rs 3050-4590 and later promoted as Sr Asst. Loco Pilot in the scale of pay of Rs 4000-6000 . While working as such he was medically de-categorised on 28.2.2005. On orders of this Tribunal in OA 38 of 2010, applicant was absorbed as Junior Engineer Grade II (Drawing) in the pay of Rs 5000-8000 w.e.f. 28.2.2005 and posted to Vijayawada vide order dt 26.10.2010 issued by the 3rd respondent. After training, applicant joined the said post on 30.1.2012. Applicant's pay was fixed as Rs 5300 by the 3rd respondent on medical de-categorisation in the pay scale of Rs 5000-8000 w.e.f March 2005 but the annual increment of Rs 150 due on 1.11.2005 in the said scale was not drawn. Respondents fixed Rs 5400 as pay instead of Rs 5450 (5300 + 150) resulting in improper fixation of pay. This improper fixation was carried over in fixing the pay of the applicant in pay band II of Rs 9300 -34,800 with GP of Rs 4200 of 6th CPC w.e.f 1.1.2006 by taking the pay scale of the applicant as Rs 4000-6000 with pay of Rs 5400 instead of the pay scale of Rs 5000-8000 and pay of Rs 5450. The 4th respondent fixed the pay of the applicant as Rs 14,890 (Rs 10,690 + 4200) in the pay band of Rs 9300 -34,800 w.e.f 30.1.2012 the date of joining the post of JE grade II. Prior to this pay fixation, the applicant's pay was fixed as Rs 14,890 (Rs 12,490 + Rs 2400) in the pay band of Rs 5200-20,200 with grade pay of Rs 2,400. As can be seen there is reduction in pay from Rs 12,490 to Rs 10,690 and augmentation of grade pay from Rs 2400 to Rs 4200. On being pointed the 4th respondent made a reference to the 3rd respondent which remains unanswered to this date. However, as per the fitment table circulated by the Railway board vide RBE No. 108/2008 for a pay of Rs 5450 in the scale of Rs 5000-8000 the applicant is entitled for pay fixation of Rs 10,140 + GP of Rs 4200 which works out to Rs 14,340 in PB-2 of Rs 9300-34,800 w.e.f

1.1.2006. Applicant has represented on 23.2.2012, 3.4.2012 and 17.1.2012 and there has been no response either to the applicant or to the 4th respondent reference made by him on 13.4.2012.

4. The contentions of the applicant are that there is no stage of Rs 5400 in the scale of Rs 5000-8000 and no rule has been quoted to reduce the pay from Rs 12490 to Rs 10,690. The fixation has not been done as per the fitment table issued vide RBE no 108/2008. In accordance with 'The Persons with Disabilities Act 1995', at no point of time, pay and status of the applicant shall be adversely impacted. On identifying an alternate post the applicant is deemed to have joined the said post with effect from the date of medical de-categorisation and thereby pay has to be accordingly regulated in the pay scale of Rs 5000-8000. Respondents not doing so is illegal and tantamount to violation of Articles 14 and 16 of the Constitution.

5. Respondents in their reply statement state that the applicant on being absorbed as Traction Assistant was placed in the pay scale of Rs 3050-4590 and on promotion as Senior Asst Loco pilot he was placed in the pay scale of Rs 4000-6000. On being medically de-categorised w.e.f 28.2.2005 applicant was placed in the pay scale of Rs 4000-6000 and a pay of Rs 5300 +30 (PP) was fixed duly adding 30% pay element , by keeping in the view the orders issued by this Tribunal in OA 38/2010. Further the applicant was found suitable to the Junior Engineer grade II in the scale of Rs 5000-8000 and he joined the said post on 30.1.2012. Respondents claim that the pay of the applicant was properly drawn as Rs 5400 w.e.f 1.11.2005 in the pay scale of Rs 4000-6000 adding an increment of Rs 100 to his last pay drawn of Rs 5300. The increment of Rs 100 was drawn because the applicant was medically de-categorised in the same scale of Rs 4000-6000 as there was no vacant post to absorb in alternative posts.

Keeping this scale in view the pay of the applicant as per 6th CPC was accordingly drawn since the applicant continued to be in this scale even on 31.12.2005. The absorption on medical de-categorisation is not a promotion and hence fixation benefits will not apply to the applicant is one another contention of the respondents.

6. Heard both the counsel and perused the documents as well as the material papers submitted.

7. In the present case, history of the case has a vital bearing in evaluating the decision of the respondents. The history when traced we see that the applicant approached this Tribunal in OA 282/2009 and it was ordered therein that the applicant be given posting in the post on medical de-categorisation for which he was found suitable on the first occasion and offered and if no post is available, they shall create supernumerary post for the applicant and to continue him in the supernumerary post till such time the applicant is adjusted in the suitable post for which he was found suitable and offered initially. The applicant was initially found suitable for the post of Junior Engineer Grade II in the pay scale of Rs.5000-8000 by the screening committee on 6.6.2006 along with the other de-categorised employees. Despite being found suitable for the said post, applicant was not given posting nor kept in a supernumerary post but was made to work against an unspecified post. Respondents were also directed to pay arrears to the applicant duly adjusting the payment already made to him while extracting his services in other miscellaneous posts as mentioned by him. This aspect of making the applicant work in other posts by the respondents, has not been denied. This order of the Tribunal was based on the previous order of the Tribunal in OA No.283 and 634 of 2008 wherein a similar order was issued

which when challenged in the Hon'ble High Court, Tribunal decision was upheld.

8. In response to the directions of the Tribunal in OA 282/2009 respondents issued an order dt 20.1.2010 posting him as Technician grade -I in the scale of pay of Rs 5200-20,000 with grade pay of Rs 2800, instead of Junior Engineer grade II. Applicant challenged this order in OA 38/2010 and the Tribunal directed the respondents to absorb the applicant in the post of Junior Engineer grade II and pay arrears of salary due. Thus the orders of the Tribunal are crystal clear that the applicant has to be absorbed as Junior Engineer in grade II. Besides, the applicant has pointed out in his representation that a junior colleague Sri M.K.Srikanth, Sr. ALP (Assistant Loco Pilot) who was medically decategorised was given alternative appointment as Chief Booking clerk in the grade 9300-34,800 + 4200 grade pay with basic pay of Rs 19,300 in Feb 2011 by enclosing the relevant pay slip which was higher than applicant's pay at that relevant point of time. Besides, the APO of Vijayawada division has written to the DRM of Secunderabad division stating that though the pay fixation of the applicant was done correctly on 28.2.2005 by taking the pay element of 30 % in 6th CPC at Rs 5300+ 300 (PP) but his pay fixation has not been done in the equivalent scale of Rs 5000-8000. It was categorically stated in the lr dated 20.9.2010 of the respondents that the applicant on Medical de-categorisation has been found suitable for absorption to the post of JE -II in the pay band of Rs 9300 -34,800 with Grade pay of Rs 4200 and that he is posted to Vijayawada against an existing vacancy at roster point no 6. The order also reads that the benefits on medical categorisation will be extended on his absorption as JE-II. Therefore the facts of the case does make it evident that the applicant shall have to be placed in the pay scale of Rs 5000-8000 as per 5th CPC. The order of this

Tribunal in OA 38/2010 has been emphatic on this aspect. Respondents claiming that there was no vacancy is not true as the RTI information furnished by the respondents on 10.4.2015 indicates that there are vacancies in 2005,2006 and 2007. Therefore the applicant's pay has to be fixed in the scale of Rs 5000-8000 with the increment of Rs 150 yielding a pay of Rs 5450 on medical categorisation. The pay slip issued by the respondents vide letter dt 8.2.2012 (A-1 annexed to Reply statement) is incorrect since it shows reduction in pay from Rs 12,490 to Rs 10,690 and enhancement of Grade pay from Rs 2400 to Rs 4200. Pay fixation is not done arbitrarily by changing pay and grade pay to arrive at some pay. Rules are to be followed. In the present case Railway board has issued the fitment table vide RBE no 108/2008 in regard to fixation of pay as per 6th CPC. As per the fitment table for a scale of Rs 5450 in 5th CPC, the revised pay in 6th CPC would be Rs 10,140 + 4200 = Rs 14,340. Adding the annually increment of Rs 430 per annum the pay of the applicant has to be 12940 + 4200 = 17,140 as on 1.7.2011 and not otherwise. The respondents have made the mistake of taking the scale of pay as Rs 4000-6000 instead of Rs 5000-8000 on medical decategorisation as ordered by this Tribunal in previous OAs cited supra. The respondents contention that it is not a promotion does not hold water as the screening committee has found the applicant suitable to the post of JE II at the first instance and the pay of the applicant has to be fixed as per rule 1307 which details the methodology in fixing the pay for medically de-categorised running staff. Pay of a senior has to be more than the junior which is established law. It is not known as to how respondents can take the plea that vacancies are not available when they themselves admit that vacancies are available in the relevant years when queried under RTI. Thus based on the aforesaid facts the

OA succeeds. Action of the respondents is against rules, arbitrary and illegal.

Hence the respondents are directed as under:

- i) To consider fixing of the pay of the applicant as Rs 14,340 (Rs 10140 + 4200) in PB-2 of Rs 9300- 34,800 (6th CPC) w.e.f 1.1.2006 and pay arrears of pay and other allowances as per revised pay.
- ii) Time permitted is 3 months from the date of receipt of this order.
- iii) With the above directions the OA is allowed.
- iv) No order as to costs.

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

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 5th day of April, 2019

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