

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 509 of 2013

Order dated: 06.03.2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Shri Bratin Roy Chaudhuri,
Son of late Samarendra Roy Chaudhuri,
Aged about 42 years,
Working as Office Superintendent (Optg.)
in South Eastern Railway, Adra Divn.,
Residing at Rly. Qtr. No. T/32-A(South Settlement),
P.O. – Adra,
Dist. – Purulia,
Pin – 723.121, West Bengal.

... Applicant.

Versus

1. Union of India
Through the General Manager,
South Eastern Railway,
Garden Reach,
Kolkata – 700 043.
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Kolkata – 700 043.
3. The Financial Advisor & Chief Accounts
Officer (Construction),
South Eastern Railway,
Garden Reach,
Kolkata – 700 043.
4. The Divisional Railway Manager,
South Eastern Railway,
Adra Division,
Dist. – Purulia,
West Bengal.
5. The Senior Divisional Personnel Officer,
South Eastern Railway,
Adra Division,
Dist. – Purulia,
West Bengal.

..... Respondents.

For the applicant : Mr. S.K. Datta, Counsel

For the respondents : Mr. P. Prasad, Counsel

O R D E R (Oral)

Per : Bidisha Banerjee, Judicial Member

This O.A. has been filed in order to seek the following reliefs:

"8.a) An order quashing and/or setting aside the rejection of the representations of the applicant by a communication dated 2.4.2012 as well as the rejection of the appeal by a communication dated 19.2.2013.

b) An order directing the respondents to grant the benefits of financial upgradation by way of second MACP benefit in the Grade Pay of Rs. 4200/- from the date of completion of ten years of service from the date of promotion of the applicant as Senior Control Clerk and to grant him all consequential benefits with arrears towards difference of pay and allowances within a period as to this Hon'ble Tribunal may seem fit and proper.

c) An order directing the respondents to produce/cause production of all relevant records.

d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. The orders impugned in the O.A. are extracted hereunder:

"To
Sri. Bratin Roy Choudhuri
OS/ANR.

Re : Non payment of MACP and wrong fixation of pay
of Sri Bratin Roy Choudhuri, OS/ANR.

Ref : Your appeal dtd. 28.12.11 and Para 3.3.2 of
CPO/GRC's inspection Note NO.P/CPO/GM Insp/03/12
dtd.09.02.12.

In response to your appeal dtd. 28.12.11 and Para 3.3.2 of CPO/GRC's
inspection Note No. P/CPO/GM Insp./03/12 dtd.09.02.12 your case was put
up to the competent authority and it has been found that your pay fixation
which has been assessed by FA & CAO/Con/GRC is correct.

Actually, after declared medically decategorisation from Goods Guard / ADA you have absorbed and posted as OS-II under Dy. CSTE/Con/ADA and as such your pay in 6th PC has been initially fixed by ASTE/Con/Adra. There after it has been revised by FA & CAO/Con/GRC vide his letter dtd 27.01.11. At the time of your Pay fixation 30% of Rg.Allowance has been added. But you have repeatedly demanded that both 30% of Rg Allowance and difference of GP have to be added at the time of your pay fixation, for which at present there is no such rules for fixation of pay by adding both 30% of Reg.Allowance and difference of GP. According to Para 1307, 1308 of IREM and Esstt. Srl. NO.122/99 your pay fixation have been assessed by FA & CAO/Con/GRC is correct and your payment is also being drawn accordingly.

Sd/-

Asstt. Personnel Officer-I
For Sr. Divl. Personnel Officer
S.E. Railway/Adra"

"To
The Chief Yard Master,
S.E. Railway/ANARA.

Sub: Appeal of Sri Bratin Roy Chowdhury, OS/Roster/Optg.
Dept. under CYM/ANR regarding Pay fixation.
Ref: Sr. DFM/ADA's letter No.ADA/Accts.ENG/MISC./203/Spl.
Dtd. 08-02-2013.

In response to the appeal dtd. 22.08.12 submitted by Sri Roy Chowdhury, addressed to DRM/ADRA it is informed that service Book of Sri Bratin Roy Chowdhury along with the fixation Statement of Pay duly certified by FA & CAO (Con)/GRC vide letter No. Con/NG/Rev./Spl. Dtd. 27.01.2011 is reviewed by Sr.DFM/ADRA and it stands good.

Accordingly, the staff concerned may please be informed at the earliest.

Encl: Nil

Sd/-
(M.R. Parui)
Asstt. Personnel Officer-I
S.E. Railway/Adra"

3. The orders impugned manifest that the applicant is aggrieved in regard to wrong fixational benefit.

4. At hearing Ld. Counsel for the applicant, would draw our attention to Annexure A-2 dt. 27.1.11. The order reads:

"Sub : Change of Pay

Ref: Your End t.No: ST/CON/ADA/NG/GPC/BRC/BS/SPL. dt: 09-08-2010

A change sheet bearing No : 50/2010 arising out of Medically unfit of Sri B. Ray Choudhury and Sri B. Satyanarayana under Dy. CSTE/Con/ADA is returned herewith duly offering the views of this office as under:

1. Sri B. Ra Choudhuri

| | |
|--|--|
| a. Pay as Goods Guard in Scale Rs. 5200/- - 20,200/- as on 01-07-08 | Pay in PB – 12420/- Grade Pay – 2800/- Basic Pay – 15220/- |
| b. Pay to be fixed as OS-II in PB- Rs.9300-3-34800 & GP- 4200/- as on 08-08-2008 duly taken into a/c 30% pay element to last pay Rs. 15,220/- in terms of para 1307 & 1308 of IREM (Vol-I) vide Brd's Instruction contained in SER's Srl. No. 122/99. | <u>Total pay to be protected as Rs.</u> <u>15,220+4570 = 19790/- as OS-11</u> <u>i.e. pay in Pay Band Rs. 15590/- +</u> <u>4200(GP)</u> |
| c. Next due date of A/Inc; 01-7- 09 | Pay in PB Rs. 16190+4200 = Rs. 20,390/- |
| d. Due date of Annual Increment for the year 2010 is 01-7-2010 | Pay in PB Rs.16,810/-+GP. Rs. 4200/- = Rs. 21,010/- |

2. Sri B. Satyanarayana

Service Book of Sri Satyananrayana has not been furnished to this office, hence the pay of Sri Narayana should be changed accordingly, if required.

Encl: S/Book of Sri B. Ray Chowdhury

And change sheet.

Sd/-

For F.A. & C.A.(Con)/GRC"

Ld. Counsel would submit that while the respondents admitted, as evident from the aforesaid order, that the total pay was required to be protected in pay band with GP 4200, they have not given effect to the order.

5. The categorical reply of the Railways is as under:

"The applicant on being medically declassified was called for appear before the screening committee. The Screening committee found him suitable in clerical cadre of OS-II in terms of IREM/87 para 1307 and Estt Srl. No. 122/99. In Estt. Srl. No. 122/99 it is mentioned that "In order to determine the same scale of pay for the purpose of absorbing a disabled/medically declassified 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".

Accordingly, his pay was calculated and fixed in 6th Pay Commission as per rule that prevailed at that material time illustrated hereunder:

The applicant, prior to being, medically declassification had been posted to the post of OS-II in scale of Rs. 5500-9000/- (5th PC) and in 6th PC its corresponding scale is Rs. 9300-34800/- + GP 4200/- Accordingly, his pay was fixed as under:

Pay & scale of 6th PC Rs. 5200-20200 + GP 2800 = Pay in
 PB-01 Rs. 12420/-
 GP Rs. 2800/-
Rs. 15220/-

Adding 30% Running Allowance on
 His basic Pay (15220.x 30) = 4566
 100

Rounded Rs. 4570/- + Rs. 4570/-

On the day of medically
 declassification i.e. on 08.08.2008

his Pay stands = Rs. 19790/-

The applicant was posted to the post of OS in scale Rs. 9300-34800/-+GP 4200/- and his pay was fixed Rs. 15590 + GP 4200/- = Rs.19790/- (i.e. 19790 - 4200 = Rs. 15590/-)

Since it was not a promotion for which the difference of GP was not paid to the applicant i.e. 4200-2800 = 1400/- The applicant is only eligible for difference of GP i.e. Rs. 1400/- subject to any promotion or MACP not providing the difference of GP in case of pay fixation on medically declassification.

As such the pay fixed of the applicant by FA&CAO prior to issuance of Estt. Srl. No. 44/2013 is correct."

We note, that the respondents have failed to clarify why the applicant would be entitled only to the difference of Grade Pay of 4200/- and not the Grade Pay of 4200 itself, and whether he already enjoyed the grade pay of 2800/- instead of Rs. 4200 from the date Rs. 4200 was due.

6. Since the reason why the difference of 1400/- is calculated instead of the whole 4200/- and such payment is not supported by any materials on record, whereas the applicant has alleged that fixational benefit as above was not in accordance with law and the dispute of pay band and grade pay, is purely factual we feel it appropriate to dispose of the O.A. with a direction upon the respondents to accord a personal hearing to the applicant, upon due notice within 4 weeks of receipt of a copy of this order and issue appropriate reasoned and speaking order justifying their decision within 2 months thereafter. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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