

19-2-2019

1 o.a. 350.00977.2017

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

No. O.A. 350/00977/2017

Date of order: 19.2.2019

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

Tapan Kumar Modak,  
Son of Late Sudhir Kumar Modak,  
Aged about 61 years,  
Retired Fitter cum Operator,  
Grade - I, Naihati,  
SS/E/E/General/Naihati,  
Eastern Railway,  
Residing at 16/6, Baigachi Ostagar Para,  
P.O. – Santipur,  
District – Nadia  
West Bengal,  
Pin – 741 404.

Applicant

VERSUS

1. Union of India through the  
General Manager  
Eastern Railway,  
17A N.S. Road,  
Kolkata – 700 001.
2. The Divisional Railway Manager,  
Eastern Railway,  
Sealdah Division,  
Sealdah,  
Kolkata – 700 014.
3. The Senior Divisional Personnel Officer,  
Eastern Railway,  
Sealdah Division,  
Sealdah,  
Kolkata – 700 014.
4. The Divisional Personnel Officer,  
Eastern Railway,  
Sealdah Division,  
Sealdah,  
Kolkata – 700 014.

.. Respondents

*hlm*

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. B.K. Roy, Counsel

**O R D E R (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(a) An order holding that the authority are at fault in not providing opportunity to the applicant to exercise his option for fixation of his pay in 6<sup>th</sup> CPC pay structure after his promotion which is beneficial to him whereas his juniors having been granted such opportunity are getting higher pay than that of the applicant as verbally intimated to the applicant.

(b) An order directing the respondent authorities to consider the option submitted by the applicant on 12.5.2009 and to refix his pay accordingly by stepping up his pay at par with his juniors mentioned in the representation of the applicant dated 6.11.2011.

(c) An order directing the respondent authorities to grant all consequential benefits to the applicant after refixation of pay in terms of the prayer (b) above including revision of pensionary benefits and the benefits consequent on such revision.

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

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

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The case of the applicant, as articulated through his Ld. Counsel, is that the applicant, who was initially appointed as a Khalasi, was promoted as Fitter-cum-Operator Grade – III, Grade-II and Grade-I on 1.3.95, 9.4.2003 and 10.3.2006 respectively. As at the relevant point of time, the applicant was not aware that he had to exercise his option on promotion and was also not provided an opportunity to exercise an option in terms of RBE No. 28 of 2009, he failed to prefer his option within the stipulated period. Consequently, his erstwhile juniors, who had exercised such options, were granted higher pay than that of the applicant in Sixth Central Pay Commission. When such anomaly came to his notice, the applicant represented requesting for stepping up his pay at par with his junior and such representation, not having been considered, and being aggrieved, the applicant has approached the Tribunal for relief.

*hsl*

4. The respondents, on the other hand, have argued that the applicant had been asked to submit his option as per Circular No. 178/81 within one month from the date of publication of the said Office Order but he failed to do so on time and only those who had applied for promotional fixation on optional basis were considered for refixation of pay as per Circular No. 18/2009 and, even when a list was prepared by the competent authority to consider those who have opted at a delayed point of time, the applicant was not considered as he had failed to submit his option at the material time and hence, when the applicant ultimately submitted his option on 12.5.2009, his option became time barred.

5. During hearing, however, it was brought to our notice that the respondent authorities had issued a circular on 3.6.2014 (Annexed to the reply of the respondents) that delayed submission of options, after the cut-off date for submission of revised options for refixation of pay under Sixth Central pay Commission, in terms of RBE No. 28 of 2009, had been condoned and the local offices were directed to expedite the finalization the cases of such delayed optees. The applicant's name does not figure in the annexed list.

In his rejoinder, the applicant, while referring to the said annexed lists, has pointed out that a large number of employees, who received their promotions in 2006, 2007 and 2008 had been accorded opportunities for refixation of pay in the circular of 2014 but the applicant had been left out of consideration of such circular.

Upon a close perusal of the list annexed to circular of 2004, it is seen that the optees, who have preferred their options from 12.3.2009 to 21.5.2009, have been included. Hence, as the applicant had preferred his option on 12.5.2009, he was very much entitled to be included in the said list for consideration in terms of the Circular of 2014.

6. Both Ld. Counsel agree that a direction may be issued to the respondent authorities to consider the case of the applicant in the context of the circular dated 3.6.2014, in accordance with law.

*hsl*

7. Accordingly, without entering into the merits of the matter and, with the consent of the parties, we direct the competent respondent authority to consider the option of the applicant dated 12.5.2009 so as to include him in the list annexed to the circular dated 30.6.2014 and to decide his case in accordance with law. In case, the applicant's pay fixation is approved, consequent benefits should be released to him thereafter.

The entire exercise should be completed within a period of twelve weeks from the date of receipt of a copy of this order.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

SP

CCE

LEB

