

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01699/2015

Dated Thursday the 24th day of January Two Thousand Nineteen

CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)

H.Nelson,
Retd. Loco Pilot (Pass)/
Power Controller,
192/4 Thanigai Nagar,
Shastri Nagar, Erode 638002.

....Applicant

By Advocate M/s. Ratio Legis

Vs

1.Union of India, rep by the,
General Manager, Southern Railway,
Head Quarters Office, Chennai 600003.

2.The Divisional Personnel Officer,
Southern Railway, Salem Division,
Sooramangalam Post, Salem.

3.The Senior Divisional Finance Manager,
Southern Railway, Salem Division,
Sooramangalam Post, Salem.

....Respondents

By Advocate Mr. Y. Prakash

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief :

"To call for the service records of the applicant including the posting orders issued to the applicant on medical decategorisation and the impugned order dated 02.07.2015 and to quash the same and to direct the respondents to arrange to pay pension and other retirement benefits in terms of chapter 9 of Indian Railway Establishment Manual Vol I and Rule 49 of the Railway Services Pension Rules, 1993 with all the consequential benefits and to make further order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

2. It is submitted that the applicant while working as Loco Pilot was medically incapacitated in the year 1999 and was continued in a supernumerary capacity till the year 2000 when the applicant was said to have been alternatively appointed as a Crew Controller. Later, the applicant was ordered to discharge the duties of Crew Controller in a supernumerary capacity by an order dt. 13.02.2003. While working as such, the applicant retired on 31.12.2013 on attaining the age of superannuation.

3. It is alleged that the applicant sought retirement benefits including add-on benefits as stipulated in Rule 17 of Railway Services Pension Rules, 1993 through a representation dt. 27.04.2015. The representation was rejected by impugned order dt. 02.07.2015. Aggrieved by the rejection, the applicant is before this Tribunal.

4. Learned counsel for applicant would argue that 'pay' as defined in Rule 1303(F.R.9)(21) of Indian Railway Establishment Code, Vol.I included any other emoluments which may be specially clarified as pay by the President. In the

light of the fact that the pay element of the running allowances was declared as pay for all purposes as present in Chapter 9 of IREM, Vol.I, non-inclusion of same for the applicant during his tenure as Power/Crew Controller and thereafter refusal to grant 55 % of such pay additionally for the purpose of pension was a gross violation of the Rule 924 of IREM, it is contended.

5. Respondents have filed a reply contesting the claim of the applicant. It is stated that the applicant would be entitled to 55% of additional allowances for determination of pension only if he retired as running staff. However, he served the respondents long after his medical decategorisation accepting the appointment as Crew Controller on which post his pay was fixed after adding 30% of pay element from the date he was medically decategorised. As the applicant retired thereafter not as a running staff, but as a Crew Controller, he was not entitled 55% of pay which was allowed only for running staff, it is contended.

6. I have considered the pleadings and submissions made by rival counsel.

7. This Tribunal had an occasion to examine a similar case in OA 100/2015 which was disposed of by an order dt. 18.08.2016 directing the respondents to consider the case of the applicant therein in terms of Rule 17 of the Railway Services (Pension) Rules, 1993 and grant him the benefit of fixation of pension accordingly. The said rule is reproduced below: -

"17. Pensionary benefits to staff declared unfit. - If a railway servant is unfit for his post but is retained in service in an alternative appointment under the provision of the code and subsequently becomes entitled to receive retirement

gratuity or pension, he shall be given the option of accepting either of following, whichever he may, prefer-

- (i) the gratuity or pension which he would normally be granted with reference to his total service taken together,
- (ii) The sum of-
 - (a) gratuity or pension which he would have been granted if he had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the spell of his service; and
 - (b) the retirement gratuity or pension which he would normally have been granted for the second spell of this service rendered in the alternative appointment:

Provided that if total qualifying service of the railway servant in both the spells of service taken together exceeds 33 years, the qualifying service in the second spell shall be reduced by the number of years by which total qualifying service in both the spells taken together exceeds 33 years and ordinary gratuity or pension and death-cum-retirement gratuity for the second spells of service shall be calculated with reference to the reduced qualifying service so calculated."

In terms of sub clause (ii) of the aforesaid rule, the applicant would be entitled to the sum of the pension which he would have been granted if had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the 1st spell of his service and the pension he would have normally been granted for the 2nd spell of his service in the alternative employment. As such, the period of service of the applicant as running staff immediately before his medical decategorisation could not be wished away.

8. It was noted in the aforesaid order of this Tribunal that the Ernakulam Bench of this Tribunal had granted relief to a similarly placed person on the strength of the said rule. It was also noted that the reliance placed by the respondents on the judgment of *Union of India Vs. B. Banerjee* in CA no.

7298/2013 dt. 06.09.2013 had been considered in the judgment of the Hon'ble Kerala High Court in OP(CAT) 109/2015 and an excerpt of the para 7 of the judgment had also been reproduced on the following lines:-

"....

7. Despite hearing the matter at length, no tenable ground could be projected from the part of the petitioners to call for interference with the finding and reasoning of the Tribunal. Though the respondents being non-suited with regard to their prayer with reference to Rule 49(b) of the Railway Services (Pension) Rules, 1993, rightly on the basis of the declaration of law made by the Apex Court in Union of India and others v. B. Banerjee [(2013) 10 SCC 265], Rule 17 of the Railway Services (Pension) Rules, 1993, still stands and there is no case for the petitioners that the said Rule has been amended/varied or deleted from the statute book.

In the above circumstances, this Court finds that the order passed by the Tribunal is perfectly within the four walls of law and is not assailable under any circumstances. The O.P. fails and the same is dismissed accordingly."

9. In view of the above, the impugned Annexure A5 communication dt. 02.07.2015 rejecting the representation of the applicant dt. 30.05.2015 is quashed and set aside. The respondents are directed to obtain the option of the applicant for determination of his gratuity or pension and other retirement benefits either under Rule 17(i) or 17(ii) of the Railway Services (Pension) Rules, 1993 and redetermine the pension payable to the applicant accordingly within a period of three months from the date of receipt of a copy of this order.

10. OA is disposed of. No order as to costs.

(R. Ramanujam)
Member(A)
24.01.2019

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