

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00642/2013

Date of order 13.05.2019

CORAM
HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)
HON'BLE DINESH SHARMA, MEMBER (A)

Manoj Kumar, aged about 42 years, son of Shri Bachoo Kumar Roy, R/o Lakhibagh, Dalmia Compound Kamla Bhawan, PO - Buniyadganj, Gaya – 823003 [Biahr].

..... Applicant.

By advocate: Sri M.P. Dixit.

Verses

1. The Union of India, Ministry of Railway, through DRM/Mogalsarai.
 2. Sr. D.P.O, Mogalsarai.
 3. Sr. D.O.M. [Div. Operating Manager], Mogalsarai.
- Respondents.

By advocate: Sri S.K.Ravi

ORDER (ORAL)

JAYESH V. BHAIRAVIA, MEMBER [J] : - In the instant OA, the applicant has prayed for a direction upon the respondents to put him in the scale of Rs. 9300-34800, which is shown in his LPC and increments along with other consequential benefits to arrive at his present pay.

2. The applicant's case in short is that he was initially appointed as Station Master in N.E. Railways and on mutual transfer, joined at Gaya on the same post, vide his LPC dated 12.11.2008, issued from his earlier posting. However, the applicant was put in the lower scale of Rs. 5200-20200 without any intimation or show cause vide his fixation order dated 04.09.2011 [Annexure-A/3]. The applicant filed representation dated 27.07.2009 [Annexure-A/4] before the DRM [P], East Central Railway,

Mughalsarai and another representation dated 06.06.2010, but till date no action has been taken, hence the present OA.

3. The respondents filed their written statement and contended that Shri Manoj Kumar was appointed as ASM [Assistant Station Master] in the scale of Rs. 4500-7000 on 04.02.2002 in Varanasi Division of N.E. Railway. He was promoted to the post of Station Master in the scale of Rs. 5000-8000 w.e.f. 12.07.2007. The applicant came in Mughalsarai Division on mutual transfer on 29.10.2008 as ASM in the scale of Rs. 4500-7000. Thereafter, he was promoted in Mughalsarai Division as Station Master in the pay band of Rs. 9300-34800 with Grade Pay of Rs. 4200/- w.e.f. 04.09.2011.

4. The respondents pleaded that the applicant applied for mutual transfer when he was working as ASM in the scale of Rs. 4500-7000 = Rs. 5200-20200 with pay band of Rs.2800/- at Varanasi Division of N.E. Railway. The respondents further submitted that the applicant wanted mutual transfer as Station Master in the scale of Rs. 5000-8000 = Rs. 9300-34800 with Grade Pay of Rs. 4200/- but as per existing rules, mutual transfer was accepted as ASM in the pay scale of Rs. 4500-7000 = Rs. 5200-20200 with Grade Pay of Rs. 2800/- and he was posted in Mughalsarai Division as ASM vide office order dated 08.12.2008.

5. The ld. counsel for the respondents draws our attention to the RBE No.2010/2009 dated 30.11.2009 [Annexure-R/1] which stipulates that fixation of pay in case of employees who seek transfer to a lower post under FR 15[a] can be done.

6. The applicant has filed one supplementary affidavit giving the details of his pay fixation in compliance of directions given by this Tribunal on 01.10.2013 but on perusal of the order-sheet dated 1.10.2013, it is noticed that the Tribunal has not issued such directions.

7. Heard the learned counsel for the parties and perused the materials on record.

8. The Id. Counsel for the applicant has placed reliance on an order passed by this Tribunal in OA No. 603/2006 dated 27th September, 2007, *Yasarapu Hari Babu vs. Union of India & Ors.*

9. It is noticed that the applicant came to Mughalsarai Division on mutual transfer on 29.10.2008 and posted as ASM in the scale of Rs. 4500-7000. It is further noticed that, vide Annexure-A/2, the transfer memo cum-last pay certificate indicates that the applicant was admittedly in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- in his earlier posting. The respondents have also admitted that the applicant was promoted as Station Master in the Mughalsarai Division in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- w.e.f. 04.09.2011.

It is also noticed that Estt. Srl. 50/95 dated 22.03.1995 given as correction slip 19 to incorporate as addition to para 604 of IREM Vol.I [1989] to insert as Sub-para [a][iii] of IREM [1989 edition] below sub-para[a][ii], which stipulates that – “when a government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such

higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected”.

10. In view of the aforesaid discussion, we are of the considered opinion that the applicant's pay is required to be protected as per aforesaid provisions of IREM. Accordingly, the respondents, particularly, the Respondent No.1, is directed to consider the case of the applicant as per existing rules for fixation/protection of pay at the relevant time, and pass speaking and reasoned orders within a period of three months from the date of receipt of a copy of this order. No costs.

[Dinesh Sharma]/M[A]

[Jayesh V. Bhairavia)/M[J]

mps