

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4109/2013

Wednesday, this the 27th day of February 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Nem Singh
s/o Shri Puse Ram
Presently working as SBA (III)
Under Sr. Divisional Electrical Engineer
Northern Railway New Delhi

..Applicant

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi
3. Divisional Personnel Officer
Northern Railway, New Delhi

..Respondents

(Mr. Kripa Shanker Prasad and Ms. Ekta Rani, Advocates)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant joined the services of respondents in the loco category. He was holding the post of Assistant Loco Pilot. In compliance with the order passed by the Tribunal, he was

promoted to the post of Loco Pilot (Goods), through an order dated 31.05.2010 in the Pay Band 2 - ₹9300-34800 with Grade Pay of ₹4200/-. However, he did not join that post and fell ill from June, 2009 onwards. In the year 2012, he was subjected to medical test, wherein he was de-categorized. The Suitability Committee for re-deployment of medically de-categorized Group 'C' staff considered the case of the applicant and found him suitable for the post of SBA – II Electrical Department vide order dated 13.05.2013. A consequential order was passed on 21.08.2013. The applicant challenges the same.

2. The applicant contends that he held the post of Loco Pilot (Goods) by the time he was de-categorized and accordingly, he is entitled to be put in a post, which carries the same pay scale.

3. The respondents filed the counter affidavit opposing the O.A. It is stated that though the applicant was promoted to the post of Loco Pilot (Goods), he did not join and has never drawn the pay scale attached to the post. It is also stated that the last pay drawn by the applicant was in the pay scale of ₹5200-20200 with Grade Pay of ₹1900/- in June, 2009 and the re-deployment of the applicant was done in a post carrying the same pay scale and Grade Pay, duly adding 30% running allowance.

4. We heard Mrs. Meenu Mainee, learned counsel for applicant and Mr. Kripa Shanker Prasad, learned counsel for respondents.

5. The undisputed facts are that the applicant was holding the post of Assistant Loco Pilot in the pay scale of ₹5200-20200 with Grade Pay of ₹1900/- by June, 2009 and thereafter he fell ill and did not attend to his duties. About one year thereafter, the respondents passed an order dated 31.05.2010 promoting the applicant to the post of Loco Pilot (Goods), in compliance with certain directions issued by the Tribunal. However, due to bad luck of the applicant, he could not join that post and when he reported the duty in 2012, he was subjected to medical test. The Medical Board declared him as unfit to hold any loco post and recommended de-categorization, vide proceedings dated 14.07.2012. The Service Rules of the Railways require the administration to provide alternative employment to the de-categorized Group 'C', employees with pay protection. It is in this context that the case of the applicant was placed before the Suitability Committee constituted for this purpose. On a consideration of the various aspects, the Committee recommended the applicant to be accommodated in the post of SBA – III Electrical Department. The consequential order was issued on 21.08.2013.

6. The pay scale of the applicant was worked out on the basis of last drawn pay in June, 2009, i.e., ₹5200-20200 with Grade Pay of ₹1900/- and 30% running allowance was added. The effort of the applicant is to get placed in a post carrying the pay scale in Pay Band 2 - ₹9300-34800 with Grade Pay of ₹4200/-. That would have been possible if the applicant had drawn that pay scale, at any point of time. When he did not draw that pay scale at all even once, the question of his being accommodated in post carrying that pay scale does not arise.

7. Learned counsel for applicant placed reliance upon the judgment of Andhra Pradesh High Court in **Union of India v. Th. Rathan Raju**, 2013 (2) ALT 729. That was a case in which the Screening Committee examined the case of a Loco Pilot (Goods), who was de-categorized and recommended to be placed in a particular post. There was no dispute about the employee therein drawing the pay scale attached to the post of Loco Pilot (Goods). In the instant case, as observed earlier, the applicant has never drawn the pay scale attached to the post of Loco Pilot (Goods).

8. We, therefore, do not find any defect in the impugned order. However, the applicant is entitled to be extended not only the benefit of the pay scale of ₹5200-20200 with Grade Pay of ₹1900/- but also 30% running allowance, as mentioned in the counter affidavit. If the running allowance is not being paid, the

same shall be included in the emoluments of the applicant forthwith and if it was not paid in the preceding month(s), the arrears shall also be paid to him.

10. The O.A. is disposed of with the above observations. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 27, 2019
/sunil/