

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 713 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA 713 of 2015 Barun Kumar, aged about 41 years, S/o D.N.Mahto, resident of At/PO – Motanga, Via – Panjwnra, Dist. – Banka , Pin – 313110 (Bihar), at present working as Senior Goods Guard, At. Titilagarh, Sambalpur Division, East Coast Railway, At/PO – Sambalpur, Orissa.

OA 267 of 2016 Vivekananda Singh, aged about 37 years, S/o J.Singh, working as Senior Goods Guard, C/o Station Manager, Titilagarh Railway Station, At. Titilagarh, Dist. – Bolangir, Odisha.

OA 589 of 2016 Khitish Kumar Tripathy, aged about 39 years, S/o Sachidananda Tripathy, at present working as Senior Goods Guard, under SMR, Sambalpur, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur, Odisha.

OA 590 of 2016 Jayaram Sial, aged about 41 years, S/o Sri Chindamani Sial, at present working as Senior Goods Guard, under SMR, Sambalpur, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur, Odisha.

OA 591 of 2016 Gourahari Nayak, aged about 41 years, S/o Bidhyadhar Nayak, at present working as Senior Goods Guard, under SMR, Sambalpur, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur, Odisha.

OA 592 of 2016 Rama Chandra Tudu, aged about 48 years, S/o Late Durga Charan Tudu, at present working as Senior Goods Guard, under SMR, Sambalpur, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist. – Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist. – Khurda.
3. Divisional Railway Manager, Sambalpur Division, East Coast Railway, At/PO – Modipada, Dist. – Sambalpur.
4. Sr. Divisional Personnel Officer, O/o The Divisional Railway Manager, East Coast Railway, Sambalpur, At/PO/Dist/ - Sambalpur.

.....Respondents.

For the applicant : Mr.S.Das, counsel

For the respondents: Mr.S.K.Nayak, counsel (OA 713/2015)
Mr.D.K.Behera, counsel (OA 267/2016)
Mr.R.N.Pal, counsel (OA 589/2016)

Mr.N.K.Singh, counsel (OA 590/2016)
 Mr.S.P.Mohanty &
 Mr.B.Rout, counsel (OA 591/2016)
 Mr.T.K.Mondal, counsel (OA 592/2016)

Heard & reserved on : 9.7.2019

Order on : 18.3.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this batch of six OAs, the issue involved is identical and the applicants are similarly placed with similar reliefs prayed for in the OA. Hence, these OAs were heard together and are being disposed of by this common order, for which, the OA No. 713 of 2015 is being taken as the leading OA.

2. The reliefs sought for by the applicant in the OANo.713/2015 are as under:-

- “(i) Admit the original application;
- (ii) Call for the records;
- (iii) Quash the order dtd. 4.8.2015 under Annexure-8 and direct the respondents to fix the pay of the applicant in terms of RBE No.109 of 2008 dt. 12.9.2008 under Annexure-5 as well as the FTR appended to the said circular from the date the applicant was appointed as Goods Guard in the running cadre i.e. with effect from 29.6.2006 & Senior Goods Guard with effect from 25.12.2011 and extend all such service benefits as is due and admissible to the post of Goods Guard & Senior Goods Guard within a reasonable time to be fixed by this Hon’ble Tribunal;
- (iv) And also pass any other appropriate order(s)/direction(s) as this Hon’ble Tribunal may deem fit and proper keeping in view the fact and circumstances of the case.”

For other OAs in this batch, the reliefs prayed for are similar to OA No. 713/2015, except for different date of the impugned orders by which the representations of the applicant have been rejected by the respondents.

3. In OA No. 713/2015, the applicant who is working at present as a Senior Goods Guard under the respondents, had represented to the authorities claiming benefit of the revised pay as per the Table FTR/4 of the RBE No. 109/2008 of the Railway Board which is applicable to the running staffs and the said representation was rejected vide order dated 4.8.2015 (Annexure-8 to the OA) which is impugned in this OA. The applicant is a running staff who was in receipt of the pay as applicable to other running staff. He claims that he is entitled for the revised pay/grade pay stipulated for the running staff in the Table FTR/4 of the Railway Board circular RBE No. 109 of 2008 dated 12.9.2008 (Annexure-5 of the OA) since other running staffs have been allowed such benefit. The applicant had initially joined the railway service as Goods

Guard on 19.6.2006 after being selected through a recruitment test by the railway authorities and he was promoted as Senior Goods Guard (in short SGG) on 25.12.2011. The Railways implemented the pay scales recommended by sixth pay commission vide the Railway Service (Revised Pay) Rule, 2008 (referred as 'Rules, 2008' hereinafter, copy of which has been enclosed in Annexure-3 of the OA as RBE No. 103/2008) and vide the circular dated 12.9.2008 (RBE No. 109/2008, copy at Annexure-5 of the OA), the pay structure of the running staff was specified. This OA has been filed since the benefit of the pay scale/grade pay for the running staff as per the RBE No. 109/2008 dated 12.9.2008 was not allowed to the applicant.

4. The facts in other 5 OAs are more or less similar except for some minor differences. In OA No. 267/2016, OA 589/2016 and OA 590/2016, the applicants had initially joined in running cadre as Goods Guard on 29.6.2006 (after 1.1.2006). In OA No. 591/2016, the applicant had joined initially as Goods Guard on 4.9.2006 (after 1.1.2006). In OA No. 592/2016, the applicant had joined as Goods Guard on 21.8.2006. In all the OAs the applicants had joined Railway service in running cadre after 1.1.2006.

5. It is stated in the OA that there is no stipulation in the circular dated 12.9.2008 that the Table FTR/4 will not apply to the employees appointed after 1.1.2006 and that the rule 8 of the Rules, 2008 will not apply to the applicant who is entitled for the benefit of the pay as per the Table FTR/4. It is further stated that not denying this benefit to the applicant, is discrimination. It is the contention in the OA that the running staffs appointed prior to 1.1.2006 and after 1.1.2006 are eligible for the benefit of the pay structure as per Table FTR/4.

6. In the Counter, the respondents have stated that as the applicant was appointed after 1.1.2006 as a direct recruit, his pay was correctly fixed as per the rule 8 of the Rules, 2008 of RBE No. 103/2008. Some of the running staffs who were working in non-running cadre prior to 1.1.2006, but were promoted as Goods Guard subsequent to the appointment of the applicant, got their pay fixed as per the RBE No. 103/2008. They preferred representation to have their pay fixed as per the RBE No. 109/2008. It was clarified by the Railway Board vide RBE No. 30/2014 (Annexure R/3 to the counter), that an employee who were promoted to the running cadre between 1.1.2006 till the date of issue of the Rules, 2008 will be eligible to opt to continue in pre-revised scale till his promotion to the running cadre and switch over to the revised pay applicable for running cadre. It is stated that the case of these employees who were promoted to running cadre after 1.1.2006 was different from the case of the applicant since they were in service as on 1.1.2006, whereas the applicant

joined service after 1.1.2006, for which the circular RBE No. 109/2008 will be applicable to those who were in service as on 1.1.2006 and promoted subsequently to the running cadre and the circular RBE 109/2008 will not be applicable for the applicants.

7. We heard learned counsel for the applicant who also submitted a written note of submission reiterating the averments in the OA. It was urged that there cannot be any cut off date for applicability of the pay structure for the running staff as per the Table FTR/4 in the RBE No. 109/2008 (Annexure-5 to the OA). Regarding delay in approaching the Tribunal with his grievance, it is stated that the claim for pay fixation is a right which can be exercised during the service period. It was further argued by the applicant's counsel that the employees who were appointed to the running cadre on promotion after appointment of the applicant were allowed higher pay as per the Table FTR/4, but the applicant has been denied the same benefit.

8. Learned counsel for the applicant has submitted a written note of submission reiterating the averments made in the OA and stating that his revised pay should not have been fixed as per Rule 8 of the Rules, 2008 but under FTR/4 like other running staff. It is explained in the written note that Rule 8 has general application to all Railway servants who joined in service after 1.1.2006 and it is applicable to the running staffs since there is a separate fixation formula for the running staff as per RBE 109/2008. It is submitted that denying the same benefit to the applicant on the ground of applicability of Rule 8, is not sustainable under law. Learned counsel for the applicant has also filed a copy of the relevant paragraphs of IREM Vol.I which are the rules applicable specifically for the running staffs. He also cited judgment of Hon'ble Supreme Court in the case of Union of India & Others -vs- Atul Shukla & Others [(2014) 10 SCC 432]. In this case a separate provision for retirement was decided by the Government of India for certain categories of officers of Indian Air Force but it was not allowed to other officers. It was held by the Hon'ble Apex Court in the above judgment as under :

"45. On the material placed before us and having regard to the rival assertions made by the parties in their respective affidavits the difference in employability of Group Captains (TS) is not borne out to justify the classification made by the Government. It is evident from the particulars given by the respondents that several Group Captains (TS) have held appointments which are also held by Group Captains (Select). If that be so, the difference in the employability of Time Scale officers vis-a-vis select officers appears to be more illusory than real. There does not appear to be any hard and fast rule on the question of deployment or employability of Group Captains (TS) or Group Captains (Select) for that matter. The Air HQ can, depending upon its perception, order deployment and post any officer found suitable for the job. Deployment remains an administrative matter and unless the same involves any reduction in pay, allowances or other benefits or reduction in rank or

status of an officer legally impermissible, such deployment remains an administrative prerogative of the competent authority."

With above observations, Hon'ble Apex Court held that the decision of Government was correctly held to be unsustainable.

9. Learned counsels for the respondents were heard in all the OAs. The written note of submissions were also filed reiterating the stand taken in the pleadings. It was explained that vide the clarification of the Railway Board in RBE 30/2014, copy of which has been enclosed at Annexure R/3 of the counter. It is clarified by the Railway board that an employee when is promoted from stationary post to running post as Guard after 1.1.2006 and before 4.9.2008 when the Rules, 2008 were issued, they will have the option to continue in the pre-revised scale till the date of their promotion as Guard in the running cadre. It was explained that the benefit of Rule 5 and Rule 6 was available for the category of employees who were appointed to the running cadre on promotion after joining of the applicant. It is further stated that the claim of the applicant is based on RBE 109/2008, which was issued in reference to the Board's letter dated 11.9.2008 in which Clause 3(i) has specifically mentioned that the said clause of the circular applies to the Railway servants who were required to exercise options under Rule 6. Therefore, RBE No. 109/2008 was applicable for the existing employees, who were in employment prior to 1.1.2006. Since the applicants were appointed after 1.1.2006, Rule 5 and Rule 6 will not be applicable to them and their pay has been correctly fixed under Rule 8 of RBE No. 103/2008.

10. On perusal of the rule 5 and rule 8 of the Rules, 2008 (Annexure-3 of the OA), the following stipulations regarding applicability of the revised pay structure have been made as under:-

"5. ***Drawal of pay in the revised pay structure*** – Save as otherwise provided in these rules, a Railway servants shall draw pay in the revised pay structure applicable to the post to which he is appointed;

Provided that a Railway servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in cases where a Railway servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the Railway servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc.

Explanation 1 - The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.

Explanation 2 - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 2006, whether for the

first time in Railway service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

Explanation 3 - Where a Railway servant exercises the option under the provisos to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Rule 1313 FR 22 of Indian Railway Establishment Code Volume II , or any other rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

Xxx

xxx

xxx

xxx

xx

8. **Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 1.1.2006** – Section II of Part A of the First Schedule of these Rules indicates the entry level pay in the pay band at which the pay of direct recruits to a particular post carrying a specific grade pay will be fixed on or after 1.1.2006.

This will also be applied in the case of those recruited between 1.1.2006 and the date of issue of this Notification. In such cases, where the emoluments in the pre-revised pay scale(s) [i.e., basic pay in the pre-revised pay scale(s) plus Dearness Pay plus Dearness Allowance applicable on the date of joining] exceeds the sum of the pay fixed in the revised pay structure and the applicable dearness allowance thereon, the difference shall be allowed as personal pay to be absorbed in future increments in pay."

11. The second proviso of the Rule 5 of the Rules, 2008 (RBE No.103/2008) allowing the employees to give option to continue in the pre-revised scale is applicable for the employees who are put on higher pay scale on promotion or upgradation between the date 1.1.2006 and the date of notification of the Rules, 2008 (i.e. 4.9.2008). The rule 6 specifies the modalities for exercising this option. It is clear that the employees who are in service as on 1.1.2006 and who will be promoted between 1.1.2006 and 4.9.2008, are eligible for exercising option under second proviso of the rule 5 as extracted above. The applicant, having been appointed to railway service first time on 29.6.2006, was not in Railway service as on 1.1.2006. He was also not put on higher pay scale on promotion or upgradation, since he was appointed for the first time in the running cadre on 29.6.2006. Hence this provision of option under second proviso of the rule 5 and the rule 6 will not be applicable to the applicant. But it will be applicable to the staffs who were promoted to the running cadre after 1.1.2006 and before 4.9.2008, as averred by the respondents in the Counter.

12. The rule 8 of the Rules, 2008 will be applicable to all the employees including the running staffs appointed as fresh recruits on or after 1.1.2006. Since the applicant was appointed for the first time under the railways on 29.6.2006, which is after 1.1.2006, his pay is to be revised in accordance with the rule 8 of the Rule, 2008 (Annexure-3 of the OA). The applicant was appointed between 1.1.2006 and 4.9.2008, for which, his pay will be revised as

per the second para of the rule 8 extracted above and as averred by the respondents in para 9 and 11 of the Counter, his pay has been fixed accordingly.

13. At the time of hearing, learned counsel for the applicant had drawn our attention to sub para (i) of para 3 of the circular dated 11.9.2008 (Annexure-4) to argue that pay fixation Tables for the running staff are being issued separately and then it was issued vide circular dated 12.9.2008 (Annexure-5) in which Table FTR/4 was specified. It was argued that the applicant, being a running staff should have been allowed the benefit of the circular dated 12.9.2008 and his pay should have been revised as per the Table FTR/4. It is noticed that para 3 of the circular dated 11.9.2008 stated as under:-

"3. In terms of Rule 6 of the Railway Services [Revised Pay] Rules, 2008, Railway servants are required to exercise their options in the format appended as Second Schedule to the Rules. The sequence of action to be taken on receipt of the option will be as follows:

[i] The manner of initial fixation of pay in the revised pay structure has been indicated in Rule 7 of the Railway Services [Revised Pay] Rules, 2008. On the basis of this Rule, detailed Fixation Tables for each stage in each of the pre-revised scales have been circulated by the Ministry of Finance under their OM No. F. No. 1/1/2008-IC dated 30.08.2008. The Fixation Tables pertaining to the scales of pay structure as applicable in the First Schedule to the Ministry of Railways' notification referred to above and Schedules annexed with this letter are enclosed as Annex-E of this letter. These may be used for the purpose of fixation in the revised pay structure as on 1.1.2006. The detailed Fixation Tables in respect of running staff are being issued separately."

14. It is noticed from above that the provisions in para 3 in the above circular dated 11.9.2008 are applicable for the employees who exercise option under the Rule 6 and as discussed in para 11 of this order, the Rule 6 is applicable for the employees who can exercise option under Rule 5 and these employees are those who were in service as on 1.1.2006 and those who have been placed at higher scale on promotion or upgradation between 1.1.2006 and 4.9.2008. Hence, the provisions of the para 3 (including all sub para under para 3) of the circular dated 11.9.2008 are not applicable for the applicant, if the para 3 of circular dated 11.9.2008 is read with the Rule 5 of the Rules, 2008. Further, the Rules, 2008 have overriding effect as stipulated in the rule 18 of the Rules, 2008. The circular dated 12.9.2008 (Annexure-5 of the OA), which is issued for the running staffs under para 3(i) of the circular dated 11.9.2008 (Annexure-4 of the OA) is not applicable for the applicant who has been appointed to the railway service for the first time after 1.1.2006 and it is applicable for those employees who can exercise option under Rule 5 and 6.

15. From the discussions above, the revision of the pay scale of the applicant is to be done under the rule 8 of the Rules, 2008 and the employees who were continuing in pre-revised scale prior to 1.1.2006 and have been promoted or

upgraded after 1.1.2006 and before 4.9.2008, will be governed by the rule 5 and rule 6 of the Rules, 2008 and for those employees the circular dated 11.9.2008 and 12.9.2008 will be applicable. The judgement in the case of Atul Shukla (supra) cited by the learned counsel for the applicant will not help the applicant's case, since in this OA, the employees who were in service prior to 1.1.2006 and who joined service after 1.1.2006 have been treated differently by allowing option to the former to continue in pre-revised scale and such distinction cannot be said to be arbitrary.

16. In view of the discussions above, we do not find anything wrong in the decision of the respondents and the grounds made out by the applicant are not found to be adequate to justify interference in the matter. Accordingly, the OA No. 713/2015 being devoid of merit, is dismissed.

17. As discussed earlier the facts involved in other 5 OAs in the batch are similar except with some minor differences with regard to dates etc. and the issue involved in all these OAs related to applicability of pay fixation as per Table FTR/4 in RBE No. 109/2008 to the applicants which has been decided by us with reference to OA No. 713/2015 in para 14 and 15. Accordingly other OAs in this batch, which are similar to the leading case OA No.713/2015, are also dismissed.

18. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath