

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 149 of 2016

OA No. 150 of 2016

OA No. 162 of 2016

OA No. 163 of 2016

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

OA 149/2016 Jyoti Panikar, aged about 51 years, S/o Late Paami Panikar, working as Senior Goods Guard, C/o Station Manager, Titilagarh Railway Station, At. Titilagarh, Dist. – Bolangir, Odisha.

OA 150/2016 Abdul Hanner Molla, aged about 52 years, S/o Late Umad Ali, working as Senior Goods Guard, C/o Station Manager, Titilagarh Railway Station, At. Titilagarh, Dist. – Bolangir, Odisha.

OA 162/2016 Santosh Kumar Singh, aged about 39 years, S/o P.N.Singh, working as Senior Goods Guard, C/o Station Manager, Titilagarh Railway Station, At. Titilagarh, Dist. – Bolangir, Odisha.

OA 163/2016 Dokkari Debendranath, aged about 50 years, S/o D.Mohanrao, working as Senior Goods Guard, C/o Station Manager, Titilagarh Railway Station, At. Titilagarh, Dist. – Bolangir, Odisha.

.....Applicant

VERSUS

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

.....Respondents.

For the applicants: Mr.S.Das, counsel

For the respondents: Mr.M.B.K.Rao, counsel (OA 149/2016)
Mr.S.K.Nayak, counsel (OA 150/2016)
Mr.R.S.Behera, counsel

Heard & reserved on : 23.7.2019

Order on : 1.8.2019

O R D E RPer Mr.Gokul Chandra Pati, Member (A)

In these four OAs, the issues, facts involved and reliefs sought for are same or similar. Hence, these OAs were heard together and are being disposed of by this common order, for which, the OA No. 150 of 2016 is being taken as the leading OA.

2. The reliefs sought for by the applicant in the OA No.150/2016 are as under:-

- "(i) Admit the original application;
- (ii) Call for the records;
- (iii) Quash the order dtd. 22.12.2015 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 20.5.2009 & Senior Goods Guard with effect from 1.3.2013 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."

3. In other OAs, the reliefs prayed for by the applicants are the same as in OA No. 150/2016 except for different dates of the impugned orders and different dates for promotion of the applicants.

Facts in OA No. 150/2016

4. In OA No. 150/2016, the applicant, while working at present as a Senior Goods Guard under the respondents, had a grievance regarding fixation of his revised pay on the basis of sixth pay Commission report, after his promotion as Goods Guard w.e.f. 20.5.2009 as averred in the OA. He was promoted to the post of Senior Goods Guard on 1.3.2013. Then he represented to the authorities on 1.9.2014 (copy not furnished by the applicant), claiming benefit of the revised pay as per the Table FTR/4 of the RBE No. 109/2008 of the Railway Board, applicable for the running staffs. When no action was taken by the authorities, the applicant filed an OA which was disposed of with a direction to the respondents to dispose of the said representation. The authorities rejected the said representation vide order dated 22.12.2015 (Annexure-7 to the OA) which is impugned by the applicant.

5. The applicant is a running staff under the Railways, who 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-4 of the OA) since other running staffs have been allowed such benefit. The applicant had initially joined the railway service as Token Porter and then he was promoted as Switchman/Cabin Master and then to the running cadre as Goods Guard on 20.5.2009 and as Senior Goods Guard on 1.3.2013. The Railways implemented the pay scales recommended by sixth pay commission vide the Railway Service (Revised Pay) Rule, 2008 (copy of relevant portion at Annexure-2 of the OA as RBE No. 103/2008 dated 4.9.2008) and vide the circular dated 12.9.2008 copy at Annexure-4 of the OA as RBE No. 109/2008, 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 has not been allowed, although the revised pay as per the RVBE No. 103/2008 has been allowed to the applicant.

Facts in other OAs

6. The facts in other 3 OAs are more or less similar except for some minor differences. The applicant in OA No. 149/2016 was appointed as Goods Guard in the running cadre i.e. with effect from 20.5.2009 & Senior Goods Guard with effect from 22.1.2012. The applicant in OA No. 162/2016 was appointed as Goods Guard in the running cadre i.e. with effect from 20.5.2009 & Senior Goods Guard with effect from 1.3.2013. The applicant in OA 163/2016 was appointed as Goods Guard in the running cadre i.e. with effect from 20.5.2009 & Senior Goods Guard with effect from 1.3.2013. In all these OAs, the applicants were promoted as Goods Guard after the date of issue of the RBE No. 103/2008 i.e. 4.9.2008.

Contentions of the applicant

7. It is contended by the applicant in the OA No. 150/16 that there is no stipulation in the circular RBE No. 109/2008 dated 12.9.2008 (Annexure-4) that the Table FTR/4 will not apply to the employees promoted after a cut-off date (i.e. 4.9.2008 which is the date of issue of the RBE No. 103/2008) and that the rule 5 and 6 of the Rules notified in RBE 103/2008 will not apply to the applicant's claim. It is further contended that the applicant is entitled for the benefit of the pay as per the Table FTR/4 in RBE No. 109/2008. It is further averred that some other running staffs like Sri Sudam Behera and Ballav Kumar Pradhan, who were promoted after 1.1.2006 but allowed the benefit as claimed by the applicant for which, he was drawing less pay compared to other senior goods guard. With intervention of the Tribunal in

another OA, the representation of the applicant dated 1.9.2014 was rejected vide order dated 22.12.2015 (Annexure-7) on the ground that the applicant is not entitled for fixation of pay as per FTR/4 Table of the RBE No. 109/2008. It is further stated that denying this benefit to the applicant, while allowing the same to others is discrimination.

8. The respondents, in their Counter in OA No. 150/16, have not disputed the facts. It is stated that the applicant's pay was revised as per the RBE No. 103/2008 w.e.f. 1.1.2006 and the applicant was not entitled to exercise option to draw the revised pay from a later date and as he was promoted as Goods Guard w.e.f. 12.6.2009, he is not entitled for fixation of his pay under FTR/4 of RBE No. 109/2008. It is pointed out that Sri Sudam Behera, Sri Ballav Kumar Pradhan were promoted as Goods Guard w.e.f. 31.12.2007 i.e. prior to the notification of the RBE No. 103/2008 dated 4.9.2008 were entitled for fixation of pay as per the FTR/4 Table.

9. No Rejoinder has been filed by the applicant in any of the OA in this batch. The contentions of the applicant and the respondents in all the OAs in this batch are similar to the OA No. 150/16.

Arguments and analysis for OA No. 150/2016

10. We heard learned counsel for the applicant for all the OAs, who also submitted a written note of submission reiterating the averments in the OA. He also submitted a copy of the provisions of the rules in Chapter IX of the Indian Railway Establishment Manual to stress the point that for running staffs, there are separate provisions of the rules governing different service conditions which are applicable to all running staffs irrespective of their date of joining. It was urged by learned counsel 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-4 to the OA). It was further argued by the applicant's counsel that the first proviso to the rule 5 of the RBE No. 103/2008 will be applicable to the applicant who was promoted to Goods Guard w.e.f. 12.6.2009 and till the date of his promotion, he can opt to remain in the pre-revised pay scale under the first proviso of the rule 5. It was argued that once the applicant is allowed to exercise option under the rule 5, then he has to be allowed the benefit of pay fixation under the Table FTR/4 of the RBE No. 109/2008. It was also argued that as per the circular dated 11.9.2008 (Annexure-3 of the OA), it was stated that for the running staffs separate pay fixation Tables will be circulated separately and the RBE No. 109/2008 was circulated on 12.9.2008 for the running staffs and hence, it should also be applicable for the applicant.

It was further stated that as long as two employees are part of the same cadre, they cannot be treated differently for the purpose of pay and allowances.

11. Learned counsels for the respondents for all the OAs were heard and written note of submissions was also filed by some of the respondents' counsel, reiterating the stand taken in the Counter. It was explained that vide the clarification of the Railway Board in RBE 30/2014, copy of which has been enclosed to the written note in OA No. 150/16. It was further argued 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 1.1.2006 and before issue of the RBE No. 103/2008 dated 4.9.2008. 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 which applies to the Railway servants who were required to exercise options under the rules. The applicant will not be entitled for pay parity with the employee who was promoted to running cadre between 1.1.2006 and 4.9.2008. Since the applicants were promoted after 4.9.2008, option is not available under second proviso of the rule 5, which will not be applicable to them and hence, their pay has been correctly fixed under Rule 8 of RBE No. 103/2008.

Issues for decision

12. From the arguments advanced by the counsels for the rival parties, it is clear that the main dispute is on whether the provisions of the rule 5 will be applicable for the applicants so as to exercise option to continue in the pre-revised pay scale till the date of promotion to Goods Guard (which is after 4.9.2008) so as to enable him to claim the pay fixation as per the Table FTR/4 of the RBE No. 109/2008. The respondents have averred that the applicant was promoted after the date of issue of the RBE No. 103/2008 dated 4.9.2008 and hence, he will not be entitled to exercise option under the rule 5.

Discussion on relevant rules

13. The rule 5 of the RBE No. 103/2008 (Annexure-2 of the OA) stated as under:-

"5. *Drawal of pay in the revised pay structure* – Save as otherwise provided in these rules, a Railway servants hall 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.

....."

14. The first proviso of the rule 5 of the RBE No. 103/2008 (Annexure-2 of the OA No. 150/2016) allows a railway employee to exercise option to continue in the existing scale till next increment or any subsequent increment or till he vacates his post or ceases to draw the pay in that scale. The first proviso of the rule 5 of the RBE No. 103/2008 does not allow an employee to exercise option till he is promoted to the next higher pay scale. There is no specific mention of promotion to higher scale in the first proviso, which is applicable till an employee continues in the scale as existing on 1.1.2006 or till he ceases to draw pay in that scale. We are unable to agree with the argument of learned counsel for the applicant that 'till he ceases to draw pay in that scale' will mean till he ceases to draw pay in that scale and then draw pay at higher scale after promotion. The provision will apply to the cases where the employee ceases to draw pay in that scale due to retirement or resignation or dismissal/removal from service. The provisions of the first proviso will not permit an employee (like the applicant), promoted or upgraded after 1.1.2006, to exercise option under the rule 5 of the RBE No. 103/2008.

15. The second proviso of the Rule 5 of the RBE No.103/2008 permits an employee to exercise option to continue in the pre-revised scale if he is placed on higher pay scale on promotion or upgradation between 1.1.2006 and the date of notification of the RBE No. 103/2008 (i.e. 4.9.2008). Clearly, the second proviso of the rule 5 will not apply to the case of the employees who were promoted after 4.9.2008, as correctly averred by the respondents. The rule 6 specifies the modalities for exercising the option under the rule 5. 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. Hence, the applicant, promoted as Goods Guard after 4.9.2008, will not be entitled to exercise option under the rule 5 and hence, the rule 5 and 6 will not be applicable to him. The second proviso of the rule 5 will be applicable to the staffs who were promoted to the running cadre after 1.1.2006 but before 4.9.2008, as averred by the respondents in the Counter

and the applicant cannot claim that he can exercise such option under second proviso of the rule 5.

16. From above, it is clear that it was not permissible for the applicant to exercise option under the first and second proviso of the rule 5 of the RBE No. 103/2008. It is also contended by the applicant that the circular RBE No. 109/2008 was issued in pursuance to specifying that the circular dated 11.9.2008 (Annexure-3 of the OA No. 150/2016) stating that the pay fixation Tables for the running staff were being issued separately. The circular dated 12.9.2008 (RBE No. 109/2008) was issued thereafter with reference to the circular dated 11.9.2008 and the Table FTR/4 was specified in RBE No. 109/2008 for the running staffs. It is noted that the para 3 of the circular dated 11.9.2008 (Annexure-3) states 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."

17. The para 3 in the circular dated 11.9.2008 is applicable for the employees who exercise option under the Rule 6 of the RBE No. 103/2008. As discussed in para 14 and 15 of this order, the employees (like the applicant) who were promoted or upgraded to higher pay scale after 4.9.2008, cannot exercise option under the rule 5 or rule 6 to continue in the pre-revised scale as on 1.1.2006 till the date of promotion as Goods Guard and for these employees, the revised pay scale is to be fixed at the pre-promotion pay scale as on 1.1.2006 as per the rule 7 of the RBE No. 103/2008. Even if they exercise option to continue till next increment under first proviso of the rule 5, it will not permit them to claim the revised pay scale applicable for the running staffs as per the RBE No. 109/2008 since at the end of the increment, the fixation in revised scale will have to be done in pre-promotion scale and not in the promotion scale. The circular dated 12.9.2008, which is issued for the running staffs, exercising option under the rule 5 and 6 as stated in para 3(i) of the circular dated 11.9.2008 (Annexure-3) is not applicable for the applicant who has been promoted to the running cadre after 4.9.2008 for which, he cannot exercise option under the first or second proviso of the rule 5.

Conclusion

18. In view of the discussions above, we do not find any infirmity in the decision of the respondents and the grounds made out in the OA are not found to be sufficient to justify any interference of the Tribunal in the matter. The allegation of discrimination of the applicant vis-a-vis other running staffs for fixation of revised pay is not tenable since the rules provide for different pay fixation Tables for different category of staffs and the applicant has not challenged the rules or the circulars issued by the Railway Board in this regard. Hence, the OA No. 150/2016 is liable to be dismissed.

19. As discussed earlier, the facts involved in other 3 OAs in this batch are similar except with some minor differences with regard to dates etc. and all the applicants in these OAs were promoted to the running cadre after 4.9.2008. The issue involved in all these OAs is whether the applicants can exercise option under the rule 5 to permit fixation of their revised pay as the running staff from the date of their promotion as per the Table FTR/4 in RBE No. 109/2008 and as discussed earlier, this issue is to be decided against the applicant. Accordingly other OAs in this batch are also liable to be dismissed.

20. Accordingly, all the OAs in this batch are dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath