

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/0645/2018

Date of Order: 14.06.2019

Between:

R. Shanmugham, S/o. late G.S. Ramaswamy, Gr. C,
Aged about 57 years, Emp. No. 24203259651,
Occ: Retired Mail Express Guard (Operating),
SC Division, South Central Railways,
R/o. H. No. 12-5-186/6/A & B, 1, Flat No. 106,
Galazy Residency, Vijayapuri Colony,
South Lallaguda, Secunderabad – 17.

... Applicant

And

1. Union of India, Rep. by its
General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
Secunderabad Division, SCR,
Sanchalan Bhavan, Secunderabad.
3. The Chief Personnel Officer,
O/o. General Manager, South Central Railway,
Rail Nilayam, Secunderabad – 17.

... Respondents

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mr. V. Vinod Kumar, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed challenging the wrong fixation of pension.
3. Applicant joined the respondents organisation in 1983 as Trains Clerk (TNC) and later, got promoted as Goods Guard in 1987, which is

categorised as running staff cadre. Running staff are allowed 55% of the running allowance of pay element for the purpose of calculating pension and pensionary benefits. Applicant was medically de-categorised and found suitable for A -3 on 16.9.2015. Before an alternative post could be offered on medical invalidation , applicant sought voluntary retirement which was permitted and accepted on 20.7.2016. However, though being running staff, on retirement, pension and pensionary benefits were fixed taking 30% of the Running Allowance for fitment instead of 55%. Applicant represented for granting 55% benefit, but it was rejected on 1.2.2018. Hence the OA.

4. Contentions of the applicant are that he is eligible as per Railway Board letter dated 29.11.2016. Applicant retired voluntarily before alternative appointment was offered. Applicant cited the judgment of the Hon'ble High Court of A.P. in WP Nos. 27894 & 27895 of 2017, dt.16.10.2017, in support of his contentions.

5. Respondents contend that the applicant retired on 20.7.2016 and that the benefit contained in Railway Board order dated 29.11.2016 cannot be extended to him, since the order will have only prospective effect and not retrospective effect. Respondents also confirm that before the applicant could be offered an alternative post, his services were used at Secunderabad station and DOMs office etc, which are stationary duties. Respondents claim that once an employee is medically de-categorised for running duties, he will cease to be running staff and hence, will be ineligible for 55% benefit.

6. Heard both the counsel and perused the material papers placed on record.

7. I) The dispute is essentially about application of the Railway Board order vide RBE No.137/2016 dated 29.11.2016 to the plea of the applicant. The important para of the Railway Board order is extracted here under:

2. The issue has been examined in Board's office, and it is observed that the issue is governed under the provisions contained in Board's letter referred to above. To address the specific aspect brought out by Federations, it has been decided that whenever a medically decategorised running staff governed by RS(PR)1993, who has rendered the prescribed qualifying service opts for Voluntary Retirement either on his own or within a period of one month from the date of offer of the first alternative post, his pension may be computed with addition of 55% Pay Element. This 55% benefit will be reckoned after deducting the 30% Pay Element fixation benefit if granted already as per Board's letter dated 05-10-2011 referred to above.

The Board's letter cited was issued in continuation of the decision taken in its letter dated 5.10.2011. Applicant took voluntary retirement on 20.7.2016 i.e. after the Board letter dated 5.10.2011 and hence, he is eligible for the 55% fitment per se. The Board letter dated 29.11.2016 is only a further clarification of the objective of the Board order dated 5.10.2011. A clarificatory letter is a continuum of the original order and hence it cannot be applied by delinking the very purport of the original letter.

II) Besides, it is well established in law, that an order with beneficial consequences cannot be denied to be applied with

retrospective effect. Support can be drawn from the Hon'ble Supreme Court observation in *High Court of Delhi v. A.K. Mahajan*, (2009) 12 SCC 62 as stated hereunder:

45. In short, law regarding the retrospectivity or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone such rules would not be permissible to the extent of retrospectivity.

Thus, based on the observation of the Hon'ble Apex Court, the Railway Board RBE No.137/2016 would be applicable to the issue of granting 55% benefit to the applicant.

III) Now let us look at the factual matrix of the case. Respondents have admitted that the applicant was medically de-categorised on 16.9.2015 and he was not offered any alternative post nor was he adjusted against a supernumerary post. As stated by the respondents, services of the applicant were temporarily used in different posts for the interregnum period commencing from 16.9.2015 till 20.7.2016, the date of his voluntary retirement. Railway Board Memo clearly stipulates that the benefit of 55% fitment can be extended to those who are medically de-categorised and sought voluntary retirement or made a request within one month of the offer of alternative appointment on medical invalidation. The applicant has voluntarily retired after medical invalidation and further he has not been offered any alternative post nor was he adjusted against the supernumerary post after medical invalidation. Therefore, according to the Railway Board order RBE No.137/2016, applicant is eligible for the 55% fitment benefit.

IV) Respondents cited different provisions of the IREM Volume I, but they are not applicable to the present case as those provisions apply when the applicant is adjusted against a supernumerary post or provided with an alternative stationary post. Respondents have used the applicant services temporarily against different posts from the date of medical invalidation till date of his voluntary retirement. Unless orders are issued by the competent authority posting the applicant in an alternative post or against a supernumerary post, any other arrangements made, as was done in the case of the applicant, lack validity.

V) The same issue fell for consideration of the Honourable High Court of Andhra Pradesh in Writ Petition No.27894 and 27895 of 2017, wherein it was held as under:

“5. In our opinion, the Tribunal has interpreted the Circular dt.29.11.2016 from a correct perspective. Indeed, the opening paragraph of the Circular would show that the same was issued while clarifying the letters addressed by DC/HCM, PNM/NFIR and PNM/AIRF, on the requests of the recognized staff federation and other trade unions demanding 55% of pay element to be reckoned for computing retirement benefit for those running staff who have been medically decategorized and decided to take Voluntary Retirement, instead of opting for redeployment in an alternative stationary post. Paragraph 5 of the Circular also makes it clear that what was contained therein is a clarification.

6. Thus, having regard to the context in which the clarificatory circular was issued, we are of the opinion that there is absolutely no justification for denying 55% pay element to the respondents, who spent all their service as Drivers/Loco Pilots. Moreover, as found by the Tribunal, from the language of paragraph 2 referred to above the Circular cannot be construed as prospective in nature, as it covers even the employees in respect of whom the pay was already fixed by taking 30% pay element.”

Thus the matter is fully covered by the verdict of the Hon’ble High Court.

VI) Therefore, based on the Railway Board instructions and the directions of the Hon'ble High Court of Andhra Pradesh *supra*, applicant has made out a case, which fully succeeds. The action of the respondents is against rules, arbitrary and contrary to the findings of the Hon'ble High Court. Therefore, the impugned order dated 1.2.2018 is quashed. Consequently, respondents are directed to consider as under:

- i) To refix the pension and the pensionary benefits of the applicant as per Railway Board order dated 5.10.2011 read with clarificatory order of the Railway Board dated 29.11.2016 and release the eligible consequential benefits, if any, thereof.
- ii) Time period allowed to implement the order is 3 months from the date of receipt of this order.
- iii) With the above directions the OA is allowed.
- iv) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 14th day of June, 2019

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