

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

**Original Application No.21/1007/2018 with
MA 21/149/2019**

Reserved on: 15.07.2019

Pronounced on: 23.07.2019

Between:

S. Shyam Prasad, S/o. Bangaraiah,
Age 46 years, Group C, Loco Pilot (Goods),
O/o. The Chief Crew Controller, Sanath Nagar,
R/o. H. No. 3-117/17/3, Bheem Reddy Nagar,
Boduppal, Hyderabad – 500 092.

...Applicant

AND

1. Union of India, South Central Railway,
Rep. by its General Manager,
3rd Floor, Rail Nilayam,
Secunderabad – 500 073.
2. Senior Divisional Personnel Officer,
Secunderabad Division, S.C. Railway,
IV Floor, Sanchalan Bhavan,
Secunderabad – 500 071.
3. Assistant Personnel Officer (Bills),
Office of the DRM (P)/ Secunderabad,
Secunderabad Division, S.C. Railway,
IV Floor, Sanchalan Bhavan, Secunderabad – 500 071.
4. Senior Divisional Electrical Engineer (TRSO),
Secunderabad Division, SC Railway,
Annex Sanchalan Bhavan, Secunderabad – 500 071.

... Respondents

Counsel for the Applicant ... Mr. P. Ramachander Rao

Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for Rly

CORAM:

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

ORDER

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

2. The OA is filed against the order of recovery of Rs.1,69,096/- from the salary of the applicant.

3. Brief facts of the case are that the applicant was promoted as Sr. Asst Loco Pilot (Sr. ALP) on 1.7.2010 with GP of Rs.2400 by the respondents and was sent for training in 2013. After completion of the training, he was promoted as Loco Pilot (Goods) on adhoc basis with GP of Rs.4200 on 10.4.2014 and a competency certificate was issued on 26.4.2014 for handling the Loco independently, by the Chief Loco Inspector. The adhoc promotion was regularised on 30.12.2015. Thereafter on being diagnosed as having neuro ailments, he was classified to take up assignments requiring A-3 medical standard by the Chief Medical Supdt. on 16.5.2018. After availing leave, applicant claims that, he rejoined duty on 16.05.2018 and requested to fix his pay as Loco Pilot (Goods) which was long overdue. In response applicant was directed to pay a sum of Rs.1,69,096 towards excess Pay paid from 1.1.2016 to 30.6.2018 vide show cause notice dated 26.7.2018. Aggrieved, OA has been filed. On 28.11.2018, this Tribunal has passed an interim order directing the respondents not to recover any amount as mentioned in the show cause notice, until further orders.

4. The contentions of the applicant are that he was not reverted from the post of Loco Pilot (Goods) post with G.P of Rs.4200 after medical de-categorisation from A-1 to A-3. Stay order has been granted to similarly

situated employees. As per Master Circular 25, respondents ought to have provided the applicant with an alternative post with GP of Rs.4200 on medical de-categorisation.

5. Respondents oppose the contention of the applicant by claiming that though the applicant was promoted as Loco Pilot (Goods) on adhoc basis from 10.4.2014 and regularised on 30.12.2015, he never worked as Loco Pilot (LP)/Goods as per the certificate issued by the controlling officer of the applicant. Applicant only worked as Sr. Asst. Loco Pilot till he was medically de-categorised on 16.5.2018 and since he has not shouldered higher responsibility, he is not eligible for the pay of LP (Goods). Official records and medical reports only indicate his designation as Sr. Asst. Loco Pilot till he was found medically unfit for the post of Sr. ALP in A-1 medical category. Rule 1313 (FR-22) proclaims that one has to shoulder higher responsibility to draw higher rate of pay on promotion. However, as per service records the pay was inadvertently fixed and drawn from 30.12.2015 by allowing 14.29 % fixation though not entitled. In accordance with Rule 13 B of chapter X of IREM any amount paid without authority of law shall be recovered. Therefore, recovery in easy instalments was ordered and a sum of Rs.10,000 was recovered from Nov 2018 salary. The applicant worked as Sr. ALP in GP of Rs.2400 and therefore, he will be provided with alternative post with GP of Rs.2400.

Applicant filed a rejoinder wherein he has pointed out that his name, not figuring in the promotion list after Mr.T. Suresh as Loco Pilot Shunting (Gr-II) with GP of Rs.2400, is a clear proof of his promotion as

Loco Pilot (Goods). In the service register, entries were originally made showing fixation of pay in GP of Rs.4200 w.e.f 10.4.2014 but actual salary was drawn with GP of Rs.2400. Thereafter, revised entries were made changing the fixation of pay by making an endorsement that "Due to not fit as LP/Goods, given by concerned CLI" Attesting authority signature and the date of attestation are missing. Applicant claims that he has assumed charge on 26.4.2014 based on the certificate issued by the Chief Loco Inspector (CLI) for having logged 1500 K.Ms under his supervision. Moreover, though this Tribunal has directed not to recover any amount by interim order dated 28.11.2018 respondents have recovered a sum of Rs.10,000/- from the Nov 2018 salary. The claim of the respondents showing his designation as Sr. ALP in official records is false. Besides, respondents initially stated that the higher pay has not been drawn since he was not certified by the CLI and later changed it to not shouldering higher responsibilities to draw the higher pay, when the CLI certificate was shown, only goes to prove that the respondents are unwilling to pay him higher pay for which he was eligible. Service book entries were later corrected claiming that the higher pay fixation was erroneous.

Respondents filed an additional reply furnishing the original records in respect of running staff who operate Loco as per the directions of this Tribunal. In the original records, the designation has been shown as Sr. Asst. Loco Pilot with G.P. Explanation of the staff concerned was also called for wrongly showing the designation of the applicant as LP (Goods) in Privilege Pass and Identity card. The applicant has himself shown his

designation as Sr. ALP during the period 2014 to 2018 while declaring family particulars, claiming children education allowance etc. Further in compliance to this Tribunal orders in OA No.21/253/2019, dated 13.3.2019, representation of the applicant dated 24.1.2019 was disposed of vide letter dated 3.4.2019.

6. Heard both the counsel and perused the pleadings on record.

7. I) Respondents have admitted that applicant has been promoted on adhoc basis as LP (goods) on 10.4.2014 and his services were regularised w.e.f 30.12.2015. The Chief Loco Inspector has issued the competency certificate on 26.4.2014 and on the same date, the applicant has issued a self declaration in regard to the competency (Annexure A-4). Learned counsel claims that the self declaration is construed as the joining report in the post of LP (Goods). Even the Principal of ETTC, Vijayawada has certified that the applicant has passed the relevant training course (Annexure A-1). Applicant, on being promoted, claims that he did approach the respondents a number of times to fix his pay as LP (Goods) with GP of Rs.4200 and he was advised to bear with them for a short while, by showing the entries of his promotion as LP (Goods) in the service book register. The service book entry does indicate that the applicant was promoted on an adhoc basis as LP (Goods) on 10.4.2014 and regularisation of his services on 30.12.2015 (Page 7 of service book register). Service book entries are statutory in nature and are considered to be authentic. The entries made were also verified by the competent authority and stamped the relevant page as scanned. However, when the applicant was medically re-classified as A-3 on 16.5.2018, he represented

on 22.06.2018 for fixing his pay in LP (Goods) with GP Rs.4200 and the response vide letter dt. 26.07.2018 is given as hereunder:

“As you have not effected promotion due to not issuing fit certificate by nominated CLI, your pay has to be re-fixed in Sr ALP Post w.e.f 30.12.2015.”

The same endorsement is reflected in the service book on 20.9.2018 (page 9 of the service book register), which the applicant claims is not verified. When the applicant confronted the respondents with the CLI certificate dated 26.4.2014, the version of the respondents changed to that of not hiking the pay for not shouldering higher responsibilities. The impugned order dated 27.9.2018 echoes this remark.

II) Therefore, from the above there is no doubt that the applicant was promoted as LP (Goods) on adhoc/regular basis on 10.4.2014/30.12.2015 respectively and that the competency certificate was issued by the competent authority, namely the CLI on 26.4.2014. The certificate issued by the Principal of the Training College reinforces the competency of the applicant to run the Loco. In the context of these developments, it is surprising that respondents have initially rejected the request that the LP (Goods) pay was not paid because the CLI has not issued the competency certificate. More so, when such a certificate is on record with the applicant logging 1500 K.M under the supervision of the CLI, respondents negating the request of the applicant is unfair to say the least. On confronting the respondents with the competency certificate issued by CLI, changing the version to that of not shouldering higher responsibilities in the impugned order dated 27.9.2018 is shocking. Respondents need to be cautious in dealing with the grievances of the

staff. Changing the reasons of rejection as per convenience, respondents would agree, is not a fair proposition.

III) Besides, coming to the core aspect, respondents have not submitted any Memo reverting the applicant to a post carrying grade pay of Rs.2400 in the period in question. Further, presuming for a moment that the applicant did not shoulder higher responsibilities, then the question that arises is as to whose fault it was in not assigning the proper post. Undoubtedly, it is that of the respondents. Respondents having committed the mistake, it is not proper to thrust the same on to the applicant, as per the observations of the Hon'ble Supreme Court extracted as under:

(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427 :

36. The respondents herein cannot take advantage of their own mistake.

IV) Besides, applicant has never shied away from shouldering higher responsibility. Respondents have not produced any evidence to this effect nor did they state so in their reply statement. It was the respondents who did not give the applicant the opportunity to take up higher responsibility and for this failure respondents cannot deny higher pay due to the applicant as per the observation of the Hon'ble Apex Court in

Vasant Rao Roman V UOI, reported in JT 1993 (2) SC 451 dated

4.3.1993, as under:

4. In our view, the Tribunal was wrong in applying the aforesaid memorandum in the case of the appellant before us. Admittedly, neither the appellant had been put under suspension nor any disciplinary proceedings were pending against him. On the contrary, he had been made to suffer on account of administrative reasons for which the appellant was not responsible. There was shortage of literate Shunters at Gwalior during 1960. The appellant being literate was deputed for table work and therefore for administrative reasons he could not complete requisite number of firing kilometers. Thus, with no fault on his part his juniors had been promoted as Shunters and Drivers and his claim was ignored on account of having not completed the requisite number of firing kilometers. The Tribunal itself has allowed the claim of the appellant regarding seniority over his juniors, considering force in the contention of the appellant. Thus, in the facts and circumstances of this case, we find no justification whatsoever for not allowing the arrears of emoluments to the appellant of the post of Shunter 'B' from June 12, 1961 and that of the post of Driver 'C' from December 17, 1965.

The case of the applicant, in principle, is covered by the cited judgment. The applicant was not proceeded against on disciplinary grounds nor was he unwilling to take up higher responsibility. The mistake did lie at the door step of the respondents and the applicant was in no way responsible for the same. Hence denying to the applicant as to what is due to him is incorrect.

V) Going a step further, Hon'ble High Court of Delhi has held in Harpal Singh Jatav v Delhi High Court and ors in W.P (c) 7711/2012 delivered on 2.9.2013, as under:

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for

this reason that F.R. 17(1) will also be inapplicable to such cases.”

Applicant after being promoted as LP (Goods) w.e.f. 10.4.2014 has never expressed unwillingness to work in the said capacity and therefore, he cannot be denied the higher pay due to him. Respondents did not submit any record to this effect. Hence, defence of the respondents that the applicant did not shoulder higher responsibility and therefore, not eligible for higher pay is fully breached, in the context of the observation of the Hon'ble Delhi High Court cited supra.

VI) The applicant was promoted as LP (Goods) on 10.4.2014 and therefore, his services were available from this date. In fact, his services in continuation were regularised on 30.12.2015 and therefore, he is eligible for the pay of LP (Goods) from the date of adhoc promotion. Tribunal takes support of the Hon'ble Supreme Court in the following case to make the above assertion.

Z. Ajeesudeen vs Union Of India & Ors on 12 February, 2008
- Appeal (Civil) No.1256 of 2008

In the case at hand, the initial appointment of the appellant is, as already noted, purely on adhoc basis and that too not in accordance with the rules for regular appointment. The consistent view taken by this Court is that even if an appointment is made on adhoc basis by following procedure according to the rules for regular selection, the period of such adhoc appointment could be counted. However, if the adhoc appointment, as in the case at hand, is made purely on adhoc basis without following the procedure prescribed under the rules for regular appointment such period spent as adhoc appointee cannot be counted. This is the law settled by M.K. Shanmugam's case (supra).

VII) In cases of the nature dealt in the present OA, responsibility has to be fixed on those who have not extracted the work from the applicant by placing him in a post carrying higher responsibility. This is exactly what the respondents have stated in RBE No.72/2016 dated 22.6.2016. Instead of adopting the said procedure prescribed, respondents finding fault with the applicant and denying him his due is not in tune with the expected conduct from a model employer. A model employer is expected to show probity and candour while resolving grievances of its employees as observed by the Hon'ble Supreme Court as under:

49. Almost a quarter century back, this Court in [Balram Gupta vs Union of India & Anr.](#) [1987 (Supp) SCC 228] had observed thus:

*“As a **model employer** the Government must conduct itself with high probity and candour with its employees.”*

Taking two different stands to deny the benefit to the applicant is not in consonance with the candour as is expected of a model employer.

VIII) Respondents did produce the original record where the designation of the applicant was shown as Sr. ALP with GP Rs.2400. However, the issue is all about the respondents not assigning the higher responsibility to the applicant after duly promoting him as LP (Goods) as per their own volition. Hence, the production of the records did not help the cause of the respondents. Further, applicant's name not figuring in the promotion list after Mr.Suresh as Loco Pilot shunting (Gr-II) with GP of Rs.2400 is one another proof of applicant's promotion as Loco Pilot (Goods). Besides, respondents claiming that the applicant himself has shown his designation as Sr. ALP while giving family particulars, seeking

railway pass, etc is not relevant since the respondents failed to assign him higher responsibility after promoting him as LP (Goods). In addition, it was not proper on behalf of the respondents to recover a sum of Rs.10,000 from the salary of the applicant of Nov 2018 against the direction of this Tribunal on 28.11.2018. Court order has to be implemented whether it is right or wrong. In case the salary bill was already prepared by the time the Tribunal order was received, as explained in their order dt. 24.1.2019, respondents could have refunded the amount later, which they did not. Tribunal trusts that in future respondents would not commit the same folly. Lest, it may have to be viewed with all the seriousness it deserves, as has been observed by the Hon'ble Supreme Court as under:

Director of Education v. Ved Prakash Joshi, (2005) 6 SCC 98

The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. (Emphasis supplied)

IX) Thus, as per the facts stated above, applicant has made out a case, which succeeds. The action of the respondents is arbitrary and contrary to the legal principles laid down by the superior judicial forums cited supra. The impugned order dated 27.9.2018 is quashed. Consequently, respondents are directed to consider as under:

- i) To stop any further recovery from the salary of the applicant.
The amount of Rs.10,000 recovered from the salary of the applicant be refunded.
- ii) To fix pay of the applicant as LP (Goods) as on the date of adhoc promotion and accordingly, pay him the pay and allowance due till the date he has been posted to an alternative post on medical de-categorisation in the grade eligible as per extant rules of the respondents organisation.
- iii) Arrears of pay, if any, that would arise by taking action as at (ii) above be paid to the applicant.
- iv) Time allowed to implement the order is 3 months from the date of receipt of this order.
- v) No order as to costs.

With the above directions the OA is allowed. MA No. 149/2019 stands disposed of.

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

Dated, the 23th day of July, 2019

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