

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 554/2013

Reserved on: 06.08.2019
Pronounced on: 21.08.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Mahendra Prasad Meena Son of Shri Hanuman Prasad Meena, aged about 45 years, at present working on the post of Clerk under the Office of Loco (MOCG) Unit, Jaipur Station, resident of Qtr. No.325A Railway Loco Colony, Jaipur.

...Applicant.

(By Advocate: Shri S.S.Ola)

Versus

1. Union of India, through the General Manager, NWR, HQ Office Jawahar Circle, Jaipur.
2. The Divisional Railway Manager, NWR, Jaipur Division, Jaipur.
3. The Senior DPO, NWR, Jaipur Division, Jaipur.

...Respondents.

(By Advocate: Shri Dinesh Pathak)

ORDER

Per: A.Mukhopadhaya, Member (A):

This Original Application, (OA), has been occasioned by the absorption of the applicant in the Group C pay scale of Rs.5200-20200 with Grade Pay of Rs.1900/- on being medically decategorised for performing duties as Head Constable, (HC), in the Railway Protection Force, (RPF), on 04.09.2012; (Annexure A/3 refers). The applicant states that at the time of such

(2)

decategorisation, he was working on the post of HC, (RPF) in the same manner as Shri Prabhu Dayal in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/-. This is evidenced by the letter sent out from the RPF to other departments of the respondent Railway seeking the applicant's adjustment against some suitable alternative post on decategorisation; (Annexure A/4 refers). He points out that as per the Indian Railway Establishment Manual Volume I, (IREM Volume I – Annexure A/13 refers), there is a specific provision in Item No.13.01 of the Manual that where such decategorisation as has occurred in his case is effected, then employees like the applicant will not be removed from service or reduced in rank but will be transferred in the same pay scale and rank that they held before such decategorisation along with attendant benefits to another post. The applicant contends that while his running pay scale in the post in which he has been adjusted is identical to that of a Senior Clerk with the respondent organisation; (Annexure A/12 office order dated 29.10.2009, Sl. No.3, related to the case of Shri Prabhu Dayal S/o Shri Ram Kumar read with Annexure A/1b refers), he was placed in this pay scale of Rs.5200-20200 with a lower Grade Pay of Rs.1900/-; Memorandum dated 18.03.2013 at Annexure A/1b). He further states that the said Shri Prabhu Dayal was also a Head Constable in the same pay scale of Rs.5200-20000 with Grade Pay of Rs.2800/- as the applicant before he was medically decategorised. Unlike the applicant however, the respondents

(3)

placed Shri Prabhu Dayal as Senior Booking Clerk, i.e. a Senior Clerk, in the same pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/- that he was serving in prior to his decategorisation. Thus, he contends that in direct violation of their own rules, i.e. IREM Volume I, Item 13.01, (Annexure A/13), the respondents reduced him in rank from Senior Clerk to Clerk; (Annexure A/1 read with Annexure A/1a refer). Not only this, the applicant contends that the respondents posted him as a Clerk in their MOCG unit against the available vacancy of a Senior Clerk, (Annexure A/1a read with Annexure A/1b refers). Thus, although a vacant post of Senior Clerk was available for adjusting the applicant's services, this was not done by the respondents. The applicant contends that by this act the respondents have clearly discriminated between him and the similarly situated Shri Prabhu Dayal in that the latter's adjustment was done as per the IREM provisions at Item No.13.01, (Annexure A/13), but his was not. Aggrieved by this, he has approached this Tribunal seeking the following relief:-

- (i) The impugned orders dated 07.03.2013 (Annexure A/1), 15.03.2013 (Annexure A/1a) and 18.03.2013 (Annexure -A/1b) as well as 11.06.2013 (Annexure A/11) be quashed and set aside and further the respondents be directed to absorb the applicant on the post of Senior Clerk under MOCG Unit in pay scale of Rs.5200-20200 + 2800 grade pay.
- (ii) Any other relief which is found just, fit and proper in the facts and circumstances of the case be passed in favour of the applicant.

(4)

2. *Per contra*, the respondents aver that the applicant's grade pay before decategorisation was correctly fixed at Rs.2400/- and that the Grade Pay of Rs.2800/-, he received prior to his decategorisation was as a result of MACP and could not therefore be counted towards his pay scale for the purposes of adjustment; (para 4.11 of reply refers). They further aver that the alternative employment afforded to medically decategorised employees like the applicant is **"not on the basis of the post but it is on the basis of pay scale"**, (para 4.13 of reply refers), and point out that the pay scale of the applicant remains the same, i.e. at Rs.5200-20200 after adjustment. The respondents therefore contend that Item 13.01 of IREM (Volume I), (Annexure A/13), has been fully complied with in this case and no injustice or discrimination have been visited upon the applicant. They further aver that while the applicant and the said Shri Prabhu Dayal, whose case has been cited by the applicant, were getting **"similar Grade Pay under MACP benefit"**, (para 4.11 of reply refers), Shri Dayal has not been absorbed on the post of Senior Clerk but instead has been absorbed in the Commercial Department of the respondents which has different criteria for promotion; (para 4.11 of reply refers). They contend that in the MOCG Unit there is no post available with a Grade Pay of Rs.2400/-, (para 4.16 of reply refers), and therefore the services of the applicant have been absorbed in a Rs.1900/- Grade Pay

(5)

post in SSE/Loco/Jaipur while protecting both his seniority as well as his pay. Thus, the respondents aver that the applicant's claim is without basis in rules and should be dismissed.

3. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Apart from reiterating the grounds laid out in the OA, learned counsel for the applicant drew attention to the admission by the respondents, (para 4.11 of reply refers), that prior to their de-categorisation, both Shri Prabhu Dayal and the applicant were similarly placed, (as HC in RPF), and were getting **"similar grade pay under MACP benefit"**. He also pointed out that while the respondents have stated in their reply that there was no post available with a Grade Pay of Rs.2400/- in the respondents' MOCG Unit, (para 4.16 of reply refers), and therefore, the applicant could not be adjusted in the same way as the said Shri Prabhu Dayal as a Senior Clerk, in their own orders at Annexure A/1a and Annexure A/1b they specifically state that the applicant is being placed as a Clerk against a vacant post of Senior Clerk. Further, he pointed out that while the respondents in their reply, (para 4.11), state that Shri Prabhu Dayal has **"not been absorbed on the post of Senior Clerk"**, the record, (Annexure A/13), clearly indicates his moving from the post of HC, RPF to Senior Booking Clerk. Thus, he argued out that the record is clearly at variance with the contentions of the respondents that

(6)

no post of Senior Clerk was available to allow adjustment of the applicant, or again that the admittedly similarly placed Shri Prabhu Dayal was not adjusted as a Senior Clerk on decategorisation.

4. Learned counsel for the respondents, on the other hand, contends that since the applicant was adjusted in the MOCG Unit and this Unit did not have any vacant post with a Grade Pay of Rs. 2400/-, therefore, the applicant was adjusted in an available clerical post in SSE/Loco/Jaipur on the basis of his pay scale; (paras 4.13 and 4.16 of reply refer). He reiterated that the applicant was not entitled for absorption on a post with Grade Pay of Rs.2800/- and that he was entitled for a post with Grade Pay of Rs.2400/-, (para 5(a) of reply refers), but he was absorbed on the post of Clerk with grade pay of Rs.1900/- while protecting his seniority as well as pay looking to the availability of vacant posts at the time of his adjustment.

5. In this case, the respondents have not disputed the applicant's contention that he was similarly situated to the said Shri Prabhu Dayal before their de-categorisation, both as regards his pay scale of Rs.5200-20200 and also in that Shri Prabhu Dayal was getting **"similar grade pay under MACP benefit"**; (para 4.11 of reply refers). They have also not contested Item No.13.01 of IREM (Volume I), (Annexure A/13), which mandates

(7)

that the adjustment of an employee on medical decategorisation against another post has to be done keeping both his rank and pay scale intact. That having been said, they have argued that the applicant could not be so absorbed, retaining his Grade Pay in the same way as was done in the case of Shri Prabhu Dayal; (Annexure A/12 refers). They have contended that the pay scale of Rs.5200-20200 was retained in the case of the applicant also and that his being given a lower Grade Pay of Rs.1900/- does not represent either a reduction in rank or indeed a reduction in pay as his pay was protected. We find ourselves unable to accept this argument of the respondents that the reference to retaining the same pay scale on adjustment after medical decategorisation, as envisaged under Item 13.01 of the IREM (Volume I), excludes the retention of the same grade pay also, as no basis has been offered in support of this. Likewise, the argument of the respondents that being placed in a lower grade pay of the running pay scale of Rs.5200-20200 does not mean a reduction in rank is also not sustainable as the rank of an employee in any cadre is very clearly determined both by his running pay scale as well as grade pay. While the said Shri Prabhu Dayal has admittedly been adjusted as a Senior Clerk, (Senior Booking Clerk), it is undisputed that the applicant, who was similarly situated, has been adjusted in the MOCG Unit of the respondent Railways as a Clerk. Thus, it appears clear from the record that the applicant has been reduced in rank during the adjustment in question with

(8)

his Grade Pay being reduced from Rs.2800/- prior to the adjustment to Rs.1900/- post adjustment and his designation being lowered from that of Senior Clerk, (equivalent to HC in the RPF), to Clerk in the respondent organisation. The record thus clearly shows that reduction in rank, which has been denied by the respondents, has actually occurred in the case of the applicant during the course of his adjustment in service after medical decategorisation. While the record speaks of the applicant being posted as Clerk against the available vacancy of Senior Clerk, (although such availability is denied by the respondents in their reply), whether or not such a post of Senior Clerk was or was not available in the MOCG Unit is not of any relevance as far as the rules applicable to this case are concerned. In case such a post was indeed not available, (as contended by the respondents despite the record suggesting otherwise), then the respondents were required, in terms of Item 13.01 of IREM (Volume I), (Annexure A/13), to adjust the applicant in some other post carrying the same running pay scale and grade pay as he was drawing prior to his decategorisation. The fact that this was done in the case of the similarly situated Shri Prabhu Dayal but not in the case of the applicant also indicates that the applicant has been discriminated against unfairly in this regard.

(9)

6. Given the findings as above, the OA succeeds and the respondents' orders, (Annexures A/1, A/1a and A/1b), qua the applicant are quashed and set aside as being discriminatory and unsustainable under the rules. The respondents are directed to absorb the applicant on a post carrying a running pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/- as has admittedly been done by them in the case of the similarly situated Shri Prabhu Dayal and continue to pay him in the running pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/- with all consequent benefits till this is effected, preferably within a period of six months of receiving a certified copy of this order.

7. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/