

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00353/2014

Date of order: 26.6.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ms. Dipali Maity @ Bhunia,
Daughter of late Kalipada Maity,
Wife of Tapas Bhunia,
Aged about 34 years,
Working as Khalasi Gr. II, under SSE/SRC,
Residing at Vill. & P.O. Haripur,
Dist. Purba Midnapur, Pin- 721 631.

.....Applicant.

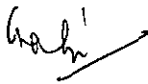
versus-

1. Union of India, through the General Manager,
South Eastern Railway, Garden Reach,
Kolkata-700 043.
2. The Divisional Railway Manager (P),
South Eastern Railway,
Kharagpur, P.O. Kharagpur,
Dist. Paschim Midnapur- 721301.
3. The Assistant Personnel Officer,
South Eastern Railway, Kharagpur,
P.O. Kharagpur,
Dist. Paschim Midnapur- 721 301.
4. The Sr. Divisional Electrical Engineer,
South Eastern Railway,
Kharagpur, P.O. Kharagpur,
Dist- Paschim Midnapur- 721 301.

.....Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. P. Prasad, Counsel



ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(i) The Office Order Memo vide No. EEANR/TL/Gr.D/71/2012 dated 18.04.2012 cannot be tenable in the eye of law and as such same may be quashed.

(ii) An order do issue directing the respondents to grant the GP of Rs. 1800/- in the scale of Rs. 5200-20,200/- without taking into account the Office Order dated 18.02.2014 issued by the Assistant Personnel Officer, Santragachi and to grant arrears."

2. Heard both Ld. Counsel examined pleadings, documents on record.

3. The submissions of the applicant, as made through her Ld. Counsel, is that, the applicant is the wife of a land loser affected by a Railway project and that, her spouse who was a regular employee with the respondent authorities, passed away while in service, and the applicant represented thereafter praying for settlement dues and other benefits.

That, the applicant was thereafter asked to appear before a screening committee to assess her suitability for appointment in Gr. 'D' post with Grade Pay of Rs. 1800/- and, after having qualified, she was offered appointment as a trainee substitute in Gr. 'D' category without any Grade Pay.

The applicant avers that the Railway Board, vide RBE No. 99/2010, had decided that the Railways may call and consider applications for employment to PB-1 with Grade Pay of Rs. 1800/- from land losers on account of land acquisition for Railway projects and also, that, in special

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cases, the General Manager of Railways could relax the eligibility conditions.

Being aggrieved at the fact that she was denied the Grade Pay of Rs. 1800/- on account of Office Memo dated 18.2.2014, the applicant has approached the Tribunal for relief.

The applicant has advanced the following grounds in support of her claim:

- (a) That, the applicant had acquired the qualification of Secondary Examination from Delhi Board of Secondary Education through distance course and hence had acquired the requisite qualifications.
 - (b) That, as her appointment letter was issued on 14.11.2011, denial of Grade pay to her on the basis of circular issued in the year 2012 would not be applicable in her context.
4. Per contra, the respondents have controverted the claim of the applicant by arguing that the applicant was engaged as a Sub-Helper in Pay Band Rs. 5200-20200/- + Grade Pay Rs. 1800/- and that, on 18.4.2012, her designation was amended as Trainee Sub-Helper in Pay Band Rs. 4440-7440/- in terms of Railway Board Estt. Srl. No. 166/2011 wherein it was clearly stated that the applicants would be given regular Pay Band and Grade Pay on acquiring the minimum educational qualification prescribed under the recruitment rules and that the regular service of the applicant would start only after she was placed in Pay Band PB-1 Rs. 5200-20200/-. Subsequently, the applicant submitted one Class-X certificate issued in the year 2013 by the Delhi Board of Senior Secondary Education with a prayer for grant of Grade Pay of Rs. 1800/- as regular employee. As the said Delhi Board of Senior
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Secondary Education is not a Member of the Boards of Council of Boards of School Education in India, however, such certification on her academic qualification was not acceptable to the respondent authorities.

Ld. Counsel for the respondents would, however, further contend during hearing, that vide respondents' letter dated 4.3.2014, the Office Order dated 18.2.2014 has been withdrawn till further orders, rendering the O.A. infructuous.

5. The respondents, in their reply, have clarified that the amended appointment order was issued to the applicant on 18.4.2012 in terms of Railway Board's Estt. Srl. No. 166/2011, which reads as follows:-

"Estt./Srl/ No. 191/2011
No. P/R&R/Poly/Pt.VI

(RBE No. 166/2011
Dated 29.12.2011)

Sub: Recruitment/engagement of persons in Pay Band of Rs. 5200-20200 (Grade Pay Rs. 1800/-) - Minimum educational qualification - regarding

Ref: Railway Board's letter Nos:-

- i) E(NG)II/2009/RR-1/10/Pt.dt. 09.12.10 (Estt. Srl. No. 13/11);
- ii) E(NG)/2008/SB/SR/15 dt. Dt. 17.9.10 (Estt. Srl. No. 159/10) &
- iii) E(NG)II/2010/RC-5/1 dt. 16.7.10 (Estt. Srl. No. 139/10)

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2. Accordingly, it has now been decided by the Ministry of Railways (Railway Board) that in exceptional circumstances, wherever grant of appointment is considered to any of those persons, in categories mentioned above, not in possession of prescribed educational qualifications for the post, such persons will be recruited/engaged as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum education qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the -1S pay band without any grade pay. The period spent in the -1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs. 5200-20200 along with grade pay of Rs. 1800/-."

The notification dated 18.2.2014, which had denied the Grade Pay to land losers without Class X passed certificate, is reproduced as below:-

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South Eastern Railway

No. E/APO/SRC/Policy

Office of the APO/Bills/SRC
Date-18-Feb-14To
All Concern SSE/TL/SRC
(SRC base all Offices / Units / Bill Units)

Reg.: Drawal of PLB and other admissible allowance in favour of the staff appointed as Tr. Subs. Gr-D in pay band Rs. 4440-7440/- without grade pay.

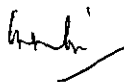
The land loser having without class 10th passed certificate engaged to the post of Tr. Substitute Gr. - D in pay band Rs. 4440-7440/- without grade pay in terms of Estt. Srl. No. 191/2011 are entitled to all other pay & allowances as per Estt. Srl. No. 118/12 except PLB & O.T. The rate of such allowance will be admissible in accordance with (IS) pay band with lowest GP Rs. 1300/- where grade pay is the criteria to assess the rate of such allowances. The rate of other allowances which are related with basic pay and pay slab will be admissible on the minimum of pay band (IS) i.e. 4440/- leave is also admissible as entitled to regular Rly. Employees.

This is for information and necessary action to all concerned. This is issued with the approval of the DPO-I/KGP.

Assistant Personnel Officer/Santragachi

The respondents, however, have admitted in their reply that vide a notification dated 4.3.2014 (Annexure R-3 to the reply), the policy dated 18.2.2014 stands withdrawn. If so, the denial of Grade Pay to land loser candidates without Class X pass certificate does not prevail any longer and, accordingly, the respondents are liable to restore the Grade pay of the applicant according to her under her earlier appointment order dated 14.11.2011.

The applicant has alleged discrimination with reference to 20 incumbents, who, according to the applicant, have been receiving the Grade Pay without having qualified as 10th passed (Annexure A-7 to the O.A.). As the notification dated 18.12.2014, that denied Grade Pay to non-10th passed land loser candidates stands withdrawn, their remains nothing to adjudicate further in this matter.



The respondents are hence directed to restore the Grade Pay to the applicant w.e.f. her date of appointment in terms of their notification dated 4.3.2014, if the applicant is otherwise so entitled.

The entire exercise may be completed within a period of 12 weeks from the date of receipt of a copy of this order.

6. With these directions, the O.A. is allowed. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member

