

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 370 of 2013

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

N.Siva Sankar, aged about 32 years, S/o Narayan Murthy, at present working as a Head Trackman under SSE (P.Way), E.Co.Rly., Kalupada Ghat, resident of Qr. No.D-1/B, Retang Colony, Po - Jatni, Dist-Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Financial Advisor and Chief Accounts Officer, East Coast Railway, 2nd Floor, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar-751017, Dist-Khurda.
3. Deputy Financial Advisor and Chief Accounts Officer (G), E.C.Railway, 2nd Floor, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar-751017, Dist-Khurda.
4. Senior Divisional Personnel Officer, E.Co.Railway, Khurda Road Divn., At/PO-Jatni, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 4.11.2019 Order on : 13.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

“(I) To direct the respondents to declare the applicant as suitable/eligible for the post of J.E.(IT) in PB-1 of 9300-34800/- with GP-4200/-.

(II) And to direct the respondents to delete the name of the applicant from the list of unsuitable/not eligible vide Annexure-A/8 & A/11 and to quash the order of rejection under Annexure A/14 & A/17.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall ever pray."

2. The dispute in this case relates to the eligibility of the applicant for participating in the notification dated 12.3.2012 (Ann.-A/5) for selection for the post of JE (IT) under the railway-respondents from among the permanent

railway servants fulfilling the eligibility criteria as specified in the said notification, which included the criterion of minimum 5 years of regular service in any departmental Group C grades as on 1.1.2012. The applicant initially appointed as Junior Trackman in Group D on 22.9.2005. He claims that he is entitled to be eligible for consideration for the post of JE(IT) and challenged the decision of the respondents to declare him ineligible for the said post on the ground that he has not completed 5 years of regular service in Group C grade as per the notification at Ann.-A/5.

3. The applicant's case is that the Railways introduced the revised pay scales vide the RBE No. 108/2008 (Ann.-A/3) and the applicant's pay scale was revised accordingly w.e.f. 1.1.2006 to the PB-1 in Group C. Vide the circular RBE No. 117/2008 dated 24.9.2008 (Ann.-A/4), it was stipulated that the Group D employees who did not possess the minimum qualification prescribed for upgradation to the revised pay scale in Group C should be imparted training and the procedure for placement in PB-1 with Grade Pay of Rs. 1800/- will be specified separately. The applicant claims that his pay was accordingly revised w.e.f. 1.1.2006 vide order at Ann.-A/2 and hence, he should have been considered to be upgraded to Group C w.e.f. 1.1.2006. The respondents, on the other hand, considered him to be upgraded to Group C w.e.f. 24.9.2008 not fulfilling the eligibility requirement of 5 years of regular service in Group C to participate in the selection vide notification dated 12.3.2012 at Ann.-A/5.

4. The applicant represented to reconsider the decision to declare him to be ineligible for the said selection, which was rejected vide order dated 30.4.2013 (Ann.-A/14). The applicant approached the Tribunal by filing the OA No. 265/2013 which was disposed of vide order dated 3.5.2013 (Ann.-A/15) without considering various submissions by the applicant, with direction to the respondents to consider the representation and pass reasoned order, if it was still pending. The respondents communicated the order date 30.4.2013 (A/14) in compliance of the order of the Tribunal. This was challenged in the OA No. 317/2013 which was disposed of by this Tribunal vide order dated 5.6.2013 (Ann.-A/16) which was disposed of at the admission stage directing the General Manager to consider the case as per the order of the Tribunal in OA No. 265/13. In compliance of the said order, the General Manager (respondent no.1) has passed the order dated 7.6.2013 (Ann.-A/7), which is impugned in this OA. Main ground advanced in the OA is that the applicant became a Group C employee with the PB-1 w.e.f. 1.1.2006 vide order at Ann.-A/2 and hence, the action of the respondents to reject his representation was without

application of mind. It was also urged that he belonged to S.C. community and was selected for pre-selection training.

5. The Counter filed by the respondents opposing the OA, stated in para 5 as under:-

“That in response to the submissions made in para-4.3 of the original application, it is humbly submitted that the RBE No. 108/2008 had been issued and circulated by Board’s letter No. PC-VI/2008/I/RSRP/I, dtd., 11.9.2008 (Annexure A/3) under the subject “Schedules of Revised Scales of Pay” and in the Notes (iii) of the said letter it has been mentioned that, “the existing classification of Railway Servants in Group ‘D’, ‘C’, ‘B’ & ‘A’ on the basis of the existing scales of pay will continue in the revised pay structure till further orders except as may be specifically prescribed otherwise by Ministry of Railways (Railway Board). No change in the classification should be made in the revised scales.” The fact is that consequent upon acceptance of the VI PC report, the Group ‘D’ post has been upgraded to Group ‘C’ post vide Board’s letter, dtd. 24.9.08. Mere placing in a pay band does not imply that the category/class of the applicant has been changed. As it is clearly mentioned in Note 1, Rule 7 of RBE No. 103/2008 that pay of such of those Group ‘D’ employees who already possess the revised minimum qualifications recommended by the commission prescribed for entry in PB-1 would be fixed with effect from 1.1.2006 in PB-1 with grade pay of Rs.1800/-. Nothing is mentioned regarding the change of Group. Hence the statement of the applicant is false and denied. The applicant has deliberately submitted the incomplete letter of Railway Board under Annexure A/3 and is misguiding the Hon’ble Court by giving false information. Hence, the copy of the complete document containing RBE No.108/2008 is filed here with as Annexure R/2.”

6. It is further stated in the Counter that the applicant is to be considered to be placed in Group C w.e.f. 24.9.2008 due to the following reason as mentioned in para 4 of the Counter:-

“As a matter of fact RBE No. 117/2008 circulated under Board’s letter No.E(MPP) 2008/3/17 dt. 24.9.09 is the first policy guideline for placement of Group ‘D’ staff after acceptance of the VI Pay Commission report so far as Railway is concerned. Hence, it is concluded that those regular Group ‘D’ staff as on rolls on 1.1.2006, who already possess the revised minimum qualifications will be placed in Group ‘C’ from that day only though they are placed in grade pay Rs.1800/- w.e.f. 1.1.2006.”

6. Rejoinder has been filed by the applicant denying the above contentions in the Counter and stated that as per the RBE No. 103/2008 (A/1), RBE No. 108/2008 (A/3), RBE No. 117/2008 (A/4) RBE No. 160/2008 (Annexure-R/1 of the Counter) decide the matter pertaining to the issue of pay revision and upgradation of posts in Group D under the Railways. The contentions in the OA have been reiterated by the applicant and stated that the applicant possesses the minimum qualification prescribed to be upgraded to the Group C for which he became a Group C employee w.e.f. 1.1.2006 and he had completed more than 5 years of service as on 1.1.2012. The date of

upgradation of the Group D to Group C employees should not be treated from 24.9.2008, but from 1.1.2006 from the circulars of the Railway Board.

7. Heard learned counsel for the applicant. Reiterating the averments in the OA/Rejoinder, he stressed on the point that as per the RBE No. 117/2008, the upgradation of Group D employees to Group C will be automatic particularly for the employees having minimum qualifications specified for upgradation to Group C. He further submitted that the provisions in the Note (iii) of the First Schedule of the RBE No. 108/2008 were with relation to the pay scales and not with regard to the posts. It was argued that since the applicant had the minimum qualification for upgradation to Group C and his pay scale was upgraded w.e.f. 1.1.2006, he should have been considered to be Group C from 1.1.2006 and not from 24.9.2008. He pointed out the copy of the service book of the applicant enclosed at Annexure-A/2 of the OA, which shows that the applicant's pay was fixed at the PB-1 with Grade Pay of Rs. 1800/- w.e.f. 1.1.2006.

8. Per contra, learned counsel for the respondents submitted that although the revision of pay scales was effective from 1.1.2006 as per the RBE No. 103/2008 (A/1), but as per the Note 1 (d), the detailed instructions for placement will be issued through executive orders separately. Then the detailed circular for placement of the employees in different scales was issued by Railway Board vide RBE No. 108/2008 (Annexure-R/2 to the Counter) in which, the Note (iii) of First Schedule states that the existing classification of the Railway servants as Group D, C, B and A on the pre-revised pay scales will continue in the revised pay scales till further orders by the Ministry of Railways. Hence, it was argued that the revision pay scale w.e.f. 1.1.2006 does not imply that the classification of the employees will change from the Group D to Group C.

9. We have carefully considered the material on record and the submissions by both the parties. The respondents' contentions are based on their interpretation of the Note (iii) of the First Schedule of the RBE No. 108/2008 (R/2), which states as under:-

“(iii) The existing classification of Railway servants in group 'D', 'C', 'B' & 'A' on the basis of the existing scales of pay will continue in the revised pay structure till further orders except as may be specifically prescribed otherwise by Ministry of Railways (Railway Board). No change in the classification should be made in the revised scales.”

The Note 1 and Note 2A to the rule 7 of the Rules at RBE No. 103/2008 (two pages of the RBE No. 108/2008 have been enclosed at A/1 of the OA) states as under:-

“Note 1 - (a) In the case of Group D employees, the pay in the revised pay structure will be fixed initially in the -1S pay band as per Clause (A) above with the appropriate grade pay and arrears paid accordingly. Thereafter, pay of such of those Group D employees who already possess the revised minimum qualifications recommended by the Commission prescribed for entry into PB-1 would be fixed with effect from 1.1.2006 in PB-1 with grade pay of Rs.1800.

(b) Such of those existing Group D employees who do not possess the revised minimum qualifications for entry into PB-1 would be retrained by the concerned Department preferably within a period of six months so that payment of arrears on account of upgradation are not delayed. After re-training, these Group D staff will also be placed in the Pay Band PB-1 with the grade pay of Rs.1800 with effect from 1.1.2006 and arrears drawn accordingly. Once placed in the PB-1 Pay Band, this category of Group D staff will regain their seniority vis-à-vis the other category of Group D staff that already possessed the minimum qualifications and were, therefore, placed in the PB-1 Pay Band as on 1.1.2006. Inter-se seniority of all the employees in erstwhile Group D will be fully maintained with Group D employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

(c) Arrears shall be payable with effect from 1.1.2006 in both the cases i.e. to those Group D employees who possess the qualifications and are placed in PB-1 straight away and those Group D employees who do not possess the qualifications and are placed after re-training. *Illustration 3* in regard to fixation of pay for Group D staff is in the Explanatory Memorandum to these Rules.

(d) Detailed instructions for placement in PB-1 will be issued through executive orders.”

Note 2A - Where a post has been upgraded as a result of the recommendations of the sixth CPC as indicated in the Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause A (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules.”

10. The applicant relies on the Annexure to the RBE 108/2008 furnished in the Annexure-A/3 of the OA. It is one of the Annexure-E of the circular which shows the fitment in the revised scale of Group D employees on upgradation to Group C. The corresponding provision in the circular is at para 3 (i) and (ii), which state as under:-

“(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.

(ii) The Tables in Annex-E will be applicable in cases where the Government has approved normal replacement pay scales. In cases of upgradation of posts and merger of pre-revised pay scales, fixation of pay will be done as prescribed in Note 2A and 2B below Rule 7[1] and in the manner indicated in illustration 4A & 4B respectively of the Explanatory Memorandum to the Railway Services [Revised Pay] Rules, 2008.”

11. It is clear that the above provisions pertain to the fixation in the revised pay of Group D and there is nothing in these provisions to show that the Group D employees will be upgraded to Group C w.e.f. 1.1.2006. The provisions specify how the fixation in the revised pay scale is to be done and do not say anything about the upgradation of Group D employees to Group C. On the other hand, in view of the stipulations in the Note (iii) of the First Schedule of the RBE No. 108/2008 as extracted in para 9 of this order above, the revision of the pay scales of the railway servants will not automatically change the classification of the group to which they belong, which was to be specified in a separate circular of the Railway Board.

12. The Railway Board in the circular RBE No. 117/2008 lays down the following procedure for upgradation and fixation of pay for the Group D to Group C:-

“The Sixth Pay Commission has recommended that the existing Group ‘D’ category employees should be upgraded to Group ‘C’ in Pay Band 1 Grade Pay Rs.1800. Those employees who do not possess minimum qualifications prescribed should be trained with emphasis on multi skilling and upgraded. The Government has since accepted the recommendation.

2. Accordingly, Railways are required to take following action:
 - i) Identify the existing Group ‘D’ staff who do not possess the qualification of Matric/ITI.
 - ii) Such staff should be imparted suitable training by the concerned executive department with emphasis on multi skilling.
 - iii) The job content of the trained staff would thus include multiple task handling which would facilitate putting a single employee to perform a number of jobs/tasks.
 - iv) Most of the staff have long years of experience and already perform tasks which require multiple skills. These staff would require guidance to make them adequately trained.
 - v) Training should be imparted on seniority basis (i.e. staff in regular Group ‘D’ scale at higher seniority positions should be trained first) so that a senior Group ‘D’ staff due for training is not overtaken by a similar junior Group ‘D’ staff.
 - vi) It is expected that Railways would meet the target of training the staff at the earliest.
3. Detailed instructions regarding procedure for placement in Pay Band-1 Grade Pay Rs.1800/- will be issued separately.”

13. The procedure for fixation of pay in the PB-1 with the Grade Pay of Rs. 1800/- has been specified in the RBE No. 160/2008 (Annexure-R/1) and vide para 3 which stipulates as under:-

“3. Consequent to the above, further action for placement of the existing regular Group ‘D’ staff (ref. rule 2 of RSRP Rules, 2008), as on the date of notification of Railway Services Revised Pay Rules, 2008, circulated vide GSR No. 643E dt. 4.9.08, in PB-1 Rs.5200-20200 with Grade Pay Rs.1800 will be regulated as follows :-

- (i) Such of ,those regular Group ‘D’ staff as on rolls on 1.1.06 who already possess the revised minimum qualification mentioned above as well as those who have been retained may be placed in Grade pay Rs.1800 in OPB-1 as per existing seniority and their pay refixed w.e.f. 1.1.2006 in PB-1 with Grade Pay of Rs.1800 in accordance with the Fixation Tables

provided for the purpose (Grade Pay 1800, PB-1) as circulated vide Annexure E of Board's letter No. PC VI/2008/I/RSRP/1 dated 11.9.2008. Arrears as may be due, may be drawn accordingly.

(ii) Inter-se-seniority of all the employees in erstwhile Group 'D' will be fully maintained with Group D employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

(iii) The existing Group 'D' staff placed in PB-1 Grade pay Rs.1800 would continue to perform the existing functions, in addition to functions that may be prescribed subsequently i.e. after placement in PB-1.

(iv) Revised designations will follow.

(v) Similarly, Group 'D' staff already recruited on regular basis after 1.1.2006 will also be allowed the benefit of corresponding revised pay structure in -IS/PB-1 pay Band (effective from the date of their recruitment) as applicable to those in service as on 1.1.2006 subject to the provisions of restraining, wherever applicable. Fixation/re-fixation of pay in such cases will however, be in accordance with Rule 8 and other relevant provisions of RS(RP) Rules, 2008 as applicable to post 1.1.2006 recruits. Arrears as may be due, may be drawn accordingly.

(vi) The instructions regarding minimum educational qualifications for fresh recruitment to Railway services in OB-1 Grade Pay Rs.1800 and revision of AVCs etc. would be issue separately by Establishment Directorate."

14. From above, it is noticed that there is no provision in the circulars placed before us to show if classification of the Group D employees has been upgraded to Group C with effect from 1.1.2006, although the revised pay scales in the PB-1 with Grade Pay of Rs. 1800/- has been allowed to them w.e.f. 1.1.2006. Basing on the materials produced before us, we do not find any justification to accept the averment of the applicant that he has been upgraded to Group C w.e.f. 1.1.2006. The applicant's averment that he was allowed pre-selection training does not prove that he has acquired eligibility for the selection in question. The applicant has not been able to furnish in this OA if under similar circumstances, any other similarly situated employee was upgraded to Group C w.e.f. 1.1.2006 with consequential benefits as claimed by the applicant in this OA.

15. In the circumstances, we do not find any infirmity in the decision taken by the respondents in this case. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA Pati)
MEMBER (A)