

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 271 of 2013

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

R.Gyaneswar Reddy, aged about 37 years, S/o R.R.Reddy, at present working as a Tech.-III/Bridge Erector under SSE (Bridge) North/E.Co.Rly./Khurda Road, resident of Qr. No.D-39/B, Traffic 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 : 15.11.2019

Order on : 21.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this OA, the applicant, a Group D employee under the respondents, claims that he was upgraded to Group C w.e.f. 1.1.2006 by virtue of acceptance of the recommendations of 6th Pay Commission Report w.e.f. 1.1.2006 vide Railway Board Circulars RBE No. 103/2008 dated 4.9.2008 (Annexure A/1) read with RBE No. 108/2008 dated 11.9.2008 (Annexure A/3) and RBE No. 117/2008 dated 24.9.2008 (Annexure A/4). It is the case of the applicant that since he was allowed the revised pay scale as Group C w.e.f. 1.1.2006, he will be eligible for consideration for the post of JE (IT), for which the eligibility of 5 years service in any Group C post was specified by the respondents in the notification for vacancy for the post of JE (IT). The applicant

is aggrieved by the fact that the respondents have not considered him to be eligible for the post of JE (IT) as he did not have 5 years of experience in Group C post on the cut off date of 1.1.2012 specified in the notification for the post of JE (IT) (Annexure A/5) and hence, he was declared ineligible for the post of JE(IT). The applicant had represented to the authorities, but such representation has been rejected by the respondents vide orders dated 6.9.2012 (Annexure A/8), dated 21.3.2013 (Annexure A/11) and dated 30.4.2013 (Annexure A/14), which have been impugned in the OA, with the prayer for following reliefs :-

- “(i) To quash the order of rejection dtd. 6.9.2012, 21.3.2013 and 30.4.2013 under Annexure A/8, A.11 & A/14 respectively;
- (ii) 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/-.

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 respondents have opposed the OA by citing the Railway Board Circulars RBE No. 160/2008 dated 29.10.2008 (Annexure R/1), RBE No. 108/2008 dated 11.9.2008 (Annexure A/3) and RBE No. 5/2010 dated 8.1.2010 (Annexure R/3).

3. Learned counsels for the applicant and respondents were heard on 15.11.2019. It is pointed out by learned counsels that another OA No. 370/2013 on identical issue has been disposed of by this Tribunal vide order dated 13.11.2019 passed in OA No. 370/2013, by which the said OA was dismissed by this Tribunal.

4. We considered the matter with reference to the pleadings and the order dated 13.11.2019 of this Tribunal passed in OA No. 370/2013. In OA No. 370/2013, the applicant had made a similar prayer to consider him as upgraded from Group D to Group C under the respondents w.e.f. 1.1.2006 on same grounds as urged in the OA No. 271/2013. The dispute in OA No. 370/2013 related to the eligibility for the post of JE(IT) for which minimum service of 5 years in any Group C post was specified in the advertisement (as in

OA No. 271/2013). Hence, the OA No. 271/2013 is factually similar to the OA No. 370/2013, for which the order dated 13.11.2019 will squarely cover the present OA (No. 271/2013).

5. It is seen from the order dated 13.11.2019 in OA No. 370/2013, that the following findings have been recorded as under :

“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 re-fixed 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 issued 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.”

6. The reasons as mentioned in the order dated 13.11.2019 passed in OA No. 370/2013 as extracted above, are also applicable for the present OA No. 271/2013, since both the OAs are factually similar and the dispute in both OAs is identical. Hence, the claim of the applicant in the present OA has no merit as per the order dated 13.11.2019 passed in OA No. 370/2013, which will be squarely applicable to this OA.

7. In the circumstances, the OA No. 271/2013 is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA Pati)
MEMBER (A)

I.Nath