

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00004/2016

Wednesday, this the 20th day of November, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Chandrasekharan N., aged 59 years, S/o. P.K. Narayanan,
 B.T. Checker, Office of the Additional Divisional Engineer,
 Southern Railway, Ernakulam Junction, Residing at : Nitha Vihar,
 Parampupzha PO, Kottayam – 680 004. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Head Quarters Office, Park Town PO,
 Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway,
 Head Quarters Office, Park Town PO, Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
 Southern Railway, Thiruvananthapuram Division,
 Thiruvananthapuram – 695 014. **Respondents**

(By Advocate : Mrs. K. Girija)

This application having been heard on 15.11.2019 the Tribunal on
 20.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “(i) Call for the records leading to the issue of Annexure A1 and quash the same to the extent it reduces the applicant's Grade Pay from Rs. 2,400/- to Rs. 2,000;
- (ii) Declare that the applicant is entitled to continue to draw the Grade pay of Rs. 2,400/- in terms of Annexure A6;

- (iii) Declare that the applicant is entitled to be considered and granted the third financial upgradation under the MACP scheme in PB1 + GP Rs. 2,400/- w.e.f. 27.1.2011 and direct the respondents accordingly.
- (iv) Direct the respondents to consider and grant the applicant the benefit of third financial upgradation in PB1 + GP Rs. 2,400/- w.e.f. 27.1.2011 with all consequential arrears of pay and allowances arising therefrom;
- (v) Award costs of and incidental to this application;
- (vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant is holding the substantive post of Track Maintainer Grade-II in PB-1 plus Grade Pay of Rs. 2,400/- and is working against the ex-cadre post of B.T. Checker. From 1.1.2006 the scale of pay attached to the post of Trackman was revised as PB-1 plus Grade Pay of Rs. 1,800/-. The MACP scheme was introduced w.e.f. 1.9.2008. The applicant states that he is entitled for 1st and 2nd financial upgradation in Grade Pay of Rs. 1,900/- and Rs. 2,000/- w.e.f. 1.9.2008 and on completion of 30 years service from 27.1.1981 he should have been given the 3rd financial upgradation in PB-1 plus Grade Pay of Rs. 2,400/- w.e.f. 27.1.2011.

3. Since the applicant was working in an ex-cadre post from 2001 he was initially not granted the benefit of 1st and 2nd financial upgradations under the MACP scheme but when applicant made representations he was allowed the benefits of the same. However, the applicant was denied the benefit of 3rd financial upgradation on completion of 30 years of service without any promotion. The applicant made representation to the respondents on 7.7.2014 seeking the 3rd financial upgradation w.e.f.

27.1.2011. There was no response to the same. However, the applicant was given promotion as Track Maintainer Grade-II in Grade Pay of Rs. 2,400/- w.e.f. 26.12.2014. The applicant's pay was reduced to Grade Pay of Rs. 2,000/- as evident from Annexure A1 salary slip of the applicant for the month of October, 2015. Feeling aggrieved the applicant has filed the present OA.

4. Notices were issued to the respondents. They filed reply statement through the learned counsel Mrs. Girija K. Gopal who submitted that the present OA is hit by limitation as per Section 21 of the Administrative Tribunals Act and therefore, not maintainable. It is further submitted that in order to get the benefit of the post of Track Maintainer Grade-II at Grade Pay of Rs. 2,400/-, applicant should have shouldered the responsibilities of higher post, but the applicant has chosen not to carry out the promotion by joining the post in the office of the Senior Section Engineer at Kottayam. It is also submitted that on completion of 30 years of service w.e.f. 10.4.2015 applicant was granted 3rd MACP. Respondents pray for dismissing the OA.

5. Heard Shri T.C. Govindaswamy, learned counsel appearing for the applicant and Mrs. Girija K. Gopal, learned counsel appearing for the respondents at length and appreciated the legal positions. Perused the record.

6. The issue raised in the present OA is whether the applicant is entitled for Grade Pay Rs. 2,400/- w.e.f. 27.1.2011 when he was given Track

Maintainer Grade-II without being actually joining the higher post or not ?

7. The stand taken by the applicant is that he has not been relieved from the post to join the higher post due to administrative reasons and therefore, he should not be put to loss due to the same. On the other hand learned counsel for the respondents submitted that one who aspire for the higher post has to shoulder the responsibilities of the higher post and prove his capabilities to the next level. The applicant has not made any efforts to get himself relieved from the present post to show his willingness to join the next post with Senior Section Engineer at Kottayam. The respondents have relied upon the judgment of the apex court in the matter of ***State of Bihar & Ors. v. Kripa Nand Singh & Anr.*** – Civil Appeal No. 6692 of 2014. The relevant part of the judgment is extracted below:

“8. At the outset, it has to be noticed that it is not a case of transfer as wrongly noted by the Division Bench. It is a case of first appointment. It is significant to note that the first respondent had not joined duty in the School as per the letter of appointment at Kisko, Lohardagga. True, the Headmaster of the School had not accepted the joining but the first respondent had necessarily to bring the matter to the higher authorities since he was to join duty as per his order of appointment within 21 days of the issuance of the appointment letter dated 5-2-1986. There is no whisper either in the writ petitions or in the counter-affidavit before this Court that the first respondent made any serious attempt before any authority seeking permission to join duty in any other school. It becomes difficult to believe that for five years, he was waiting for an order to join duty in a school where there is vacancy. As we have already observed above, it is not a case of an employee being transferred from one place to another. It is a case of fresh appointment. In case, the appointee could not join duty in the first place of posting, he should have brought the matter to the notice of the higher authorities and sought for a posting in any other place, so as to save his appointment. Nothing of that sort was done by the first respondent. He waited till 1991 till he got a Memo dated 17-7-1991.....”

8. As per the judgment of the apex court in ***Kripa Nand Singh***'s case (supra) if an employee is not allowed to join the promotional post, then the employee concerned has to bring the same to the notice of the higher authorities by making serious attempts to show the willingness to join the higher post. In the instant case the applicant has not placed any material or record to show that he had made any attempt or representation to higher authorities in order to join the promotional post of Track Maintainer Grade-II, rather he has approached this Tribunal against his pay being reduced from Grade Pay of Rs. 2,400/- to Rs. 2,000/- on account of not shouldering the responsibilities of the post of Track Maintainer Grade-II. As held by the apex court in the matter of ***Kripa Nand Singh***'s case (supra) one has to shoulder the responsibilities then only he would be entitled for emoluments of the said post or at least he should have put all efforts to join the higher post by bringing into the knowledge of higher authorities that he was not being relieved for joining the promotional post due to shortage of staff or any administrative exigencies and then only he can claim that he was compelled to work on the same post despite his willingness and he had been deprived the joining to the higher post. In the present case the applicant had not made known the administrative exigency to higher authorities and rather kept silent till his pay has been reduced.

9. After considering the rival contentions, the facts and circumstances of the present case, we are of the view that the ratio of the apex court decision in ***Kripa Nand Singh***'s case (supra) squarely covers the issue in the present case and we feel that no case for interference is made out. Accordingly, the

OA lacks merit and the same is hereby dismissed with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00004/2016

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of salary slip of the applicant for the month of October, 2015.
- Annexure A2** - True copy of applicant's salary slips for the months of April, 2015 to September, 2015 to show that the applicant was drawing a Grade Pay of Rs. 2,400/-.
- Annexure A3** - True copy of Railway Board's letter No. PC-V/2009/ACP/2 dated 10.6.2009.
- Annexure A4** - True copy of memorandum bearing No. V/P 535/MACPS/KTYM (SNP) dated 20.9.2012 issued from the office of the 3rd respondent.
- Annexure A5** - True copy of representation dated 7.7.2014 addressed to third respondent requesting for grant of the financial upgradation under MACP scheme w.e.f. 27.1.2011.
- Annexure A6** - True copy of office order bearing No. 05/2014/WP/KTYM dated 26.12.2014, issued by the 3rd respondent promoting the applicant as Track Maintainer Grade II in his parent line.
- Annexure A7** - True copy of Railway Board Order bearing RBE No. 111/2014 dated 14.10.2014.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-