

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00744/2015

Friday, this the 15th day of November, 2019

CORAM:

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

S. Jayarajan, aged 43 years, S/o. Sukumaran,
 Clerk, CRC Office, Southern Railway, Quilon,
 Residing at Tharayil Puthen Veedu,
 Cherussery Bhagom, Chavara PO,
 Kollam – 691 583.

..... **Applicant**

(By Advocate : M/s. Varkey & Martin)

V e r s u s

1. Union of India, represented by Chairman Railway Board,
 Rail Bhavan, New Delhi – 110 001.
2. Divisional Personnel Officer, Southern Railway,
 Trivandrum – 695 014. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 07.11.2019 the Tribunal on
 _____ delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“I) Declare that the applicant is entitled to be paid salary and allowances as Sr. Assistant Loco Pilot (SNP) including running allowance, allowance in lieu of kilometerage etc. until he joined the alternative post of Clerk and direct the respondents accordingly.

II) Quash Annexures A3, A8 and A9 orders.

III) Declare that the applicant is entitled to have his pay fixed in PB-2+GP 4200 in the alternative post of clerk and to regulate his seniority as per para's 1309 and 1310 of IREM and; direct the respondents accordingly.

IV) Set aside Annexure A5 order in so far as it is not in conformity with the relief (iii) above.

V) Call for the records leading to the issuance of Annexure A11 and quash the same.

VI) Award costs of and incidental to this application.

VI) Grant such other relief, which this Honourable tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicant was working as Senior Assistant Loco Pilot prior to he was declared as medically disabled because of low vision and certified fit for alternative job and was posted as a Clerk. The applicant was getting salary after declaration of medically disabled all along like running staff on stationary duty which included pay element of running allowances, allowances in lieu of kilometerage, etc. in PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 2,400/-. In the month of February, 2014 his pay pattern was changed and his pay was raised to Rs. 16,360/- and the Grade Pay remaining the same at Rs. 2,400/-. The respondents have withdrawn the element of running allowances and allowances in lieu of kilometerage. The drop in emoluments was Rs. 1,500/- in February, 2014 which was increasing every month. The applicant made a representation on 16.4.2014 but there was no response from the side of the respondents.

3. Applicant has cited Chapter XIII of IREM which was amended on 29th April, 1999 whereby it was provided that when a Senior Assistant Loco Pilot in scale of Rs. 4,000-6,000/- is medically decategorized and shifted to an alternative job he is eligible to add pay element of 30% to the minimum

and maximum of the said scale in terms of paragraph 1307 of IREM at Annexure A7 and arrive at notional scale of Rs. 5,200-7,800/- which is almost corresponding to the existing scale of Rs. 5,000-8,000/-. Presently it is in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/-.

4. Notices were issued to the respondents. They entered appearance through Shri Sunil Jacob Jose Standing Counsel for the respondents who filed a reply statement contending that the applicant was found unfit in Aye-One medical classification for the post of Senior Assistant Loco Pilot and found fit in the lower medical classification in BEE-Two and below, as per the medical certificate issued by the medical authorities on 30th September, 2013. When the applicant was placed on a supernumerary post in terms of the office order dated 18.12.2013, the applicant has been given alternative appointment as a Clerk in the pay band of Rs. 5,200-20,200/- with Grade Pay of Rs. 1,900/- to maintain lien in the clerical cadre of Mechanical Department and he is being continued in the present Grade Pay of Rs. 2,400/. The applicant has accepted the post without any grievance. The applicant is being estopped from raising this plea in the present Original Application.

5. The respondents further stated that the applicant's seniority was revised placing him just below one Shri P.A. Prasanth, Junior Clerk and Smt. Vijaylakshmi & ors. in terms of paragraphs 313 and 1310 of IREM Volume (I) and as per letter dated 30th March, 2016. Respondents have also cited the judgment of the apex court in ***Union of India & Ors. v. B.***

Banerjee – Civil Appeal No. 7298 of 2013 arising out of SLP © No. 3446 of 2012. The operative portion of the judgment is as under:

“11. There is yet another aspect of the matter which would require a mention. Under Rule 903 of the Running Allowance Rules, as noticed above, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorized Driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as is evident from the rejoinder affidavit of the Union. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified.

12. We, therefore, hold that the High Court was not justified in issuing the impugned directions for grant of ALK to the respondent. The order of the High Court dated 20.6.2011 is therefore, set aside and the appeal is allowed.”

6. It is further submitted that at the time of medical decategorization on 30th September, 2013 the pay band of the post held by the applicant was PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 2,400/-. So when the pay element of 30% is added to the minimum and maximum of the pay band notional pay can only be Rs. 6,760-26,260/- which is not the corresponding to the pay band of Rs. 9,300-34,800/-. The applicant has not produced any orders or circulars to ascertain that the corresponding pay to PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 2,400/- is PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/-. Thus, the Applicant cannot be granted the Grade Pay of Rs. 4,200/- as claimed in the present OA. Respondents pray for dismissing the OA.

7. Heard Mr. Martin G. Thottan, learned counsel appearing for the applicant and Mr. Sunil Jacob Jose, learned counsel appearing for the respondents at length. Perused the record.

8. The short point raised before this Tribunal is that whether the applicant is entitled for salary and allowances of Senior Assistant Loco Pilot including running allowances, allowances in lieu of kilometerage until he joined the alternative post of Clerk and whether the applicant is entitled to have his pay fixed in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/- on the alternative post of Clerk ?

9. Learned counsel for the applicant has drawn our attention to the order dated 3rd November, 2011 issued by the Southern Railway in which a comparison statement has been drawn and at serial No. 4 Senior Assistant Loco Pilot in PB-1 plus Grade Pay of Rs. 2,400/- is equated to the scale of stationary post in PB-2 with Grade Pay of Rs. 4,200/-. He has also placed reliance on another comparison statement issued on 18.8.2015 in which a similar stand taken for running staff in PB-1 with GP of Rs. 2,400/- should be equated with stationary post in PB-1 plus Grade Pay of Rs. 2,400/-. The learned counsel for the applicant has tried to emphasize upon this Tribunal that he is entitled for Grade Pay of Rs. 4,200/-.

10. This issue has already been dealt with by this Tribunal in the order dated 12th March, 2013 in OA No. 832 of 2012. The operative portion of the order reads thus:

“6. The Ministry of Railway amended IREM Volume I in the matter of absorption of medically de-categorized staff in alternative employment in the light of Persons with the Disabilities Act, 1995. Paragraphs 1307, 1308, 1309 and 1310 of IREM Volume I which are relevant for the purpose of adjudicating the OA are reproduced hereunder:-

“1307. Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorised running staff:- In order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of Pay of the running staff. If the scale of Pay so arrived at is not identical with the scale of Pay already existing, the same may be replaced by the equivalent existing scale of pay.

1308. Fixation of Pay:- The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically decategorisation. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowance as may be in force. If the basic pay so arrived at does not correspond to any stage in the absorbing grade the pay may be fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly if the Pay so arrived at exceeds the maximum of the absorbing grade, the Pay may be fixed at the maximum and the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance should be allowed on pay plus personal pay, if any, in the absorbing grade.

1309. Benefit of Past service to be allowed:- A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the alternative post.

1310. Fixation of seniority of disabled/medically decategorised staff absorbed in alternative employment:- The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. This is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.”

7. The contention of the applicant is that increase in the band of their pay in the post of Junior Clerk in terms of paragraph 1308, does not show increase change in grade pay or pay band as per paragraph 1307. In the light of the new pay structure with effect from 1.1.2006 certain modifications are necessary to Annexure A4 recruitment rules. According to the respondents pay of decategorised running staff absorbed in alternative post may be determined by adding 30% to the existing basic

pay with no change in the grade pay as per the recommendations of a Committee and accordingly, the respondents are following the same. For the purpose of determining eligibility of candidates for promotion/selection to Group-B posts, the grades of running staff may be equated with those of the stationary staff as per Annexure A6(b) dated 3.11.2011 as under:-

“Sl.No.	Category of Running Staff	Scale of Pay applicable (VI CPC)	Scale of stationary post to which should be equated (VI CPC)
.....
.....
5.	Assistant Loco Pilot	PB-1 + GP Rs. 1900	PB-1 + GP Rs. 2400
.....
.....	”

8. For the purpose of alternative post to the medically decategorized running staff in terms of paragraph 1307 of IREM there is no reason not to apply the equivalence of grades of running staff with that of the statutory staff as of Annexure 6(b) in the matter of promotion. The grade pay of the applicant accordingly should go up from Rs. 1900/- to Rs. 2400/-. Hence, the Original Application is allowed as under:-

Annexures A1 and A2 orders to the extent they deny the applicants Grade Pay of Rs. 2400/- are set aside. The applicants are entitled to be absorbed in PB 5200-20200/- with grade pay of Rs. 2400/- and the consequential benefits under paragraphs 1307 to 1310 of Annexure A4 rules. The respondents are directed to grant the applicants grade pay of Rs. 2400/- in PB 5200-20200/- and consequential benefits under paragraph 1307 to 1360 at Annexure A4 within a period of two months from the date of receipt of a copy of this order.”

11. Taking clue from the above decision of this Tribunal, we are of the view that in terms of various orders such as No. P(S)612/IV/Mechl/Gr.B/ISL dated 3rd November, 2011 the pay scale of Senior Assistant Loco Pilot in PB-1 plus Grade Pay of Rs. 2,400/- as per VIth CPC has been equated to the scale of stationary post in PB-2 plus Grade Pay of Rs. 4,200/-, the applicant who has been declared medically unfit for the post of Senior Assistant Loco Pilot is entitled for the fixation of pay in PB-2 at Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/-. Ordered accordingly. The impugned order at Annexure A3 is quashed and set aside.

The applicant is also entitled for allowances in lieu of kilometerage and running allowances with effect from 30th September, 2013 i.e the day the applicant has been given/offered the supernumerary post till he has been given alternative post with effect from 21st August, 2014 as per paragraphs 1307 and 1310 of IREM Volume I. The aforesaid exercise shall be completed by the Respondents within a period of three months from the date of receipt of a copy of this order.

12. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00744/2015**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of letter No. V/MD84/1/UF dated 30.9.2013 issued by the Medical Superintendent, Southern Railway, Trivandrum.

Annexure A2 - True copy of Section 47 of the PWD Act, 1995.

Annexure A3 - True copy of the memorandum No. V/P.524/VI/RG/Fixation/Vol.VII dated 21.1.2014 issued by the 2nd respondent.

Annexure A4 - True copy of the applicant's representation dated 16.4.2014.

Annexure A5 - True copy of the letter No. V/P.II/XII/Gr.C&D/Med. Decat dated 12/21-8-2014 issued by the 2nd respondent.

Annexure A6 - True copy of the applicant's representation dated 29.12.2014.

Annexure A7 - True extract of amended chapter XIII of IREM.

Annexure A8 - True copy of the memorandum No. V/P.439/VI/Vol.I dated 18.12.2013 issued by the 2nd respondent.

Annexure A9 - True copy of the Railway Board's letter No. E(NG)I-2009/RE-3/9 dated 5.10.2011.

Annexure A10 - True copy of the letter No. P(S) 612/IV/Mechl/Gr.B/ISL dated 3.11.2011 along with the guidelines.

Annexure A11 - True copy of the Railway Board's letter RBE No. 92/2015 dated 18.8.2015.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of letter No. V/P.612/IV/Office Staff dated 30.3.2016.

Annexure R2 - True copy of Railway Board's letter RBE No. 92/2015 dated 18.8.2015.