

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

OP (CAT).No.109 of 2015 (Z)

AGAINST THE ORDER IN OA 219/2014 of CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED 02/3/15

PETITIONERS/RESPONDENTS IN OA:

1. UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY
HEAD QUARTERS OFFICE, CHENNAI 600003.
2. FINANCIAL ADVISOR & CHIEF ACCOUNTS OFFICER
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, CHENNAI 600003.
3. THE SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT
678002.
4. THE SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM 695014

BY ADV. SRI.TOJAN J.VATHIKULAM,SC,RAILWAYS

RESPONDENTS/APPLICANTS IN OA:

1. M.T. KESAVAN, AGED 61 YEARS
S/O.KESAVAN NAMBISAN
RETIRED LACO PILOT/ GOODS (SNP) UTILIZED AS CREW CONTROLLER
SOUTHERN RAILWAY, SHORNUR, RESIDING AT THANAL
UPPILADATH PARAMBU, CHEMANCHERRY, KOZHIKODE 673304
2. SHRI K. VENUGOPALAN, AGED 60 YEARS
S/O.VELAYUDHAN
RETIRED LACO PILOT/ GOODS (SNP) UTILIZED AS CREW CONTROLLER
SOUTHERN RAILWAY, ERNAKULAM JUNCTION
RESIDING AT THUSHARAM, VP.19/331, ARIYALLUR PO
MALAPPURAM 676312

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 109 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:A TRUE COPY OF THE OS.NO.219/2014 ALONG WITH ITS ANNEXURES

P2:A COPY OF THE REPLY STATEMENT ALONG WITH ANNEXURES

P3:A TRUE COPY OF THE REPLY STATMENT IN RESPECT OF THE 2ND APPLICANT
IN OA.219/2014

P4:A COPY OF REJOINDER DATED 07.07.2014

P5:A TRUE COPY OF ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONERS

P6:A TRUE COPY OF THE ADDITONAL REJOINDER DATED 08.12.2014

P7:A TRUE COPY OF THE MA.NO.229/2014 IN OS.NO. 219/2014

P8:A TRUE COPY OF THE TRIBUNAL'S ORDER DATED 02.03.2015 IN
OA.NO.219/2014

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**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

O. P. (CAT) No.109 of 2015

Dated this the 30th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Does the verdict passed by the Tribunal in the O.A. No.219 of 2014, permitting the applicants to have an option under Rule 17 of Railway Services (Pension) Rules, 1993, with regard to the fixation of pension, require any interference at the hands of this Court, is a point to be looked into.

2. The factual sequence reveals that the respondents herein were working as Loco Pilots in the Railways. While so, by virtue of some infirmities, they were medically decategorized. Subsequently, in view of enabling provisions under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, for

short, “PWD Act”, and also by virtue of the Indian Railway Establishment Manual (IRE Manual), they were permitted to continue in supernumerary posts as Loco Pilots/Goods and later, they were appointed as 'Crew Controllers', vide Annexures-A2 and R1. It is the admitted case of the respondents that they subsequently retired from the service. But when the pensionary benefits were fixed as per Annexures-A7 and A8, it was found as not to the requisite extent. According to the respondents, in terms of Rule 49(b) of the Railway Services (Pension) Rules, 1993, they are entitled to have 55% of the pay for reckoning their total emoluments for pensionary benefits. It was pointed out that, by virtue of the nature of the posts, being Loco Pilots, they were entitled to have 30% “**running allowance**” which was being paid to them and as per the mandate of Rule 49, this element was also liable to be reckoned as part of the total pay for fixing the pensionary benefits. Pursuant to medical

decategorization, even though the respondents were appointed as Crew Controllers, in view of the specific provision under the PWD Act, such change in post cannot result in adverse circumstance, particularly by way of reduction in pay or such other benefits. Since they were drawing the 'running allowance' while working as Loco Pilots, it was contended that they were entitled to reckon this part as well, as part of their basic pay, for fixing the reckonable extent of pay for granting the service pension. Raising the contention in this regard, they approached the Tribunal by filing O.A. No.219 of 2014.

3. The claim was resisted from the part of the petitioners/Railways, pointing out that there was absolutely no instance of violation of the 'PWD Act' by the Railways. The scheme and object of the Act was given effect to by accommodating the respondents after their medical decategorization, without any change or reduction in the pay

and they were working as Crew Controllers. 'Running allowance' is a particular type of payment which could be paid only to the Loco Pilots, depending upon the distance covered by them and it is not an automatic event, even in the case of persons who are still working as Loco Pilots.

4. Whether Crew Controllers were eligible to obtain 'running allowance' was an issue, which came up for consideration before the Apex Court and after meticulous analysis of the facts and figures and the relevant provisions of law, it was held as per the decision reported in **Union of India and others v. B. Banerjee [(2013) 10 SCC 265]**, that Crew Controllers were not entitled to have 'running allowance'. Placing reliance on the said decision, the contention raised by the petitioners/Railways before the Tribunal, was accepted and it was clearly held that the respondents were not entitled to have the benefit of Rule 49 counting 'running allowance' as part of reckonable extent of

pay, for fixation of pension.

5. However, it is to be noted that the respondents in the meanwhile, had got the original application amended, raising an alternate prayer to the effect that, if for any reason it was to be held that they were not entitled to have 'running allowance' also as reckonable extent of pay, then they might be given the benefit of **Rule 17 of Railway Services (Pension) Rules, 1993**, which provides an opportunity of option in the matter of fixation of pension.

The said rule reads as follows:

“17. Pensionary benefits to staff declared unfit. - If a railway servant is medically unfit for his post but is retained in service in an alternative appointment under the provision of the code and subsequently becomes entitled to receive retirement gratuity or pension, he shall be given the option of accepting either of following, which ever he may, prefer-

(i) the gratuity or pension which he would normally be granted with reference to his total service in both the spells of his service taken together,

(ii) the sum of -

(a) gratuity or pension which he would have been granted if he had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the first spell of his service; and

(b) the retirement gratuity or pension which he would normally have been granted for the second spell of his service rendered in the alternative appointment:

Provided that if total qualifying service of the railway servant in both the spells of the service taken together exceeds 33 years, the qualifying service in the second spell shall be reduced by the number of years by which total qualifying service in both the spells taken together exceeds 33 years and his ordinary gratuity or pension and death-cum-retirement gratuity for the second spells of service shall be calculated with reference to the reduced qualifying service so calculated."

6. The petitioners herein contended that, by virtue of the special enactment (PWD Act, 1995), Rule 17 of Railway Services (Pension) Rules, 1993, had virtually become redundant. The said proposition was repelled by the Tribunal and the O.A. was allowed in part, directing the respondents therein to permit the applicants to invoke option under Rule

17 of the Railway Services (Pension) Rules, 1993, and to have their pension computed accordingly, within a span of two months. This in turn is under challenge in this original petition.

7. Despite hearing the matter at length, no tenable ground could be projected from the part of the petitioners to call for interference with the finding and reasoning of the Tribunal. Though the respondents being non-suited with regard to their prayer with reference to Rule 49(b) of the Railway Services (Pension) Rules, 1993, rightly on the basis of the declaration of law made by the Apex Court in **Union of India and others v. B. Banerjee [(2013) 10 SCC 265]**, Rule 17 of the Railway Services (Pension) Rules, 1993, still stands and there is no case for the petitioners that the said Rule has been amended/varied or deleted from the statute book.

In the above circumstances, this Court finds that the

order passed by the Tribunal is perfectly within the four walls of law and is not assailable under any circumstances. The O.P. fails and the same is dismissed accordingly. However, considering the persuasive request of the learned Standing Counsel for the Railways, the petitioners are hereby given a further period of 'two months' to implement the direction given by the Tribunal as per order dated 02/03/2015 in O.A. No.219 of 2014.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

