HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 36121 of 2017

ORDER:- (ORAL)
(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed assailing the order dated 22.03.2017 in O.A.No. 20/1183 of 2012 passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad.

The brief facts of the case are that the respondents – applicants, who belong to the running staff in the South Central Railway, were medically de-categorized on various dates from 25.11.2010 to 15.12.2011. They were not offered alternative employment till processing of their applications for their voluntary retirement from service. When the respondents received the papers relating to fixation of their pension they found that they were receiving nearly Rs.3,000/- to Rs.5,000/- less than the pension they ought to have received. On enquiry, they found that the administration relied upon a letter issued by the South Central Railway on 18.10.2011, according to which, the pay of medically de-categorized running staff would be fixed. Accordingly, the respondents contend that the aforesaid letter relates to fixation of pay of running staff and also to a situation where running staff are to be given alternative employment. At the time of finding such alternative post, the pay band and grade pay of the alternative post and the grade pay of the person, who is to be accommodated, are to be compared. This circular does not deal with retirement benefits of the medically de-categorized running staff. Accordingly, the respondents submitted that Para 924 of the Indian Railway Establishment Manual (IREM) specially refers to various benefits to be given to the running staff and for the purpose of retirement benefits 55% of the basic pay should be taken into account for calculating pension and DCRG for running staff retiring on or after 01.04.1979. Accordingly, they sought directions against the petitioners to pay their pension and DCRG benefits taking into account 55% of the basic pay and release all arrears with interest.

The case of the petitioners-Railway Board is that the representation of the respondents seeking 55% running allowance on their basic pay, which they were getting prior to medical de-categorization, is against the instructions of CPO/SC in S.C.No. 138 of 2011. The respondents were paid 30% running allowances as per their eligibility and they were not entitled to claim 55% of the running allowance on account of the fact that Para 924(d) of IREM stipulates that 55% of basic pay shall be taken into account for the purpose of retirement benefits only in the case of running staff who retired on or after 01.04.1979. The respondents, after their medical de-categorization, cease to be running staff and they are not entitled to claim 55% of the basic pay for the purpose of retirement benefits.

The learned counsel for the petitioners-Railway Board submits that the running staff, who were de-categorized and kept on supernumerary post, will not be allowed to get 55% of running allowance as per Para 924(d) of IREM and the retirement benefits will only be allowed as per Para 924(iii) of IREM. However, the learned Tribunal has ignored the aforesaid fact and allowed the application filed by the respondents. The learned counsel further submits that as per Serial Circular No. 138/99, the pay of the disabled/medically de-categorized running staff will be fixed on absorption in the alternative post based on the basic pay plus 30% of their basic pay representing the pay element of running allowances as may be in force. In RBE No. 138/2011, the Railway Board has decided that the pay of the medically de-categorized running staff, who are kept on supernumerary post till the date of their absorption in suitable alternative post, need to be suitably fixed by addition of pay element of running allowance as may be in force. After fixation of pay, no allowance in lieu of kilometerage shall be admissible. In accordance with the Circular, the pay of all the respondents has been fixed duly reckoning 30% of pay as running allowance from the date of medical de-categorization while keeping them on supernumerary post, as such, at the time of their retirement, 55%running allowance was not added as the respondents were working on stationary post at the time of their retirement.

The respondents filed rejoinder before the Tribunal stating that Para 924(d) of IREM applies to those running staff who are absorbed in suitable alternative post and not to those who could not be provided alternative post. As the respondents were not provided alternative post, they are entitled to 55% of running allowance. They also stated that S.C.No. 138/2011 deals with fixation of pay while on supernumerary post only and does not apply to retirement benefits of retired employees. Thus, as the Board's letter is silent on the retirement benefits, the local officers cannot draw such inference. As they have been running staff till their retirement including the period they were kept on supernumerary posts, their retirement benefits have to be reckoned in terms of IREM Para 924(iii) and not in terms of Para 924 (d) as they never held stationary post.

It is pertinent to mention here that the Apex Court in the case of Union of India v. B.Banerjee in Civil Appeal No. 7298 of 2013 had examined the entire gamut of issues relating to running allowance rules at great length and held that *"No Running Allowance i.e. either kilometerage* *allowance or allowance in lieu of kilometerage is contemplated for any staff including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running allowance of either description is required to be paid only to members of the running staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties."* Therefore, in other O.A.Nos.1362 of 2015 and 1479 of 2015, it was brought to the notice of the Tribunal that after the judgment of Supreme Court in Union of India v. B.Banerjee as cited supra, the petitioners – Railway Board itself issued RBE.No. 137 of 2016, dated 29.11.2016 in which the Board had examined the demands of the staff Federations for including 55% of the pay element in computing the retirement benefits for those running staff who have been medically de-categorized and decided to take Voluntary Retirement instead of opting for re-deployment in an alternative stationary post. After examining the demands, the Railway Board held that 55% benefit will be reckoned after deducting 30% Pay Element Fixation benefit granted already as per Board's letter dated 05.10.2011 referred to above. Thus, the issue that has been agitated in the O.A. before the Tribunal has been considered by the Railway Board in RBE.No. 137 of 2016 which is reproduced below:

“ RBE No.137/2016

No.E(P&A) H-2004/RS-05 New Delhi, dated 29.11.2016

The General Managers(P)/CAOs.,
All India Railways & Prod. Units etc.

Sub: Pensionary benefits of medically de-categorized running staff who opt for voluntary retirement.
Ref: Board’s letter No.E(NG)I-2009/RE-3/9, dated 05.10.2011.

* * *

Vide DC/JCM item No.25/2004, PNM/NFIR Item No.8//2015 and PNM/AIRF Item No. 46/2012, recognized staff Federation have demanded that 55% of Pay Element be reckoned for computing retirement benefits for those running staff who have been medically de-categorized and who decide to take Voluntary Retirement instead of opting for re-deployment in an alternative stationary post.

2. The issue has been examined in Board’s office, and it is observed that the issue is governed under the provisions contained in Board’s letter referred to above. To address the specific aspect brought out by Federations, it has been decided that whenever a medically de-categorized running staff governed by RS(PR) 1993, who has rendered the prescribed qualifying service, opts for Voluntary Retirement either on his own or within a period of one month from the date of offer of the first alternative post, his pension may be computed with addition of 55% Pay Element. This 55% benefit will be reckoned after deducting 30% Pay element Fixation benefit if granted already as per Board’s letter dated 05.10.2011 referred to above.

3. In case such staff does not give option of Voluntary Retirement within the outer limit period of one month specified herein above, it will be deemed that the staff has accepted the alternative appointment offered, and in this case, retirement benefits will be governed by extant instruction on the issue whenever he superannuates or opts for Voluntary Retirement thereafter.

4. The period of one month to opt for Voluntary Retirement for those medically de-categorized running staff, who have

already been offered the alternative posts, will start from the date of issue of this letter.

5. The above clarification shall take effect from the date of issue of this letter.

6. This issue is with the concurrence of the Finance Directorate of the Ministry of Railways.

7. Please acknowledge receipt."

On perusing the contents of RBE No. 137 of 2016, we are of the opinion that the language used in Paragraph No.2 of the letter of the Railway Board makes it clear that 55% benefit will be reckoned after deducting 30% Pay Element Fixation benefit if granted already as per Board's letter dated 05.10.2011 referred to above. As the instructions of the Railway Board are to extend the benefit of 55% of the Basic Pay after deducting 30% benefit earlier granted as per Board's earlier letter dated 05.10.2011, there is a clear retrospective application to RBE 137/2016 so as to cover the case of those medically de-categorized running staff who opted for Voluntary Retirement without taking alternative employment and those pension benefits were previously regulated in terms of RBE 138/2011, dated 05.10.2011. Accordingly, the respondents would be governed by RBE 137/2016 dated 29.11.2016 in which the Railway Board itself has permitted to take into account 55% of the Basic Pay for the purpose of pension.

In view of the above discussion and the legal position, we find no illegality or perversity in the impugned order passed by the learned Tribunal.

Hence, we do not find any merit in the writ petition and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

23.01.2018

ABHINAND KUMAR SHAVILI, J

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