

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 26.08.2019

Order pronounced on 13.09.2019

WPS No. 1297 of 2019

- Bhaskar Guha, s/o Late A. B. Guha, aged about 40 years Near Bony Agency
Devri Khurd, Bilaspur Chhattisgarh 495 004 **---- Petitioner**

Versus

1. Union of India, Through the Secretary, Ministry of Railways, Rail Bhawan
New Delhi 110 001
2. General Manager, South East Central Railway, Bilaspur, Chhattisgarh
495 004
3. Chief Personal Officer, South East Central Railway, Bilaspur,
Chhattisgarh 495 004
4. Senior Divisional Personal Officer, South East Central Railway, Bilaspur,
Chhattisgarh 495 004
5. Assistant Personal Officer (Bills), HQ South East Central Railway,
Bilaspur, Chhattisgarh 495 004 **-----Respondents**

For Petitioner : Shri AV Sridhar, Advocate

For Respondents- 2 to 5 : Shri HS Ahluwalia, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Order

Per Parth Prateem Sahu, J.

1. The petitioner by this instant petition has called in question the order dated 09.11.2017 passed in Original Application No.203/1114/2011 (for short, 'OA') whereby the OA filed by the petitioner was dismissed.
2. Brief facts relevant for disposal of this petition are that on 17.09.1996, the petitioner was appointed as Ticket Collector in the pay scale of Rs.3050-4590/-. Subsequently, he was promoted as Goods Guard in the pay scale of Rs.4500-7000/- on 15.03.2003. On his own request and willingness, he was transferred and posted as Guard Counsellor w.e.f. 21.03.2005. After passage of time, the petitioner

became eligible for the post of Section Controller but looking to his seniority, he was not promoted immediately. The petitioner made representation for correction of his seniority and after correction of seniority, he has been promoted on the post of Section Controller w.e.f. 03.01.2006. The petitioner made representation that he is eligible for the promoted post of Section Controller w.e.f. 03.03.2005, which was subsequently accepted and granted him benefit of promotion vide order dated 19.10.2006 but monetary benefit was granted from the order dated 03.01.2006, the date on which he joined the promotional post.

3. The Ministry of Railways notified the Revised Pay Rules, 2008 (for short, '2008 Rules') and made it applicable from the first day of 2006. Petitioner made a representation on 13.04.2009, ie after coming into force of 2008 Rules, mentioning therein that as on the date ie 01.01.2006, he was working as Guard Counsellor, therefore, his pay should be fixed as Guard Counsellor from 01.01.2006 as per provisions of the 2008 Rules. Claim/representation of the petitioner was rejected mentioning therein that the petitioner has been granted promotion on 03.01.1996 and also notional promotion on the post of Section Controller w.e.f. 03.03.2005 and also, considering the date of coming into force the 2008 Rules. The petitioner filed Original Application bearing No.732 of 2009, which came to be disposed off by the Central Administrative Tribunal, Jabalpur Bench at Bilaspur vide order dated 18.05.2011 wherein following order has been passed:

“But, after the perusal of the records and hearing both sides we feel that fresh consideration is required to be done in this matter. The pay of the applicant on his promotion has to be fixed on the

basis of his pay in the substantive post of Guard, which must be reflected in the promotional post and therefore going through many relevant circulars in this regard re-computation is necessarily to be made by the Railways. Therefore, we remit the matter to the Respondents to re-determine the matter once again after grant of an opportunity of being heard to the Applicant, who is also permitted to file a computation statement which the Railways should also consider before finalizing the matter. The Respondents shall complete the entire exercise within next two months and appropriate speaking order shall also be passed within that period. The OA is disposed of with the directions contained above. No order as to costs.”

4. In compliance to the said order, the Chief Personnel Officer, considering all the facts of the case, rejected claim of the petitioner for fixation of pay as Goods Guard w.e.f. 01.01.2006 vide detailed speaking order dated 14/15.07.2011.

5. Dissatisfied with the order dated 14/15.07.2011 passed by the authority concerned, petitioner again filed an OA before the Central Administrative Tribunal (for short, the Tribunal), Jabalpur Bench at Bilaspur, which came to be registered as OA No.203/1114/2011. In the said OA, the petitioner has prayed for following reliefs:

“8.a. That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicant.

8.b. That, the learned Tribunal may kindly be pleased to quash the rejection of the claim of the applicant dated 14/15.07.2011 (Annexure A/1) and further direct the respondents to fix the pay of the applicant in Running Category of Guards Controller.

8.c. Costs

8.d. Any other relief with the learned Tribunal deems fit and proper may be awarded.”

6. The Tribunal after considering the submissions made by respective counsel for the parties, dismissed OA which made the petitioner to file this Writ Petition, seeking following relief :

“10.1 That, this Hon'ble Court may kindly be pleased to quash the impugned order dated 09.11.2017 (Annexure P/1) passed by the Hon'ble Central Administrative Tribunal, Jabalpur in OA No.203/1114/2011.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondents to re-fix the pay of the petitioner considering the physical working of the petitioner as Guard Counsellor on the cut off date i.e.01.01.2006 in consonance with Railway Services (Revised Pay) Rules 2008.

10.3 Any other relief which the Hon'ble Court deems fit in the circumstances of the case may be given.”

7. Learned counsel for the petitioner submits that the 2008 Rules were made applicable w.e.f.01.01.2006 and therefore, his pay should be revised considering the post ie Guard Counsellor, which he was holding on the said date. He further submits that petitioner's posting as Section Controller was made on 03.01.2006 on his representation. By another representation vide order dated 19.10.2006, he has been granted benefit of promotion on Section Controller w.e.f. 03.05.2005 but the monetary benefits have been given only from 03.01.2006. Prior to 03.01.2006, the post of petitioner was Guard Counsellor and therefore, he is entitled for the revision of pay only as Guard Counsellor under 2008 Rules on 01.01.2006.

8. Per contra, learned counsel appearing for the respondents submits that learned Tribunal after taking into consideration all the facts, particularly promotion granted to the petitioner on the post of Section Controller, has rightly rejected claim of the petitioner for fixation of his pay under the revised pay Rules on the post of Guard Counsellor. He also submits that the orders of promotion have been issued by the respondents in favour of the petitioner on the representation made by him from time to time and therefore, he cannot claim any benefit of revised pay scale for the post which he was not holding on the date of coming into force of 2008 Rules.

9. We have heard learned counsel for the parties and perused the records.

10. The main grievance of the petitioner is with respect to the fixation of pay on the basis of the 2008 Rules . It is not in dispute that the said Rules came into force vide notification dated 04.09.2008, though it has been made applicable w.e.f. 01.01.2006 but the date on which the 2008 Rules came into effect cannot be ignored as it is material in view of the claim of the petitioner.

11. The petitioner has initially challenged the formation of panel for the post of Section Controller vide his representation dated 22.02.2005 to the Divisional Railway Manager on the ground that Junior to him has been empanelled for promotion on the post of Section Controller. He further submitted reminder representation on 11.04.2005. In pursuance to the representations made by the petitioner, he was promoted to the post of Section Controller on 03.01.2006. The petitioner again made

representation on 09.05.2006 to promote him from the date when his juniors were promoted ie from 03.03.2005. The said representation of the petitioner was allowed on 19.10.2006 and he has been given notional promotion w.e.f. 03.03.2005 but the monetary benefit was not provided to him. From the aforementioned facts, it is clear that the petitioner has been initially promoted to the post of Section Controller w.e.f. 03.01.2006 but on his representation, subsequently, he has been granted notional promotion w.e.f. 03.03.2005 vide order dated 19.10.2006. If the sequence of dates to be taken into consideration, it is very clear that for bringing into consideration ie to be empanelled for promotion on the post of Section Controller, the petitioner had made representations, he was promoted w.e.f. 03.01.2006 and thereafter, he again made a representation to grant him promotion from the date when his juniors were promoted and considering his representation, he has been granted benefit of promotion w.e.f. 03.03.2005 vide order dated 19.10.2006. All the orders are based on representations of the petitioner himself, much prior to coming into force of 2008 Rules.

12. Undisputedly, the petitioner was promoted and posted as Section Controller w.e.f. 03.03.2005, vide order dated 19.10.2006 with all other benefits except monetary benefits.

13. In view of above facts and figures, dates and events, it is very clear that at the time of coming into force of 2008 Rules, the petitioner was holding the post of Section Controller w.e.f. 03.03.2005 and therefore, the pay of petitioner could not have been fixed treating the petitioner to be posted as Guard Counsellor. The respondent- department rejected his

claim by passing a speaking order dated 14/15.07.2011, which cannot be said to be an erroneous order. The petitioner was not only granted notional promotion w.e.f. 03.03.2005, but he has been granted seniority from that date and by virtue of that his pay is also to be fixed accordingly. As the petitioner did not work on the post of Section Controller prior to 03.01.2006, the benefit of salary to that post was not granted to him, but the fact remains that on the date when the 2008 Rules came into existence ie on 04.09.2008, the petitioner was working as Section Controller and promotion on the post was accorded to him w.e.f. 03.03.2005 vide order dated 19.10.2006 ie much before coming into force of 2008 Rules.

14. The learned Tribunal in para-10 and 11 of its impugned order has taken note of the contents of the order passed by the authority on 14-15/7/2011 which was challenged before the Tribunal. Paras 10 & 11 are reproduced herein below for ready reference:

“10.Respondent No.3 in his order dated 14/15.07.2011 (Annexure A-1) have brought out that the entry date of his promotion as Section Controller w.e.f. 03.03.2005 was done as per the representation of the applicant which mentioned as under :

“The administration has rectified the error by amending the panel but due to giving immediate effect the pay of the undersigned is fixed as Rs.6375/- from January, 2006. In this connection, it is submitted that for actual compliance of the modified panel in true spirit the pay should be fixed on Proforma basis from March, 2005 when the original panel was implemented.”

11. Summarizing all the details about his fixation, Respondent No.3 mentioned as under (Annexure A-1)

“1. The promotion of Sri Bhaskar Guha as Section Controller was given effect from 03.03.2005, though on proforma basis. The

period from 03.03.2005 was reckoned as working as Section Controller. His pay was fixed on proforma basis accordingly. He was granted increments for working as Section Controller from 03.03.2005.

2.The seniority of Sri Bhaskar Guha as Section Controller was also given from 03.03.2005.

3.The proforma promotion and the seniority from 03.03.2005 were not at the behest of the administration, but on the representation of Sri Bhaskar Guha made in 2006. Thus, even though, on 01.01.2006, he was physically working as Guard Counsellor; this was obliterated by granting him proforma promotion as Section Controller w.e.f. 03.03.2005 by a subsequent order on 19.10.2006.”

15. The learned Tribunal for rejecting/dismissing OA have also taken into consideration the other facts and position of the petitioner which is as under:

“6. While refuting the claim of the applicant, the respondents have stated that the applicant was granted the benefit of treating him as notionally promoted at the higher grade post of Section Controller/Non-Running Category post) w.e.f.03.03.2005 and had accordingly also drawn the pay of the post of Section Controller in the 5th CPC pre-revised pay scale. Therefore, revision of his pay in the 6th CPC scales as on 01.01.2006 has to be fixed in the grade of Section Controller only.”

16. Considering the aforementioned facts and circumstances of the case, particularly considering that the petitioner fought his battle for revising his seniority making him to be considered and empanelled for the promotion on the post of Section Controller and thereafter, to grant him the promotion from the date when his juniors were promoted which was also accepted and granted w.e.f. 03.03.2005 vide order dated 19.10.2006, all

the acts of promotions particularly granting anti dated promotion and fixation of pay etc., on the post of Section Controller have taken place much prior to coming into existence of the 2008 Rules, the petitioner cannot claim that his pay should be fixed as Guard Counsellor in view of 2008 Rules, which is not sustainable.

17. We do not find any tenable ground calling interference in the impugned order passed by learned Claims Tribunal. The petition being devoid of any substance, which is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge