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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13418 of 2014 (O/M)
Reserved on : 21.2.2019
Date of decision : 28.2.2019

Sunil Dutt and others

..... Petitioners

Versus

Railway Board through its Chairman, Government of India, Rail Bhawan,
New Delhi, and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Raman Sharma, Advocate,
for petitioners.

Mr. R.T.P.S. Tulsi, Advocate,
for respondents.

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KULDIP SINGH, J.

Petitioners seek quashing of judgment dated 19.12.2013 (Annexure-P-1), passed by Chandigarh Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby the claim raised by petitioners, seeking quashing of order dated 20.6.2012 (Annexure-A-6), was dismissed. Petitioners further seek direction to respondents to grant Grade Pay of Rs. 2400/- to applicant-petitioner No. 1 and Grade Pay of Rs. 4600/- to applicants-petitioners No. 2 and 3, w.e.f. 25.9.2008, 19.3.2010, 18.3.2011 respectively, with all consequential benefits of pay fixation, arrears and

interest.

Brief facts of case are that all applicants-petitioners were initially appointed with respondent-Railways in the Running Staff Category. Applicant-petitioner No. 1 was working as Assistant Loco Pilot, whereas applicants-petitioners No. 2 and 3 were working as Assistant Loco Pilots (Goods). Applicant-petitioner No. 1 was drawing salary of Rs. 5200-20200 plus Grade Pay Rs. 1900/-, whereas applicants-petitioners No. 2 and 3 were drawing their pay in the pay band of Rs. 9300-34800 plus Grade Pay of Rs. 4200/-. All applicants-petitioners have been medically de-categorized from running staff category w.e.f. 25.9.2008, 19.3.2010, 18.3.2011, respectively and were adjusted in the next higher grade pay and not in the same grade pay and, therefore, adjustment of applicants-petitioners on this count is not as per the rules. Applicants-petitioners made representations and they were told that they will be considered for redeployment with next higher Grade Pay of Rs. 2400/- after seeking clarification from respondent No. 1 Railway Board. When applicants-petitioners sought information under Right to Information Act, 2005, and no response was received, they filed an appeal under the Right to Information Act, 2005, and they were informed vide letter date 20.6.2012 that RBE No. 53/2011, dated 25.4.2011, is not applicable in the case of applicants-petitioners, but is applicable on Running Staff for the purpose of promotion/selection to Group 'B' post. Respondents failed to consider the fact that post of Assistant Loco Pilot belonging to PB-1 with Grade Pay of Rs. 1900/- belongs to Group 'C' category and, therefore, said letter is applicable in their case. It is stated that similarly situated employees were granted the benefit of Circular dated 25.4.2011.

Respondents took the stand that on medical de-categorization, applicants-petitioners were offered alternative post to absorb them. Applicant-petitioner No. 1 was ultimately absorbed as SBA-III in the pay scale of Rs. 5200-20200 plus Grade Pay of Rs. 1900/- on 9.12.2011. Applicant-petitioner No. 2 ultimately accepted the post of MCM (Fitter) Works, Ambala, in Engineering Department in the Grade Pay of Rs. 4200/- and he joined on 18.3.2011. Applicant-petitioner No. 3 joined the post of Coaching Supervisor in Commercial Department in Grade Pay of Rs. 4200/- and he joined on 17.3.2011. Respondents further took the plea that applicants-petitioners are governed by following rules :-

'1308 of IREM Vol. I-Fixation of Pay

The pay of the disable/medically de-categorized 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/medical de-categorization. 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 in the absorbing grade, the pay may be fixed at the stage just below and the difference may be allowed as personal pay to be absorbed in future increments/increase 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.

1311 of IREM Vol. I-Other type of cases

- (1) The staff who get their cases recommended for a change of category on medical grounds will not get the benefit of these rules, but will be treated as staff transferred on their own request.
- (2) The staff declared as malingerer in terms of Note (ii) below para 512(2) of Indian Railways Medical Manual will also not be covered by these rules. They will continue to be governed by the provisions in the IREM *ibid*.

In PS No. 11816 of 21.5.1999 on the subject of absorption of medically incapacitated staff in alternative employment, it is provided that

13.01. A railway servant who failed in vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing duties of the post which he occupies, should not be dispensed with or reduced in rank but should be shifted to some other post with the same pay scale and service benefits.

13.07. Element of running allowance to be reckoned while finding alternative post to disabled medically de-categorized running staff – in

order to determine the same scale of pay for the purpose of absorbing a disable medically de-categorized 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.'

Therefore, it was stated that pay of applicants-petitioners has been correctly fixed.

We have heard learned counsels for parties and have also carefully gone through the case file.

The perusal of impugned order of Chandigarh Administrative Tribunal, Chandigarh Bench, Chandigarh, dated 19.12.2013 (Annexure-P-1) shows that pay of applicants petitioners has already been re-fixed after adding 30% of basic pay on account of running allowance after they joined in alternative posts, to which they have been appointed after medical de-categorization.

The learned counsel for applicants-petitioners has argued that 30% of basic pay has been allowed as allowances and not made part of basic pay, whereas it should have been made part of basic pay for grant of higher grade.

Now, the question before this Court is as to whether 30%

running allowance has to be made part of basic pay for grant of higher grade or 30% is to be allowed as additional allowance ?

For this purpose, a look at Rule 1308 of IREM Vol. I, which deals with medical de-categorization of railway servants, shows that for the running staff, 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, which means that pay element of running allowance is to be added in basic pay. The said Rule further lays down that 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 difference may be allowed as personal pay to be absorbed in future increments/pay.

The language of Rule 1308 of IREM Vol. I shows that the basic pay is to be arrived at by adding a percentage of the basic pay, representing the pay element of running allowance in the basic pay, meaning thereby that pay equivalent to running allowance is not to be allowed as separate allowance, but as part of basic pay. The said rule further talks about other allowances in the absorbing grade and does not say that pay equivalent to running allowance is to be allowed as separate allowance.

The learned counsel for respondents has argued that in letter dated 25.4.2011, regarding comparison of pay scale is only to be considered for the purpose of promotion to respective Group 'B' posts. Even if it is so, it shows that running staff was equated with higher grade pay of stationary staff.

In a similar matter in case of Union of India Versus Manoj Swarnkar (arising out of Writ Petition No. 6037/2012, decided on 2.11.2015), a Division Bench of Madhya Pradesh High Court held

that 30% is to be added in the minimum and maximum of pay scale of running staff at the time of fixing the pay of medical de-categorized running staff in the alternative employment. In the said scale, for the purpose of minimum and maximum grade, 30% of the basic pay was added and grade was accordingly calculated.

After considering the rules, discussed above, we are of the view that 30% pay is to be added in basic pay for the purpose of fixing the absorbing grade in terms of Rule 1308 of IREM, Vol. I. Consequently, petition is allowed. Impugned judgment of Chandigarh Administrative Tribunal, Chandigarh Bench, Chandigarh, dated 19.12.2013 (Annexure-P-1) is set aside to the extent that respondents are directed to fix the pay of applicants-petitioners after adding element of running allowance in the basic pay for fixing of absorbing grade in terms of Rule 1308 of IREM, Vol. I, referred to above. Needless to say that they will be entitled to such grade from such date they joined alternative service. They shall also be entitled to arrears and other consequential benefits, but not the interest on arrears.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

28.2.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No