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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.01.2019

% **W.P.(C.) No. 4945/2016**

RAJESH KUMAR

..... Petitioner

Through: Mr. Padma Kumar & Mr. Amandeep
Joshi, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. R.V. Sinha, Ms. Rashmi
Malhotra & Mr. A.S. Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K.CHAWLA, J. (ORAL)

1. Petitioner is aggrieved of the orders dated 12.02.2016 and 19.04.2016 passed by the Central Administrative Tribunal, Principal Bench in short, 'CAT', in OA No. 3920/2013 and RA No. 84/2016 filed by the petitioner, in effect, seeking issuance of the directions to be retained in the cadre of Head Clerk and in the alternative, for grant of due promotion on the post of Loco Pilot (Goods) at par with his juniors, with consequential effect(s).

2. Concisely, the relevant facts are that the petitioner was initially appointed as Apprentice Diesel Asstt. on 09.04.2001 and after completion of his training, appointed as Diesel Assistant, since designated as Assistant Loco Pilot, w.e.f. 29.01.2002. On 03.11.2005, he sustained injuries on duty and remained under medical treatment w.e.f. 03.11.2005 to 11.03.2006 and

was promoted to the post of Sr. Asstt. Loco Pilot on 29.04.2006. As per the injury sustained, the petitioner was found unfit in medical category Aye-one/Aye-two/Aye-three/B-I/B-II but found fit in medical category Cey-one/& below and was so treated and put on supernumerary post w.e.f. 12.10.2006. W.e.f. 23.03.2010, the petitioner came to be posted as Head Clerk (Mech.) in the grade of 5000-8000 (revised pay band of 9300-34800 + GP 4200). On 14.08.2013, a show cause notice came to be issued to the petitioner on the premise that he was offered alternative post of Head Clerk (now Office Supdt. in 6th CPC) in the grade 5000-8000 (now GP 4200 in 6th CPB) inadvertently inasmuch, as, he was working in GP 2400 in PB-I at the time of medical de-categorisation and his pay had been fixed by adding 30% of RA in GP 2400 and granted GP 4200 in PB-II as on 18.12.2010. To this show cause, the petitioner submitted his reply dated 31.08.2013, which was rejected vide communication dated 31.10.2013, reiterating that he had come to be absorbed in two grades higher in ministerial grade, inadvertently. It resulted into filing of OA that came to be dismissed vide impugned order dated 12.02.2016. The petitioner then sought review of the order dated 12.02.2016 *inter alia* placing reliance on circular dated 20.05.2015, which, in effect, clarified the Railway Board's earlier circular dated 30.04.2013 pertaining to fixation of pay of disabled/medically unfit running staff on being appointed against alternative (stationary posts) in revised (6th CPC) pay structure. CAT dismissed the said review application vide order dated 19.04.2016. Aggrieved of the said orders, the petitioner has preferred the instant writ petition.

3. Though, in the writ petition, the petitioner has asserted that he was

entitled to the post of Head Clerk on account of the medical decategorisation of running staff in terms of para 1307 of the Indian Railway Establishment Manual (IREM) Vol. I and the circular dated 01.10.1999, during the course of hearing, the learned counsel for the petitioner was at pains to explain as to how the pay scale and the service of the post of Head Clerk were the same, or of equivalent grade to the post of Sr. Asst. Loco Pilot. In the impugned order dated 12.02.2016 passed in OA, the CAT has adverted to the relevant rules on the subject, as follows :

"3. In this regard, para 1301 and 1307 of the Indian Railway Establishment Manual (IREM) Vol.-I, which are relevant for adjudication of the present case, are reproduced below:

"1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the 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. 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."

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This was followed by circular dated 24.04.2011. The relevant portion of which reads as under:

"2. The question of equivalence of grades has since been

reviewed in the light of the scales of pay introduced on the basis of scales of pay recommended by the Sixth Central Pay Commission, and it has been decided that for the purpose of determining eligibility of the candidates for promotion/selection to Group 'B' posts, the grades of running staff may be equated with those of the stationary staff as indicated below:

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5. It would be clear from above that Senior Assistant Loco Pilots (Senior Diesel Assistants), who were in the scale of Rs.4000-6000 as running staff, on being found medically unfit were to be adjusted against stationary post in the scale of Rs.5000-8000 (V CPC)/PB-2 + GP 4200 (VI CPC)."

The foregoing observation of CAT that the petitioner at the relevant time of adjustment against stationary post was entitled to the pay scale of 5000-8000 (V CPC) was conceded to by the learned counsel for the petitioner to be the correct status of his entitlement and to be in consonance with circular dated 01.10.1999 of the respondents. Turn of events took place after the implementation of 6th Pay Commission, whereunder, though the petitioner was to be replaced with the pay scale of PB 5200-20200 with GP 2400, he came to be provided with PB 9300-34800 + GP 4200. This was an apparent error, which the respondents sought to rectify with the issuance of the show cause notice dated 14.08.2013. During the course of hearing, learned counsel for the petitioner conceded to this apparent error. That an inadvertent mistake, cannot enure to the benefit of employee in perpetuity, does not require any elaboration and therefore, the petitioner being sent back on special supernumerary post in PB 5200-20200 GP 2400 till further deployment vide communication dated 31.10.2013, cannot be faulted with. It appears that under the orders of the Tribunal and this Court, the petitioner

has continued to officiate the post of Head Clerk. This leads us to, thus, consider the relief(s), that the petitioner could be entitled to, in the given peculiar facts and circumstances.

4. The petitioner sustained injuries on duty, while working on a post, which attracted 30% running allowance. This running allowance has to be adjusted against the stationary post and paras 1301 and 1307 of IREM Vol.I relate to such situations and CAT advertent to such instructions of Railways has made observations to the following effect :

"14. The Railways have fashioned their paras 1301, 1307 etc. on the lines of the provision of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Since running staff get a percentage of pay (perhaps 30% currently), in case a running staff becomes medically decategorised and has to be adjusted against stationary post, the new pay scale was decided by adding 30% to both the minimum and maximum of existing scale which he was drawing to arrive at the nearest equivalent scale. To illustrate, the applicant was working in the scale of Rs.4000-6000 as Senior Assistant Loco Pilot. Adding 30% to both minimum and maximum of scale, we come to the range of Rs.5200-7800 but nearest scale to that is Rs.5000- 8000. Therefore, upto the V CPC, since employees were getting pay scales, this worked well and as in the case of the applicant, he was offered the scale of Rs.5000-8000. Since Rs.5000-8000 was the scale of the Head Clerk, he was absorbed in the post of Head Clerk.

15. With the coming of VI CPC Report, the structure of pay scales completely changed and instead of pay scales, the VI CPC recommended limited number of Pay Bands and added the concept of Grade Pay to differentiate the hierarchy of posts. For example, the same Pay Band PB-1, i.e. Rs.5200-20200, have several Grade Pays like Rs.1800, Rs.1900, Rs.2400 etc. With the introduction of this new system, it became difficult to implement the old para 1307 as the pay band remains the same and only grade pay changes in the new system. Therefore, the Railways had to resolve this issue, which they did vide circular dated 30.04.2013 by amending para 1307 of IREM Vol.-I as cited above.

5. We do not see any reason to differ with the above-said observations

made by CAT in the impugned orders.

6. Taking into account the overall factual conspectus of the matter, as also the fact that the petitioner has continued to work in the post of Head Clerk and been receiving the emoluments payable against such post, for over the years and that, the post, which he was otherwise entitled to hold, attracts running allowance of 30% of the pay, we are of the considered view that the last pay drawn by the petitioner in the post of Head Clerk should be protected till the time, he achieves the level of such pay in the supernumerary or redeployed post, in pursuance of communication dated 31.10.2013.

7. For the foregoing reasons, in the peculiar facts of this case, the impugned orders are set aside and the writ petition is partly allowed to the effect that the petitioner shall comply with the communication No. 727-E/2/5234/P-7 dated 31.10.2013 within four weeks from today and on his such joining, the last pay drawn by him against the post of Head Clerk shall be protected, till the time, in the new post, he attains the same level of pay. Writ petition stands disposed of accordingly. No order as to costs.

A.K.CHAWLA, J.

VIPIN SANGHI, J.

JANUARY 18, 2019/rc