



2024:DHC:9054-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10927/2019**

NEM SINGH

.....Petitioner

Through: Mr. Gaya Prasad, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Vikrant N. Goyal, Adv.
with Mr. Aditya Shukla, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

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21.11.2024

C.HARI SHANKAR, J.

1. The petitioner joined the services of the respondents as Assistant Loco Pilot. He was promoted to the post of Loco Pilot (Goods) by order dated 31 May 2010, in the pay-band of ₹ 9300-34800.

2. The concluding paragraph of the said order reads thus:

“Accordingly in order to implement the orders of the Hon’ble CAT/NDLS Sh. Nem Singh be relieved from SSB immediately to effect his promotion as Loco Pilot Goods/DSL in Pay band of Rs.9300-34800 GP 4200 so that he may be considered for promotion at par with his junior Sh. Shiv Pal S/o Sh. Kali Chran promoted on 28.01.2009.”

3. Following this, on 5 October 2010, the Northern Railway issued

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Page 1 of 7



a further order, fixing the pay of the petitioner in the grade of ₹ 9300/- -34800 with grade pay of ₹ 4200/-, from the date when the said grade was granted to his juniors.

4. The last two paragraphs of the said communication, which are relevant, may be reproduced thus:

“Now in compliance to the Hon'ble CAT's orders in its true letter and spirit their pay is hereby fixed on proforma basis from the same date, when their juniors were promoted and actual from the date they shouldered responsibilities of the next higher post. A list of such staff totalling 222 (Two hundred & twenty two) including Sh. Jitender Singh and 62 others, applicants of this OA no: 1892/2007, who have been extended the benefit of proforma fixation with ref. to their juniors from the respective dates as mentioned against each is enclosed. The pay of identified juniors, namely-Shri Upender Kumar at S.No 23, Sh. Vinod Kumar S.No. 56, Sh. Naresh Kumar S.No. 219 & Sh. Sunil Kumar S.No. 222 had been fixed at Rs 10590+4200=14790/- in: PB.9300-34800 GP-4200 from the date of their promotion as I.P.O on the basis of their options as they had, opted for pay revision under 6th pay commission report from the date of their promotion and have forgiven the arrears from 1/1/2006 onward till the late of promotion as LPG.

In view of the fact that juniors could get an opportunity to get their pay fixed as per option at the appropriate time, the seniors could not get the same opportunity to submit their option due to non fixation of their pay so far, as such their pay has also been fixed from the dates their juniors were allowed such fixation considering their deemed options, so as to bring them at par with their juniors in order to comply with the orders of the Hon'ble CAT. However, as directed by the court they are accorded proforma fixation @ Rs 14790/- with reference to their respective Juniors. They will get actual benefit of pay as LPG from the date of shouldering the higher-responsibility. If any employee of this list wants to opt out of deemed option from the date of promotion, he can send his request through his respective Sr. Crew Controller. This is however, provisional subject to any discrepancy coming to notice or pendency of any proceedings in the Hon'ble Court. Please charge their pay as mentioned in the enclosed list and necessary arrears be paid if due, immediately.”



2024:DHC:9054-DB



5. Subsequent thereto, as the petitioner became medically unfit for holding the post which was of Loco Pilot he was medically de-categorised from the said post on 21 August 2013, and was posted as Switch Board Attendant. The petitioner sought protection of the pay of ₹ 9300-34800 with grade pay of ₹ 4200/-, while working as Switch Board Attendant.

6. On the said claim being rejected, the petitioner approached the Tribunal by way of OA 100/4109/2013, praying that the respondent be directed to refix his pay in the grade of ₹ 9300-34800 with grade pay of ₹ 4200/-.

7. The Tribunal has, *vide* the impugned order dated 6 March 2019, rejected the said claim on the ground that the petitioner did not *actually discharge* any duties in the grade of ₹ 9300-34800, even though his pay had been fixed in the said grade, as he was medically rendered unfit to perform in the post to which he had been appointed.

8. In that view of the matter, the Tribunal holds, in the said order, that the petitioner was entitled only to protection of the earlier pay of ₹ 5200-20200 with grade pay of ₹ 1900/-, which he had drawn.

9. A review application, filed by the petitioner seeking review of the said order, also stands dismissed by the Tribunal on 6 May 2019.

10. Aggrieved by the said decision, the petitioner has approached this Court, reiterating his prayer that the pay of ₹ 9300-34800 with grade pay of ₹ 4200/-, in which grade his pay had been fixed by order



2024:DHC:9054-DB



dated 31 May 2010, be protected.

11. We have heard Mr. Gaya Prasad, learned Counsel for the Petitioner, and Mr. Vikrant N Goyal, learned Counsel for the respondent.

12. We must observe at the outset that the Tribunal has not even reproduced the relevant Rules. There is a mere observation, in para 5 of the impugned judgment, that “the Service Rules of the Railways require the administration to provide alternative employment to the de-categorized Group C employees, with pay protection”. The concerned service rule has neither been reproduced nor quoted.

13. We would request the Tribunal hereafter to ensure that, where the outcome of a petition before it is dependent on the interpretation of a Rule, the rule is quoted, especially as, at times, these are Rules which may not be readily available in the public domain.

14. Nonetheless, Mr. Gaya Prasad has drawn out attention to the relevant Rule, which is Rule 1303 of the Indian Railway Establishment Manual, which reads thus:

“1303. The railway servants both in group (i) and group (ii) of Para 1302 cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post *in the grade in which the employee concerned with was working on regular basis before being declared medically unfit* pending location of suitable alternative



2024:DHC:9054-DB



employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.”

15. A bare reading of Rule 1303 discloses that, consequent on medical de-categorization and re-appointment, the railway servant is entitled to be placed in the grade in which he was working on regular basis before being declared medically unfit.

16. In our considered opinion, the learned Tribunal has erred in requiring actual prior physical discharge of duties by the employee who was medically de-categorised, in the scale of which the employee seeks pay protection consequent on re-deployment. Rule 1303 does not at any point specify that there must be actual physical discharge of duties by the employee in the scale of which he seeks protection. There is no dispute about the fact that, by order dated 31 May 2010 – which, in fact, was passed by way of implementation of an earlier judgment passed by the Tribunal itself – the petitioner had been placed in the scale of ₹ 9300-34800 with grade pay of ₹ 4200 with effect from 30 January 2007, though actual pay was to be granted only from the date when the petitioner physically discharged the duties of the post.

17. In such cases, the Court is required to provide an expansive, rather than a restrictive, interpretation to the provision, especially as it is beneficial in nature. Inasmuch as the petitioner had been placed in the scale of ₹ 9300-34800 with grade pay of ₹ 4200/- w.e.f. 30 January 2007, and his pay in the said grade had also been fixed in the



2024:DHC:9054-DB



scale from the said date, though his entitlement to actual benefits was only from the date when he physically joined the post, the scale on which the petitioner was working on the date when he was de-categorised has necessarily to be treated as ₹ 9300-34800 with grade pay of ₹ 4200/-, and not ₹ 5200-20200 with grade pay of ₹ 1900/-.

18. Expressed otherwise, once there was a formal order refixing the pay of the petitioner in the grade of ₹ 9300-34800 with grade pay of ₹ 4200/- with retrospective effect, it could not be said that the petitioner continued to work in the earlier scale of ₹ 5200-20200 with grade pay of ₹ 1900/-, earlier held by him.

19. We are, therefore, of the considered opinion that the petitioner would be entitled to protection of the pay scale of ₹ 9300-34800 with grade pay of ₹ 4200/- and to be placed in that scale consequent to his medical de-categorisation.

20. We, therefore, set aside the impugned order passed by the Tribunal.

21. Prayer (2) in the OA filed by the petitioner read thus:

“8.2 That this Hon’ble Tribunal may further be graciously pleased to direct the respondents to post the applicant in and direct the respondents to post the applicant in an alternative post which is equal to the post to which the applicant was holding in the cadre of Loco Pilot in which he was placed as per directions of this Hon’ble Tribunal was due to him for promotion as Loco Pilot and fix the salary in the equivalent grade.”

22. In our view, the petitioner is entitled to the said relief. The



2024:DHC:9054-DB



respondent would ensure that the petitioner is placed in a post commensurate to the scale of ₹ 9300-34800 with grade pay of ₹ 4200/- as was prayed by him in OA and that his salary is also fixed in the equivalent grade as it stands today. The petitioner would be entitled to fixation of his pay on the aforesaid basis but would not be entitled to claim any back wages.

23. Resultantly, the writ petition stands allowed, albeit without costs.

C.HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 21, 2024/dsn

Click here to check corrigendum, if any