



Seyar

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 021/00193/2017

Date of Order : 06.11.2017

Between :

D.Venu, S/o D.Prasad, aged 60 years,
Occ : Retd. Mail Guard, O/o The Station Manager,
Kachiguda R.S., Kachiguda, Hyderabad,
R/o D.No.1-1-53/98, Banjara Colony,
ECIL Post, Kapra, Hyderabad.

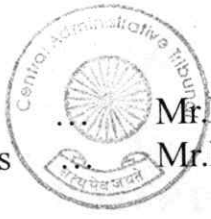
... Applicant

And

1. Union of India, represented by
The Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Bhavan,
Hyderabad division, Secunderabad.
5. The Senior Divisional Financial Manager,
South Central Railway, Hyderabad Bhavan,
Hyderabad division, Secunderabad.
6. The Branch Manager,
State Bank of India,
Saket Branch, Kapra,
Hyderabad.

... Respondents

Counsel for the Applicant
Counsel for the Respondents



Mr.K.R.K.V.Prasad, Advocate
Mr.Mrs.A.P.Lakshmi, S.C. for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... *Member (Judl.)*
Hon'ble Mrs.Minnie Mathew ... *Member (Admn.)*

ORAL ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

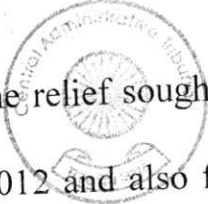
The applicant while working as Express Guard in Hyderabad division of South Central Railway was medically decategorized during the year 2012. He was initially kept on supernumerary post in Pay Band Rs.9300-34800 with Grade Pay Rs.4200/-. Though the applicant intended to continue in service, the respondent-Railways did not identify any post to absorb the applicant for providing alternative employment. On that the applicant voluntarily retired from service as a consequence of medical unfitness declared by the respondent-Railways before any alternative post was offered to him. Vide memo dated 04.07.2012 the applicant's basic pay was fixed giving weightage of 55% of basic pay to be reckoned as running allowance for the calculation of pay for fixing the pension which is admissible for the employees retired from running cadre. Accordingly the Pension Pay Order (for short PPO) dated 30.09.2012 was issued. On the said basis the applicant was drawing pension for about 2 years 2 months. Subsequently on 01.10.2014 his pension was reduced by Rs.11,961/- without any intimation to him. On enquiry with the Railways he came to know that a letter was issued by the department stating that the pay of the applicant was inadvertently fixed contrary to



the Railway Board instructions dated 15.10.2011 by taking into account the pay + 55% towards running allowance instead of pay + 30% which resulted in excess payment of pensionary benefits to the tune of Rs.3,31,952/-. Further the department by referring the audit inspection report directed the applicant to remit back an amount of Rs.3,12,232/- to Railways.

2. Subsequently, the 1st respondent issued a clarification dated 29.11.2016 to the earlier letter dated 05.10.2011 that 55% of pay element be reckoned for computing retirement benefit for those running staff who have been medically decategorized and decided to take voluntary retirement instead of opting for redeployment in an alternative stationary post. After the said letter of clarification dated 29.11.2016, the applicant made representation to the Department stating that the said clarification squarely applies to his case retrospectively and requested the respondents to restore the pension as fixed at the time of his retirement vide PPO dated 30.09.2012 and continue to pay the pensionary benefits as per the said PPO based on original fixation and also refund the amounts deducted from his monthly pension w.e.f. October 2014. The respondents rejected the request stating that the clarification dated 29.11.2016 is only prospective in operation. Therefore, the applicant filed the present OA.

3. The respondents in their reply statement inter alia contended that the clarification letter dated 29.11.2016 is only prospective in operation and therefore


the applicant will not be entitled for the relief sought for in the OA to restore the pension fixed vide PPO dated 30.09.2012 and also for the refund of the amounts deducted from the monthly pension with effect from October 2014.

4. The short question which requires consideration is as to whether the letter of clarification dated 29.11.2016 is retrospective in operation.

5. In W.P.Nos.27894 and 27895 of 2017 which were carried to the Hon'ble High Court involving the identical issue, the Hon'ble High Court by order dated 16.10.2017 clarified that the Tribunal interpreted the circular dated 29.11.2016 from a correct perspective and held that the circular was issued on the request of the recognized staff federation and other trade unions demanding 55% of pay element to be reckoned for computing retirement benefit for those running staff who have been medically decategorized and decided to take voluntary retirement, instead of opting for redeployment in an alternative stationary post. Therefore, the circular dated 29.11.2016 is retrospective in operation and hence squarely applicable to the applicant retrospectively.

6. Consequently, the respondents are directed to restore the pension fixed at the time of retirement of the applicant vide PPO dated 30.09.2012 and continue to pay pension to the applicant on the basis of the said PPO as per the original fixation in the said PPO. The respondents are further directed to refund the



amounts deducted from the monthly pension of the applicant with effect from October 2014 and restore the pension withheld with interest at the rate of 10% per annum.

7. In the result, OA is allowed. There shall be no order as to costs.

प्रमाणित प्रत
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER. OA. 193/17
निर्णय का तारीख
DATE OF JUDGEMENT. 06/11/17
प्रति रोषार किया गया ति
COPY MADE READY ON 28/11/17

Nimp 28/11/17

समुच्चय अधिकारी / न्यायाधीश
Section Officer / Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच/Hyderabad Bench

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