

B.Sudheer Kumar vs the General Manager

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Court : Kerala Orders

Decided On : Dec-05-2019

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice V.G.Arun

Appeal No. : OP (CAT)/3423/2013

Appellant : B.Sudheer Kumar

Respondent : The General Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN THURSDAY, THE 05TH DAY OF DECEMBER 2019 / 14TH AGRAHAYANA, 1941 O.P.(CAT).No.3423 OF 2013(Z) AGAINST THE ORDER IN O.A.832/2012 DATED 12-03-2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH PETITIONER/S:

1 B.SUDHEER KUMAR, AGED 47 YEARS, S/O.BHASKARAN PILLAI, JUNIOR CLERK, CTC OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT POURNIMA, KALLUVATHUKKAL.P.O., KOLLAM-691

579. 2 N.CHANDRALAL, AGED 46 YEARS, S/O.NANUKUTTAN, JUNIOR CLERK, CCRC OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT LAL BHAVAN, POUIKUZHY, OCHIRA.P.O., KOLLAM-695 526. 3 P.A.PRASANTH, AGED 38 YEARS, S/O.PRABHAKARAN, JUNIOR CLERK, DME/CD/OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT TC 31/1988, AYANIKADU NAGAR, PALKULANGARA, PETTAH.P.O., TRIVANDRUM-695 024. 4 A.BIJU, AGED 40 YEARS, S/O.ANIRUDHAN, JUNIOR CLERK, DME/CD/OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT K.A.NIVAS, WEST OF GHSS, ATTINGAL.P.O., TRIVANDRUM-695 101. BY ADVS. SRI.T.C.GOVINDASWAMY SMT.SREEKALA T N SRI.KALA T GOPI

OP(CAT).3423/2013 & - 2 - RESPONDENT/S: 1 UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS, PARK TOWN.P.O., CHENNAI-600 003. 2 THE SR. DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695 014. R1 BY ADV. SMT.SUMATHY DANDAPANI (SR.) R1-R2 BY SRI.B.RAJESH, SC, RAILWAYS THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 05-12-2019, ALONG WITH OP (CAT).158/2015(Z), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(CAT).3423/2013 & - 3 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN THURSDAY, THE 05TH DAY OF DECEMBER 2019 / 14TH AGRAHAYANA, 1941 O.P.(CAT).No.158 OF 2015 AGAINST EXHIBIT P4 ORDER IN O.A.832/2012 DATED 12-03-2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH PETITIONERS/ RESPONDENTS IN O.A.: 1 UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN.P.O., CHENNAI-600 003. 2 DIVISIONAL PERSONNEL

OFFICER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695014. BY ADVS. SMT.SUMATHY DANDAPANI (SR.) SRI.B.RAJESH, SC, RAILWAYS. RESPONDENTS/ APPLICANTS IN O.A.: 1 B.SUDHEER KUMAR, S/O.BASHKARAN PILLAI, JUNIOR CLERK, CTLC OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT:'POURNIMA', KALLUVATHUKKA.P.O, KOLLAM-691579. 2 N.CHANDRALAL, S/O.NANUKUTTAN, JUNIOR CLERK, CCRC OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT: LAL BHAVAN, POUIKUZHY, OCHIRA.P.O, KOLLAM-690526. OP(CAT).3423/2013 & - 4 -

3 P.A.PRASANTH., S/O.PRABHAKARAN, JUNIOR CLERK, DME/CD OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT:TC.31/1988, AYANIKADU NAGAR, PALKULANGARA, PETTAH.P.O, TRIVANDRUM-695024. 4 A.BIJU, S/O.ANIRUDHAN, JUNIOR CLERK, DME/CD/OFFICE, SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT:K.A.NIVAS, WEST OF GHSS, ATTINGAL.P.O., TRIVANDRUM-695101. R1-R4 BY ADV. SRI.T.C.GOVINDA SWAMY R1-R4 BY ADV. SMT.KALA T.GOPI R1-R4 BY ADV. SRI.B.NAMADEVA PRABHU R1-R4 BY ADV. SRI.M.ABDUL SALAM.

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 05-12-2019, ALONG WITH OP (CAT).3423/2013(Z), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(CAT).3423/2013 & - 5 - K.Vinod Chandran & V.G.Arun, JJ. -----

O.P(CAT) Nos.3423 of 2013 & 158 of 2015 ----- Dated this the 5th day of December, 2019

JUDGMENT

K.Vinod Chandran,J: These Original Petitions have been filed by the Union of India and the applicants before the Tribunal. We shall refer to the parties from their status before the Tribunal in the O.A. The Annexures referred to here; are as produced in the O.A.

2. The applicants are medically de-categorized Assistant Loco Pilots, who were absorbed as Junior Clerks. They claimed that they are entitled to be absorbed as Senior Clerks in Pay Band ['PB' for short] of Rs.5200-20200 plus Grade Pay ['GP' for short] of Rs.2800/- with consequential benefits under paragraphs 1307 and 1310 of Annexure A4 Rules. They also claimed that there is an

equivalence of the Running Staff, to which category Assistant Loco Pilots belong, with the stationary posts, which contention was specifically affirmed by the Tribunal. The Tribunal hence, based on Annexure A6(b), directed the applicants to be granted GP of Rs.2400/-. The OP by the OP(CAT).3423/2013 & - 6 - applicants claim still higher GP of Rs.2,800/- and that by the Railways challenge the grant of Rs.2,400/- as against the legally due GP of Rs.1900/-.

3. Sri.T.C.Govindaswamy, learned Counsel appearing

for the applicants argued for the position that they are entitled to GP of Rs.2800/- relying on Annexures A6(a) and A6(b) documents as also paragraphs 1307 to 1310 at Annexure A4. It is also contended on behalf of the applicants that when fixation is granted, they have to be fixed at the Basic Pay in the PB which they are entitled to on the basis of their service and GP has also to be added on with a further addition of 30% for the purpose of protecting their

pay in the post which they held prior to medical de-categorization, which post is termed as Running Staff. It is urged that when 30% of BP, which is the running allowance, is added to Rs.1900/-, it is above Rs.2400/- and hence, they are entitled to the next higher GP, i.e., Rs.2800/-.

4. Smt.Sumathy Dandapani, learned Senior Counsel,

instructed by Sri.B.Rajesh, Standing Counsel for Railways, sought to sustain the order specifically pointing out that the applicants were granted fixation after adding on 30% of the basic pay, which every Running Staff is entitled to. OP(CAT).3423/2013 & - 7 -

5. Admittedly on medical de-categorization as Assistant Loco Pilots, the applicants are entitled to pay

protection even in the other categories

Rs.2800/-. In this context, we have to notice the reply filed by the respondents before the Tribunal. Serially, each of the applicants' pay fixation is found in paragraph-3, which is extracted hereunder: i) $(11410+1900) \times 30\% = 3993/-$ i.e., Rs.4000/- ii) $(11610+1900) \times 30\% = 4053/-$ i.e., Rs.4060/- iii) $(9260+1900) \times 30\% = 3348.30$ i.e., Rs.3350/- iv) $(8920+1900) \times 30\% = 3246/-$ i.e., Rs.3250/-

6. As was rightly submitted by the applicants, the

GP has also to be included while computing the total Basic Pay. The total Basic Pay is that fixed in the PB plus the GP for the post. The total Basic Pay including GP plus its 30% was taken by the respondents and the said amount has been added on to the Basic Pay fixed in the PB, other than the GP. For illustrative purpose, we take the case of the 1st applicant, which is dealt with as item No.(i) in the above extract. The GP of Rs.1900/- has been added to the

OP(CAT).3423/2013 & - 8 - Basic Pay within the PB of Rs.11410/-, 30% of which is rounded off to Rs.4000/-. This Rs.4000/- has been added to Rs.11410/-, as is seen from Annexure A2, making the Basic Pay within the PB, eligible to the 1st applicant as Rs.15410/-. To this, the GP of the Grade is added, on which total component, Dearness Allowance is calculated. Hence, the contention that 30% of the GP has not been added on to the total Basic Pay cannot be sustained.

7. The claim of GP at Rs.2800/- cannot at all be

sustained, nor can the GP at Rs.2400/-; on any ground, much less of equivalence of posts. To advance the ground of equivalence, reliance has been placed on Annexure A6 series of documents. Annexures A6(a) and A6(b), according to the learned Counsel, indicates the pay scale of Rs.3050-4590

having been equated with pay scale applicable to the stationary posts, of Rs.4000-6000. Annexure A6(b) equates PB-1 + GP Rs.1900 of Assistant Loco Pilot with PB-1 + GP Rs.2400 of stationary posts. We do not think that Annexure A6 series of documents referred at all, to an equivalence of pay or posts for the purpose of enabling similar GP in

the allegedly equated posts. Annexure A6 series of documents equates the pay of Running Staff with those of stationary staff for the purpose of promotion selection.

OP(CAT).3423/2013 & - 9 - The equivalence of Running Staff with that of Stationary Staff is only for the purpose of promotions; enabling the equated posts of Running Staff and Stationary Staff to be considered together for higher posts. Hence, Annexure A6 series of documents only equates an Assistant Loco Pilot with a Stationary Post, the latter having higher GP for the purpose of enabling consideration for selection to a higher post under Group 'B'. It does not at all result in similar pay scale being granted to the equated posts.

8. When 30% of the entire Basic Pay including GP has been added on for the purpose of fixation of the applicants' pay in the stationary posts in which they are accommodated by reason only of their medical de-categorization, there can be no further additions made. The applicants, as we saw, were granted a GP of Rs.1900/- which they were eligible to, in the Running Staff category.

On medical de-categorisation and protection even on de-categorisation.

9. When accommodated in a post for reason of medical de-categorization, they are only entitled to the OP(CAT).3423/2013 & - 10 - benefits as is seen from Annexure A4. Paragraphs 1307 and 1308 of Annexure A4 are as hereunder:

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.

1308. Fixation of Pay:- The pay of the

disabled/medically decategorised 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/medically decategorisation. 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 just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly if the pay so

OP(CAT).3423/2013 & - 11 -

arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the maximum and the difference may be allowed as personal pay to be absorbed in future increments/increases 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.

10. Paragraph 1307 speaks of adding of the running allowance, which is 30% of the Basic Pay to the minimum and

maximum of the scale of pay of the Running Staff. Admittedly, as we noticed in the illustrative case of the 1st applicant, his basic pay, fixed at Rs.11410/- within the PB, after adding 30% of the Basic Pay plus GP of Rs.4,000/- and the GP of Rs.1900/- comes to Rs.15410/-. Paragraph 1308 assumes significance insofar as for Running Staff when absorbed in an alternative post for reason of medical decategorization, pay will be fixed of Basic Pay + 30% representing the running allowance. If the Basic Pay so arrived does not correspond to any stage, the pay is fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. In the case of the applicants such a situation

does not arise in the initial fixation. We do not think there is any

OP(CAT).3423/2013 & - 12 - sustainable claim for the applicants to be granted a higher GP of Rs.2800/- or even Rs.2400/- and they are entitled to only the GP of Rs. 1,900/-; running allowance of 30% of the total basic pay including that of the GP having been added to determine the pay within the PB applicable to them. What the applicants claim is a further addition to their GP and

resultant fixation in a higher GP; which they are not entitled to. They claim the benefit twice over which they would not have obtained if they remained as Running Staff. There cannot be a better benefit on de-categorisation and accommodation in an alternative post which accommodation is not on the principle of equivalence.

The impugned order of the Tribunal is set aside and O.P (CAT) No.158 of 2015 is allowed. Consequently, O.P.

(CAT) No.3423 of 2013 is rejected. The parties are left to

suffer their respective costs. Sd/- K.VINOD CHANDRAN JUDGE Sd/- V.G.ARUN JUDGE Vku/- OP(CAT).3423/2013 & - 13 - APPENDIX OF OP (CAT) 3423/2013 PETITIONER'S/S EXHIBITS: ANNEXURE A1 TRUE COPY OF OFFICE ORDER NO.12/2011/PG DATED 22/03/2011 ISSUED BY THE 2ND RESPONDENT. ANNEXURE A2 TRUE COPY OF MEMORANDUM NO.V/P5214/IV/FAX/VOL.II DATED 14/09/2011 ISSUED BY THE 2ND RESPONDENT. ANNEXURE A3 TRUE EXTRACT OF SECTION 47 OF THE PERSON WITH DISABILITIES (EQUAL OPPORTUNITIES PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995. ANNEXURE A4 TRUE COPY OF THE RAILWAY BOARD LETTER RBE NO.89/99 DATED 29/04/1999.

ANNEXURE A5(A) TRUE COPY OF THE REPRESENTATION DATED ANNE

NO.E(NG) 1-98/PM-2/8 DATED 01/10/1999. ANNEXURE A6(B) TRUE EXTRACT OF SOUTHERN RAILWAY'S LETTER NO.PS0612/V/MECHI/GR.B/ISL DATED EXHIBIT P1 TRUE COPY OF THE ORDER IN O.A.NO.832 OF 2012 DATED 12TH MARCH 2013 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,

ERNAKULAM BENCH. EXHIBIT P2 TRUE COPY OF OA 832/2012 ALONG WITH ITS ANNEXURES. EXHIBIT P3 TRUE COPY OF REPLY STATEMENT DATED NIL NOVEMBER, 2012 FILED BY THE RESPONDENTS IN OA 832/2012. EXHIBIT P4 TRUE COPY OF REJOINDER IN OA 832/2012 FILED BY THE PETITIONERS DATED 24/11/2012. OP(CAT).3423/2013 & - 14 - RESPONDENT'S/S EXHIBITS: EXHIBIT R1 TRUE COPY OF THE 1ST PETITIONER WILLINGNESS IN WRITING ON 16/03/2011 THAT HE CAN BE POSTED TO CLERICAL CADRE. EXHIBIT R2 TRUE COPY OF THE PROCEEDINGS OF THE

SCREENING CONDUCTED ON 09/03/2011 FOR CONSIDERATION OF MEDICALLY DECATEGORYED EMPLOYEES FOR ALTERNATIVE EMPLOYMENT.

OP(CAT).3423/2013 & - 15 - APPENDIX OF OP (CAT) 158/2015 PETITIONER'S/S EXHIBITS: ANNEXURE A1 TRUE COPY OF OO NO.12/2011/PG DATED ANNEXURE A2 TRUE COPY OF MEMORANDUM NO.V/P524/IV/FIX/VOL.II DATED 14/09/2011. ANNEXURE A3 TRUE EXTRACT OF SECTION 47 OF THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995. ANNEXURE A4 TRUE COPY OF RAILWAY BOARD'S RBE NO.89/99 DATED 29/4/1999.

ANNEXURE A5(A) TRUE COPY OF REPRESENTATION DATED ANNEXURE

SUBMITTED BY THE 3RD APPLICANT. ANNEXURE A5(D) TRUE COPY OF REPRESENTATION DATED ANNEXURE A6(A) TRUE EXTRACT OF RAILWAY BOARD'S LETTER NO.E(NG)1-98/PM-2/8 DATED 1/10/1999. ANNEXURE A6(B) TRUE EXTRACT OF SOUTHERN RAILWAYS' LETTER NO.P(S)612/IV/MECHI.GR.'B'/ISL DATED NOVEMBER 3, 2011. ANNEXURE R1 TRUE COPY OF THE REQUEST/WILLINGNESS DATED EXHIBIT P1 TRUE COPY OF THE O.A.832/2012 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED BY

THE PETITIONERS HEREIN IN O.A.832/2012 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

OP(CAT).3423/2013 & - 16 - EXHIBIT P3 TRUE COPY OF THE REJOINDER IN O.A.832/2012 FILED BY THE APPLICANTS BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH EXHIBIT P4 TRUE COPY OF THE ORDER DATED 12TH MARCH 2013 IN O.A.832/2012 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH EXHIBIT P5 TRUE EXTRACT OF THE LIST OF CATEGORIES EXHIBIT P6 TRUE COPY OF THE REPORT OF THE SCREENING COMMITTEE EXHIBIT P7 TRUE COPY OF PARA 924 OF THE INDIAN RAILWAY ESTBALISHMENT MANUAL. [TRUE COPY]

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