

(2018) 09 CAT CK 0152

In the Central Administrative Tribunal

Case No : Original Application No. 3921 Of 2015

Chander Kant Dubey

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0152

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Lalita Prasad, Satpal Singh

Final Decision : Dismissed

Judgement

1. The applicant, who is aggrieved with non-payment of Training Allowance @ 15% of basic pay during the period 2005- 2009 while working as Instructor, has filed the instant Original Application seeking the relief of grant of Training Allowance @ 15% BP him for the period from 2005-2009 along with arrears with interest @ 12% per annum.

2. Brief facts of the case are that the applicant was initially appointed as Temporary Loco Cleaner on 14.02.1976 in pay scale of Rs.196-232 under Bikaner Division of respondents and was subsequently promoted as Fireman "C" in pay scale of Rs.210-270, which post was later upgraded to Foreman "B" on 17.06.1981 with pay scale of Rs.260-353. The applicant avers that in pursuance of cadre review done on 26.03.1982, the applicant was sent to the post of Fireman "C" but on 01.01.1984 he was again reverted to the post of Fireman "B". In the year 1984, the applicant was transferred to Loco Shed vide order dated 10.04.1984 and after implementation of IVth CPC, the pay of the applicant was fixed in pay scale of Rs.750-940. Thereafter, his pay was fixed in pay scale of Rs.825-1200 w.e.f. 01.01.1988 and subsequently in pay scale of Rs.950-1500 w.e.f. 01.01.1990. The applicant was promoted as DSL Assistant on 10.12.1989 and after 3-4 years, he was again promoted as Shunter in pay scale of

Rs.1200-2000 vide order dated 23.07.1992. Applicant was empanelled for promotion to the post of Goods Driver in grade pay of Rs.1350-2200 (RPS) and his pay was fixed at Rs.1560/- on 01.01.1996. On 30.10.1998, he was again promoted as Loco Pilot Passenger in pay scale of Rs.5000-9000 and was transferred to Delhi Division with the same seniority wherein he was shown at serial no.30 with pay at Rs.6200/- while his juniors were stated to have been shown senior to him from serial no.31 to 54.

2.1 However, on 26.08.2003, the applicant was yet again promoted as Senior Passenger Driver in Special Grade of Rs.6000-9000 but he was not allowed the training allowance @ 15% to the BP. The applicant submits that he was deputed against the post of Loco Instructor/Loco Inspector in Pay scale of Rs.6500-10500 with Grade Pay of Rs.4600/- by fixing his pay at Rs.7900/- w.e.f. 01.11.2006 where he performed his duties till 2009. On 11.02.2010, he was promoted against a regular post of Loco Pilot Mail in pay scale of Rs.9300-34800/- with GP of Rs.4200/- whereas he was working as Senior Crew Controller under the respondents. Aggrieved with the same, the applicant made a representation dated 01.10.2010 requesting the respondents to grant him training allowance @ 15% of the basic pay as has been given to similarly situated persons, but the respondents did not pay any heed to his representation.

2.2 Finding no response from the respondents, the applicant earlier approached this Tribunal by filing OA No.2962/2015 seeking multiple reliefs including the one which has been sought in this OA. In the said OA, the Tribunal, at the admission stage itself, permitted the applicant to delete the prayer (c) pertaining to grant of training allowance @15% of basic pay and file a separate OA. Hence, the applicant has filed this OA seeking the said relief.

2.3 Pursuance to notices issued to the respondents, they have filed their counter affidavit in which it is stated that applicant was officiating as Instructor/Loco Inspector in the grade of Rs.6500-10500 temporarily purely on local arrangements for three months for which he was on training as passenger driver/ Crew Controller/Power Controller prior to put on local ad hoc arrangement till further order vide order dated 08.08.2005. However, he was not selected by the Selection Committee in accordance with Advance Correction Slip No.2/2001. Therefore, the applicant is not entitled to get the benefit of Training Allowance as per the extant rules. In the said letter, it was clearly mentioned that the employee will have no claim of seniority being a temporary local arrangement and can be repatriated to the cadre of Driver at any time without any notice. However, the applicant had been got 30% allowance in the grade of Rs.6500-10500 for temporary adhoc period vide respondents" letter dated 20.4.2015. The applicant was not selected by the selection committee in accordance with advance correction Slip No.2/2001 and, therefore, he is not entitled for the benefit of training allowance as per extent rules.

3. The applicant has chosen not to file any rejoinder.

4. During the course of hearing, learned counsel for the applicant submitted that applicant performed the duties of the post of Loco Instructor from March 2015 to August 2009, but no training allowance @ 15% B.B. was paid to him which amounts to violation of Railway Board's instructions on the subject. Counsel further submitted that this issue of grant of 15% training allowance to Instructor/Chief Instructor had already been adjudicated by this Tribunal in OA No.2975/2010 (Jagdish Prasad Vijay vs. Union of India and another) decided on 16.5.2011 and this Tribunal "It has not been established before us that there was any deficiency on the part of the applicant or any unwillingness to be subjected to the screening. For what appears to be a lapse deliberate or not on the part of the respondents, the applicant cannot be deprived of his due entitlement. Para 7 of these Circulars which clearly provided for grant of the Training Allowance at the prescribed rate would come into play.

8.1 The OA encloses a number of documentary proofs of persons having been granted such allowance at the rate of 15% of the basic pay. These have not been effectively rebutted by the respondents. Hence the plea of discrimination also cannot be brushed aside.

8.2 The respondents' plea of the applicant raising these claims after retirement is not found to be factually correct. The applicant, who retired in Oct. 2010, had been making a number of representations since 2008. In any case, considering the factual gamut, there is adequate justification for us not to discard the OA on the technical plea of delay. Even otherwise too, the impugned order dated 23.10.2009 rejecting the representation provides the reference point for reckoning the period of the limitation for the purposes of this OA. Hence the limitation plea is not found tenable.

8.3 As regards the enhancement to 30% by the VI CPC the counter reply does not make any factual rebuttal to the contention of such a recommendation (Para 4.5).

9. In view of the foregoing, the claims in the OA are found to be justified and the OA is partly allowed with the following directions:-

Applicant will be entitled to grant of Training Allowance at the rate of 15% of the basic pay with arrears for the period he functioned as Chief Instructor, ETTC, Ghaziabad.

The further enhancement to 30% as per the VIth CPC would be examined by the respondents and decided by a speaking and reasoned order."

The said Order of this Tribunal was challenged by the respondents before the Hon"ble Delhi High Court vide Writ Petition (Civil) No.994/2012 and the Hon"ble Delhi High Court dismissed the said Writ Petition and upheld the aforesaid Order of this Tribunal vide Order dated 21.2.2012. Accordingly, counsel further submitted that non grant of 15% training allowance to the applicant for the said period is arbitrary and discriminatory action of the respondents and therefore the

instant OA deserves to be allowed.

5. Counsel for the respondents submitted that applicant was put to work as Driver Instructor purely on local adhoc arrangements for a period of three months temporarily for training monitoring/counseling and smooth running of train operations for safety point of view vide letter dated 23.2.2005 and the applicant has not been able to show any documents which show that he was directed to function as such till 2009 as claimed by him. Counsel further submitted that the aforesaid judgment of this Tribunal which was upheld by the Hon"ble Delhi High Court is not applicable in the case of the applicant as in that case, the applicant was able to prove that he has discharged the function as Chief Instructor from 24.10.2003 to 26.7.2000, till the date of his retirement. But in this case, the applicant has not been able to prove this fact. Lastly, counsel submitted that the instant OA is liable to be dismissed by this Tribunal.

6. Heard learned counsel for the parties and perused the material placed on record.

7. This Court is unable to accept the contentions of the learned counsel for the applicant, as first of all, the present case is not covered by the judgment delivered by this Tribunal in OA No.2975/2010 which was upheld by the Hon"ble Delhi High Court vide order dated 21.2.2012 (supra), as the facts of this case are not similar to the facts of that case. In the present case, despite repeated query raised by this Court, the counsel for the applicant was not able to show whether the applicant had actually discharged the function of Driver Instructor during the period, as alleged by the applicant, by adducing any documentary evidence. Counsel simply placed reliance on certain documents, vide which certain employees not parties in this OA were granted training allowance due to their working against the posts of Loco Instructor (Training), but no similar or any other order has been placed by the applicant to show that such orders were issued in his case also. The respondents have categorically stated that the applicant being a Driver was put to work on local arrangement for 3 months as Driver Instructor/Loco Inspector Gr. 6500-10500 vide Order dated 20.4.2005 (Annexure A/1) and for that period, they have already paid him by adding 30% in the grade pay of Rs.6500-10500. The extract of the letter dated 20.4.2005 is as under:-

"In continuation of DRM"s Office Notice notice of even no. dated 23-02-2005, 15-03-05, the pay of following drivers put to work on local arrangements for 3 months as Driver Instructor/Loco Instructor Gr. 6500-10500 may be drawn as under:-

S. No.

Name/ Father"s name

Posting Station

Pay

Pay now fixed on adding 30% in Rs.6500-10500

1.

Sh. Chander Kant Dubey

TKD

1-11-04=7520/- (6000-9800)

02-03-2005= 10100/-

The order above clearly shows in column 5 that they have already paid him for this ad-hoc work by adding 30% in Rs.6500-10500 for the period as aforesaid. Hence, it is found that respondents have already paid for the said period and no further document has been provided to show that the applicant was appointed for any further period. Therefore, this Court do not find that the prayer made in the instant OA is borne out from the records. Annexure A1 is provided by the applicant. Hence, no case for any additional payment is made out.

8. In the result and for the foregoing reasons, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.