

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/20/852/2014 & MA/20/576/2018**

HYDERABAD, this the 25<sup>th</sup> day of February, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Radi Bala Raju,  
S/o. Late Anthony,  
Aged about 48 years,  
Residing at Dr.No.8-1282,  
Plot No.132, L.I.C. Colony,  
Laxmipuram, Papayarajupalem,  
Visakhapatnam 530 051.

... Applicant

(By Advocate: Dr. P.B. Vijaya Kumar)

Vs.

1. Union of India rep. by its General Manager,  
East Coast Railway, Chandrasekharpur,  
Bhubaneswar 751 017 (Orissa).
2. The Divisional Railway Manager (Personnel),  
East Coast Railway, Waltair,  
Visakhapatnam 530 004
3. The Divisional Railway Manager (S&T),  
East Coast Railway, Waltair,  
Visakhapatnam 530 004.
4. Koruprolu Satyanarayana,  
S/o. Appala Naidu, aged 53 years,  
Desgn: Sr. TO, East Coast Railway,  
Waltair.
5. Yendamuri Lakshmi,  
W/o.(late)YVS Rao, aged 43 years,  
Desgn: Sr. TO, East Coast Railway,  
Waltair.
6. Bantupalli Tarakeswara Rao,  
S/o. (late) B. Gowli Prasad, aged 30 years,  
Desgn: Sr. TO, East Coast Railway,  
Waltair.
7. Potnuru Rukmendhar Kumar,  
S/o (late) P. Ananda Rao, aged 28 years,  
Desgn: Sr. TO, East Coast Railway,  
Waltair. ... Respondents

(By Advocate: Mr. D. Madhava Reddy, SC for Rlys  
Mr. G. Pavana Murthy for R-4 to R-7)

**O R D E R (ORAL)****Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**

The applicant appears to be endowed with the qualities of manoeuvring and getting the highest benefit without doing any work. In the result, he has caused serious disturbance in various departments of Railways, and made it to defend itself, in a frivolous litigation.

2. The applicant joined the service of the South Eastern Railway as Hammer Man Gr.III. Thereafter, he was promoted to the post of MSM Gr.II. It is stated that in the year 2002, he participated in certain games in the Railways and in the process, he fell unconscious. He was medically tested and was decategorised, and was offered the post of Fitter. However, on a request made by him, he was posted as Black Smith vide order dated 12.02.2007. There again, he did not join that post. At a later stage, he made a request for posting him as a Junior Telephone Operator on 08.02.2008.

3. Through a letter dated 21.05.2008, the applicant was informed that in case he is posted as Junior Telephone Operator, he has to take the bottom seniority, and he agreed for the same. However, in the order which was issued on 24.09.2010, it was mentioned that his seniority will be fixed in the normal course. The employees of the concerned department are said to have objected to the place assigned to the applicant in the seniority list. Therefore, the respondents issued a show cause notice dated 14.02.2014, requiring the applicant, to explain as to why, he be not assigned the bottom seniority, as agreed to by him. At that stage, the applicant filed O.A. No.249/2014. That was disposed of on 04.03.2014, just granting time to the

applicant to file representation. Thereafter, the respondents passed an order dated 14.02.2014, dealing with the objections raised by the applicant. It was mentioned that his seniority shall be assigned at the bottom, as on the date of his being appointed as Telephone Operator. The same is challenged in this O.A.



4. The applicant contends that though he agreed for being assigned the bottom seniority, that was rejected on 08.05.2009 and thereafter posting was given on 24.09.2010, without any such conditionality.

5. The respondents filed a reply, opposing the O.A. It is stated that an inadvertent mistake that has occurred in the order of posting is being taken advantage of and the applicant cannot ignore his own admission to take the bottom seniority.

6. We heard Sri P. Ramachander Rao representing Dr. P.B. Vijaya Kumar, learned counsel for the applicant, Sri Bhim Singh representing Sri D. Madhava Reddy, learned counsel for the official respondents and Sri G. Pavana Murthy, learned counsel for the private respondents.

7. At a time when the applicant was working as MSM, he is said to have participated in the sports and on the ground that he fell unconscious, medical examination was conducted and he was found to be not fit to discharge the duties of MSM. Therefore, he was offered the post of Fitter. The applicant made a request that he be posted as Black Smith. Though that request was acceded to, he did not join that post. At a later stage, he made a representation for posting him as Junior Telephone Operator. The representation dated 13.07.2007 reads as under:

Mr. R. Balaraju, MSM-II/ Test Room/WAT, humbly represent the following facts for your sympathetic consideration and order please.

As per the order of Sr. DSTE/WAT I attended for a re-medical examination on 13.06.2007 Sr. DMO/ WAT confirmed the earlier decision. As such working near P-Way lines, Running Machines, Water Columns etc. will not be suitable for my health conditions.

Therefore, I earnestly request you to absorb me as Sr. Telephone Operator in Scale Rs.4000-6000 which is equivalent to my present scale and post me in Waltair Trunk Exchange. In this regard I hereby declare that I am willing to go as Telephone Operator at my own request and also willing to accept bottom seniority in the grade of Sr. Telephone Operator (4000-6000).ö



The same was considered and reply was given vide letter dated 21.05.2008 which reads as under:

Mr. Sri R. Bala Raju SM-II/ WAT has applied for change of category as Jr. Telephone Operator vide his application dt. 8.2.2008.

In his application Sri Bala Raju has stated at Col.No.9 that öSeniority protection under medical groundsö is required.

However, no such protection of seniority is admissible under Estt. Srl.No.122/99.

Therefore, Sri Bala Raju may be informed that:

- a) Conditional request for category change cannot be accepted
- b) Unconditional acceptance of bottom seniority as Jr. TO should be submitted so as to process the request application further.ö

It was clearly mentioned therein that the applicant must agree to take bottom seniority in the category of Junior Telephone Operator. In response to that, the applicant replied on 27.05.2008 as under:

öWith reference to your letter under reference I submit that I have no objection to accept the bottom seniority in the category of Jr. Tele Operator as per column (b) in your letter as per extent rules.ö

8. Unconditionally, the applicant agreed to take the bottom seniority in the category of Junior Telephone Operator. It appears that the efforts made for posting the applicant as Junior Telephone Operator did not materialise and that was informed on 8.4.2009. The efforts were continued and ultimately on 24.09.2010, the applicant was appointed as Junior Telephone Operator. The order reads as under:

öIn partial modification to this office order No.Estt/Med.Decat/ Alternative Post/03/07 dated 12.02.2007, the following orders are issued with the approval of ADRM/WAT.

Sri R. Bala Raju, S/o. Anthony, MSM-II (S&T)/ WAT ö who was Medically decategorised and given alternative posting orders a Black Smith- III under SSE(S)/MYD/WAT of Signal & Telecom Dept is now posted as Jr. Telephone Operator under SSE/T/Exchange/WAT.

Note: 1) The above orders are issued with the approval of Competent Authority and Sr. DSTE/ WAT ös orders on Sr. DPO WAT ös Note dt. 6.9.2010.

2) The seniority of the above staff may be fixed as per the rule envisaged in Estt. Srl. No.122/99 and scale may be fixed as per Estt. Srl.No.118/02 i.e. same pay scale at the time of their Medical de-categorisation.

3) The staff who have been medically de-categorised and offered the alternative post should accept the post offered to him. If the employee does not accept the alternative post immediately, the payment of salary to him/ her against the supernumerary post would be discontinued forthwith as per Estt. Srl. No.227/2000. The feed back in this regard is to be sent to this office within 7 days.ö

9. The Assistant Personnel Officer has either ignored the factum of the applicant agreeing for taking bottom seniority or has deliberately

incorporated a clause in favour of the applicant. In the subsequent seniority list, the applicant was shown at a place that an ordinary employee would get. This, naturally, was objected to, by Telephone Operators. Therefore, the respondents issued a show cause notice and that was followed by the impugned order dated 21.07.2014. The background of the case is mentioned in paragraphs 2 & 3 as under:



That while working as MSM Gr.II you were declared unfit for the post of MSM-II but fit in B-1 medical category vide Sr.DMO/ WAT& M.C.No.B1/SME4202 dated 3.10.2002 and posted as Fitter at ELS VSKP on alternative absorption on Medically decategorization vide OO No.Estt/Medi.Decat/01/2005 dt.18.4.2005. However, on your specific request the above OO dt.18.4.2005 was modified and you were posted as Blacksmith Gr.III vide No.Estt/Medi.Decat/ Alternative Post/03/07 dt.12.02.2007 keeping in view the provisions of Para 1304 of IREM that the alternative employment offered is only in posts which the staff can adequately fill and the Railway administration should ensure that the interest of other staff in service is not adversely affected.

However, you did not join the above posts and again represented on 8.2.2008 for change of category to the post of Jr. Telephone Operator with seniority protection on medical grounds. You were clearly informed vide this Office letter No.WPV/162/S&T/CC/RBR dt.21.5.2008 that you are not entitled for the protection of seniority, in case our request for change of category to the post of Jr. Telephone Operator is considered. In response to the said letter you have expressed your willingness to accept bottom seniority on change of category to the post as Jr. TO vide your application dated 27.5.2008.ö



10. The applicant does not dispute that he agreed for taking bottom seniority as Junior Telephone Operator, and it is not open to him to contend contrary. The applicant should have reciprocated the generosity that was extended to him by the administration and respected his own admission. However, sincerity and faithfulness do not appear to be familiar words for the applicant. He continued his litigious tendency and subjected the respondents to unnecessary litigation. We do not approve the conduct of the applicant. The respondents shall take all the corrective steps, forthwith.

11. We, accordingly dismiss the O.A. MA/20/576/2018 shall stand closed. There shall be no order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE L. NARASIMHA REDDY)**  
**CHAIRMAN**

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