

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2505/2001

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Hon'ble Shri Shanker Raju, Member(J)

Wednesday, 29th day of May, 2002

Shri Nathi Lal
s/o Shri Sukh Lal
r/o E-4/498, Nand Nagri Shahdara
Delhi - 93. Applicant

(By Advocate: Shri D.S.Mahendru)

Vs.

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi. Respondents

(By Advocate: Shri Rajinder Khatter)

O R D E R (Oral)

By Shanker Raju, M(J):

In this OA, applicant has sought fixation of his pay after his medical de-categorization as he was getting a pay scale of Rs.825-1200 earlier, and has been put to work in the pay scale of Rs.750-940 after he was medically de-categorized. He has also sought pay and allowances w.e.f. 19.5.1990 to 7.7.1995 with re-calculation of his retiral benefits.

2. Applicant, who was appointed as Gangman in 1967, was ultimately promoted as Key Man in 1989. While working as Key Man, applicant fell sick w.e.f. 19.5.1990 and was referred to Central Hospital, New Delhi where he remained under treatment from 19.5.1990 to 6.7.1990 and was issued a fitness certificate by the Medical Superintendent (NR) and recommended light duty to the applicant for three months. Applicant had

reported for duty at Rohtak, the ADMO, Rohtak issued a Memo. dated 18.7.1990 to the Permanent Way Inspector, to return the sick certificate and thereafter he had not been given his duty and attached pay and allowances. He preferred OA 1703/90 before the Tribunal whereby by an order dated 28.8.1990, directions have been issued to the applicant to avail the departmental remedies. Consequently, he preferred a representation dated 1.9.1990. Ultimately, by a discharge fit certificate dated 15.9.1990, treating the period from 20.7.1990 to 7.9.1990 as absent, the applicant reported to the Assistant Engineer, Rohtak to join duty where he was apprised that no light duty post exists, applicant was referred to Orthopedic Surgeon for review of the applicant's case for light duty. Applicant preferred another OA 2442/90 before the Tribunal wherein by an order dated 23.1.1995 directions have been issued to the respondents to take immediate decision on giving alternative employment to the applicant as recommended in the medical certificate dated 3.1.1991 and to treat the intervening period as on medical leave.

3. Applicant, in compliance of the order supra, was posted as Wash Boy in the pay scale of Rs.750-940 w.e.f. July, 1995 which was below the scale of Rs.825-1200 previously drawn by him. The intervening period was not decided as leave on medical ground.

4. Applicant, being aggrieved with the inaction of the respondents, filed another OA 2838/99 for fixation of pay in the scale of Rs.825-1200 where

the respondents have filed their reply and the OA was dismissed by an order dated 27.11.2000. Being aggrieved, CWP No.4771/2001 was filed before the High Court of Delhi. In the meanwhile, the applicant had came across a copy of respondents' letter dated 2.2.2000 pertaining to absorption of medically de-categorized/incapacitated staff in alternative employment wherein the Railway servants who have been completely disabled for further service in any post in the Railway or those who have been declared disabled/incapacitated for the post they held, or declared fit in the lower medical category, have been made eligible to be retained in service in posts corresponding to their lower medical category or to be kept on special supernumerary post in the grade to be created. Applicant, in pursuance, represented to the respondents and by an order dated 1.2.2000 the request was rejected by observing that the orders will not be applicable to the applicant as he refused to accept the post offered to him for an alternative employment. Applicant later on withdrew the CWP with liberty to file a fresh petition on the basis of the aforesaid order.

5. Learned counsel for the applicant stated that as fitness certificate was issued by the Medical Superintendent on 13.7.1990 recommending light duty, he was not allowed to join duties and was kept out of job wilfully and intentionally. It is stated that the earlier pay scale drawn by applicant has not been protected while providing alternative job to the applicant. It is also stated that respondents have not come out with clear case that no alternative

employment in corresponding scale was available as such the same was not offered to him. It is stated that the applicant is entitled for pay and allowances for the period he was medically de-categorized till he was given alternative appointment in terms of order dated 2.2.2000, where Paras 1302, 1303 and 1305 of the IREM Vol. (2) have been explained.

(16)

6. It is stated that applicant reported to DRM before 22.11.1994 and was attending the office for getting alternative employment. No show cause notice was issued to the applicant. He places reliance on the latest instructions of the Board and contended that the communication is not a change in the rules but an amendment made for the benefit of Railway servants and since he was neither declared retired nor leave extended beyond six months and was kept in waiting for alternative appointment the amended instructions should be applied to his case which entitles him for grant of pay and allowances for the entire period of waiting and as he has never refused the alternative appointment the respondents' action is not legally sustainable.

7. Respondents' counsel Shri Rajinder Khatter, denied the contentions and stated that applicant was declared medically unfit for the original post of Key Man as per letter dated 31.1.1991 where he has been recommended for suitable alternative post where bending forward is not required permanently. As having been adjudged suitable for the post of Chowkidar by the Committee of three officers, he was directed to AEN/ROK on 17.5.1991 for absorption

in his jurisdiction. Applicant had not complied with the directions till 22.11.1994 as soon as he appeared, before the DRM, Welfare Inspector was deputed to verify the facts. On 24.1.1995 on visiting his residence, it was apprised that the applicant was not in town. Although applicant informed the Inspector on 4.2.1995 that he was sick and had not taken treatment from any Railway hospital and has given explanation for not reporting to DRM's Office shows his wilful and deliberate absence on his own volition.

(A)

8. Applicant was adjudged suitable for the post of Luggage Porter/Safaiwala in the grade of Rs.750-940 for which willingness was sought on 19.4.1995 but he refused the option and requested to assign him duties of Coach Attendant. As there was no vacancy of Coach Attendant, he was adjudged suitable for the post of Hospital Attendant/Peon/Khaliasi in the grade of Rs.750-940, but for want of vacancy he was ultimately posted as Wash Boy in the Staff Canteen on 17.7.1995. As per Para 1304 of IREM ibid the period from medical de-categorization to the date of alternative employment is to be treated as leave. High Court has given liberty to the applicant to ascertain whether his case falls within the communication dated 1.2.2000. Applicant is precluded from taking any other plea in this OA as would be barred by Resjudicata. As amendment in Paras 1302, 1303 and 1305 of IREM ibid had come into operation on 28.6.1999, the same would be only prospective in operation. As the case of the applicant was finalised in the year 1995 and he joined his duties on 7.7.1995 he was accorded alternative appointment as per the

extant instructions in vogue at that time. As per para 10.1 and 10.2 of the instructions of 24.4.1991, he cannot be given pay scale more than the maximum scale of absorbing grade which was rightly accorded to the applicant.

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9. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the claim of the applicant for pay and allowances for the period 19.5.1990 to 7.7.1995 is concerned, applicant has sought the same relief in OA 2838/99 and by an order dated 27.11.2000 the Co-ordinate Bench, by placing reliance on Para 1303 of IREM of 1989, observed that as period from the date of de-categorization to the date of alternative appointment employee has to take his own leave and as applicant has already been paid an amount of Rs. 584/- for the period 19.5.1990 to 18.6.1990, no payment could be made to him as no leave was due to him, the OA was dismissed. As this grievance of the applicant has been finally settled between the parties in an earlier OA, the same is barred by the doctrine of resjudicata and cannot be gone into in the present OA.

10. Applicant, who has approached the High Court in CWP No.4771/2001 against the aforesaid decision, on his statement that he has come across Railway communication dated 1.2.2000 which could benefit him and strengthen his claim, he withdrew the petition with liberty to file a fresh petition on the basis of that communication. As such the present OA is to be adjudicated only on the issue of

applicability of letter dated 1.2.2000 issued by the DRM and to see whether the same applies to the case of the applicant or not. In the letter dated 1.2.2000 as Paras 1302, 1303 and 1305 of IREM ibid were amended and it was decided that Railway servants who have been completely disabled for further service in any post in the railway or those who have been declared disabled/incapacitated for the post they are holding but declared fit in the lower medical category, are eligible for retention in service in posts corresponding to his lower medical category, if they cannot be adjusted immediately or absorbed in any suitable alternative post, they are required to kept on special supernumerary post in the grade in which such staff were working on regular basis, pending location of suitable employment for them with the same pay scale and service benefits. This is on the analogy that medically de-categorized staff faced hardships and the pay of the staff should be charged against the post they were holding till they have acted against the alternative post.

11. If one has regard to the aforesaid instructions, applicant despite being served and apprised by the respondents, as regards an offer for an alternative employment, has not reported to the DRM. He ultimately reported after 22.11.1994 and for administrative exigency and non-availability of posts he was offered on 17.7.1995 alternative post of Wash Boy in the Staff Canteen. As per Para 1304 of the IREM the period from the date of medical de-categorization to the date of the alternative appointment, the employee has to take his own leave.

Amendment of Paras 1302, 1303 and 1305 of IREM ibid was effected from 28.6.1999 and the instructions are only prospective in nature. As the case of the applicant was finalised in the year 1995 as per paras 10.1 and 10.2 of the instructions dated 24.4.1991 where it has been decided that the Railway servant who is medically de-categorized and absorbed in the alternative appointment will be fixed at the stage corresponding to pay drawn in the post held in the parent department and if there is no such post in which he has absorbed he is to be given the stage below the pay previously drawn by him. In this view of the matter, the pay of the applicant was rightly fixed by the respondents at the maximum of the absorbing grade. The instructions dated 1.2.2000 being prospective in nature and the case of the applicant for alternative appointment having attained finality before that, would not be applied retrospectively in his case. Applicant's pay has been rightly fixed by the respondents under the extant instructions in vogue when his case was finalised. Applicant absented himself on his own volition cannot seek pay and allowances which has already been adjudicated by the Tribunal in earlier OA referred to above.

12. As the applicant has himself refused and declined the alternative appointment as Coach Attendant, he cannot derive any benefit out of it. As the applicant has also not taken treatment in any recognised and prescribed hospital, he has no valid claim.

13. As respondents' communication dated 1.2.2000 has no retrospective operation, the same would not be applicable to the case of the applicant. I am of the considered view that the respondents' action is valid and is in accordance with the Circular issued on 24.4.1991. As no infirmity is found in the action of the respondents and the applicant has failed to establish a prima-facie case for my interference, the OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

/rao/