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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2546 of 2001

New Delhi, this the 13th day of October, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Nirbhay Dutt Sharma,
Ex. Head Constable,
Under Divisional Security Commissioner,
R.P.F. Northern Railway,
Panchkuin Road,
New Delhi

..... Applicant

(By Advocate : None present even on the second call)

Versus

Union of India,

Through :

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Divisional Personnel Officer,
Northern Railway,
D.R.M.'s Office,
State Entry Road,
New Delhi.
4. Divisional Security Commissioner,
R.P.F., Northern Railway,
New Delhi.

....Respondents

(By Advocate : Shri Rajeev Bansal)

ORDER (ORAL)

The applicant, who was working as Naik in Railway Protection Force, was medically incapacitated by Medical Board vide order dated 13.11.1996 and was observed to be put to a sedentary job on permanent basis. Accordingly in July, 1997, he was found fit for the job of Catering Khallasi. The aforesaid was not acceded to giving rise to the present OA.

2. None appeared for the applicant even on the second call, I proceed to dispose of this OA in terms of Rule 15 of the CAT (Procedure) Rules, 1987.

3. In the OA, what has been contended is that as per the Vth CPC's Recommendations, the post of Naik was upgraded as Head Constable in the pay scale of Rs.3200-4900, which is a Group 'C' post. As per the instructions, the Group 'C' employee cannot be adjusted on an alternative post in Group 'D'. In this backdrop, it is stated that as from 1.1.1996, the post of Naik has been upgraded in Group 'C', offering Group 'D' post to the applicant was not in accordance with law.

4. However, respondents represented through Shri Rajeev Bansal, took a preliminary objection with regard to jurisdiction.

5. This Bench vide order dated 3.10.2002, as the applicant has sought alternative job of civil side, overruled the objection regarding jurisdiction.

6. On Merit, Shri Bansal, learned counsel for the respondents, stated that the applicant in view of his medically incapacitated by letter dated 19.12.1996 was offered the job of Catering Khallasi vide order dated 11.7.1997 which the applicant had refused to accept on 12.8.1997.

7. It is further stated that the rank of Naik in Railway Protection Force is designated as Head Constable in the pay scale of Rs.3200-4900 w.e.f.10.10.1997 as the applicant had never worked in this pay scale for a single day as he stood medically decategorised earlier to the upgradation of the post, he cannot be treated to have on medical incapacitated in group 'C' post. Accordingly, keeping in view the Railway Board's letter dated 2.9.1977 whereby it is provided that alternative job cannot be offered and the medically incapacitated staff should not be absorbed in higher scale, the request of the applicant for absorbing against group 'C' post could not be acceded to.

8. Shri Bansal, learned counsel further stated that as the applicant was working as Naik in the pay scale of Rs.950-1400, he is not entitled to the benefit.

9. I have carefully considered the pleadings in OA as well as the contentions put forth by the learned counsel for the respondents.

10. It cannot be disputed that medically incapacitated staff cannot be absorbed in higher scale as per Railway Board's instructions, which are not superceded and are still *invo^lgue*.

11. However, the Railway Board, as per the recommendations of the Vth CPC, has upgraded the scale of pay of Naik in the Railway Protection Force to Head Constable, which is Group 'C' post and the recommendations are effective from 1.1.1996. If the same had been given effect to from 1.1.1996 and on that date the applicant was holding the pay scale of the upgraded post, his case is to be considered for sedentary or alternative post in the same scale.

12. In this view of the matter, OA is disposed of with a direction to the respondents to offer to the applicant an alternative job in the pay scale which he was holding at the time when he was medically decategorised within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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