

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1742/2000

(B)

New Delhi this the 31st day of January, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri V.K. Majotra, Member (A)

Shri Mahender Kumar,
S/o Shri Ram Prasad,
House No. 1678-C,
Kalkaji Extension,
Govindpuri,
New Delhi.

-Applicant

(By Advocate: Shri T.D. Yadav)

Versus

1. Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.
3. The Divisional Personnel Officer,
Northern Railway, Ambala Cantt.
4. The Medical Superintendent,
Northern Railway, UMB
Division, Ambala Cantt.

(By Advocate: Shri Rajeev Bansal)

-Respondents

O R D E R

Hon'ble Shri V.K. Majotra

The applicant has challenged Annexure-A dated 6.4.2000 whereby claim of the applicant for grant of six month's special ex-gratia leave and reduction in pay on appointment in an alternative job as decategorised on medical ground in the lower grade has been rejected. The applicant has also claimed pension on the basis of higher pay in the pay scale of Rs.1200-30-1800.

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2. Shri T.D. Yadav, learned counsel of the applicant stated that the applicant had been functioning as Semi Highly Skilled Fitter since 1984 drawing pay @ Rs.1380/- on 19.10.1990. He met with an accident while on duty and was declared unfit by Medical Superintendent for the job of Fitter in Grade-II. He was re-deployed as Junior Clerk in the lower grade of Rs.950-25-1500. According to the learned counsel of the applicant, whereas the applicant was previously drawing the basic pay of Rs.1380/- in the pay scale of Rs.1200-1800, he was re-deployed on the basic pay of Rs.1250/- in the pay scale of Rs.950-1500. The applicant retired on 31.7.97. The learned counsel drew our attention to Rule-304 IREM Vol.I (Annexure-C) which reads as follows:-

"(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to same other post with the same pay scale and service benefits.

(2) A Railway servant failing in Clause (1) above cases to perform the duties of the post he is holding from the date he is declared medically unfit for the present post. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service and benefits, efforts to locate suitable alternative employment starting immediately".

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3. The learned counsel stated that the applicant's basic pay drawn by him in the earlier scale should have been protected, which was not done.

4. The learned counsel of the respondents Shri Rajeev Bansal stated that the applicant was declared unfit in B-1 and B-2 categories. He was declared fit for class C-1 and C-2. As there was no pay scale of Rs.1200-1800 in Ministerial Cadre, the applicant was absorbed as Clerk in the pay scale of Rs.950-1500 granting him full pay protection from November 1990 till he retired from service on 31.7.1997.

5. The learned counsel was asked specifically to show any document to establish that before his re-deployment the applicant was drawing a basic pay of Rs.1380/-. He drew a blank. As the applicant has not established that he was drawing a basic pay of Rs.1380/- at the time of his re-deployment of de-categorisation, it cannot be said that his pay was not protected on re-deployment. Respondents in any case have said that applicant's earlier scale of Rs.1200-1800 is not available in the Ministerial cadre. Therefore, he was absorbed as Clerk in the lower pay scale of Rs.950-1500 and that his pay was protected and fixed at Rs.1250/-. The learned counsel also contended that there is no provision in any rule for payment of ex-gratia leave.

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6. Having regard to the reasons and discussion recorded above, we do not find any merit in the OA which is dismissed. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.

Ashok Agarwal

(Ashok Agarwal)
Chairman