

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the 6th Day of November, 2020)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/527/2011

Mahaveer son of Sri Munshi Lal, Resident of Village Nagla Mewa, Post Office Udhesar, District Firozabad, Uttar Pradesh.

..... **Applicant**

By Advocate: Shri Satish Dwivedi

Versus

1. Union of India through the General Manager, North Central Railway, Head Quarter Office, Allahabad.
2. The General Manager, North Central Railway, Head Quarter Office, Subedarganj, Allahabad.
3. The Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
4. The Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
5. The Assistant Engineer (Track), North Central Railway, Tundla.

..... **Respondents**

By Advocate: Shri Amit Kumar Rai

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Shri Satish Dwivedi, Advocate is present for the applicant. Shri Amit Kumar Rai, Advocate is present for the respondents.

2. I have heard learned counsel for both the parties and have carefully gone through the record.
3. The relevant facts, in brief, are that the applicant was initially engaged as a Casual Labourer in the month of January, 1980 in the

respondents' department, North Central Railway, Allahabad. In the year 1987, he was allowed C.P.C. Scale by the Railway Administration. His services were regularized on 08.06.1996 and he was posted as Trackman/Gangman at Allahabad.

4. Unfortunately, the applicant was declared medically unfit and was decategorized for the post of Trackman/Gangman on the ground of deficiency in vision.

5. The grievance of the applicant is that the respondents' department failed to provide him alternative appointment as per rules, instead the applicant was retired from service on medical ground by the Railway Administration arbitrarily vide order dated 19.09.2000. Whereas, the similarly situated other 39 candidates, were not retired on medical ground and were posted on supernumerary posts.

6. Learned counsel for the applicant has contended that the applicant's case is similar to those 39 railway employees, who have been posted on supernumerary post after their medial decategorization till the alternative appointment or job is procured to them. In this regard, the attention of this Tribunal has been drawn to Railway Board/Railway Ministry amended provision of Para-304 of Indian Railway Establishment Code Vol-I, which is quoted as below:-

"304 (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 occupied should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

304 (2) *A Railway servant falling in Clause (1) above cases to declared medically unfit for the present post. If such a Railway servant cannot be immodestly 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 ”*

7. The applicant being aggrieved preferred a representation on 28.06.2000 to the Divisional Personnel Officer, Northern Railway, DRM Office, Allahabad but when no action was done by the Department, the applicant preferred another representation on 17.10.2000 to DRM (P) Northern Railway, Allahabad, requesting that he be allowed to continue on supernumerary post till alternative job or appointment is given to him, as his case is also similar to those 39 railway employees.

8. It is, further, contended by learned counsel for the applicant that there is provision to give appointment on compassionate ground to one of the wards of medically declassified railway employee and the applicant under the said provision applied to give appointment to his son on compassionate ground and one of his sons was given appointment on 23.02.2005 on the post of Helper/Khalasi in the Department of Railways. However, the applicant was not given the pension and other retirement benefits. The applicant raised his grievance before the Directorate of Public Grievance and by letter dated 09.01.2007, he was communicated that his grievance was being examined by the Department.

9. Thereafter, the applicant received letter dated 18.04.2007 sent by the Divisional Railway Manager, North Central Railway, Allahabad whereby, he was communicated that for the purpose of payment of pension, the employee concerned should have completed 10 years' service, but in the case of the applicant as he has completed only 7 years, 4 months and 19 days, he is not eligible to get pension under the law. The copy of the order dated 18.04.2007 has been annexed as Annexure A-7.

10. The applicant challenged the aforesaid letter by means of Departmental Appeal before the General Manager, North Central Railway, Allahabad requesting that entire period of his service, which is more than 12 years, should be counted for the purpose of sanction and payment of pension. In the appeal, he also submitted that services of similarly situated and the persons junior to the applicant were regularized in the year 1988, 1989 and 1990 but his services were regularized in the year 1996 after a long delay, therefore, the services of the applicant deserves to be treated as regularized w.e.f. the same date when the persons junior to the applicant, were regularized, but without considering the contentions raised by the applicant in the Departmental Appeal, the impugned order was passed in a cursory and discriminatory manner.

11. In this regard, my attention has been drawn to the order passed by this Tribunal in earlier OA No.252 of 2010, wherein a direction was issued to the Competent Authority to consider and decide the representation/appeal dated 18.05.2007 by a reasoned

and speaking order, meeting all the contentions raised therein by the applicant, within a period of three months from the date of receipt of copy of this order.

12. Learned counsel for the applicant has vehemently argued that a bare perusal of the impugned order (Annexure A-1) clearly shows that Competent Authority has not considered any contentions raised by the applicant in his Appeal/Representation dated 18.05.2007. My attention has also been drawn to Annexure A-10, which is a covering letter dated 26.03.2010 filed with the Representation/Appeal dated 18.05.2007 before the Competent Authority.

13. It has also been contended that the impugned order has been passed by an officer, who was not Competent Authority, instead, the order should have been passed by the General Manager, who is the Competent Authority.

14. To the contrary, learned counsel for the respondents has vehemently opposed the OA by contending that the applicant is a Class-IV employee and in respect of Class-IV employee, the orders are passed by the Assistant Divisional Engineer, who is the Competent Authority for their cases. However, when learned counsel for the respondents was asked that when this Tribunal had earlier directed to decide the Appeal/Representation of the applicant, meeting out all the contentions raised therein by the applicant, why the impugned order was passed in a cryptic manner,

the learned counsel for the respondents could not give any satisfactory reply.

15. In view of the above, no useful purpose will be served in keeping this matter pending any further, which is already pending since the year 2011 and it is finally disposed of with a direction to the respondents concerned, who is the Competent Authority to comply with the order dated 16.03.2010 passed by this Tribunal in OA No.252 of 2010 in true letter and spirit by meeting out all the contentions raised therein by the applicant, within a period of three months from the date of receipt of copy of this order. The order so passed on the representation/appeal of the applicant shall be communicated to him without any delay.

16. Needless to say that, the Tribunal has not expressed any opinion on the merits of the case. No costs.

**(Justice Vijay Lakshmi
Member (J))**

Sushil