

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Applicaton No.776/2012

*Thursday* this the 26<sup>th</sup> day of February 2015

**C O R A M :**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER  
HON'BLE Mr.RUDHRA GANGADHARAN, ADMINISTRATIVE MEMBER**

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12. Jithesh K.,  
S/o.Kunhikannan,  
Senior Ticket Examiner,  
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Residing at Santhi Bhavan,  
Palayad P.O., Thalassery.

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13. Shibu S.,  
S/o.Saravanan T.C.,  
Ticket Examiner, Southern Railway,  
Palakkad, Palakkad.  
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Pandarakavu, Manappullikavu,  
Palakkad – 13.

14. Babu Rajan K.M.,  
S/o.K.K.Anandan,  
Sr. Ticket Examiner,  
Southern Railway, Palakkad, Palakkad.  
Residing at Thamburu, Nottanpara,  
Puduperiaram P.O., Palakkad. ....Applicants

(By Advocate Mr.T.C.Govindaswamy)

**V e r s u s**

1. The Union of India,  
represented by the General Manager,  
Southern Railway, Headquarters Office,  
Park Town P.O., Chennai – 600 003.
2. The Chief Personnel Officer,  
Southern Railway, Headquarters Office,  
Park Town P.O., Chennai – 600 003.
3. The Senior Divisional Personnel Officer,  
Southern Railway, Palakkad Division, Palakkad.
4. The Secretary to the Government of India,  
Ministry of Railways, Rail Bhavan,  
New Delhi – 110 001.
5. Sri.Chenthamara.R.,  
Pointsman/A, Southern Railway,  
Walayar Railway Station,  
Walayar, Palakkad – 678 624.
6. Sri.Parameswaran C.,  
Senior Pointsman/A, Southern Railway,  
Palakkad Town Railway Station, Palakkad – 678 505.
7. Sri.Balakrishnan.C.K.,  
Pointsman/A, Southern Railway,  
Shornur Railway Station, Shornur.

8. Sri.Gangadharan.A.,  
Pointsman/A, Southern Railway,  
Kanjikode, Palakkad Dt.
9. Sri.Viswanathan K.,  
Pointsman/A, Southern Railway,  
Shornur Railway Station, Shornur.
10. Sri.Mahesan.P.V.,  
Loco Pilot, (Shunting)-II,  
Southern Railway, Kannur Railway Station, Kannur.
11. Sri.Sivadasan.K.,  
Head Constable,  
Railway Protection Force, Southern Railway,  
Tirur Railway Station and P.O., Tirur – 676 101. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 7<sup>th</sup> January 2015 this Tribunal on .....26/02/..... 2015 delivered the following :

**ORDER**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

M.A.No.844/2012 for joining together of the applicants stands allowed. Applicants are Ticket Examiners of different grades in the Palakkad Division of Southern Railway. They are aggrieved by the induction of Party Respondent Nos.5 to 11 who are medically decategorized employees into the different grades of Ticket Checking cadre with full seniority and pay causing substantial prejudice and irreparable injury to the applicants in the advancement of their career. It is contended by the applicants that the impugned order, Annexure A-1 by which the aforesaid medically decategorized persons are being inducted for initial training for the post of Ticket Examiner, is *ultra vires* to para 1304 to 1306 of the IREM, Vol.II. It is also contended by the applicants that party respondent

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Nos.5 to 9 who belonged to Traffic Department and worked as Pointsman do not have the SSLC qualification which is the minimum qualification for appointment as Ticket Collector by direct recruitment and hence is violative of the statutory provisions in para 127 of the IREM, Vol.I. According to applicants respondent No.10 belonged to Loco Mechanical Department and respondent No.11 is from Railway Protection Force and hence they do not have any right to be considered for absorption as Ticket Checking cadre. It is also contended that there was no proper application of mind by the Screening Committee while assessing the suitability of respondent Nos.5 to 11 and the said Committee itself was not properly constituted one as per the relevant provisions in the IREM.

2. The official respondents contend that party respondent Nos.5 to 11 who are medically decategorized persons have been considered to be posted in the Ticket Checking cadre in accordance with the provisions in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as PWD Act) and also under the suitably modified provisions in paras 1301 to 1315 of the IREM, Vol.I. (Annexure A-2). Before their medical de-categorisation respondent Nos.5 to 9 were working as Pointsman, respondent No.10 a Loco Pilot (Shunting) Grade II and Respondent No.11 a Head Constable of Railway Protection Force. On their medical decategorization they were kept in supernumerary posts. The Additional Divisional Manager had nominated a Committee consisting of Senior Divisional Medical Officer, Senior

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Divisional Commercial Manager and Senior Divisional Operation Manager for screening the medically decategorized employees for absorption in the alternative posts. Branch Officers of the department concerned were co-opted as members of the aforesaid Committee. Party Respondent Nos.5 to 11 were recommended for absorption to the Ticket Checking cadre for assessing their suitability. The recommendations of the Committee vide Annexure R-1 were approved by the Additional Divisional Railway Manager on 13.8.2012 and those employees were directed for initial training course as per Annexure A-1. Regarding the contention of alternative employment given to the medically decategorized R.P.F. Head Constable, respondents contend that as per Section 10 of the Railway Protection Force Act, 1957 officers and members of the Force are deemed to be railway servants within the meaning of Indian Railway Act, 1890. It is contended by the official respondents that as per para 1310 of IREM, disabled/medically decategorized staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to their length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit and therefore, their length of service shall have to be protected along with their pay. Respondents pray for rejecting the O.A.

3. A rejoinder was filed by the applicants disputing the contentions in the reply statement of the official respondents. Additional reply statement was filed by the official respondents pointing out that Annexure

A-2 instructions contained in IREM was never challenged by the applicant. It is also contended by the respondents that as per Annexure R-3 orders, medically decategorised R.P.F staff will have to be attached to the respective territorial jurisdiction of the Divisions/Units for absorption in the alternative employment.

4. We have heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.Rajesh representing Shri.Sunil Jacob SCGSC. Learned counsel for the applicant referred to a common order dated 14.2.2005 of this Bench in O.A.Nos.550 & 562/2005 and another common order dated 15.9.2014 in O.A.Nos.1106/2012 & 708/2013.

5. We feel that it would be advantageous to quote the relevant provisions in the IREM, Vol.I relating to absorption of medically incapacitated staff in alternate employment, for a better appreciation of the manner in which they are to be dealt with while they are given alternative employment. It reads :

**Absorption of disabled/medically decategorised staff in Alternative Employment :-**

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service 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 some other post with the same pay scale and service benefits.

**1302. Classification of Railway Servants declared medically unfit -**

Railway servants acquiring disability during service and declared medically unfit are divisible into two groups :

i. Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the 'C' medical category; and

ii. Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The railway servants both in group (i) and group (ii) of Para 1302 cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. 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 employee concerned 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 benefits, efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

1304. **Disabled Medically decategorised staff to be absorbed in posts they can adequately fill :-** In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

1305. **Absorption in posts identified for employment of physically handicapped persons/creation of supernumerary posts.** The Railway servants falling in group (i) mentioned in para 1302 i.e. those who are declared unfit even for the lowest medically category, may be absorbed in a post/category identified as suitable for employment of physically handicapped persons and fresh recruitment to that post/category from open market from amongst physically handicapped withheld. In case the alternative post is not carrying the requisite pay scale, a supernumerary post may be created in appropriate scale of pay and the employee adjusted against the same keeping the lower grade post vacant by withholding fresh recruitment thereto. The supernumerary post so created to accommodate a disabled/medically incapacitated employee shall stand abolished as soon as a suitable post in the appropriate scale is found for the Railway servant concerned or the post is vacated by him for other reasons, whichever is earlier.

1306. **Steps to be taken for finding alternative employment :-**

1. With a view to determine the categories in which the disabled/medically decategorised Railway servant is suitable for absorption, a committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the disabled/medically decategorised Railway servant was working, the Railway servant's immediate officer being one of the members of the committee. After the committee has examined the Railway servant and determined his suitability for certain categories of posts, the officer under whom the Railway servant was working will proceed to take further action to find suitable alternative employment for him.

2. The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with same scale of pay as was attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.

3. It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own unit/division, office, workshop etc. and a register with the details as mentioned in sub-para (6) below will be maintained for this purpose.

4. If there is no immediate prospect of employment in his own unit/division, office, etc., the name of the Railway servant with particulars as given in sub-para (6) below will be circulated to all other offices or establishments where suitable employment is likely to be found.

5. Nothing in the previous paragraphs, however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the Railway servant concerned and must contain full particulars of his service and must be forwarded to the officer to whom addressed or to the authority competent to make the appointment. The result of the application must be intimated to the Railway servant.

6. A register containing the names of all Railway servants declared medically unfit and to be absorbed in alternative post will be maintained by Headquarters, Divisional and other extra-Divisional offices. These registers will contain not only the names of the staff of the particular division, etc., but also the names notified to the unit Officer concerned by other unit/offices. This will not, however, absolve officers under whom the Railway servant was last working from continuing their efforts to find suitable employment for the disabled/ medically decategorised employee. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows :

- i. Serial number.
- ii. Date on which incapacitated.
- iii. Name and Father's name.
- iv. Post last held on regular basis with scale of Pay and rate of pay.
- v. Educational qualifications - If no educational qualifications, then general remarks regarding knowledge of English, regional language etc.
- vi. Medical category in which placed.
- vii. Details of special supernumerary post till absorption in alternative appointment (Para 1303).
- viii. Date from which absorbed in alternative appointment.
- ix. Nature and category of alternative appointment.
- x. Scale of Pay of the alternative post and the pay fixed at.
- xi. Details of supernumerary posts, if any after absorption in Alternative appointment (Para 1305).
- xii. Remarks.

7. If and when a Railway servant is absorbed in an alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On receipt of such intimation, his name will be deleted from the registers.

8. Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no disabled medically incapacitated Railway servant who is suitable for the post is available. If any such disabled/ medically incapacitated employee is available, he will be given preference over all other categories of staff for appointment.

1307. **Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorised running staff :-** In order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of Pay of the running staff. If the scale of pay so arrived at is not identical with the scale of Pay already existing the same may be replaced by the equivalent existing scale of pay.

1308. **Fixation of Pay :** The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically decategorization. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowance as may be in force. If the basic pay so arrived at does not correspond to any stage in the absorbing grade the pay may be fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly if the Pay so arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the minimum and the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance should be allowed on pay plus personal pay, if any, in the absorbing grade.

1309. **Benefit of past service to be allowed :** A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the alternative post.

1310. **Fixation of seniority of disabled/medically decategorised staff absorbed in alternative employment :** The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. This is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

13.11. The staff who get their cases recommended for a change of category on medical grounds will not get the benefit of these rules, but will be treated as staff transferred on their own request.

6. Yet another Railway Board instructions regarding this matter is RBE No.112/2003 which specifically deals with medically decategorised staff being absorbed in the Ticket Checking cadre. The said RBE reads :

In terms of para 1306 of IREM Volume I,1989, as introduced vide Advance Correction Slip No.77 issued under Board's letter No. E(NG)I/96/RE3/9(2) dt. 29.4.99 efforts should first be made for absorption in alternative employment of staff medically decategorised in the Unit of the officer under whom he was working as it is primarily his responsibility to find suitable alternative employment for medically decategorised staff.

2. In the PNM meeting held on 20/21.5.03 the Federation pointed out that despite the above provision, medically decategorised staff are straight away being absorbed in posts filled entirely by promotion in other Departments without making efforts to find an alternative employment for him in the

Department in which the medically declassified staff was working. They cited an example of a Technical Supervisor in higher promotional grade, who, on medical declassification, was absorbed in Ticket Checking cadre in a post entirely filled by promotion without considering the possibility of his absorption in other Wings of the Department in posts carrying appropriate lower medical classification.

3. The Board wish to clarify that besides the provision referred to above regarding absorption in the same department in the first instance, the procedure also requires vide para 1304 of IREM ibid that the alternative employment should be in posts which the staff can adequately fill and as far as possible, should broadly be in allied categories where their background and experience in earlier posts could be utilised. Accordingly, the Board would like to reiterate that serious efforts should be made to find alternative employment for medically declassified staff in other wings of the same department in posts carrying appropriate lower medical classification and only when it is not possible to do so the employee should be considered for absorption in other departments.

1304. (IREM Vol-1) Disabled Medically declassified staff to be absorbed in posts they can adequately fill :- In the matter of absorption of disabled/medically declassified staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled/medically declassified staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically declassified staff. For this purpose, attempts should be made to absorb the disabled/medically declassified Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

7. A perusal of the aforesaid provisions in the IREM having the status of statutory rules and the related Railway Board instructions will reveal that they are in consonance with the PWD Act, 1995. Section 47 (1) of the PWD Act confers a legal right to the persons who have acquired disability during employment. Section 47 reads :

**47. Non-discrimination in Government employments.** - (1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

8. We are of the view that the case of the applicants have to be adjudicated in the backdrop of the aforementioned legal provisions which in a nutshell can be stated that a person who acquired disability during employment shall have to be provided with suitable alternative employment or if the same is not possible they have to be retained in the employment by creating a supernumerary post, without causing any discrimination to such person in matters of pay, seniority, rank or promotion. Applicants contend that with the absorption of Party Respondent Nos.5 to 11 in the Ticket Checking Cadre will prejudicially affect the promotional prospects of the applicants. A perusal of paras 1304 to 1311 quoted above also shows that it is obligatory on the Railway Administration to ensure that the interest of other staff in the service of the department to which the medically de-categorized staff are given alternative employment are not adversely affected and that no reversion of any officiating employee is made. It may appear that this provision is contradictory to the obligation of the railway to provide alternative employment to those who have been medically de-categorised from the other departments. It is settled position that no employee can claim any vested right regarding creation of posts or recruitment to the post unless some legal provision is violated. In *Kunal Singh v. Union of India and another* (2003) 4 SCC 524 it was held that :

"9. ....The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

9. The Apex Court went on to add that Section 72 of the PWD Act, 1995 gives supervening effect over and above all other provisions in the law, which reads :

"72. Act to be in addition to and not in derogation of any other law – The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities."

10. In the circumstance we are of the view that the decision of the respondents Railway in providing alternative employment in the Ticket Checking cadre was taken after subjecting respondent nos. 5 to 11 to an assessment by a committee to determine their ability to be posted in an alternate employment. Annexure R-1 shows that the Screening Committee set up by the respondents Railway had assessed the suitability of medically declassified staff. According to applicants, Annexure R-1 assessment by the Committee was done in a mechanical manner without applying their mind about the suitability of the Party Respondents for

the Ticket Examiner posts. Para 1306 of the IREM quoted above details the steps to be taken for finding alternative employment of medically decategorised railway employees. It mentions about the setting up of a Committee. In our view, Annexure R-1 adequately shows that the Committee consisted of a Medical Officer and other railway official has examined respondents Nos. 5 to 11 to assess their suitability to the other different categories of posts for alternative employment. Para 1309 and 1310 of the IREM states that the past service of medically decategorised employee has to be treated as continuous with that of the alternative post and that he should be given seniority in the grade of absorption with reference to the length of service. Para 1310 stipulates that such employee absorbed in alternative post should be allowed seniority in the grade with reference to the length of service rendered non- fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. Therefore, we hold that aforesaid provisions in the IREM read with Section 47 of the PWD Act, 1995 provide an inviolable right to the medically decategorised persons for alternative employment in any department which the administration decides after assessing their suitability. In view of the legal right conferred to the persons who acquired disability while in service, which we consider as a superior right, the other employees in such department cannot resist the induction of such medically- decategorised, even if the seniority of the former is adversely affected.

11. Under Section 10 of the Indian Railway Act, 1890 Members of the Railway Protection Force are deemed to be Railway servants. Therefore, we are of the view that the decision of the respondent Railway to give alternative employment to a medically decategorized Head Constable (Respondent No.11) is perfectly in tune with the aforequoted IREMs read with Section 47 of the PWD Act, 1995.

12. In the light of the above legal provisions, we are of the view that no legal rights of the applicants have been violated in the light of Annexure A-1 decision to give alternative posting to Party Respondent Nos.5 to 11 in the Ticket Checking Cadre of the Southern Railway in the Palakkad Division. Annexure R-3 order of the Railway states that such alternative posts should be given in the same Division/Unit for absorption.

13. In the result, the O.A is only to be dismissed. We do so. Ordered accordingly. No order as to costs.

(Dated this the 26<sup>th</sup> day of February 2015)

**RUDHRA GANGADHARAN  
ADMINISTRATIVE MEMBER**

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**U.SARATHCHANDRAN  
JUDICIAL MEMBER**