

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 31st DAY OF May 2011)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr.S.N. Shukla, Member (A)

Original Application No 477 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Bal Bahadur son of Sri Padam Bahadur, aged about 48 years,
resident of H-366 B, Railway Colony Hartala, Northern Railway,
Moradabad.

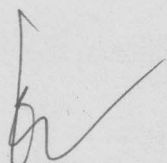
..... **Applicant**

Present for Applicant : Shri R.C. Pathak

Versus

1. Union of India, through the General Manager, North Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad (U.P.)
3. The Divisional Railway Manager (Personnel), Northern Railway, Moradabad (U.P).
4. The Senior Divisional Personnel Officer, Sr. D.P.O. Northern Railway, Moradabad (U.P).
5. The Assistant Divisional Engineer, Northern Railway, Chandausi, Moradabad (U.P).
6. The Chief Controller, Northern Railway, Moradabad (U.P).
7. The Section Engineer, Rail Line, Railway Station Raja Ka Shahpur, Northern Railway, Chandausi, Moradabad (U.P).

..... **Respondents**

 **Present for Respondents : Shri A. Tripathi**

ORDER

(Delivered by Dr. K.B.S. Rajan, Member (J)).

The case of the applicant as culled out from the application is as under:-

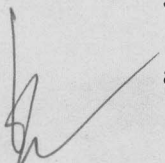
The applicant was initially appointed as Casual Labour Car Driver on 22.06.1976, acquired the status of temporary employees. He was allotted a Type I Quarter on 07.06.1985 by the respondent NO.2 vide Annexure A-5. On 14.10.1996 the respondent issued a punishment order of compulsory retirement for some departmental case (Annexure A-8). On 16.01.1997 the Appellate Authority reduced the punishment for WIP for two years and taken back to applicant in service. On 24.04.2000, the respondent issued a certificate of recommendation for alternative employment to the applicant on medical grounds. On 28.01.2002, the applicant was sent by the respondents to Engineers Regiment T.A Chandigarh to service there as M.T. Drivers where he was serving till 14.2.2002. This action of the respondents confirms that the applicant is fit for Group 'C' post of M.T. Car Driver. On 31.01.2002 the respondent NO.2 placed the applicant on the post of Group 'D' Chawkidar under medical decategorization from the Staff Car Drivers Group 'C' post instead of placing the applicant in an equivalent Group 'C' post in the pay scale of Rs. 4000-6000. On 24.03.2003 the respondent No.2 issued the Seniority List of Drivers but the applicant's name was not figured in the said seniority list whereas his junior's name was shown in the seniority list. The applicant made several representations dated 28.3.2003, 30.4.2003, July 2003 but no action was taken till date. The respondent NO.2 issued orders vide Annexure A-1, A, and A-2 dated 30.1.2004,

31.1.2003 and 15.7.2003, reverting the applicant from the post of Car Drivers in the pay scale of Rs. 3050-4590 Group 'C' post to the post of Chawkidar Group 'D' post I the pay scale of Rs. 2550-3200 and the said order of the respondents is illegal and unlawful and the same are liable to be quashed and set aside by this Hon'ble Tribunal with all consequential benefits alongwith arrear of pay and allowances 18% penal interest and the applicant pay is liable to be protected on Group 'C' post and may be adjusted on equivalent Group 'C' post being medically decategorized.

2. Case of the respondents is as under:-

The applicant was granted C.P.C. scale after attaining temporary status w.e.f. 15.1.1979; he was allotted type I quarter on 7.7.1985 because after attaining C.P.C. scale the casual labour is entitled to all the benefits as regular employee. The applicant was declared medically unfit for the post of Staff Car Driver and as such he was offered the post of Chaukidar/Peon after screening by the screening committee, but he did not join the post as such his services could not regularize by the respondents. He was dismissed from service vide order dated 4.10.1995 for remaining unauthorized absent from duty. The punishment was reduced to reduction in pay in the minimum of the grade for two years by appellate authority considering the financial position. He was later on awarded punishment of compulsory retirement vide order dated 14.10.1994 on the charge of taking liquer during duty hour. The punishment of compulsory retirement was reduced to the W.I.P for two years by appellate authority taking a lenient view with the applicant. The services of the applicant were temporary being

utilized as Casual Staff Car Driver as such his designation was shown in the document as Staff Car Driver everywhere. The applicant was sent to territorial Army Camp which is an independent body of Army and as such the working of the applicant in the Army Camp was not at all relevant with the present case of the applicant and there is no irregularity or illegality in the order passed by the respondents declaring him medically unfit for the post of Staff Car Driver. The applicant on being declared medically unfit for performing the duty as Staff Car Driver was screened and alternative appointment was given to him on the post of Chaukidar/Peon. The pay of the applicant was protected and he is receiving the salary for the post which he was getting before medically unfitness as such the applicant did not suffer from any financial loss. The applicant did not join the post of Chaukidar/Peon offered to him after screening as such his designation was shown in the computerize pay slip as Staff Car Driver which is not at all relevant in the present case of the applicant. Representation of the applicant was duly considered by the Competent Authority and the Competent Authority in compliance of the Hon'ble C.A.T. order passed reasoned and speaking order and the said order was communicated to the applicant as such there is no irregularity or illegality in the order passed by the respondents.

3. In his rejoinder, the applicant has reiterated his contentions as contained in the O.A.
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4. Learned counsel for the applicant argued that the provision of Decategorization and Alternative Employment is available only to regular employees and not Casual or Temporary status employee. Seen from that point of view the fact that the applicant has been afforded alternative posts would confirm that the applicant was earlier confirmed employee in Group 'C' grade as Staff Car Driver. In fact, when the applicant was sent to the Territorial Army, Chandigarh, the same too could not have been as a Casual Labourer Motor Driver because no other department would entertain anybody except when such person holds a regular post.

5. Learned counsel for the applicant further argued that once the respondents had medically decategorized the applicant then the Rule of Decategorization has to be followed in toto. The rule relating to alternative employment on medical decategorization is provided for in 313, I.R.E.M, which reads as under:-

" 313. MEDICALLY UNFITTED RAILWAY SERVANTS :-

a.

- i. Medically decategorised staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised. For example, traffic running and operating staff need not necessarily be absorbed in the ticket checking cadre alone but they could also be absorbed in other commercial, station or yard category.
- ii. The medically decategorised staff absorbed in alternative posts, whether in the same or other cadre, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher grade is to be taken into account.

Provided that if a 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.

- iii. While absorbing the medically decategorised Running Staff in alternative posts, a percentage of basic pay representing the pay element in Running Allowance, as decided by the Government through administrative instructions from time to time, should be added to the minimum as well as maximum of the scale of pay for purposes of identifying 'equivalent' posts and their seniority should then be fixed in the equivalent absorbing posts".

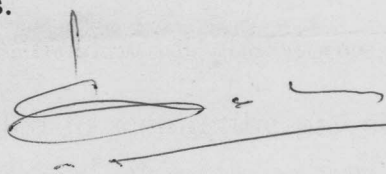
6. The above Rule clearly provides for equivalent post and as such, the respondents are mandated by the said Rule to afford such Railway employees on Medical Decategorization Equivalent Post, which means equivalent pay scale. In fact, in respect of employees entitled to running allowance, on their decategorization on medical grounds, their pay scale in the alternative post should be in the scale whose minimum pay should not be less than the pay scale drawn earlier plus 30% of running allowance. In the case of **Narendra Kumar Chandla v. State of Haryana, (1994) 4 SCC 460**, Apex Court has held as under:-

7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post

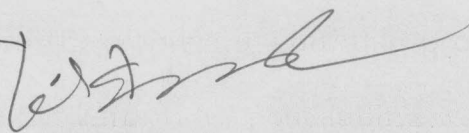
of LDC protecting his scale of pay of Rs 1400-2300 and direct to pay all the arrears of salary.

7. Keeping in view the above Rule position, it would not suffice if only the pay is protected but the applicant should be posted against the post carrying equivalent pay scale. Till then he has to be kept under waiting list or surplus scheme and should be given an alternative employment as and when vacant post arise with equivalent pay scale is available. Or else, as in the case of Narendra Chandla, higher pay scale be afforded to the applicant for whatever post he is holding.

8. In view of the above, **O.A. is allowed.** Respondents are directed to restore the pay scale to the applicant and also protect his pay and afford him an alternative Group 'C' post falling which in a Group 'D' post with the pay scale as of Group 'C' post as held in the case of Narendra Kumar Chandla (supra) The impugned order dated 15.7.2003 is hereby quashed and set aside. Respondents shall comply with the order within 4 months. No costs.



Member (A)



Member (J)

Manish/-