

(9)
Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1102 OF 2005

WITH

ORIGINAL APPLICATION NO.13 OF 2006.

ALLAHABAD THIS THE 28th DAY OF March, 2007.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman.

Hon'ble Mr. K.S. Menon, Member-A

Manmohan Jha (Sr. Electric Driver, Medically Unfit North Central Railway, Kanpur), son of late Shri Kapileshwar Jha, resident of 584-C, Loco Colony, Allahabad.

.....Applicant in O.A. No.1102/05.

(By Advocate: Sri R.P. Yadav)

Versus.

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Senior Divisional Electrical Engineer, (Operating), North Central Railway, Allahabad.
4. Senior Divisional Personnel Officer, Divisional Railway Manager Officer, North Central Railway, Allahabad.

.....Respondents in O.A. No.1102/05

(By Advocate : Sri Amresh Singh)

ALONGWITH

ORIGINAL APPLICATION NO.13 OF 2006.

Manmohan Jha (Sr. Electric Driver, Medically Unfit Now posted as Crew Controller, under Assistant Divisional Electrical Engineer, North Central Railway, Kanpur), son of Shri Kapileshwar Jha, resident of 584-C, Loco Colony, Allahabad.

✓

.....Applicant in O.A. No.13/06

(By Advocate: Sri R.P. Yadav)

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Senior Divisional Electrical Engineer, (Operating), North Central Railway, Allahabad.
4. Senior Divisional Personnel Officer, Divisional Railway Manager Officer, North Central Railway, Allahabad.
5. Assistant Divisional Electrical Engineer, (Operating), North Central Railway, Allahabad.

.....Respondents in O.A. No.13/06

(By Advocate : Sri P.N Rai)

ORDER

By Mr. Justice Khem Karan, Vice-Chairman.

After having been medically decategorised on 1.5.2001, while working as Senior Driver in the pay scale of Rs.5500-9000 under the respondents in North Central Railway, the applicant was given temporary appointment as Crew Controller at Allahabad, pending his final adjustment/absorption against some regular post as permissible under the Rules. Earlier the respondents directed him vide letter dated 16.9.2002 to work on the post of Traction Loco Controller and on the representation of the applicant, he was shifted to the post of Crew Controller. It was on 27.11.2002 that Divisional Railway Manager, Allahabad passed order to utilize his services as Crew Controller at Kanpur till such time as his final absorption was not decided. The applicant, however, did not join at Kanpur in compliance of modified order dated 27.11.2002 and continued absenting. Instead he filed one O.A. No.1354/02 challenging the order dated 29.8.2002 as modified on 27.11.2002, which this Tribunal finally disposed of vide order dated 26.10.2004. The Tribunal observed that contention of the applicant that he should be posted only against the supernumerary post and cannot be transferred, was not tenable as orders for taking work of Crew Controller were passed on his request. It was further observed that applicant ought to have joined the post without raising any grievance and he cannot sit at home on his own and claim salary by sitting idle (copy of this order dated 26.10.2004 is at Annexure CA-7). It appears that applicant filed writ petition No.1084/05 challenging the Tribunal's



order dated 26.10.2004 and the same was pending. As the applicant did not join at CNB Kanpur pursuant to the modified order dated 27.11.2002, so the respondents initiated formal disciplinary proceedings against him for unauthorized absence from duty. The applicant filed O.A. No. 1254 of 2003 challenging the chargesheet Disciplinary proceedings, which this Tribunal dismissed vide order dated 5.10.2004 (Annexure 8). As on a result of enquiry, the applicant was removed from service vide order dated 10.1.2005 (Annexure No.10). It appears that he filed one O.A No.130/05 before this Tribunal challenging the legality and soundness of removal order dated 10.1.2005 (which he has not disclosed in O.A. No.1102/05). The Tribunal disposed of the same vide order dated 17.2.2005 (Annexure CA-10) with the observation that Appellate Authority shall endeavour to dispose of pending appeal preferably within a period of two months. The Appellate Authority has passed an order dated 26.5.2005 (Annexure 1 to the O.A.), modifying the order of punishment to that of withholding of two increments for two years advising the applicant to carry out order of transfer and posting at C.N.B Kanpur. It is this order dated 26.5.2005 and consequential order dated 26.7.2005 (Annexure 2) passed by Divisional Railway Manager (Personnel), Allahabad asking him to report for duty at Kanpur and order dated 2.8.2005 (Annexure 3 to the O.A.) passed by Chief Crew Controller, N.C. Railway, Allahabad reiterating his posting at Kanpur and informing the applicant about the same, are being challenged in O.A. No.1102/05. The applicant has prayed for quashing the order dated 26.5.2005 to the extent that he refuses him back wages/arrears of salary, and so far as, it transfers him from Allahabad to C.N.B Kanpur. He has also prayed that respondents be directed to post him at Headquarter, Allahabad on permanent basis by utilizing his services and he be paid his salary regularly. It is also prayed that they be asked to compensate him for withholding the salary etc. According to him, he could not have been transferred from Allahabad to C.N.B Allahabad on a temporary basis and in a lower pay scale and that charges levelled against him were totally misconceived as observed by the Appellate Authority and so he will be entitled for back wages with all consequential benefits. It has also been said that impugned orders dated 26.5.2005, 25.7.2005 and 2.8.2005 are silent on the point as to why the applicant is not entitled for the arrears of salary.

(12)

2. The respondents have filed written reply in O.A. No.1202/05 contesting the claim of the applicant. The sum and substance of their defence in this O.A. of 2005 is that after being medically decategorised in the year 2001, the applicant was to be permanently absorbed on a suitable post and while that exercise was being undertaken, he was temporarily adjusted on supernumerary post of T.L.C. at Allahabad and it was on his request that he was shifted to the post of Crew Controller and transferred to Kanpur but he did not join at Kanpur and remained absent from duty right from 17.9.2002 to 28.9.2005. They say that as his posting on the post of Crew Controller was a temporary arrangement and as he was to report for duty on the post but he absented so was subjected to formal disciplinary proceedings. They have referred to Circular No.11528 and Railway Board's letter No.ELNG-1/2001/RE/3151 dated 8.10.2001 (Annexures CA-2 and CA-3) so as to say that till medically decategorised persons are absorbed on suitable post in a regular way, they are to be adjusted temporarily or provisionally on supernumerary post or otherwise and they have to work there so as to get salary. According to them, as the applicant continued absenting from 17.9.2002 to 28.9.2005, so was not entitled to claim salary for the period of unauthorized absence. In paras 23 and 24 of the reply, they have tried to say that the applicant is ⁱⁿ _{not} know of the fact that order dated 1.11.2004 (Annexure CA-11) has been passed for adjusting him permanently on the post of Chief Trains Clerk in the grade of Rs.5500-9000 fixing his pay at Rs.6900 per month plus allowances and has been directed to undergo training as per Rules but instead of complying those orders or instead of challenging those orders, he has filed this O.A., suppressing the factum of his permanent adjustment vide order dated 1.11.2004. According to them, the entire controversy has come to end with the order dated 1.11.2004, by which the applicant is to be absorbed in a regular and permanent way. They say that though the applicant has not referred to order dated 1.11.2004, ~~in this O.A.~~ ^{but} they annexed copy of it to his earlier O.A. No. 130/05.

3. In rejoinder affidavit filed in this O.A. No.1102/05, nothing new has been said except reiteration of some of the averments made in the Original Application.

✓

4. While the said O.A. No.11002/05 was still pending, the applicant filed O.A. No.13/06 challenging the orders dated 2.1.2006 and 3.1.2006 (Annexure 1) by which he has been asked to report for training at Regional Training Centre, Chandausi where training of such Chief Trains Clerk was to take place from 5.1.2006 to 30.1.2006. He has also sought the relief to the effect that respondents be restrained from interfering with his working as Crew Controller at C.N.B, Kanpur and not to compel him to join the training for Chief Trains Clerk at Chandausi. He has stated that after the Appellate order dated 26.5.2005, he reported for duty at C.N.B Kanpur on 3.8.2005 and started discharging functions of Crew Controller in the pay scale of Rs.6500-10500/- and as his posting as Crew Controller at Kanpur was in a permanent way and so the respondents were not justified to shift him to the cadre of Trains Clerk. After referring to O.A. No.1102/05, the applicant tried to say that once he was permanently absorbed on the post of Crew Controller after having been medically declassified, Rules did not permit the respondents to shift him to the cadre of Trains Clerk and to ask him to go for training. He says that pay scale of Crew Controller is higher to the pay scale of Trains Clerk, so respondents cannot put him in inferior pay scale. It transpires from perusal of ordersheet that vide order dated 10.1.2006 passed in O.A. NO.13/06, this Tribunal directed the respondents not to take any punitive action against the applicant till 24.1.2006. This interim order was extended from time to time.

5. The respondents have contested the claim by filing the reply. Their stand is that applicant's posting at C.N.B Kanpur as Crew Controller was on a temporary basis, pending consideration of his permanent absorption, after he was medically declassified in 2001. According to them, ^{pending} alternative employment on permanent basis in terms of Circular No.11528 and Railway Board's letter No.ELNG-1/2001/RE/3151 dated 8.10.2001 (Annexures R-II and R-III to the reply) was entrusted to a duly constituted Screening Committee consisting of Officers of Junior Administrative Grade and pending that exercise, the applicant was temporarily posted as Crew Controller at Kanpur and now the matter relating to permanent absorption has been finalized and orders issued on 1.11.2006 (Annexure 3), according to

(14)

which, the applicant is to be adjusted on the post of Chief Trains Clerk and for that, he has to undergo certain training and instead of complying those orders, he has rushed to this Tribunal.

6. In his rejoinder, the applicant has tried to say that there is no provision of temporary adjustment of medically decategorised persons and his adjustment or posting as Crew Controller at Kanpur was in a permanent way and so the respondents cannot shift him to the cadre of Trains Clerk. He alleges that he is being unnecessarily harassed. In para 27, he says that he was never subjected to any screening for permanent absorption in the cadre of Trains Clerk and was never informed about the letter dated 1.11.2004, allegedly issued in connection with the permanent absorption of medically decategorised persons.

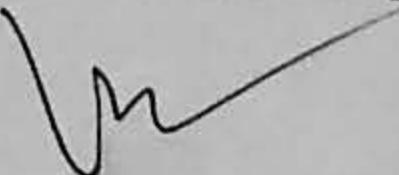
7. As most of the facts and circumstances in two O.As mentioned above, namely O.A. No.1102/05 and O.A. No.13/06 were common, so both were connected with each other and were heard together. Sri R.P. Yadav, appearing for the applicant in 2 O.As has also filed written arguments in O.A. No.13/06. We have also perused the entire material on record of two O.A.s, and the written argument filed by Sri R.P. Singh and have also heard the parties counsel quite at length.

8. The main controversy appears to be as to whether the posting of the applicant in 2002 on supernumerary post of Traction Loco Controller at Allahabad or on the post of Crew Controller at Allahabad or at C.N.B, Kanpur was by way of temporary adjustment, pending final decision regarding his adjustment in a regular way or was a permanent and regular adjustment. It appears that when the applicant was subjected to disciplinary proceedings for unauthorisedly absenting from duty, he was trying to say that his adjustment on the post of Crew Controller was only a temporary measure and so he could not be subjected to such Disciplinary proceedings for unauthorized absence. What remarkable is that he is not challenging the averments made in the reply that a Committee of Senior Officers were constituted for examining the regular adjustment of such medically decategorised persons and on the basis of exercise done by this Committee, certain orders have been issued on 1.11.2004 (Copy of which is Annexure

CA-3). According to this decision, the applicant is to be given posting in the cadre of Chief Trains Clerk and for that he has to undergo for training at Chandausi. Although Sri R.P. Yadav has tried his best to convince us that the posting of the applicant on the post of Crew Controller at Allahabad or at Kanpur was in a regular way but after having gone through the entire material on record of both these O.As, we have not been able to persuade ourselves to accept his argument. The applicant concedes that initial adjustment in the year 2002 was on a supernumerary post and if it was so then when his adjustment on the post of Crew Controller at Allahabad or on the post of Crew Controller at Kanpur became a permanent, could not be cleared by Sri R.P. Yadav. Sri R.P. Yadav has tried to say that since respondents had taken a stand in the earlier O.As that applicant's adjustment on the post of Crew Controller, Kanpur was on a permanent basis so it is now not open to them to turn around and say that it was as a stopgap arrangement or on a temporary basis.

9. We have perused the order dated 26.10.2004, passed in O.A. No.1354/02 and other papers on record, but we have not been able to find anything that proves, applicant's adjustment on the post of Crew Controller ^{was} regular one or permanent one. There is nothing to show that the respondents took the case that it was permanent/regular absorption.

10. The material on record reveals that the question of permanent/regular absorption of medically declassified persons including that of the applicant was entrusted to a committee of officers, which after examining all the aspects, gave its view in November 2004 to which reference has already been made in earlier part of this order. According to that the applicant is to be adjusted on the post of Chief Trains Clerk. Nothing specific has been said as to why the applicant cannot be regularly absorbed on that post. The argument of Shri Yadav, that post of Chief Trains Clerk is not suitable one, does not appeal to us, as the same is not based on any rule or rationale. After all senior officers of the rank of Junior Administrative grade have examined the entire matter and on the basis of their examination, order dated 1.11.2004 has been issued specifying the cadres or post on which the such medically declassified persons including the

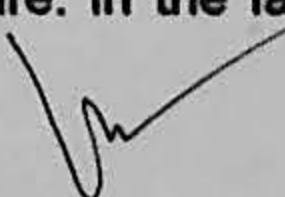


(10)

applicant have to be adjusted in a permanent way. Sri R.P. Yadav argues (see argument No.5) that what loss would be caused to the Railway Administration, if the applicant is permitted to continue on the post of Crew Controller at Kanpur. The argument does not appeal to us. It is not the question as to what loss is to be caused to the Administration, if the one is allowed to continue at one post or the other. The question is how the employee can refuse to go to the place where the Administration wants to send him. How can be stick to a temporary arrangement when permanent one has been made.

11. Shri Yadav has also tried to assail transfer order by saying that copy was not served on the applicant as observed in appellate order. Now, when all that has already been subjected to judicial scrutiny in previous O.A and when appellate orders have been passed, there is no point in rasing all this again. Sri Yadav has also referred to Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995 so as to say that these did not contemplate temporary or provisional posting and so posting of the applicant on the post of Crew Controller, Kanpur should be treated as permanent. The subject of temporary or permanent adjustment of medically decategorised persons of the Railways is regulated by the Circulars issued by the Railway Administration and it is never the contention of Sri Yadav that pending the regular absorption of such medically decategorised persons, no temporary arrangement can be made. The applicant was himself posted on a supernumerary post, pending his permanent absorption against a regular post. The fact that he was adjusted on a supernumerary post, itself reveals that it was by way of temporary measure and was not a regular absorption.

12. The Appellate order dated 26.5.2005 and consequential orders dated 25.7.2005 and 1.8.2005 are perfectly justified, ⁱⁿ the facts and circumstances of the case, the Tribunal is not sitting in appeal over the order dated 26.5.2005 so as to see as to whether the charge of unauthorised absence from duty was or was not established. The Authorities found the same established and punished the applicant by withholding his two increments. This order does not suffer from any legal error so as to entitle this Tribunal to interfere with the same. The rest of two orders are consequential in nature. In the face of the fact



(A)

that the applicant remained absent from duty from 17.9.2002 to 2.8.2005, as ^{partially} affirmed in departmental proceedings also, the applicant is not entitled to wages for that period O.A. No.1102/05 deserves to be dismissed.

13. We do not think the fate of O.A. No.13/06 will be different. We see no reason as to why the applicant is not obeying the order, asking him to report from Training at Chandausi for doing the training of Trains Clerk as decided earlier. The applicant is not challenging the notice dated 1.11.2004 (Annexure CA-3) where the case of several medically decategorised persons including that of the applicant has been examined and alternative post has been suggested on which each of such persons is to be absorbed. The applicant's names figures in this list and the cadre earmarked is to him that of Trains Clerk. The stand of respondents that the cases of all medically decategorised persons of Allahabad Division were given to a committee of Senior Officers and Committee examined the matter and suggested alternative post to such medically decategorised persons in letter dated 1.11.2004 (Annexure CA-3) appears to be well-founded and applicant has not been able to refute any of the averments made in this context. He is sticking to the post of Crew Controller, Kanpur on untenable plea that his posting as Crew Controller was by way of alternative absorption in a regular way. The Fact is otherwise. We have found above that his posting of Crew Controller was a temporary measures and was not a regular absorption. His was not only case. So O.A. No.13/06 is also totally misconceived and is deserves to be dismissed. If he wants to serve, he has to go for training as ordered and doing the job.

14. So the both Original Applications are hereby dismissed but with no order as to costs.

G. Venkateswaran
Member-A

Chu
28.3.07
Vice-Chairman.

Manish/-