

(Open Court)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the **4th** day of **April, 2011**

Present:

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER- J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A

ORIGINAL APPLICATION NO.1489 OF 2005

Sukh Nandan Ram, S/o Ghura Ram, R/o Jafarpur, P.O. Moghal Sarai, District-Chandauli.

.....Applicant.

V E R S U S

1. Union of India through the General Manager, E.C. Rly. Hazipur, Bihar.
2. The Senior D.P.O., E.C. Rly. Moghalsarai, District-Chandauli.

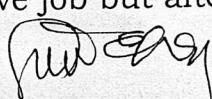
..... Respondents

Present for the Applicant: Sri S.K. Dey, Sri S.K. Mishra
Present for the Respondents: Sri Rajeev Sharma

OR D E R

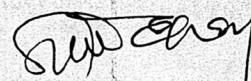
(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARAM, MEMBER-J)

1. Instant OA has been instituted in order to give direction to the respondents to pay his salary from 25.1.2003 to 28.12.2003 with different spell's. The pleadings of the parties may be summarized as follows:-
2. It has been alleged by the applicant that he entered the Railway service on 16.11.1981 and promoted from time to time and was posted as Lever Man Grade I in scale of pay Rs.3050-4590 U/S.M./E/C/Rly. and drawing the salary of Rs.3800. That for the job of Lever Man Grade I applicant was medically de-categorized as shown in Annexure-2 and he was sent for periodical medical examination but he was declared unfit in medical category A2 and he was found fit in B1 medical category vide letter dated 25.10.2002 which is Annexure A-1. That applicant gave the option for the post of clerk as an alternative job but after an inordinate delay he was given

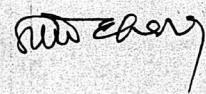


the job of fitter in the scale of pay Rs.3050-4590 at pay Rs.3800/- vide order dated 22.12.2003 which is Annexure A-2. Sri Chittaranjan Prasad and Sri Prem Kumar posted as Diesel Assistant in scale of Pay Rs.3050-4590 were given an alternative job of clerk after being unfit in medical category A1 along with the applicant. That the applicant was allowed for duty w.e.f.29.12.20003 and till 28.12.2003 applicant was kept waiting for duty. The salary for the period from 25.1.2003 to 28.12.2003 was not paid and on his request he was paid upto 24.1.2003 against his earned leave. That in view of Rule 1304 of Railway Manual an alternative job is to be provided within six months. Annexure A-3 is the extract of Rule 1304. That the representation was made by the applicant for giving duty and for payment of salary for the period from 25.1.2003 to 28.12.2003 but no response was given to that, hence the OA.

3. Respondents filed the counter reply and denied from the allegations made in the OA. It has further been alleged that the applicant was declared medically unfit in medical category in A-2 and A-3 for his present services but found fit in B-1 category and below with glasses by Chief Medical Superintendent, Mughalsarai through its letter dated 25.10.2002 for the lower medical category job. That as per rules the applicant was not provided suitable alternative job and he was placed on special supernumerary post in the same pay scale. In the mean time applicant was offered the job in identical grade and was absorbed as Fitter grade III in pay scale of Rs.3050-4590 (RSRP) on the pay scale of Rs.3800 per month vide letter dated 09.01.2003. Annexure CR-1 is the copy of offer of letter. But the applicant refused to join on the said post. He made representation on 12.5.2003 requesting for his posting in Artisan category in electrical General Department. His request was considered by the competent authority and he was posted in Electrical General vide letter dated 30.7.2003. Annexure CR-2



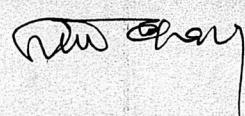
and CR-3 are the documents relating to that. It has further been alleged that the alternative job was provided to the medically declassified staff on the recommendation of screening committee with the approval of AGM/HJP. As an alternative appointment was to be made in Class-III category, the applicant along with other declassified staff were screened by the screening committee and he was found suitable to be absorbed in the category of Technician (Artisan) and Shri Chittranjan Prasad and Prem Kumar posted as Diesel Assistant found fit to be absorbed in clerical cadre against the located vacancy of clerk. That the applicant was placed on special supernumerary post from 25.10.2002 to 24.1.2003 and the payment of salary was made by the applicant and the arrears amounting to Rs.18,183 was paid for the period dated 13.2.2003. that the applicant refused to accept the offer of alternative job then order was passed for discontinuing from the Special supernumerary post which was created for him and payment against special supernumerary post will be stopped. Thereafter the period from 25.1.2003 to 30.7.2003 was on employee's leave account and this period was regularized in his leave due and gross amount of Rs.22,874/- was paid. Applicant preferred an appeal dated 5.8.2003 for posting in Train Lighting Unit under Electrical General Department at Mughalsarai. But there was no vacancy against Technician Grade III in scale Rs.3050-4590(RSRP) in Train Lighting Unit at Mughalsarai. Hence applicant's request was considered by the competent authority and considering the financial condition and posted at Mughalsarai against the vacancy created by down grading, higher grade post of Gaya to lower grade post and transferred at Mughalsarai. The whole process of this exercise was made with a view to absorbing him in alternative job at his own request during the period from 31.7.2003 to 28.12.2003 and the said period has been regularized against leave due vide latter dated 26.4.2006. Annexure



CA-5 is also the instructions about the alternative job to a medically decategorised staff. That the OA lacks merit and liable to be dismissed.

4. We have heard Mr. S.K. Dey and Mr. S.K. Mishra, Advocate for the applicant. Mr. Rajeev Sharma, Advocate for the respondents and perused the entire facts of the case. From perusal of the pleadings of the parties it is evident that this OA has been instituted in order to claim the salary from 25.1.2003 to 28.12.2003. It is undisputed that applicant was medically examined by the Chief Medical Officer, Mughalsarai on 25.10.2002 and he was decategorised for the post for which he was working. It is also undisputed that in the case of medical decategorised employee an alternative job is to be provided according to his position and qualification. It has been argued by the learned counsel for the applicant that after being decategorised on 25.10.2002 in view of the rules the post is to be offered to an employee within a period of six months. That he opted for the post of clerk and he was possessing the requisite qualification for the post of clerk but the respondents had not accommodated the applicant on the post of clerk whereas Sri Chittaranjan Prasad and Prem Kumar posted as Diesel Assistant in the same pay Rs.3050-4590 were given an alternative job of clerk after being unfit in Medical category alongwith the applicant. It has also argued that screening took place of these two persons along with the applicant but the alternative job was provided to these two persons and for the reasons best known to the respondents the [post of clerk was not given to the applicant.

5. It is an admitted fact that there is a rule for providing alternative job to the medically decategorised employee within a period of six months and in the present case the period of six months shall be counted from 25.10.2002 when the medical examination of the applicant was conducted. It has been



alleged by the respondents that alternative job was provided to the applicant vide letter dated 9.1.2003 on the same pay which he was drawing prior to medical deategorisation, but the applicant refused that post and did not join on that post. Under these circumstances, learned counsel for the respondent argued that as prior to the expiry of a period of six months alternative job was provided to the applicant but he intentionally refused to accept the offer for the post of Fitter in pursuance of letter dated 9.1.2003. Hence, the respondents are not liable to make payment for the period which has been claimed by the applicant. It has further been argued by the learned counsel for the applicant that again the applicant was offered alternative post vide appointment letter dated 30.07.2003. But again the applicant refused that post and instead of accepting the alternative job offered by the respondents applicant preferred a representation to the respondents on 25.11.2004. In the representation it was alleged that considering the educational qualification of the applicant he may be given suitable job. It has been argued by learned counsel for the respondents that it was not possible to accommodate the applicant on the post which he wanted. Under these circumstances, from the documents it is evident that an alternative job was offered to the applicant well within the stipulated period of six months but the applicant refused to accept that job.

6. It is seen that the applicant is at present working on the post of Fitter, the same post which was offered to him vide letter dated 9.1.2003 but at that time the applicant had not accepted that post. It has also not been alleged by the applicant that he was not medically fit for the post of Fitter and this contention can be belied from the fact that he at present working on the post of fitter, it means the applicant was fit for the post of Fitter but he has intentionally refused.



7. It has also been alleged by the applicant that two other persons were medically de-categorised along with the applicant and they were also medically examined on the same day and screened for the post of clerk but appointment was only given to those persons namely Sri Chittaranjan Prasad and Prem Kumar but the post of clerk was not given to the applicant. We would not like to comment on this point but it is for the respondents to decide that which post is to be offered to whom. It is their discretion and merely on the ground that applicant was justified in refusing the post of Fitter in the month of January. The salary cannot be granted for that period. It is to be ascertained whether the alternative job was given to the applicant or not and in view of rule the applicant was given alternative job and at present he is working on the post of Fitter.

8. Learned counsel for the respondents argued that in view of Railway Board circular dated 15.1.2001 alternative job is to be offered to a medically de-categorized employee. It has also been provided in the circular that if an employee medically de-categorized employee offered an alternative post and he refused, then the payment of salary be stopped forthwith and accordingly the respondents were entitled to stop the payment of the salary. Learned counsel for the respondents also argued that the respondents were considerate enough in order to make the payment of salary from 25.10.2002 to 24.1.2003. He was placed in special supernumerary post and the payment was made of salary to the applicant and the same was drawn by the applicant for the period from 25.1.2003 to 30.7.2003. The applicant was paid the salary of the leave due in his account and it has been alleged that the period from 25.1.2003 to 30.7.2003 was regularized on the basis of his leave. And from 31.7.2003 to 29.8.2003 the salary was paid on the average pay from 30.8.2003 to 4.10.2003, the half salary was paid and after 5.10.2003 to 28.12.2003 no salary was paid. Under these circumstances it



is evident that the applicant was paid salary from his leave account, and when no leave was due then no salary was paid. We are of the opinion that as alternative job was offered to the applicant well within the period of expiry of six months on 09.01.2003, hence applicant is not entitled to the salary claimed by him.

9. For the reasons mentioned above, we are of the opinion, that the applicant is not entitled for the salary claimed by him. Job was offered to him but he refused intentionally. Hence, the OA lacks merit and liable to be dismissed.

10. OA is dismissed. No Costs.