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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 756 of 2005

Thirdey this the 75 of December 2006

**Hon. Mr. Justice Khem Karam, Vice Chairman
Hon. Mr. M. Jayaraman, Member (A)**

Chhabi Nath, Son of Shri Ragghoo, under Chief Health Inspector, North Central Railway, Allahabad, resident of Village Bakdunda, Post Office Meja Road, District Allahabad.

Applicant

By Advocate Shri M.K. Upadhyay

Versus

1. Union of India, through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, (P), North Central Railway, Allahabad.
3. Assistant Divisional Engineer, North Central Railway, Allahabad.
4. Chief Health Inspector, Station Allahabad.

Respondents

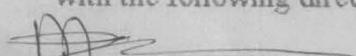
By Advocate Shri Avnish Tripathi

ORDER

By Mr. M. Jayaraman, Member (A)

Shri M.K. Upadhyay appearing for the applicant and Shri Avnish Tripathi for the respondents.

2. In this O.A., the applicant is aggrieved that although alternative job has been given to him but attendant benefit as provided in paragraph no.1309 and 1310 of the Indian Railway Establishment Manual Volume I has not been extended to him.
3. Briefly, the facts of the case are that the applicant was working as Gangman and he sustained serious injury at work place and he was asked to undergo medical examination in January 1990 after which he was decategorised and found unfit for the job but he was recommended for sedentary job. He was accordingly confirmed in the same job with light duties. Suddenly he was sent for medical examination again vide letter dated 19.06.1997 and on that basis he was forced to go on leave from 16.08.1997 and he was issued with a show cause notice. The applicant filed an Original Application No. 577 of 1998 before this Tribunal, which was disposed of with the following direction vide Order dated 17th March 2004: -



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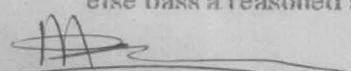
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"It seems that finding has been recorded by the D.P.O. without making any effort for providing alternative job to the applicant, therefore, this case is being remanded back to respondent no.2 to personally look into the matter and in case applicant is found fit for sedentary job by the Medical Board to make an effort to provide him some alternate job or else pass a reasoned and speaking order under intimation to the applicant alongwith Medical Board's opinion. This exercise shall be completed within three months from the date of receipt of a copy of the Order."

4. Accordingly, the applicant was offered the job of Safaiwala on compassionate ground vide Order dated 06.10.2004 in the scale of Rs.2650-4000/- with the pay fixation of Rs.3300/- alongwith other allowances. The applicant has stated that he has however, not been paid the benefit for the past services during the intervening period namely 16.08.1997 to 06.10.2004 that is how the applicant has come up with the present O.A.(in the second round of litigation).

5. The applicant's main plea before us is that he sustained serious injury in the year 1990 during the course of his employment. He was treated by the Railway Doctors and was examined by the Medical Board in January 1990, when he was not found fit to work as a Gangman and recommended for sedentary job. Accordingly, he has been performing the sedentary job and it was for the Railway Authorities to have found him a suitable job and give him proper work and so he could not be denied the benefit of past services for the period 16.08.1997 to 06.10.2004.

6. The respondents have opposed the pleadings of the applicant and stated that the applicant after decategorisation was allowed to perform light duty work by taking a sympathetic view and he was paid pay and allowances for the post of Gangman. Since the applicant refused to do even this work, he was sent for Special Medical Examination, as requested by him. When it was confirmed by the Chief Medical Officer, Allahabad vide letter dated 16.08.1997 that the applicant was not at all fit to perform the work of Gangman and he was recommended sedentary job in category B-1. Though the competent authority tried to accommodate the applicant, due to non-availability of vacancy in any other category, he was granted leave till alternative employment was made available to him. The Divisional Personnel Officer, Allahabad discharged the applicant from service on medical ground on the basis of non-availability of suitable vacancy. The applicant in the meantime approached the Tribunal, who passed Order dated 17.03.2004 in the earlier O.A. No. 577 of 1998 giving direction to the respondents to provide him alternative job or else pass a reasoned and speaking order under intimation to the applicant alongwith



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Medical Board opinion within 3 months. The respondents have further stated that after re-examination, applicant was found suitable for the post of Safaiwala and accordingly he was appointed on the post of Safaiwala at Allahabad on 06.10.2004. The respondents have stated that since the applicant was out of Railway service from 08.10.1998 to 06.10.2004 and since the Tribunal has not given any direction regarding consequential benefit to the employee, no dues were paid for the intervening period.

7. Paragraph no.1309 and 1310 appearing at page 161 of the Indian Railway Establishment Manual Volume I (Revised Edition), 1989 are extracted below: -

"1309. Alternative employment to be suitable-

- (i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.
- (ii) It would not, however, be appropriate to offer a Group 'D' post to a railway servant in the Group 'C' service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who had risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.
- (iii) For the purposes of this paragraph, an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.
- (iv) While finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post' (Board's letter No.E (NG) II-77-RE 3-2 dt.2-9-77). All cases decided on or after 1-1-1973 may be reviewed and benefits as above given only if (a) there had been an acute hardship, and (b) there should



(b)

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be no effect on others. (Board's letter No. E (NG) II-79 RE 3/5 dt. 22-5-79). Even in such cases the matter of payment in the equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise.

(E(NG) ISO SR 6/83 dt. 5-3-81).

NOTE: -Care should be taken by Railway administration to see that the interests of the staff in service are not affected adversely as far as possible and alternative appointment should be offered only in post which the staff can adequately fill. Their suitability for the alternative posts be judged by holding suitability test/interview as prescribed under the extent instructions.

2(a) In the matter of absorption of medically decategorised staff care has to be exercised to ensure that when more than one medically decategorised staff from the same cadre are absorbed in alternative employment in the same seniority unit or cadre, as far as possible the case of any senior who of necessity was absorbed in a lower post should be reviewed and efforts made to adjust the senior against the higher post and the junior taken only lower down either in the same grade or lower grade.

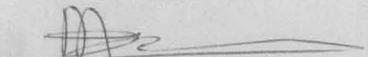
(E(NG) II-73 RE 3/16 dt. 11-4-75).

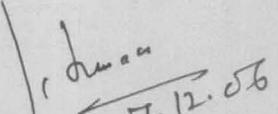
1310. *Offer of alternative employment to be in writing:* - The alternative employment must be offered in writing, stating the scale of pay and the rate of pay at which it is proposed to reabsorb him in service. On no account should the Railway servant be posted to an alternative appointment until he has accepted the post. A railway servant is at liberty to refuse an offer of alternative appointment and the leave granted to him will not be terminated pre-maturely merely because of his refusal. The Leave must run its course. He will continue to remain eligible for other alternative offers of appointment till his leave expires and efforts to find such appointments should, therefore, continue throughout the currency of his leave."

8. From the above, it may be seen that these two paragraphs deal with the method of providing alternative employment and the need to ensure that such alternative appointment offered would be suitable to particular Govt. servant. It also says that Railway servant would be at liberty to refuse an offer of alternative appointment and the leave granted to him will not be terminated pre-maturely merely because of his refusal. From the record we find that the respondents have in fact followed the procedure outlined above. The applicant's plea made in paragraph no.15 at page 9 of the O.A. which is reiterated in his Rejoinder Affidavit in paragraph no.9 on page 4 is that the applicant would be entitled for the benefit of his past services for all purposes and that his past services would be treated as continuous service alongwith seniority and other benefits. We are afraid that we cannot find the above ^{providing} ~~stipulated~~ either in paragraph no.1309 or 1310 of the Manual, reproduced above. As pleaded by the respondents, after decategorisation, the applicant was offered an alternative job, which he did not accept, so he was allowed

to proceed on leave during the period from 16.08.1997 to 08.10.1998 and thereafter the applicant was effectively out of service from 08.10.1998 to 06.10.2004 when he was offered an alternative job, which he has accepted. Therefore, there would be no question of any consequential benefits to the applicant for the intervening period i.e. 08.10.1998 to 06.10.2004 (the period between 16.08.1997 to 07.10.1998 being treated as on leave), as claimed by the applicant. There was also no direction from the Tribunal to give consequential benefits to the applicant for the period of absence from duty. The respondents cannot be faulted in this regard and for this reason we do not find any warrant for interference in the matter. In the circumstances, there is no substance in the applicant's plea and accordingly this O.A. fails and needs to be rejected.

9. In view of the above observations, we dismiss this O.A., ~~as not maintainable~~.
No order as to costs.


Member (A)


Vice Chairman

/M.M./