

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00511/2020

Tuesday, this the 23rd March, 2021

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Judicial Member

Vijith.A.N, Aged 38 years,
S/o. Govindan,
Staff No: J/T 5015, PF No:15551201240,
Now working as Station Master, Kannapuram,
Southern Railway.
Permanently residing at Niduvote House,
P.O. Mavilayi, Kannur District.
PIN 670 622. Mob No: 9744317090.

Applicant

(Advocate: Dr.K.P.Satheesan Sr.
along with Adv. Mrs.Bhadrakumari)

Versus

1. The General Manager,
Southern Railways, Park Town,
Chennai, PIN: 600 002.
2. The Divisional Railway Manager,
DRM Office Complex,
Southern Railway, Palakkad Division,
Palakkad. PIN: 678 002.
3. The Senior Divisional Operating Manager,
DRM Office Complex, Southern Railway,
Palakkad Division, Olavakkod,
Palakkad. PIN: 678 002.
4. The Senior Divisional Personal Officer,
DRM Office Complex, Southern Railway,
Palakkad. PIN: 678 002.
5. The Station Superintendent
Southern Railway, Kannapuram,
Kannur-670 301.

Respondents

(Advocate:Mr.Sunil Jacob Jose)

The OA having been heard on 17th March, 2021, this Tribunal delivered the following order on Monday the 23rd March, 2021:

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) *Quash Annexure A9 & A12 orders and relevant portion of Annexure A7 order with respect to the applicant absorbing and posting him as Section Controller, Control office, Palakkad and also quash Annexure A15 relieving order.*
- (ii) *Declare that Annexure A12 order issued by respondent No.3 and A9 order and the portion of A7 order to the effect absorbing and posting the applicant as Section Controller, Control Office, Palakkad and Annexure A15 relieving order are illegal, arbitrary and liable to be set aside.*
- (iii) *Issue a direction to the respondents to absorb and post the applicant in a Commercial Office at Kannur Area considering him medically de-categorized and his poor health condition.*

2. The applicant's case in brief is as follows:

The applicant was working as Assistant Station Master and he claims to have an unblemished service record. He also claims to have been awarded a Certificate of Recognition for his meritorious service, presented in the 62nd Railway Week Award function. While he was working at Kannapuram in Kannur District, he underwent a periodical medical examination on 16.9.2019. In the medical examination, the applicant was found to be suffering from 'Atrial Septal Defect' and his case was evaluated by ACHD Peramboor on 21.9.2019. It was opined that "Large Secundum ASD, L-R shunt and he needed surgical closure of ASD. Since the Medical Board advised for an open heart surgery immediately, the applicant could not take a decision as he was afraid of the trauma of operation. Since he was not ready to undergo surgery, the Medical Board declared that the applicant is unfit for Aye and Bee categories of jobs and he is fit for Cey I and below which does not involve heavy manual labour. It was also mentioned that

the applicant is not fit for safety category jobs involving train running or passing duties. The certificate is produced as Annexure A2.

3. The third respondent issued a communication on 4.2.2020 directing the applicant to report before Senior SR.DC(P)/PGT) to work as Cash Witness temporarily for the purpose of gainful utilization until further orders. Since it was found difficult to continue to work at Palakkad, he requested for a transfer to Crew Management Service Office at Kannur and he was posted there by the third respondent as per order dated 28.2.2020. In the said order, the third respondent stated to utilize the applicant temporarily at CMS/CAN for gainful utilization until further orders. Accordingly, the applicant joined duty in Crew Management System Office at Kannur with effect from 29.2.2020. On 7.8.2020, a screening for finding a suitable post to the applicant was conducted by 3rd and 4th respondents and during the screening the applicant made a request for posting him near Kannur area in Commercial Department considering his poor health condition so as to enable him to reside with his family. The applicant's wife is working as a government servant in the Civil Supplies Corporation at Kannur. But unfortunately, the 4th respondent issued an office note dated 7.9.2020 giving absorption of the staff who were waiting for alternative employment on medical grounds, who were screened on 7.8.2020 wherein the applicant was given an alternative posting as Section Controller in Operating Department at Palakkad. The said order is impugned as Annexure A7. Thereafter, the Station Manager at Kannur issued an order directing the applicant to report to Station Superintendent, Kannapuram. Accordingly the applicant reported to the Station Superintendent at Kannapuram as per Annexure A8. Subsequently the 4th respondent issued an order dated 8.9.2020 absorbing and posting the applicant as Section Controller in Operating Department at Palakkad. The said order is also impugned as Annexure

A9.

4. According to the applicant, he is a medically de-categorized employee who cannot do jobs involving heavy manual labour and is not fit for safety category jobs involving train running or passing duties. The job of Section Controller is a safety category one involving train running and passing duties for which he is unfit as stated in Annexure A2 communication. Hence the absorption of the applicant as Section Controller in Operating Department, Palakkad was highly illegal, arbitrary and unjust.

5. Even though the applicant submitted a request before the 4th respondent stating the strenuous nature of job of Section Controller, and to reconsider his absorption, there was no reply given. Annexure A9 order was issued without considering his medical de-categorization and it is highly illegal. Since there was no redressal of the applicant's grievance, he filed OA No.435/2020 on 17.9.2020 and the Tribunal disposed of the said OA with a direction to the respondents concerned to consider Annexure A10 representation filed by him dated 9.9.2020 and pass a reasoned and speaking order within a period of one month from the date of receipt of the order. The said order is produced as Annexure A11. On 7.10.2020, the third respondent issued an order rejecting the request of the applicant and upholding the previous order absorbing and posting him as Section Controller. The said order is marked as Annexure A12. Thereafter, the applicant was also relieved for joining duty as Section Controller. So the applicant is aggrieved by Annexures A7, A9, A12 and A15 orders passed by the respondents.

6. The respondents appeared and filed a detailed reply statement, admitting the medical de-categorization of the applicant. They also admit that the applicant can be considered only for Cey one and below categories for absorption. Even though the applicant had applied for posting in Commercial Department in

Kannur area, the respondents could not accede to it because the category of Commercial and Ticketing staff is now included in B-2 category where the applicant cannot be posted. So the applicant cannot be inducted into Commercial Department. The applicant was posted as Section Controller on the basis of recommendation of the Standing Committee and approved by the competent authority strictly adhering to the proven medical classification. According to the respondents, even though the controller duty is a safety category job, it does not involve any train running or passing duties. According to them, at present the working nature of Section Controller is not stressful as it is done electronically. According to them, Section Controller's job is not involving heavy manual labour and hence the applicant's argument has no merit. The respondents had passed a speaking order at Annexure A12 after considering all relevant facts and medical de-categorization. As per Railway Board order dated 28.2.2019, medical classification for unified category of Commercial and Ticketing staff is B-2 exclusive of the existing commercial staff. It was also stated that due to Covid-19 pandemic, most of the commercial staff are remaining idle for the last six months. It was also contended that the 7th Pay Commission had granted "Special Train Controllers Allowance" and it has nothing to do with the nature of job of Section Controllers. The applicant was considered as deemed to have been relieved and the relieving memo is now pasted on the notice board of the Station Superintendent at Kannapuram.

7. The applicant filed a detailed rejoinder stating that the Section Controller post is not a suitable post for him. As per Annexure A13 order dated 28.2.2019, the revised medical classification for unified category of Commercial and Ticketing staff is applicable to direct recruitment only and it will not affect the existing employees. It was also contended that as per Section 136 of Railways

Act, "Hours of Employment Regulation are made and as per the said regulation, Section Controller's work is classified as intensive. So the applicant seeks to set aside the above orders and for a posting which is suitable to medically de-categorized person.

8. We have heard the counsel for the applicant Dr.K.P.Satheesan, Sr., assisted by Advocate Smt.Bhadrakumari and the counsel for respondents Sri Sunil Jacob Jose and have also gone through various relevant rules and regulations and annexures produced before the Tribunal.

9. We have carefully gone through the detailed reply given by the respondents as Annexure A12 on the basis of directions given by the Tribunal. It is admitted that the applicant is medically de-categorized and as per the classification, he can be engaged only in Cey One and below jobs not involving heavy manual labour. It also shows that the Section Controller is having 4 shifts in 6 hours each which does not involve full night duty. So according to the respondents, it is not an arduous job as alleged by the applicant.

10. We have gone through the medical certificate issued by the Medical Board, which is produced as Annexure A2. The Medical Board has examined the applicant and found that he is having cardiomegaly problems and he requires surgical closure of ASD. He was de-categorized as not fit for any safety category jobs involving train running or passing duties. It was also clearly stated that the applicant is unfit for Aye and Bee categories. He can be engaged only in Cey One and below, without having any heavy manual labour. There is no dispute between the applicant and respondents regarding the medical de-categorization of the applicant and the Medical Board opinion regarding his health condition. It is clearly mentioned that the applicant cannot be used for work involving safety and train running etc. He also cannot attend heavy manual labour. The applicant in

this case was first posted as Cash Witness and, thereafter, he was posted as Crew Management Service Office. But subsequently, the applicant was posted as Section Controller in the existing vacancy as per Annexure A7 order dated 7.9.2020. The respondents had also absorbed him as Section Controller in Operating Department as per Annexure A9 dated 8.9.2020. It is to be seen whether the posting of the applicant as Section Controller is of arduous nature and whether it is a safety category job involving train running or passing duties. The applicant has extracted the details of work to be done by Section Controller from the Manual of Indian Railways and according to him, the main functions of the Section Controller are as follows: 1 to 7 extract.

- “(i) Recording the movement of trains on the 'Control' graph including crossing, connections and shunting reasons for detentions etc.*
- (ii) Advising stations in advance of the work to be done on trains on move.*
- (iii) Informing sheds and stations about the late running of trains to avoid the calling of crew and guards earlier than necessary or to put back trains wherever advisable.*
- (iv) Informing major stations and concerned Section Controller about the current running of trains on the section and their anticipated arrivals well in time.*
- (v) Keeping in close touch with Engineering-blocks and working of material trains so as to give the maximum possible time with least detention to other traffic.*
- (vi) Incident management to include adjusting movements of trains in view of the likely impact of of the incident, informing all concerned.*
- (vii) Watching the working of marshalling yards & major terminals.”*

11. The applicant in this case has also produced a copy of the report of the Committee on Allowances as Annexure A18 to show the arduous nature of work as Section Controller. The Committee has recommended special Train Controllers Allowance to Section Controllers. The recommendations of the 7th

CPC was also extracted in the said report. It reads as follows:

“Having regard to the strenuous nature of the job, and to incentivise qualified persons to work as Controllers, we recommend a Special Train Controllers' Allowance of Rs.5000 per month to Section Controllers and Dy. Chief Controllers. The allowance will increase by 25 percent each time DA rises by 50 percent.”

12. The said recommendation was implemented by the Railways as per Annexure A19 order dated 10.8.2017.

13. If we go through the reply filed by the respondents, it can be seen that even the respondents admit that the post of Section Controller is a safety category job but why the respondents have posted him to such an important post is not clear. The extract of the Indian Railways Manual shows that the job of Section Controller is strenuous and it requires constant attention all the time during work. As per Annexure A2, the applicant is suffering from serious heart problems and he should not be posted in safety category jobs and jobs involving heavy manual labour. The order appointing the applicant as Section Controller as Annexure A7 is arbitrary and illegal in this case. Annexure A9 absorption of him in the said Department without considering his representation was also an arbitrary order without considering the grievance of the applicant. Annexure A12 speaking order shows that the respondents had appointed him as Section Controller considering his long experience as Station Master. But the respondents have not clearly stated what was the reason for posting him in a safety category post which the Medical Board has specifically stated not to be done in its certificate.

14. In view of the above situation, we find that the orders issued by the respondents as Annexures A7, A9, A12 & A15 impugned in this OA are liable to be set aside.

15. In view of the facts and circumstances revealed, we hereby set aside the above impugned orders. The respondents are directed to consider the case of the applicant in the light of the medical de-categorization certificate issued by the Medical Board and in view of various non safety category jobs available in the Department for posting the applicant. This should be done within a period of one month from the date of this order. The OA stands allowed to that extent.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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- Annexure A1: True copy of the Award during the year 2016-2017 issued by Chief Operations Manager, Chennai dated 3/3/2017.
- Annexure A2: True copy of the communication No.J/MD. 84/V dated 6/11/2019 issued by the Additional CMS/PGT Divisional Office, Medical Branch.
- Annexure A3: True copy of the communication dated 4/2/2020 issued by the 3rd respondent.
- Annexure A4: True copy of the order No:J/T.20/SNP dated 28/2/2020 issued by the 3rd respondent.
- Annexure A5: True copy of the representation dated 19/7/2020 submitted by the applicant before the 4th respondent.
- Annexure A6: True copy of the representation submitted by the applicant before the 4th respondent dated 12/8/2020.
- Annexure A7: True copy of the Office Note dated 7.9.2020 issued by the 4th respondent.
- Annexure A8: True copy of the communication issued by the Station Manager, Kannur dated 9/9/2020.
- Annexure A9: True copy of the order No:J/T.15/2020 dated 8/9/2020 issued by the 4th respondent.
- Annexure A10: True copy of the representation submitted by the applicant on 9/9/2020 before the 4th respondent.
- Annexure A11: True copy of the order passed by this Tribunal in O.A. No:180/00435/2020 dated 22/9/2020.
- Annexure A12: True copy of the order No:J/T20/KPQ/VAN/1 dated 7/10/2020 issued by the 3rd respondent.
- Annexure A13: True copy of the order issued by Railway Board dated 28/2/2019.
- Annexure A14: True copy of the order issued by the 3rd respondent dated 9/9/2020 with regard to the vacancy position.
- Annexure A15: True copy of the relieving order affixed in the notice board of Kannapuram Station along with typed copy of the same.
- Annexure A16 (a) & (b) respectively: True copy of the request for leave submitted by the applicant along with Medical Certificate issued by Dr.Dharmesh Damodar Vachaly.
- Annexure A17: True copy of the information issued under the RTI Act by the 4th respondent stating the vacancy position in the Commercial Department dated 12/10/2020.

- Annexure A18: True copy of the relevant pages of Report of the 7th Pay Commission Report.
- Annexure A19: True copy of the order issued by the Govt. of India, Ministry of Railways dated 10/8/2017.

Annexure A7: True copy of the Office Note dated 7/9/2020 issued bby 4th respondent.