

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00238/2021 with MA No. 337/2021

HYDERABAD, this the 7th day of April, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



Venkata Ganesh Babu V S/o Ranga Rao,
Age 40 years, Group 'C', Loco Pilot (Passenger),
O/o the Chief Crew Controller, Kacheguda,
R/o H.No.12-13-829/C, Flat No.101, Sai Balaji
Residency, Street No.11, Tarnaka,
Secunderabad-500017.

...Applicant

(By Advocate : Mr. P. Ramachander Rao)

Vs.

1. Union of India, South Central Railway, Rep by its
General Manager, 3rd Floor, Rail Nilayam,
Secunderabad-500073.
2. Senior Divisional Personnel Officer, Hyderabad Division,
S.C.Railway, Ground Floor, Hyderabad Bhavan,
Secunderabad-500025.
3. Senior Divisional Mechanical Engineer,
Hyderabad Division, S. C. Railway, I Floor,
Hyderabad Bhavan, Secunderabad-500025.
4. Chief Medical Superintendent, Kacheguda,
Hyderabad Division, Hyderabad.
5. Chief Crew Controller, Hyderabad Division,
Kacheguda.
6. The Divisional Railway Manager,
Hyderabad Division, SC Railway,
Secunderabad.Respondents

(By Advocate : Mr.V.Vinod Kumar, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed aggrieved by the impugned relieving order 12.12.2020 while he was undergoing treatment in the Railway Hospital for “neurocardiogenic syncope” and for a direction to the respondents to post the applicant in a sedentary post.

3. Brief facts of the case are that the applicant while working as Loco Pilot (Passenger) was medically de-categorised on 19.5.2020 and offered the Senior Technician Post on 17.11.2020 in the Mechanical Department. Applicant represented to the DRM on 23.11.2020 and without disposing the representation, the applicant was ordered to be relieved on 12.12.2020 to join the alternative post offered, though at that time he was taking medical treatment. Aggrieved, the OA is filed.

4. The contentions of the applicant are that as per R-4 medical advice, he should not stand for long hours, change his posture or undertake strenuous work. The Senior Technician job offered involves strenuous work. On 16.12.2020, the 4th respondent certified the applicant to be medically fit, though he was not fit and therefore, was compelled to take treatment from Gandhi Hospital and some of the medical certificates submitted seeking leave were not accepted which speaks of the vindictive attitude of the respondents. Possibly by rejecting the MCs the respondents may make out a ground for proceeding on account of unauthorized absence. On 13.1.2021, applicant was tested positive for Covid-19. Applicant was posted in Sr. Technician post contrary to the recommendations of the



specialist. Delivering the relieving order while taking medical treatment is violative of Rule 233 of Indian Railway Establishment Code Volume—I and that too, before the disposal of the representation. Applicant cited the Hon'ble Apex Court judgments in support of his contentions.



5. Respondents *per contra* state that the screening committee which medically de-categorised the applicant had a doctor as one of the members, considering his medical condition and recommended the post of Sr. Technician in Mechanical Department, which is a supervisory in nature involving no physical strain. Rule 233 of IREC Vol. I cited by the applicant is not applicable. As per DRM letter dated 17.11.2020 if an employee does not join the alternative post offered, then salary should not be drawn. An employee on medical de-categorisation has to be absorbed in the other wings of the same Department and if not possible, in the other Departments, as per Railway Board Letter vide RBE No. 112/2003. Applicant was absorbed in the same Department. Moreover, as per Railway Board Circular RBE 213/2000 (Serial Circular No.234/2000, dt. 29.12.2000), the supernumerary post in which an employee medically de-categorised is initially adjusted, will be abolished once an alternative post is offered. The Railway Doctor found him fit on 16.12.2020 and it has to be given credence. Applicant refused to take delivery of the relieving order and hence, it was delivered through a bearer.

6. Heard both the counsel and perused the pleadings.

7. The dispute is about posting the applicant as Sr. Technician in the Mechanical Department after he was medically de-categorised. The facts of the case reveal that the applicant was suffering from ***Neurocardiogenic***

Syncope with head tilt positive. Syncope is defined as a transient loss of consciousness, with loss of posture (that is, falling). Commonly described as “fainting,” “passing out,” or “blackout,” Syncope requires emergency visits and admission in the hospitals depending on type of case. The recurrence rate is more with the advancing age. The results of a **tilt table test** are based on whether you faint during the **test** and what happens to your blood pressure and heart rate. The result is **positive** if your blood pressure decreases and you feel dizziness or faint during the **test**. Frequent or recurrent episodes can negatively affect quality of life and employability.

II. The broad features of the medical condition make it clear that one has to be careful because loss of consciousness/ fainting at any moment of time and particularly, while working in a department like Mechanical Dept involving repair of wagons, would be something the respondents have to ponder about. Is it not risky to expose the applicant to such a work environment! The 4th respondent i.e. Chief Medical Superintendent has advised the applicant not to stand for long periods, avoid sudden change of postures, exertion and not to undertake strenuous work. Even after the 4th respondent’s advice as at above, offering applicant the Sr. Technician post is surprising. It thus raises a question mark as to whether the Committee has properly evaluated the case of the applicant in view of the advice of the 4th respondent. Respondents claim that the post offered is a supervisory post considering his educational qualification of B.Tech. (Mechanical Engineering) and his medical condition. It appears the respondents have been more influenced by the educational qualification i.e. Degree than his



medical condition in offering the post in question. The Ld. Counsel for the applicant has pleaded that the post offered was not a supervisory post and it is part of Artisan Cadre, as per Railway Board RBE No.205/2009 dt. 25.11.2009.



III. The objective of medical de-categorisation is to enable the employee to work in a post he can work. In this regard the observations of the Hon'ble Apex Court in ***Narender Kumar Chandla v. State of Haryana, 1995 AIR 519, 1994 SCR (1) 657***, are reproduced here 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."

This Tribunal, in similar circumstances, passed an interim order in OA No. 21/253/2019 on 13.03.2019 as under:

"2. It is submitted on behalf of applicant that applicant was decategorized as he has been suffering from "Neurocardiogenic Syncope". He was posted in an alternative post of Technician-II/ELS/LGD which involves repair of locomotives. The grievance of the applicant is that in view of his disability, he was not able to discharge duties in the said post. He submitted representation dated 24.01.2019. Therefore, there shall be interim direction to respondents to consider and to dispose of representation dated 24.01.2019 submitted by the applicant, within a period of four weeks and consider his case for adjusting him in a post in which he would be above to discharge his duties."

In one another verdict of this Tribunal in OANo.115 of 2020, vide order dt. 22.03.2021, it was observed as under in regard to offering of an alternative post as under:



“IV. Further, respondents’ organisation has a very large establishment and finding a suitable alternative is not a difficult exercise. Where there is a will there is a way. The respondents did accommodate similarly situated staff as OS and therefore, the plea of the applicant to consider him similarly. The respondents state that there are no OS posts, but they did not furnish any documentary evidence to this effect. As a model employer, they have a higher responsibility to back their facts with documentary backing, rather than challenging a hapless applicant to be put to strict proof of his contention about the availability of OS posts. It is not that the applicant needs to be posted as OS only, but any other post where he can work and contribute to the organisation. This is the minimum responsibility of the respondents to be discharged in the best interests of the organisation and in the process, the applicant too. Rules are meant to take decisions, which further the interests of the organisation and not create disgruntled employees by not appreciating the import of the rules. The spirit of the rule is sacrosanct and not its literal interpretation.

V. We find that there is scope to accommodate the applicant like many others in a post in which he can work and not doing so, is defeating the very objective of having the concept of medical de-categorisation. The OA was filed in January 2020 and there could be some OS posts that would have become vacant in the interregnum period and such a possibility cannot be ruled out. Therefore, it is all the more necessary to have a relook at the request of the applicant.

VI. In view of the above, we direct the respondents to consider the request of the applicant for posting him in the post of OS and in case, it is not feasible, they are directed to post him in a post compatible to his ability to perform, other than the Commercial Supervisor post. Before issuing the posting order, the applicant be called and heard, so that there would be no further room for the grievance to persist. Time calendared to implement the judgment is 3 months from the date of receipt of this order.

With the above direction the OA is disposed of with no order as to costs.”

IV. Besides, we also observe that when the applicant was under treatment from Gandhi Hospital, the relieving order was served on the applicant through a messenger. We do not understand the tearing hurry in

serving the relieving memo in the manner it was done. The applicant is entitled for medical leave on health grounds. Some of the medical certificates submitted were reported to have not been accepted. Without disposing the representation of the applicant dated 23.11.2010, the relieving order dated 12.12.2020 was issued. These circumstances demonstrate that the respondents were not dealing with the applicant in a fair manner. Employees, who are medically de-categorised are under emotional stress and the action of the respondents should not further enhance the stress and aggravate the disease/medical infirmity they are suffering from. There has to be a human touch in dealing with the matters of the heart (emotions).

V. The applicant is willing to work and is only seeking that he be given a post where he would be able to work. Therefore, the emphasis on the norm by the respondents that salary would be stopped once alternative post is offered is painful to note, since it is important to note that the employee need to be taken into confidence in offering an alternative post. Such an effort appeared to have not been taken and by not doing so, the grievance remains unresolved reflecting adversely on Organizational efficiency. The respondents' establishment is large and it would not be a herculean task to locate a post in which the applicant can work. A little effort would yield a win-win situation.

VI. Therefore, in view of the aforesaid circumstances, we direct the respondents to give a personal hearing to the applicant and thereafter identify a post, other than the Senior Technician post, where he can work and contribute to the respondents organisation. Till a decision is taken, the relieving order dated 12.12.2020 is kept in abeyance. Time allowed to



implement the judgment is 12 weeks from the date of receipt of this order. With the above direction, OA is disposed with no order as to costs. Consequently, MA 337/2021 stands disposed.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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