

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00313/2015 with MA Nos. 1005/2016 & 296/2017

HYDERABAD, this the 29th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



K. Jagga Rao S/o Venkataiah,
Aged 44 years, Occ : Loco Pilot (Goods),
O/o The Chief Crew Controller,
Kazipet R.S., South Central Railway,
R/o H.No.437/2, Railway Quarters,
Nehru Nagar, Kazipet-506 003.

...Applicant

(By Advocate : Mr. K. R. K. V. Prasad)

Vs.

1.Union of India represented by
The Chairman, Railway Board,
(Ex Officio Principal Secretary to Government of India),
Rail Bhavan, New Delhi.

2.The General Manager,
Rail Nilayam, South Central Railway,
Secunderabad.

3.The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad Division,
South Central Railway,Secunderabad.

4. The Senior Divisional Personnel Officer,
Sanchalan Bhavan, Secunderabad Division,
South Central Railway,Secunderabad.

....Respondents

(By Advocate : Mr. V.V.N.Narasimham, SC for Railways)

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

Through Video Conferencing:



2. The OA is filed questioning the Memo dt. 22.01.2015 r/w. Memo dt. 25.02.2015 in so far as absorption of the applicant in the alternative post of Chief Book Clerk with posting at Bidar, Karnataka State instead of allotting a suitable alternative post compatible with the medical advice, consequent upon his medical categorization.

3. Brief facts of the case are that the applicant while working as Loco Pilot (Goods) was found medically unfit on 13.2.2014 and temporarily posted as Chief Crew Controller at Khazipet. Thereafter, he was screened on 2.9.2014 by the duly constituted committee, which recommended the case of the applicant to the post of Chief Booking Clerk (CBC)/ Chief Parcel Clerk (CPC)/ Chief Goods Clerk (CGC) in the Commercial Department and accordingly, he was posted at Bidar vide impugned order dated 25.2.2015. The applicant represented that his health condition does not permit working as CBC involving night duties and there being no relief, the OA is filed.

4. The contentions of the applicant are that he represented in January 2015 stating that the CBC post specified involves night duties and he would not be in a position to handle the job. He was assured by the Screening Committee that he would be considered for a suitable post at Khazipet. He underwent surgery, as a consequence of which, his shoulder, neck and mouth movements have become restricted. Applicant has to undergo frequent medical check-ups and requires to take adequate rest. He has 2

children studying in 9th & 3rd standard, who have to be taken care of. When others who were similarly situated represented for a change, it was considered and posted as OS (Office Supdt.) to stations of their choice or nearby places. The applicant has done Diploma in Electronics & Communication Engineering and therefore, he can be considered for the post of JE (Drawing). The case of the applicant is covered under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act (for short "**PWD Act**"). Applicant belongs to the SC community and as per rules, he need to be posted nearer to his native place. The applicant can be adjusted against a supernumerary post till a suitable alternative post is identified. As per Para 1304 of IREM, Vol. I, Chapter XIII, a medically de-categorised employee has to be appointed in a post commensurate to his ability. Posting him to a distant place like Bidar would deteriorate his health further. The applicant was discriminated by posting similarly situated employees who have lesser medical problems as OS and not the applicant. Articles 14, 16 & 21 of the Constitution have been violated.



5. Respondents in the reply statement state that the applicant was medically de-categorised on 13.2.2014 after due screening by a committee and on obtaining his consent, was considered for the post of CBC/CPC/CGC vide memo dated 22.1.2015. Accordingly, he was posted as CBC at Bidar on 25.2.2015, while keeping in view the night duties associated with the job. No assurance was given by the screening committee to post him at Khazipet. The screening committee had the



additional Chief Medical Supdt. as a member of the screening committee and therefore, considering his medical condition, educational qualifications, etc, he was recommended for the post of CBC and therefore, posted in the said cadre at Bidar. Medical facilities are available at Bidar for regular check up. Applicant is liable for transfer to any place in the Division and not necessarily near to his native place. Cadre change cannot be done after the recommendations of the committee are received. Pay of the applicant has been protected. In regard to posting of other employees as OS on the recommendation of a previous medical panel on medical de-categorisation, the applicant cannot neither affirm that they have less severe medical issues nor can he compare himself with those who were screened by a different medical panel. There are no JE vacancies to consider the case of the applicant. He would be considered for the said post as and when the vacancy arises provided he joins the post offered. As per rules, if the applicant does not join the post offered, his salary would not be drawn since applicant cannot be used in a non functional job incurring unnecessary costs. The applicant cannot be continued in a supernumerary post after an alternative post has been identified. Applicant is not a PWD person because he has been found unfit only for a particular medical classification.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the posting of the applicant working as Loco Pilot (Goods) as CBC at Bidar after being medically de-categorised. The respondents followed the prescribed norm of forming a screening committee with a doctor as one of the member which recommended the applicant to be posted as CBC/CPC/CGC on 02.09.2014, as per the Memo

dt. 22.1.2015 and accordingly, he was posted as CBC at Bidar on 25.2.2015. The applicant's grievance is that he underwent surgery and as a result, his shoulder, neck and mouth movements got restricted. Consequently, he is afraid that with his fragile health, he would not be able to work as CBC involving night duties and that too, at Bidar, which is far away from his present place of posting at Khazipet.



II. Going to the basics, a medically de-categorised employee is one whose health is not normal. Therefore, they can handle certain type of work depending on the medical condition. A doctor would be able to diagnose a de-categorised employee and recommend the type of duties he can do, but his recommendations would not necessarily be correct in all circumstances. If a doctor were to be accurate in his diagnosis, every patient treated by him has to be cured. It is a million dollar question, which remains unanswered forever. A patient knows more about his condition than the doctor and therefore, some credence has to be given to the version of the applicant about his plight of restricted shoulder, neck and mouth movements. Moreover, faith in a doctor is fifty percent of the cure. The doctor in whom the applicant has reposed confidence would not be available at Bidar. It is not for the respondents to state as to which hospital or the doctor the applicant can reach out to, as held by Hon'ble Supreme Court in a catena of judgments. Moreover, for a patient, family support and the familiar surroundings enable quick recovery along with the confidence he gets in life as it progresses. Therefore, the argument that at Bidar, medical facilities are also available is a shallow contention lacking respect to human sensitivities involved in an issue of the type on hand.

III. The Constitution provides for some relaxation in considering the cases of employees belonging to the SC community and therefore, the respondents as a matter of their transfer policy should, as far as possible, post SC employees near to their native place. Every employee is liable to be posted to any place within the Division, but in respect of SC employees, some leeway has been given by the Railway Board to post them near their native place. This provision has not been denied by the respondents. Hence, the applicant being an SC employee, even this factor has to be considered and it cannot be brushed aside in simplistic terms.



IV. We agree with the respondents that the applicant does not belong to the PWD category, but one cannot deny that he is handicapped to work to his full capacity. Therefore, the request of the applicant to post him in OS or JE (Drawing) and not as CBC involving night duties. The respondents have a very large establishment and it would not be difficult for them to consider the applicant for a sedentary post where he can work and contribute to the organisation.

V. The OA has been filed in 2015 and we are sure, there would be many changes in the establishment like availability of OS/JE posts etc or any other post at Khazipet or at Khammam to consider the request of the applicant. When the applicant has medical issues of the nature described, anyone with common prudence would sympathise with him and it requires no profound medical knowledge to come to the conclusion that he should be given as assignment commensurate to his disability as provided for in para 1304 of IREM Vol.I. Respondents claiming that a committee has recommended the alternative post and therefore, the posting cannot be



changed pales into insignificance since the respondents did not rebut the assertion of the applicant that in case of other similarly situated employees change of cadre to the post of OS was allowed after the committee tendered its recommendation. If it was done to others, why not for the applicant! If not done, it would tantamount to discrimination and violative of Article 14 of the Constitution. The argument of the respondents that a different panel provided the post of OS to others lacks logic since all the panels are bound by the same rules. The difference is in the thinking of those who have been given the responsibility to decide and when their thinking is violative of Article 14 of the Constitution, then is it liable to be judicially reviewed. There has to be uniformity and consistency in the action of the respondents. Different yardsticks being applied to similarly situated persons, is impermissible under law.

VI. A similar issue fell for consideration before this Tribunal in OA 115 of 2020 wherein, we made some key observations taking into consideration the individual and organisational requirements and observed as under:

“II. However, the applicant was medically de- categorised due to a health issue which does not permit him to do certain tasks which require concentration for long spells of time. The post of Commercial Supervisor as the name goes, is all about dealing with commercial aspects which involves revenue related work and hence, calls for greater responsibility and deep concentration so that no wrong decision or note is prepared, which would cause difficulty in regard to the aspect of revenue for the respondents organization. Now, the moot point to be considered is as to whether assigning an important assignment like Commercial Supervisor to the applicant would be in the interest of the organisation! Seizure in medical parlance is understood as a sudden, uncontrolled electrical disturbance in the brain. It can cause changes in your behavior, movements or feelings, and in levels of consciousness. Such is the impact of seizure on the behaviour of an individual and placing such individuals in posts of Commercial Supervisors is taking an unwarranted risk from the organisational point of view. More than the applicant the respondents need to be worried to assign such an assignment to an employee who suffers from seizures.



III. True, the Screening Committee had a doctor but there is a well accepted saying that a patient knows better than the doctor about what he is suffering from. A doctor's advice is valuable but all advises are not found to be correct. A doctor is also a human being and there could be a judgmental error in his opinion too. It cannot be denied that the respondents need people who can work and not those who cannot. Here is a case where the applicant is praying that he is not in a position to work as Commercial Supervisor due to his medical issue and by forcing him to work in the said post, either he will commit mistakes which will only lead to disciplinary action and will cause unnecessary financial burden on the respondents organisation or he will seek voluntary retirement, which in turn calls for replacement involving recruitment costs and precious time required to find a replacement. Decision making involves all these aspects and it is not a one-problem-one-solution syndrome. Therefore, the element of discretion in decision making. If decisions were to be straight jacket decisions, then serious questions would arise in having a hierarchy of command in the managerial spectra of the respondents organisation. The efficiency of an organisation is also measured from the grievance decision ratio and organisations with the lowest such ratio are the most successful, for the obvious reason that employee morale would be high, coupled with higher unflinching commitment to the organisation.

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 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."

The case of the applicant is also covered by the above verdict and requires no further elaboration. The difference is in the ailment but the consequence of the ailment perse in debilitating the ability to perform being diminished is unequivocally equal. Therefore, in view of the aforesaid circumstances, respondents are directed to consider the request of the

applicant to be posted as OS/ JE or in a post where he can work in peace at Khazipet/Khammam or any place nearer to either of the two, so that he would be able to contribute effectively to the organisation while safeguarding his health at the same time. Before, issuing any order the applicant may be called and heard by the competent authority so that a decision that aptly responds to the ground reality can be taken in the interest of the respondents organization/ employee. This, we are specifically observing to minimize the grievances in the respondents' organisation on this count and to save the valuable time of the respondents as well as that of the court. The time allowed to implement the judgment is 3 months from the date of receipt of this order. Till the respondents take a decision as directed, the Interim order dated 05.03.2015 would hold good.



With the above direction, the OA is disposed of with no orders as to costs. Consequently, MAs stand disposed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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