

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

OA NO.36/2000

Allahabad, this the *14th* day of *May*, 2008

**HON'BLE SHRI ASHOK S. KARAMADI, MEMBER (J)
HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)**

Rati Pal
S/o Late Nand Lal
R/o Quarter No.E-81B, Railway Hospital Colony
North Eastern Railway
Izzat Nagar Division
Bareilly.
After medically dectegorisation working
As Clerk in Izzat Nagar Division
(Stores), North Eastern Railway,
Bareilly. Applicants

(By Advocate: Sh. T.S.Pandey)

Versus

1. Union of India through Ex-Officio
Secretary and Chairman
Railway Board
Rail Bhawan
New Delhi.
2. Director General
Railway Protection Force
Baroda House
New Delhi.
3. General Manager,
North Eastern Railway
Gorakhpur
4. Divisional Security Officer
North Eastern Railway
Izzat Nagar Division
Bareilly.
5. Divisional Manager (Stores)
North Eastern Railway,
Izzat Nagar Division
Bareilly. Respondents

(By Advocate: Sh. Anil Kumar)



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ORDER

By Shri Shailendra Pandey, Member (A):

The applicant was initially appointed as Constable in the Railway Protection Force on 10.12.1974 [according to him in the pay scale of Rs.825-1200, subsequently revised to Rs.3050-4590] and worked as Constable till he was medically de-categorized on 23.05.1997 in Izzat Nagar Division. Subsequently, he was appointed to the post of Clerk in the pay scale of Rs.3050-4590 vide Office Order No.41 dated 10.09.1999 as rectified by the order dated 04.10.1999. A fitness certificate was issued on 23.01.1998 by the Senior Divisional Medical Officer in which it had been mentioned that "avoid work where smoke or any other germs are there".

2. The applicant has claimed through this OA salary for the period from January, 1998 till August 1999 which according to him amounts to Rs.84,420/- along with 12% interest thereon, as according to him, he had continued to discharge official duties during this period, and there was no legitimate reason for the respondents to deny him pay for this period. Hence, this Original Application has been filed. The applicant has also mentioned in his OA that he had obtained a loan against his GPF deposits in the year 1995 but the last instalment of this had been recovered in the month of December, 1997 and, therefore, no amount towards this is due from him.

3. In the counter reply, the respondents have stated that the applicant was appointed as Constable/Kahar in the pay scale of Rs.70-85 on 10.12.1974 and not as Constable in the pay scale of Rs.825-1200 and that this scale was revised to Rs.2610-3540 and not Rs.3050-4590, as claimed by the applicant. They have also stated that it is incorrect to say that he performed his duties from January, 1998 to August, 1999

and that during this period he was under medical treatment and observation of the medical department and the period was treated as leave not due since no leave was due to his credit, and he was not entitled to any payment. They have further stated that absorption as Clerk in the pay scale of Rs.3050-4590 after his medical de-categorization has been made erroneously, as absorption after medical de-categorization is permissible only in identical grades or in lower grades, and that action for correction of the administrative error is on hand. They have also mentioned that no advance from his Provident Fund was paid to the applicant in 1995 and no recovery towards this was effected from his salary. It has also been clarified that the period of applicant's sickness from 04.04.1997 to 23.01.1998 was treated as follows - from 4.4.1997 to 13.5.1997 and from 14.5.1997 to 2.6.1997 regularized as leave due as 40 days of LAP 70 days LHAP and the rest as Leave without pay as no further leave was due at his credit. He was paid leave salary whatsoever was due to him and he is not entitled to any further payment as claimed.

4. As regards work after 23.01.1998, when the Senior Divisional Medical Officer, Izzatnagar issued a fitness certificate with the endorsement "Avoid work where smoke or any other jerm [sic; germs] are there", the respondents have stated that there was no post available with IPF/Kasganj where the applicant could have been asked to perform duties and that period of his sickness from January 1998 to September, 1999 has been regularized as Leave Without Pay there being no leave due at his credit and no payment is thus due to him.

5. The applicant's counsel has contended that after the date of medical de-categorization an employee is required to be provided an alternate job protecting his scale of pay and the actual pay drawn by him

at the time of medical de-categorization and if it is not possible to adjust the employee against any post, he has to be kept on a supernumerary post until a suitable post is available or on attaining the age of superannuation whichever is earlier. In this connection, he has relied on the judgement of the Hyderabad Bench of this Tribunal in OA No.1368/2002 [**P. Pardhasarathy v. The Union of India and Ors.**], decided on 10.12.2002, wherein it has been held as under:

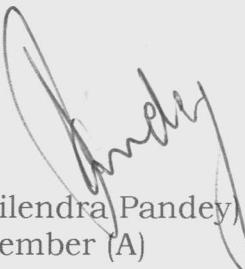
“Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Section 47(1) – Indian Railway Establishment Manual, Para 1305—Pay Fixation – Medical Decategorisation – Once it is found that the person has developed serious disability during the course of the employment on account of nature of duties performed by him and was medically de-categorised after subjecting him for medical examination by the Medical Officer of the Railways—Employee is to be provided alternate job protecting his scale of pay and the actual pay drawn by him at the time of medical decategorisation and if it is not possible to adjust the employee against any post he is to be kept on supernumerary post until a suitable post is available or on attaining the age of superannuation whichever is earlier—There would be no distinction between the employees who voluntarily subjected for medical examination and those who were made to undergo medical examination by the authorities without a request being made in this regard for the purpose of extending the benefit of the 1995 Act and Railway Board Instructions dated 26.6.2002 on the subject—Ordered accordingly.”

6. We have perused the material on record and we have been through the rival contentions of both the parties. It is pertinent to note here that the judgment of the Hyderabad Bench of this Tribunal referred to above would be applicable only if it were found that the person has developed serious disability during the course of the employment on account of nature of duties performed by him. It has been pointed out to us that both the eyes of the applicant were operated for cataract on 23.05.1997 and on this date he was medically de-categorized. It would be



necessary to first examine if the disability in question has resulted on account of nature of duties performed by him and whether after medical de-categorization, the disability in question had brought him within the ambit of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and only in that case the respondents would be required to take action to provide him alternate job, etc. in terms of the relevant provisions of the said Act.

7. In view of the above discussion, we are of the considered opinion that interest of justice would be met if the present case is remitted to the respondents with a direction to them to reconsider the entire case in terms of the extant rules on the subject and the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, provided the applicant's disability comes within the list of disabilities under the said Act and ~~arose~~ because of the nature of duties performed by him. After consideration of the matter as above, the respondents shall pass a reasoned and speaking order regarding the applicant's claim including that for salary arrears, within a period of three months from the date of receipt of a certified copy of this order. No costs.


(Shailendra Pandey)
Member (A)


(Ashok S. Karamadi)
Member (J)

/nsnrsp/