

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No. 413 OF 2001.
Cuttack, this the 23rd day of September, 2005.

KESHAB CHANDRA SINGH APPLICANT.

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of CAT or not? *Yes*

AFR *of* *of*

(M.R. MOHANTY)
MEMBER (JUDICIAL)

o

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No. 413 OF 2001.
Cuttack, this the 23rd day of September, 2005.

C O R A M:-

THE HON'BLE MR. M.R.MOHANTY, MEMBER (JUDICIAL)

Keshab Chandra Singh, 33 years,
Son of Surendra Singh, Gopinathpur,
Via- Bahugram, Cuttack at present
Choukidar in Bridge Inspector's Office,
Cuttack under S.E.Railway. APPLICANT.

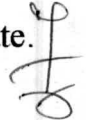
For the Applicant : - M/s.A.K.Mishra, J.Sengupta, P.R.J.Dash,
D.K.Panda, G.Sinha, Advocates.

VERSUS.

1. Union of India represented through General Manager, SE Railway,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager, SE Railway, Khurda Road, Khurda.
3. Divisional Personnel Officer, SE Railway, Khurda Road, Khurda.
4. Junior Engineer, PWI, SE Railway, Rambha, Ganjam.

..... RESPONDENTS.

For the Respondents:- Mr.D.N.Mishra, Counsel for Railways.
M/s. B.K.Behura, P.C.Panda, P.Dutta, Advocate.



12

- 2 -

O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL):-

Applicant Keshab Chandra Singh, a low-paid Gangman attached to Railway Engineer stationed at Rambha/Ganjam of East Coast Railway/South Eastern Railway, was under treatment (for the reason of his sickness) under the Railway Medical Superintendent at Khurda Road and, during the period of his said sickness, he had to be admitted in SCB Medical College Hospital at Cuttack and, ultimately, he was referred (by the Junior D.M.O/ Surgeon of the Railways at Khurda Road) to the Railway Medical Director (Neuro-Surgeon) at Garden Reach (Kolkata); who opined that the Applicant should be given sedentary job (like Chowkidar/Office-Peon/Rest House Caretaker) and to remain under regular medical supervision. The Junior Engineer/PWI of Railways stationed at Rambha/Ganjam, however, informed (the Sr. D.P.O.) about non-availability of sedentary posts at his disposal in order to accommodate the Applicant. It appears, although steps were taken for providing an alternate employment to the Applicant by placing him before a screening; no such screening was taken on 23-06-1998 nor on 19-08-1998 and, finally, after screening him on 23-09-1998, the Applicant was posted,

J
S

13

- 3 -

on 04-11-1998, as Chowkidar under Railway Section Engineer (Bridge) at Cuttack against an existing vacancy. During the intervening period, the poor Applicant was unable to discharge field duties; for which he was, virtually, forced to remain on leave and, since sufficient leave was not available in his leave-account, he had to suffer the period (of leave) without pay. During this period, the Railways was considering the plight of such of their employees, who were suffering medical de-categorisation stage and, ultimately, Railway Estt. Srl. No. 122/99 (vide Rly. Bd. Order No. E (NG)/1/96/RE-3/9/2 dated 29-04-1999) was issued to allow the medically de-categorised employees to continue in service till their suitable absorption in alternate post and to create supernumerary posts to accommodate them; if suitable posts are not available to provide immediate alternate postings to them. The said stand of the Railways was reiterated in Railway Estt. Sl. No. 34/2000 vide Railway Board's Letter dated 18.01.2000. Despite this, it was experienced that a long time is being required to create supernumerary posts for the medically decategorised personnel of the Railways leading to nonpayment of monthly salaries to them. Experiencing such a situation (of finding out an alternate job for the medically decategorised employees, as was

J
S

faced by the Applicant of this case or to create supernumerary post) the authorities of the South Eastern Railways issued a circular (in CPO/GRC Letter No.P/R/4/31/Pt.III dated 25-09-2000) to the following effect:-

“.... Without waiting for creation of post, salary should be paid without break. Since the employee is waiting for absorption, he is on duty and there is no question of deducting his leavein all case of medically decategorisation, payment of salary should continue without interruption and even without creation of supernumerary post etc. may be decided later and no leave be deducted.”

Despite the above clarifications, the salaries of the Applicant for the intervening period (during which he was unable to discharge out door duties and was waiting for an alternate sedentary job, without payment; for adequate leave was not available in his leave account) having not been paid, he approached the Authorities (with his representation dated 12-02-2001) and, no heed having been paid to his said grievances, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

.....to direct the Opposite Parties to pay the salary for the period from 08-04-1998 to 04-11-1998 and further to direct the Opposite

J
S

Parties to regularize the said period and also to grant the annual increment which is due and admissible including the Bonus etc. and to allow the application with costs.”

2. By filing a counter, on behalf of the Railways/Respondents, it has been stated that the case of the Applicant to be barred by limitation and that since the Applicant (as per his pleadings in this Original Application) remained on leave by making an application for “leave without pay”, he is estopped to claim payment for the intervening period. The Respondents have also relied upon Para-2304 of Indian Railways Establishment Manual to oppose the claim of the Applicant.

3. Paras 1301, 1302 & 1304 of Chapter XIII of Indian Railways Establishment Manual (that deals with absorption of Medically Incapacitated Staff in Alternative Employment as it stood prior to amendment vide Estt. Sl.No. 122/1999 and 34/2000 and clarified in S.E.Railway Circular dated 25-09-2000) reads as under:-

“1301. A railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith but every endeavour should be made to find alternative employment for him as expeditiously as possible. Such employment must be of suitable nature and on reasonable emoluments having regard to the

J
O

emoluments previously drawn by the railway servant.

1302. Classification of railway servants declared medically unfit - Railway servants declared medically unfit for further service are divisible into two groups:-

(i) Those completely incapacitated for further service in any post on the railway i.e. , those who cannot be declared fit even in the 'C' medical category;

(ii) Those incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1304. Railway servants incapacitated for service in posts held by them.

(a) permanent railway servants - A permanent railway servant in group (ii) of Para 1302 above must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave Rules by which he is governed, from that date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit, his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should , be extended by grant of extra ordinary leave, subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not

J

17

exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should, however, be noted that,

- (i) the actual creation of supernumerary post will follow the acceptance of offer of alternative post;
- (ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

NOTE- The purpose of granting extraordinary leave envisaged in this para is that in case the Railway administration is able to find a suitable alternative employment for a medically incapacitated employee, there should be no break in his service. Since the period of such extraordinary leave counts for the purpose of special Contribution to P.F. in the case of a railway servant governed by the state Railway Provident Fund Rules but not in the case of pensionable Railway servant the latter employee may not like to avail of the extraordinary leave but may instead prefer to quit service on pension, immediately on the expiry of his period of leave with allowances. In such case extraordinary leave need not be granted to a railway servant, if he so desires.

2. In the matter of absorption of a medically incapacitated staff in alternative post, Railway administrations, should take care to ensure that the interests of staff in service are not adversely affected as far as possible. The alternative

J
S

appointment should be offered only in posts which the staff can adequately fill.

(b) Temporary Railway Servants – A temporary Railway Servant in group (ii) of Para 1302 above who becomes medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the benefit admissible to permanent Railway servants as at (a) above should be given.

If a temporary employee has become medically unfit for the post held by him, on account of circumstances which did not arise out of and in the course of his employment, the benefit of Rule 304 RI (of Fifth Edition 1985) , will not be admissible. While therefore, it is strictly not obligatory to find alternative employment for such an employee, every effort should, nevertheless, be made to find alternative employment. The employee concerned should be granted such leave as is due to him plus extra ordinary leave not exceeding three months ; the total not exceeding six months. If no alternative employment can be found in this period, the employee should be discharged from service”

4. Taking clue from the executive instructios contained in para 1304 above, the Respondents/Railways have refused to make any payment to the Applicant for the intervening period. But by experiencing the difficulties in providing alternate employment at the earliest opportunity (the primary responsibility, of providing such alternate employment, being of the Railway Authorities), the Railways issued Esst. Sl No. 122/99 and 34/2000 and basing on such

J
O

19

- 9 -

Estt. Sls., the Chief Personnel Officer of South Eastern Railway/
Garden Reach/ Kolkata issued clarification under Annexure-10 dated
29-09-20009 to the extent stated herein below:-

“SOUTH EASTERN RAILWAY
CPO's Office/GRC.
Dt. 25-09-2000.

No.P/R/4/31/Pt.III

To
All concerned.

Sub: Payment of salary to medical de-
categorised staff waiting for creation of
Supernumerary posts.

In terms of Board's order No.E
(NG)/1/96/RE-3/9/2 dtd. 29.4.1999 (Est.
Srl.No.122/99) the medically decategorised
employee would continue to be in-service till the
time they are absorbed suitably and if post are not
available, supernumerary post would be created to
accommodate them. This order were again reiterated
vide Board's letter dated 18-1-2000 (Est.
Srl.No.34/2000)

It appears that creation of
supernumerary post takes rather long time for
which the employees are made to suffer by
nonpayment of monthly salary or salary is paid only
for leave available.

Adviser (IR)/Rly.Board has
indicated that such position does not exist in any
other Railways. Further GM has also decided in the
last POM that without waiting for creation of post,
salary should be paid without break. Since the
employee is waiting for absorption, he is on duty
and there is no question of deducting his leave. In
spite of this we get complaints that some of the

J
S

medically decategorised staff are not getting salary after medically decategorisation.

It is hereby clarified that in all cases of medically decategorisation, payment of salary should continue without interruption and even without creation of supernumerary post, Administrative procedure for creation of supernumerary post etc. may be decided later, and no leave be deducted".


5. In the above view of the matter, the objection of estoppel and limitation, as raised by the Respondents, are hereby over ruled; as there cannot be any estoppel against the statute (Railway Board's Circular, in absence of any statutory provision, being statutory in character) and hyper technicality of limitation should not stand on the way of dispensation of justice.

6. The exact issues came up for consideration before this Bench of the Tribunal in Original Application No.187 of 2002 (filed by one Sri V.S.R.Patnaik – VS- Unino of India and Others) and this Bench of this Tribunal, after taking note of the submissions raised by the Railways and the position of the Rules, in its order dated 11th October, 2002 had the Railways /Respondents to adjust the said Applicant only in a post carrying the same scales of pay in which the Applicant was continuing before he was declared medically unfit and in the event of non availability of such a post in the same scale of

7/8

pay, the Respondents therein should allow the Applicant therein to continue in a supernumerary post as per the Indian Railway Establishment Code/Manual referred to above and pay him all his service and financial benefits as per the Rules, even during the intervening period. There are no new materials placed by the Respondents to differ from the view already taken in the case of V.S.R.Patnaik (Supra).

7. In the above view of the matter, there is no iota of doubt to hold that the Applicant is entitled to the emoluments/salaries (what he was getting earlier to his medical decategorisation) for the period from 08-04-1998 to 04-11-1998 and as a necessary consequence, he is also entitled to annual increments and regularisation of aforesaid intervening period of his service. The Respondents are hereby directed to calculate and pay all the arrear dues and consequential reliefs as directed above, to the Applicant within a period of 120 days from the date of receipt of copy of this order. In the result, this O.A. is allowed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)