

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 96 OF 2003

Cuttack, this the 15th day of February, 2005

Sri R.K.Sahu

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Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? TS
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? TS


(M.R. MOHANTY)
JUDICIAL MEMBER


(B.N. SOM)
VICE-CHAIRMAN

8

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 96 OF 2003

Cuttack, this the 15th day of February, 2005

CORAM:

**HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER**

Sri R.K.Sahu, aged about 54 years, six months, son of late P.N.Sahu, hitherto working for gain as TPM'A' at Khurda Road, under Sr.Divisional Operations Manager, S.E.Railway, Khurda Road, at present residing at Balichak Sahi, Post-Jatni, Dist.Khurda, PIN 752 050

Applicant

Advocate for the applicant

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Mr.Achintya Das

Vrs.

1. Union of India, service through General Manager, S.E.Railway, Garden Reach, Kolkata 43.
2. Member Staff, Railway Board, Rail Bhavan, New Delhi.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Kolkata, Pin 700 043.
4. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O.Jatni, Dist.Khurda PIN 752 050.
5. Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, P.O.Jatni, Dist.Khurda, PIN 752 050

Respondents

Advocate for Respondents

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Mr.T.Rath,
Panel Counsel(Rly)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri R.K.Sahu, working as TPM 'A' at Khurda Road, has filed this Original Application challenging the office order dated 21.11.2002 (Annexure A/2) issued by the Senior Divisional Personnel Officer declaring him unfit in Category 'Aye-Two' but fit in category 'Bee-One' for identifying alternative post for absorption, the office order dated 29.11.2002 (Annexure A/3) issued by the same authority posting the applicant as Khalasi Helper on absorption on re-categorization, and the letter dated 3.12.2002 (Annexure A/6) sparing him for joining the new post.

2. The grievance ventilated by the applicant in the Original Application, briefly stated, is that on re-categorisation to Category 'Bee-One' with the glass, under the extant rules, as enshrined in Rule 304 of Indian Railway Establishment Code, Vol.I ('IREC, Vol.I' in short), he should have been absorbed in an alternative equivalent post and if he could not have been immediately adjusted against or absorbed in any suitable alternative post, he should have been kept on a special supernumerary post in the grade in which he was working on regular basis before being medically declared unfit, pending

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location of suitable alternative employment for him with same pay scale and service benefits. The case of the applicant is that not only he was not put in an equivalent or suitable alternative post, but no special supernumerary post was also created with the same pay scale and service benefits, thereby prejudicing the interest of the applicant and causing financial loss to him. He did submit a representation to the authorities (Annexure A/4) on 5.12.2002, but without any effect. His miseries heightened further when he found that in a similarly circumstanced case, one Shri R.K.Gupta, working as Station Superintendent, Khurda and one Shri V.S.R.Patnaik, working as L.M.'A' were given alternative employment strictly in terms of the conditions laid down in Rule 304 of I.R.E.C., Vol.I and Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 and the Ministry of Railways' letter No. E(NG)1/96/RE3/9(1), dated 29.4.1999. The applicant has also alleged that no pay has been drawn for him for the month of December 2002 and in support of this statement, he has submitted a copy of the pay slip for the month of December 2002 (Annexure A/7). In the circumstances, he has prayed for quashing of the impugned orders and to direct the Respondents to post him in some other post with the same pay scale and



11
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service benefits that he was getting prior to becoming medically de-categorised with effect from 10.10.2001.

3. The Respondents have resisted the Original Application by filing a counter. They have, however, filed an additional counter on 30.11.2004. By filing the additional counter, they have resiled from the stand taken by them in the counter affidavit dated 29.4.2004 where they had taken the position that the Respondents had the prerogative to reduce the applicant in rank by way of redeployment on medical re-categorisation and could shift him to a lower post under certain circumstances. They had further stated that such an arrangement could be made till he could be posted to the post carrying the same scale of pay as he was holding before re-categorisation. They had contended that the applicant although was posted as Khalasi Helper in Electrical Trade Department, but he has been allowed to draw his pay in the scale of pay of Rs.3050-4590/- and therefore, they had not contravened the rules, as alleged by the applicant. They have, however, substantially retraced their stand in the additional counter. They have explained that the applicant was initially appointed as Khalasi Helper in the Electrical Department due to want of a post in equivalent grade/pay scale of TPM, but his pay was protected at the stage

62

of Rs.4350/- which he drew at the time of de-categorisation in the same scale of pay, i.e., Rs.3050-4590/-. By filing a copy of their order dated 19.2.2003 (Annexure R/1) they have pointed out that it was made clear in the said order that till an equivalent post is found out for absorption of the applicant, he shall continue to be kept on supernumerary post in the grade of Rs.3050-4590/-, the scale in which he was working on regular basis at the time of his medical re-categorisation till such time he is adjusted in the post carrying the same or equivalent pay scale. They have also admitted that while fixing the pay of the applicant in the new post, inadvertently one increment was not sanctioned in his favour. The said omission has since been corrected after the same was brought to their notice by Respondent No.5. They have also submitted that as the applicant has been given protection of service by retaining him in the scale of Rs.3050-4590/- which he held regularly as TPM by creating a supernumerary post and as he has been given his due increment in the said scale by order dated 29.11.2004 (Annexure R/4 filed in course of hearing), both the grievances of the applicant with regard to pay protection and service benefits have been redressed and nothing survives in this Original Application for further adjudication.



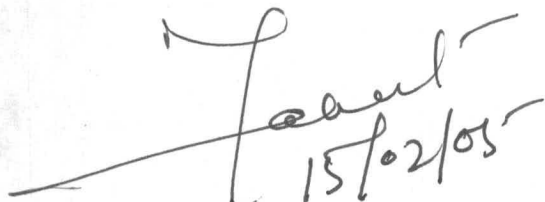
4. We have heard the learned counsel for both the parties and have perused the records placed before us.

5. The learned counsel for the applicant repeatedly canvassed before us that the Respondents be directed to give the applicant all service benefits about which they have remained silent. On a careful consideration of the submission made by the learned counsel for the applicant, we are of the view that the Respondents should set to themselves a time frame within which the Screening Committee should find a suitable alternative post in equivalent pay scale for the applicant, otherwise his further progression in the career will be affected because supernumerary posts do not have a long life. Further, it is also necessary to complete this task sooner than later so that the applicant can be given a permanent foothold in a regular cadre giving him benefits of past service without which his further career progression will be jeopardised. We would hope and trust that the Respondents would lose no further time to complete the task of finding out suitable alternative post for the applicant in any case within a period of four months from the date of receipt of this order.

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6. With the above observation and direction, the Original Application is disposed of. No costs.


15/02/05

(M.R. MOHANTY)
JUDICIAL MEMBER

AN/PS



(B.N. SOM)
VICE-CHAIRMAN