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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

**O.A. NO. 16 OF 2004
Cuttack, this the 30th day of August, 2005.**

KIRTAN ROUT

APPLICANT

VERSUS

UNION OF INDIA & ORS.


RESPONDENTS.

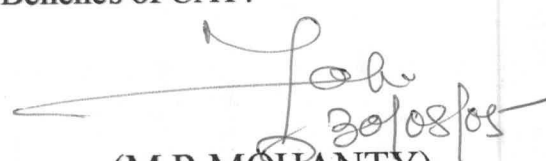
FOR INSTRUCTIONS

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

yes

MS


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 16 OF 2004
CUTTACK, THIS THE 30th of August, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HONBLE SHRI M.R.MOHANTY, MEMBER(J)

.....

Shri Kirtan Rout, Aged about 58 years, S/o. Bhaiga Rout, village – Godipatia, P.O. Seragada-Mukundipur, Via; Jenapur, Dist. Jajpur, at present working as Sr. Chowkidar under Section Engineer (DEW), E.C.Railway, Cuttack.

..... Applicant

Advocate(s) for the Applicant - Mr. N.R.Routray.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast railway, Khurda Road Division, At/P.O. Jatni, Dist. Khurda.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/P.O. Jatni, Dist. Khurda.
4. Sr. Divisional Medical Officer, E.C.Railway Hospital, At/P.O. Station Bazar, Town/Dist. Cuttack.
5. Sr. Section Engineer (DEW), east Coast Railway, At/P.O. Station Bazar, Town/Dist. Cuttack.

..... Respondents

Advocate(s) for the Respondents - Mr. R.C.Rath.



ORDER

SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

Heard Mr. N.R.Routray, learned counsel appearing for the Applicant and Mr. R.C.Rath, learned standing counsel appearing for the Respondent-Railways and perused the materials placed on record.

2. The background facts of this case as revealed from the Original Application and the Counter are that the Applicant was working as Senior Trackman (in the pay scale of Rs. 2650-4000) under SSE (P.Way) Cuttack. As per rule, a person working as Sr.Trackman is required to be Bee One medical category. While working as such, the Applicant was sent for periodical medical examination and was declared unfit in Bee One medical category but fit in Cey One medical category, thereafter, the Applicant was screened for his alternate absorption and it was recommended for his posting as Sr.Choukidar (in the scale or Rs.2650-4000) in Elect, Dept. The competent authority having approved the same, a posting order was issued by office order No.P/R/Med.De./Catg/Gr.D/Alt.Abso. dated 20.11.2000. It appears, although the said office order was issued, the Applicant could not be absorbed as such; due to surrender of posts of Sr.Choukidar and his case was again put up to the competent authority for alternative absorption (with a recommendation by the screening committee) to post him as Conservancy Jamadar (in scale of Rs. 2650-4000) in the Medical Department and consequential office order under Annexure-R/1 dated



5.4.2001 was issued allowing the same rate and scale of pay (as he was drawing as Sr. Trackman before being medically decategorized) as per Rule 1301 of IREM. Thereafter, posting order (posting the Applicant under CHI/CTC) was issued by office order No.P/3/20/Med/Posting/CJM/01 under Annexure-R/2 dated 23/24.4.01. The Applicant, however, did not report either before the Chief Inspector at Cuttack or Medical Supdt. at Khurda Road and remained absent till 25.7.2001 and only on 26.7.2001 he reported before the Medical Supdt./ Khurda Road for his posting and, on the same day, he was directed by the Ms/Kur (by letter No.PH/6/1329 under Annexure-R/3 dated 26.7.2001) to report to Sr. DMO/CTC (under whose administrative control the Chief Health Inspector functions) and, finally, the Applicant reported before the CHI/Cuttack on 27.7.2001 and, as it appears, from the very next day he remained absent. While the matter stood thus, the Applicant filed O.A.No.537/01 with a prayer to direct the Respondents to absorb him in the post of Chowkidar lying vacant under MWIC/CTC. or by creating a suitable supernumerary post (with protection of pay and seniority) by recalling the order dated 23.4.01 and also to release his arrear salaries from the month of Nov.2000. On 15.7.02, the Standing Counsel for Railways was asked to take instructions in the matter relating to engagement of the Applicant as Chowkidar in the office of Section Engineer/CTC. and the Applicant also submitted two representations (on 26.07.02 and on 2.08.02) and, ultimately, the case (for posting the Applicant as Chowkidar) was examined by the Railways and it was found that there was no such vacancy of Chowkidar (in Engineering department at Cuttack) and, therefore, the Applicant was not available to be posted as Chowkidar at Cuttack; which factum was intimated to this Tribunal. Thereafter, this Tribunal asked to provide a post of Chowkidar to the Applicant; Railway being a big Organization having

good number of Office at Cuttack. After receipt of the said instruction through the Standing Counsel, the case of the Applicant was again put up before the competent authority and as, in the mean time, there existed a vacancy of Chowkidar (in the office of DE(WS) Cuttack) necessary orders were passed (by order under Annexure-R/7 dated 30.10.02) posting the Applicant as Sr. Chowkidar (in the scale of Rs 2610-3540/-) with protection of pay. Thereafter, the Applicant reported before the Ch. Health Inspector/Cuttack, on 6.11.02, and, on the same date, he was spared to report before DE (WS) CTC; which is evident from letter under Annexure-R/8 dated 6.11.02. The Applicant joined in the post of Sr. Chowkidar in the office of Sr. Sectional Engineer (DEW) CTC on 7.11.02 as is evident from Annexure-R/9. Thus, the Applicant was medically decategorized on 01.05.2000 and spared from the office of this SE (PW) CTC on 25.11.2000 to report to Sr. DPO/KUR; his pay upto 23.11.2000 was drawn by SSE (PW) CTC but his pay from 24.11.2000 to 24.4.01 could not be drawn in-advertantly (as has been admitted in the counter of the Railways) and during the pendency of the O.A., his arrear pay for the period from 24.11.2000 to 24.4.01 was drawn vide bill No. Med/99/wages/2002 dated 12.02.02. As the Applicant did not join immediately, on issuance of Annexure-R/2 dated 23/24.04.01 and it was only on 27.7.01 he reported for alternate absorption and again from 28.7.01 he remained absent from his duties, his pay for one day (i.e. 27.7.01) was drawn vide bill No. Med/99/wages/2002 dated 15.2.02 and as the applicant remained absent from 28.7.01 till 5.11.02, it is the stand of the Respondents in the counter he was not entitled for any salary for that period. However, on further examination of the case of the Applicant, it was found by the Railways that he was entitled for one day salary i.e. for 26.7.01 and one

day pay was being drawn to be paid to him. Thus, the period from 25.4.01 to 25.7.01 and 5.11.02 has been treated by the Railways as unauthorized absence of the Applicant and that he is not entitled for any salary for the said period and also is not entitled for regularization of that period.

3. This Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, has carried the following prayers:-

- a) To quash/set aside the order of rejection dt. 19.11.03 under Annexure A/9 and
- b) To direct the respondents to regularize the intervening period from 2.5.2001 to 5.11.2002.

4. Having heard the Ld. Counsel for both the parties, we are to note that Railways have got benevolent provisions to provide an alternate employment to a medically decategorized employee. In the present case, they (Railways) took a long time to provide an alternate employment. As it appears, the alternate posting was not of a choice of the Applicant; for which he had to run- from pillar to post and ultimately, of course, at the intervention of this Tribunal, an appropriate posting was given to him; where he joined. When discretion has been vested with the authority to give an alternate posting to a medically decategorized employee, they should exercise the said discretion in a befitting manner and provide a befitting posting to the medically decategorized employee. Merely because discretion have been vested, that should not be exercised in a ~~damo~~-care manner. The Psychological aspect of the personnel should be kept in mind, while exercising the discretion for a healthy personnel management. In the present case, the medically decategorized Rly. Servant was offered a job in

the health-maintenance wing, apparently in a hest; for which the Applicant had to raise grievance time and again and, when he was offered the post of a Senior Chowkidar, he reported to duty. Under the scheme of the Railways, in order to take care of medically decategorized employees, while making provisions for providing alternate employment/posting, the authority have also kept in mind such situations; for which they have noted (while clarifying the matter) to pay idle wages by creating supernumerary posts etc. etc. In fact by a clarification issued in Rly. Board letter under Annexure-A/2 (at page 18 of the O.A.) dated 04.03.02, it was stated as under: -

“In cases where for want of posts in the same/equivalent grade such employees are engaged in productive work by deploying them in posts not carrying the same or equivalent scales of pay while they may work against such posts they should continue to be kept on supernumerary posts in the grade(s) in which they were working on regular basis at the time of their medical decategorization, till such time they are adjusted in the posts carrying the same or equivalent scales(s) or pay. This will be in keeping with the provisions contained in Para 1305 of IREM, as incorporated vide ACS No.77.”

In the present case, since no befitting post (Sr. Chowkidar) was available, the Applicant was given another posting not befitting to him; for which he is, now to battle this litigation. Had the spirit of the Rly. Board clarification been kept in mind by the respondents, then the

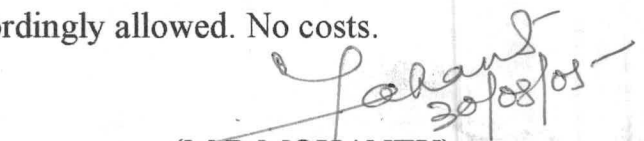
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Applicant would have been adjusted as Sr. Chowkidar although without any basis.

5. In the above premises, while over-ruling the stand of the Railways, we direct that full salary of the Applicant be paid for the intervening period from 02-05-2001 to 05-11-2002; as he was medically decategorized and entitled to be adjusted in terms of the provisions contained in the Railway Rules.

6. This O.A. is accordingly allowed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)