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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 187 OF 2002.
Cuttack, this the 11th day of October, 2002.

V.S.R. PATNAIK.

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APPLICANT.

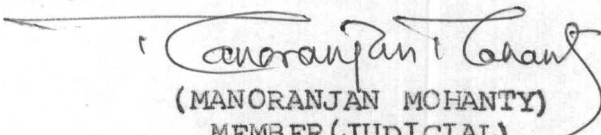
VRS.

UNION OF INDIA & OTHERS.

RESPONDENTS.

FOR INSTRUCTIONS
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1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

11/10/2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 187 OF 2002.
Cuttack, this the 11th day of October, 2002.

C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

Sri V.S.R. Patnaik, Aged about 51 years,
Son of Late Sanyasi Pattanaik, hitherto
working for gain as L M 'A' at Khurda
Road under Sr. Divisional Operations
Manager, S. E. Railway, Khurda Road at
present residing at B. P. Colony, Post-Kanchil,
District-Srikakulam, PIN- 532290.

.... APPLICANT.

By legal practitioner:- Mr. Achintya Das, Advocates.

: Versus :

1. Union of India service through General Manager,
S. E. Railway, Garden Reach, Kolkata-43.
2. Member, Staff, Railway Board, Railway 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,
PO: Jatni, District: Khurda- 752 050.

.... RESPONDENTS.

By legal practitioner:- Mr. Ashok Mohanty,
Senior Counsel for the Respondents.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

In this Original Application, Under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following reliefs:-

*8.1. The impugned Office Order NO.P/R/Med. De-catg./Gr.C/Alt.Absp dated 23-5-2001 issued by the Divisional Railway Manager (P) Khurda Road (Annexure-A/3) to be set aside and quashed so far as the applicant is concerned for reasons mentioned above;

8.2. the impugned Office Order No.34/2001, Dt. 7-6-2001 issued by the Sr.Divisional Engineer (CO), Khurda Road (Annexure-A/5) to be set aside and quashed so far as the applicant is concerned;

8.3. the applicant may be shifted to some other post with the same pay scale and service benefits as per Rule 304(1) of IREC and paragraph 1301 of IREM.;

8.4. During the period from 25-12-2001 to the date of joining of the applicant in pursuance to the revised posting order in accordance to Rule 304 of IREC (vol.I, 1985 ed) the applicant will be entitled to the same scale of pay and all service benefits which he was getting prior to becoming medically unfit on 26-2-2001;*

2. Shorn of unnecessary details, it would suffice to say that the Applicant, having been duly selected, was promoted as LM 'A' in the scale of Rs.3050-4590/- (on 09-04-1991) on regular basis, (against a permanent existing vacancy) under of the Senior Divisional Operations Manager/South Eastern Railway at Khurda Road. While working as such, the applicant was getting as his basic pay Rs.3800/- (after earning annual increment in the pay scales of Rs.3050-4590/-) as on 26-02-2001; when in the periodical medical

examination, he failed in a vision test by virtue of disability acquired during service and accordingly, the Applicant was declared unfit in 'Aye-Two but fit in Cey-One', under Annexure-A/2. It is the case of the Applicant that even though statutory rules, framed under Article 309 of the Constitution of India, printed in Indian Railway Establishment Manual, provide that on medical decategorisation, a person under no circumstances can be reduced in rank and should have been shifted to some other post with the same pay scale and service benefits, but in the case of the Applicant in gross violation of the said statutory rules, the applicant on being screened has been recommended for the post of Khalasi in Engineering Department under order dated 23-05-2001 and accordingly, the applicant has been posted, under Annexure-A/5, as a Khalasi in the scale of Rs. 2550-3200/- which is a Group 'D' post. Hence, in this Original Application, the applicant questioned as to whether on the face of the Indian Railway Establishment Code/Manual which has the statutory force, on being found medically decategorised, the applicant can be adjusted in Gr.C post in the same scale of pay or can be posted in Gr.D post having a lesser scales of pay giving the last pay protection to him.

3. The Respondents have filed their counter interalia stating therein that the Applicant was promoted to the post of Lever Man 'A' provisionally and not regular basis. It was not always feasible to adjust the persons like the

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Applicant in the alternative post in the same pay scale or to create supernumary post in the appropriate scales of pay, and in such a contingency, the employee has to be reduced in rank due to nonavailability of certain rankwise posts and has to be absorbed in a lower rank otherwise this will result cessation of the employment. Due to such problems, it was decided by the Chief Personnel Officer, who is the competent authority, in the matter of appointment, after considering the case of the applicant vide DO letter dated 11-12-2000 that for such medically decategorised staff fit to work in alternative job will be decided by the Screening committee. It was also directed in the said letter that the screening committee should be able to give alternative employment immediately and there should not be any necessity to create supernumerary post, under Annexure-R/1. It has also been averred that since the Applicant has read upto class IV and no post in the same scale of pay was available to absorb him in Gr.C category, the committee, therefore, adjudged him fit for holding a post of Khalasi in Gr.D category and accordingly, the Applicant was posted as Khalasi. Against the said decision of the Respondents, the Applicant made a representation and after considering the representation of the Applicant the competent authority decided to post him as Senior Chowkidar in the scale of pay of Rs. 2610-3540/- which is above the scale of pay of the Khalasi. It has been averred that the applicant has been given the pay protection which he was drawing in the post of Leverman 'A', even then the applicant did not join the post and has approached before this Tribunal.

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4. The moot question for consideration in this Original Application is as to whether the decision of the Chief Personnel Officer, dt. 11-12-2000, under Annexure-R/1 can over-ride the statutory rules framed under Article 309 of the Constitution of India known as Indian Railway Establishment Code/Manual. For the sake of appreciation, the provisions of the Indian Railway Establishment Code 304(1) and (2) are quoted herein below:-

"IREC(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank but should be shifted to some other post with the same pay scale and service benefits.

(2) A Railway servant falling in clause(1) above ceases to perform the duties of the post he is holding from the date he is declared medically unfit for the present post. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit, pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately".

(emphasis supplied)

Further para 1301 & 1303 of 'IREM' provides as follows; -

"1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits;

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1303. xx xx. If such a railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately xx xx*.

(emphasis supplied)

Learned Counsel for the Applicant has also relied on the Railway Ministry's letter dated 4-3-2002 (under Annexure-RJ/3 to the rejoinder) published in a magazine/news paper (Indian Rail worker) which reads as under:-

The matter has been considered by this Ministry who wish to clarify that absorption of medically categorised staff in grade(s) lower than the grade held by them on regular basis at the time of their medical decategorisation is in contravention of the provisions of the Act. However, 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 scale 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 decategorisation, till such time they are adjusted in the post carrying the same or equivalent scale(s) of pay.

5. Having heard Mr. Das, learned Counsel for the Applicant and Mr. Ashok Mohanty, learned Senior Counsel appearing for the Respondents/Railways, it is revealed that the instructions contained in Indian Railway Establishment Code or Manual are statutory in nature and statutory orders can not over-ride by subsequent executive instructions issued by the Chief personnel Officer. No where in the above quoted

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rules/instructions/provisions, it has been provided that due to non-availability of posts, medically decategorised persons should be adjusted in the lower scales of pay giving the pay protection of last pay drawn by them. Rather it has clearly been provided in the above quoted provisions that in case non-availability of suitable posts, the persons, so medically decategorised, should be kept in supernumerary posts till they are adjusted suitably. It is, therefore, held that the executive instructions issued by the Chief Personnel Officer of S.E. Railway is non-est in the eye of law and cannot override the statutory provisions as aforesaid.

2. In order to get support, learned counsel for the Applicant has also referred to the order dated 24-12-2001 of this Tribunal rendered in Original Application No. 435/2001; in which a similarly circumstanced person, being medically decategorised, was posted in a lower grade and approached this Tribunal in which, by an interim order was granted on 26-9-2001. Counter to the said Original Application was also filed on 06-11-2001. In the said case the Sr. DPO/KUR issued a modified order on 23-11-2001 and posted the Applicant of the said Original Application in the same scale of pay in which he was working prior to his decategorisation. As a consequence, the Tribunal by order dated 24-12-2001, directed the Respondents, of that case, that during the interim period (in which the Applicant was not on duty from 23-5-2001 till the date of joining of the Applicant in pursuance to the order dated 23-11-2001), the applicant will

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be entitled to scale of pay; which he was getting prior to medical decategorisation and all consequential service benefits.

7. It is to be noted that scales of pay always meant/ attached to a post. It provides different slabs at each stage. Merely because the pay protection as agreed to and given by the Respondents, is not enough/sufficient to meet the requirement of the statutory rules; for which the Railway Board/Railway Ministry, consciously issued instructions/made provisions that till suitable post in the same scale of pay is available, such person should be allowed to be kept on supernumerary post in the grade(s) in which he is working on regular basis at the time of his medical decategorisation till such time ~~such~~ time, he is adjusted in the post carrying the same or equivalent scale(s) of pay. As such non-observance of the statutory rules, and adjusting the applicant in a lower scale of pay his highly illegal and not sustainable in law.

8. Before parting the case, I must observe that on joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt. only because it has the power to appoint does not become the master of the body and soul of the employee. The fundamental rights, including the right to life under Art. 21 of the Constitution or the basic human rights are not surrendered by the employee. The Govt. by providing job opportunities to

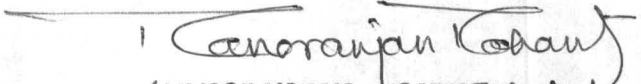
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its citizens only fulfils its obligations under the Constitution, including the directive principles of the state policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Govt. or any other employer is regulated by the terms of contract of service rules made by the Central or the state Govt. under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. While promoting the Applicant, with his present educational qualification, there was nothing embargo on the part of the Respondents, but, surprisingly, while adjusting him in any of the same scale of pay, it has been averred by the Respondents that the Applicant does not have the qualification; which is not available on the part of the Respondents to be agitated in this case.

9. In that view of the matter, and in view of the order passed on 24-12-2001 in O.A.No.435/2001, while quashing the impugned Office order dated 23-05-2001 issued by the Divisional Railway Manager(P), Khurda Road, under Annexure-A/3, so far as the Applicant is concerned, and the impugned order dated 07-06-2001 issued by the Senior Divisional Engineer (Co.), Khurda Road, under Annexure-A/5, I direct the Respondents to adjust the 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 such post in the same scale of pay is not available, the Applicant

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should be allowed 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. While allowing this Original Application, it is directed that all exercises, as aforesaid, should be completed within a period of 60 (sixty) days from the date of receipt of a copy of this order. There shall be no order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

11/10/2002

KNM/CM.