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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 653 of 2004
Cuttack, this the 11th day of July, 2008

Smt. Bisayya ... Applicants
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

SMT. BISAYYA, aged about 36 years, W/o. C.H.Dal Pratap Qr.No. EL 121/2
Traffic Colony, Rayagada, State Orissa at present working as Technician
Grade III Carriage and Wagon Department, Rayagada,
At/Po/PS/Munsif/Dist. Ryagada, East Coast Railway Zone.

..... Applicant

By legal practitioner: M/s. M.Chand, D.R.Parida, S.Khan, D.R.Nanda,
Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway,
At/Po/Ps/Munsif, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, At/Po9/Dist.
Vishakhapatnam, Andhra Pradesh.
3. Sr. Section Engineer, C&W Rayagada East Coast Railway,
At/Po/Dist.Rayagada.

...Respondents.

By legal practitioner:



ORDER

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

According to the Applicant before proceeding on Medical Leave with effect from 14.04.2002 due to illness, she was continuing in the promotional post of Fitter Grade III carrying the scale of pay of Rs.3050-4590 on regular basis. However, before being taken to duty, she was asked to be examined by the Railway Doctors who on examination, medically de-categorized the Applicant for B-1 and B-2 category and declared her fit in C-1 category. Accordingly, vide order under Annexure-3 dated 04.05.2004 the Applicant was declared fit to work in her former post of Sweeper in Medical Department. Being aggrieved by the said order, she has approached this Tribunal in the present Original Application filed U/s.19 of the A.T.Act, 1985 challenging the impugned order under Annexure-3.

2. It is seen from the record that this OA was filed by the Applicant on 28.09.2004 with several defects including the defect that the Applicant approached this Tribunal without exhausting departmental remedy. However, on rectification of some of the defects,



the matter was registered and placed to the Bench on 02.11.2004 for consideration on the question of admission and grant of interim order. But on the request of Learned Counsel for the Applicant Mr. M.Chand, the matter was adjourned to 05.11.2004. On 05.11.2004 Learned Counsel for Applicant also sought for adjournment. Accordingly, the matter was ordered to be taken up when moved. When the matter was placed for consideration on 25.06.2008 i.e. after near about four years, neither the Applicant nor her Counsel was present. No request was also received for adjournment of this case. However, Mr. S.K.Ojha, Learned Standing Counsel for the Respondents/Railway, who was present in Court submitted that as the Applicant was declared medically unfit for B-1 and B-2 and fit for C-1 she was ordered to work in her former post of Sweeper and as such, there has been no error in the decision making process of the matter warranting interference by this Tribunal. He also submitted that even if the applicant has any grievance against the impugned order under Annexure-3, instead of approaching this Tribunal, she should have taken up the matter with

the higher authority by way of submitting representation and having not done so, this OA needs to be dismissed.

3. We have considered the submissions advanced by Mr. Ojha vis-à-vis the pleadings/materials made/placed on record by the Applicant. No doubt, as per the provisions of the A.T. Act, before the order under Annexure-3 being challenged in this OA, the Applicant ought to have first taken up her grievance with her higher authority which has not been done. But on perusal of the impugned order it is seen that the placement or the adjustment of Applicant due to medical de-categorization in the post of Sweeper, prima facie shows, is against the Rules 1301 and 1302 of the Indian Railway Establishment Manual (IREM) which provide as under:

"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.

1302. Classification of Railway Servants declared medically unfit:- Railway servants acquiring

disability during service and declared medically unfit are divisible into two groups:-

- (i) Those completely disabled for further service in any post in the railway, i.e. those who cannot be declared fit even in the "C medical category; and
- (ii) Those disabled/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."

4. In spite of the above, we are not inclined to admit this Original Application as the long silence of the Applicant itself gives enough impression that the Applicant is no more interested to pursue this matter. Therefore, this Original Application is disposed of with liberty to the Applicant that if she has any grievance she may make representation to the appropriate authority within a period of ^{thirty}~~fifteen~~ days hence and we hope and trust that the said Respondents on receipt of such representation would consider and dispose of the same in accordance with the Rules/Law. There shall be no order as to costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)