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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.1207 of 2004
Cuttack, this the 26th day of June, 2007.

G.D.Naik ... Applicant
 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?

(N.D.RAGHAVAN)
VICE-CHAIRMAN

B.B. Mishra
(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Sri G.D.Naik aged about 47 years son of Sri Bhoun Naik working for gain as Sr. Telephone Clerk under Station Manager, Bhadrak under the control of Sr. Divisional Operations Manager, E.Co. Rly., Khurda Road at present staying at C/o.Chittaranjan Parida, Matha Sahi, Po. College Square, Cuttack-3.

..... Applicant.

By legal practitioner: Mr.Achintya Das, Advocate.

-Versus-

1. Union of India represented service through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
2. Chief Personnel Officer, E.C. Railway, Chandrasekharpur, Bhubaneswar, PIN 751023.
3. Divisional Railway Manager, E.Co. Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752050.
4. Sr. Divisional Operational Manager, E.Co. Railway, Khurda Road Po. Jatni, Dist. Khurda, PIN 752 050.
5. Sr. Divisional Personnel Officer,, E.CO. railway, Khurda Road, PO. Jatni, Dist. Khurda.

...Respondents.

By legal practitioner: Mr. R.C.Rath, Advocate

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ORDER

MR.B.B.MISHRA, MEMBER(A):

The case of the Applicant is that he, being selected and empanelled, was promoted to the post of Goods Guard in the scale of pay of Rs. 1200-2040/- (existing Rs. 4500-7000/-) vide DPO/KUR's order No. P2/174/Gd.C/DPQ/84/88 dated 31.10.1984. While working in the promotional post of Goods Train Guard, in a routine manner he faced the medical examination and on medical examination by the Medical Superintendent (I/C), Khurda Road, it was found by the latter that the Applicant is unfit in 'Aye two' but fit in 'Cee one' medical category vide the certificate issued on 24.09.1997. Accordingly, the Applicant became medically de-categorized for performing the duties of the Guard, and was recommended for absorption as Outdoor Clerk. Pursuant to such recommendation, Applicant was posted as Senior Telephone Clerk in the scale of Rs.4,500-7,000/-. Since the Applicant was a running staff, as per Rules, 30% of his basic pay should have been added in his new scale of pay in order to determine the equivalent scale for stationary job. Since this was not done, he submitted representations praying for extension of such benefits as also release of pay and allowances from 25.09.1997 to 20.06.1998 during which time his case was under consideration by the respondents for providing alternative appointment but no pay was drawn.

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Though in the month of July, 2004 his pay was enhanced from Rs.7125/- to Rs.7900/-, in the month of August, 2004 without any notice, his pay was reduced to Rs.7000/-. Being aggrieved by such action of the Respondents, the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“8. Relief Sought:

- 8.1 That it is prayed before your Lordships to kindly quash and set aside the impugned Office Order No.38/98 dated 19.6.98 issued by the Sr. Divisional Personnel Officer, Khurda Road (Annexure-A/3) so far the applicant is concerned.
- 8.2 That your Lordships may be pleased to issue directives to the Respondents to provide an alternative employment to the applicant in scale Rs.5500-9000/- and to pay difference of pay from 19.06.1998 till the date he is provided with the proper scale of pay.”

2. Respondents by filing counter have maintained that they have tried to suitably adjust the Applicant after his medical de-categorization and allow all monetary benefits which he was earlier getting. But due to want of vacancy they have not been able to offer him equivalent post. By placing copy of the order dated 01.02.2006 (Annexure-R/2), it has been stated by the Respondents that during the pendency of this Original Application, the pay of applicant has been re-fixed taking into consideration of 30% of running allowance. He was also extended the equivalent scale of Rs.5,500-9,000/- (RSRP) raising his

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basic pay to Rs. 9000/- w.e.f. 22.06.1998. It has been stated that since emoluments have been allowed, the Applicant may not have any cause for complaint. However, it has been stated that the Applicant can be adjusted in equivalent post as and when it falls vacant.

3. In the rejoinder, the applicant has strongly refuted the stand of the Respondents that not only the emoluments but also rank should be protected. His contention is that as per the Rule (304 IREC and paragraphs 1301 to 11311 of IREM) medically de-categorized person is not only required to be shifted to some other post with the same pay scale and service but also in rank. Merely because pay protection is given without rank, it is not enough to say that the applicant has no grievance to be redressed in this OA.

4. We have heard both the parties and gone through the records placed before us. The factual aspects of the matter are not in dispute. Also the applicant does not dispute so far as receipt/protection of emoluments are concerned. We have looked into paragraph 1301 and 1302 of the IREM produced by the Applicant and it provides 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.

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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."

5. Above two rules were not controverted by the Respondents. They only contend that it is beyond the purview of the DRM to create supernumerary post.

6. Having heard both the parties we come to the conclusion that the Applicant deserves to be given an equivalent post in addition to the emoluments which have been afforded in the new post. He has been medically de-categorized eight years back and has served in the lower post for last eight years. Medical de-categorization must have already caused him enough anguish and more anguish should not be added to it by posting him in an inferior post. If the Department has not been able to find a suitable post as per Rules quoted above, a supernumerary post should be created and the applicant should be allowed to function in the same post till a regular vacancy in a equivalent post occurs. If it is beyond the administrative function and power of the DRM, E.Co. Railways, he should take up the matter with his superior/higher authority competent to

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do so and in any event, the Applicant should be given an equivalent post within 6 (six) months from the date of receipt of a copy of this order.

7. With the above observations and directions, this OA stands allowed by leaving the parties to bear their own costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN


(B.B. MISHRA)
MEMBER(A)