

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 600 OF 2005
CUTTACK, THIS THE 29th DAY OF August, 2008

Janardan Panda Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(K.THANKAPPAN)
MEMBER (JUDL.)


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

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 600 OF 2005
CUTTACK, THIS THE 29th DAY OF August, 2008

CORAM :

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

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Shri Janardan Panda, aged about 52 years, son of Late Chakradhar Panda working as Junior Control Clerk under Sr. Divisional Operations Manager, E.Co.Railway, Khurda Road at present residing at Vill. Ganpur, P.O. Simor, Dist. Khurda, PIN 752061.

.....Applicant

Advocate(s) for the Applicant- Mr. Achintya Das.

VERSUS

1. Union of India service through the General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar.
2. Member, Staff, Railway Board, Rail Vihar, New Delhi, PIN 110001.
3. Divisional Railway Manager, E.Co.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.
4. Sr. Divisional Operations Manger, E.Co.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.
5. Sr. Divisional Personnel Officer, E.Co. Railway, Khurda Road, P.O. Jatni, Dist. Khurda PIN 752050.

..... Respondents

Advocates for the Respondents – Mr. O.N. Ghosh.

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ORDER

HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

The present O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the order passed by Respondent No.5 whereunder the applicant has been posted as a Jr. Control Clerk in the Grade of 3050-4590/- consequent to medical decategorization. The applicant was posted as Cabin Master (Switchman) in the scale of Rs. 4000-6000/- w.e.f. 22.02.2001 under Sr. Divisional Operations Manager, East Coast Railways, Khurda Road. During the course of his service, he developed heart problem and was subjected to medical examination. Based on this medical examination, the applicant was recommended for light duty and, accordingly, he was posted by Sr. Divisional Operations Manager as Token Porter vide Annexure-A/7 on 24.06.2003. The applicant was declared fit to resume duty on 16.09.2003 by Sr. Divisional Medical Officer, East Coast Railways, Bhadrak (Annexure-A/4). The applicant was medically decategorized on 30.09.2003 as he was found to be unfit in Aye-Two and fit in Cey-One on account of defect in vision and there has been no mention about his main ailment. Consequently, he was posted as Jr. Control Clerk in the scale of

Rs. 3050-4590/- vide Annexure-A/1. Being aggrieved, the applicant submitted representations for his posting in the same grade, i.e. 4000-6000/- which was being drawn by him prior to the decategorization and also to change his category in operating department. The applicant points out that his claim is justified on the strength of Rule 304(1) of the Indian Railway Establishment Code, Vol.I, which reads as follows:

“304(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.”

He further cites the provisions of Para 1301 of Indian Railway Establishment Manual, Vol.I (Annexure-A/16) to the effect that Railway Servants of his type should not be dispensed with or reduced in rank but should be shifted to some other place with same pay scale and service benefits. The applicant further alleges that the provisions of Para-1306 of IREM, Vol.I have not been followed by the Railway Authorities while reducing him to the lower scale and not providing him alternative posting of the same rank as enjoyed by him prior to decategorization. The following reliefs have been sought by the applicant:

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"8.1 To quash the Sr. Divisional Personnel Officer, Khurda Road's letter No. P2/174/Optg/Med. De-catg./Alt.abs./04 dt 24.8.04 (Office Order No. 41/2004 dt. 24.8.04 (Annexure-A/1).

8.2 To issue direction to the Respondents to consider posting the applicant in any post carrying same scale of pay of Rs. 4000-6000/- and service benefits which the applicant was getting just prior to decategorization by keeping in view the advice of the Specialist of Department of Cardiovascular Surgery, Southern Railway, Perambur, Madras. (Anenxure-A/6)"

2. In the counter filed by the Respondents, it has been admitted that the applicant, who was working as Cabin Master in the scale of Rs. 4000-6000/- was declared medically decategorized and alternatively absorbed as Junior Control Clerk in the scale of Rs. 3050-4590/- vide Annexure-A/1 order dated 24.08.2004 to the O.A. There the Respondents confirmed that the post, which was held by the applicant, would remain as supernumerary till such time the applicant is adjusted in the equivalent grade in terms of Establishment Sl. No.118/02. The relevant portion of this provision is extracted below:

"The matter has been considered by this Ministry who wish to clarify that absorption of medically decategorised staff in grade(s) lower than the grade held by them on regular basis at the time of their medical decategorization 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 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 scale(s) of pay. This will be in keeping with the provisions contained in para 1305 of IREM, as incorporated vide ACS No. 77, referred to in the preceding para. .”

The Respondents have further stated that the applicant has been provided with a light job during day shift in compliance with the interim order passed by this Tribunal on 20.07.2005 keeping in view that the applicant has heart problem. The Respondents have justified their action in posting the applicant as Jr. Control Clerk on the ground that this post is one of the sedentary nature of job in Control Office provided with Air Conditioned completely and it is lighter than the job of the Cabin Master. The Respondents have also come out with the fact that they were in search of suitable vacancy to accommodate the applicant but no such equivalent post and grade could be located in the Personnel Branch to suit his physical condition as per his request.

3. Heard the Ld. Counsel on either side and perused the materials placed on record.

4. The main contention of the counsel for the applicant is that the applicant has been given the same pay scale i.e., Rs. 4000-6000/- but he has been denied the concomitant

service benefits. The counsel for the applicant emphasized that had he been absorbed in any post carrying the same pay scale, he would have advanced in that post by virtue of his seniority in that scale. The counsel for the Respondents on the other hand pointed out that the administration has decided to accommodate the applicant in the alternative post, till such time he is adjusted in the equivalent grade in terms of Establishment Sl.No. 118/02. Due to non-availability of post in the similar grade, the applicant was absorbed in the alternative post though in a grade which he was holding before decategorization. At the same time, no injury has been caused to him as he was allowed to hold the post of Jr. Control Clerk in the scale of Rs. 4000-6000/- on the ground that he enjoys this scale on supernumerary basis.

5. There is no dispute that the Indian Railway Establishment Code Rule 304(1) provides for alternative posting to the same pay scale and service benefits to a medically decategorized employee with the object of not reducing him in rank or not dispensing with his service. Similar provisions are also contained in para 1301 of IREM. The alternative arrangement made by offering the post of Jr. Control Clerk in the grade of Rs. 3050-4590/- vide O.M. No. 41/2004 dated 24.08.2004 (Annexure-A/1), it appears is still continuing

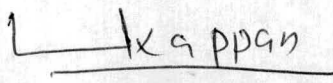
with a note "...2. Sl.No. 02 & 03 were carry the higher grade prior to their Med. de-categorization as such their post which they were holding will remain as supernumerary post till such time they are adjusted in the equivalent grade in terms of Sl.No. 118/02 although they are posted alternatively." It is incomprehensible to accept that during the last 4 years no alternative post could be identified in terms of Establishment Sl. No. 118/02. It is seen that the applicant has made a series of representations for posting him in suitable alternative post carrying same scale of pay and same service benefits as was enjoyed by him prior to de-categorization on medical ground and these representations have not been properly considered and have been disposed of without examining the various issues raised in these representations except that it is communicated by Annexure-R/1 that " there is no vacancy of Jr. Clerk available in Personnel Deptt. to entertain your representation for change of category from Jr. Control Clerk/Optg. Deptt. to Jr. Clerk/Pers. Deptt."

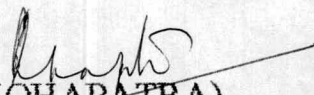
6. By continuing the applicant in the post of Jr. Control Clerk albeit in the scale of 4000-6000/-, the service benefits i.e. the seniority of the applicant, scope for career progression etc. cannot be ensured. It is, therefore, incumbent upon the part of the authorities to have given him a

supernumerary post in the scale as held by him prior to decategorization, which would protect his seniority as well as his future career progression. This view also gains support by the decisions of this Tribunal in O.A.No. 96/03 disposed of on 15.02.2005, in O.A.No. 187/02 decided on 11.10.2002 and the decision of Hyderabad Bench of the Tribunal in O.A.No. 926/01 decided on 29.08.2003 reported in 2004(1) ATJ 32.

7. In the above conspectus, we are of the view that Respondent No. 5 should adjust the applicant in a post carrying the scale of Rs. 4000-6000/- with all other status and benefits as were available to him prior to medical decategorization. Ordered accordingly. Respondent No.5 must comply this direction within a period of 60 days from the date of receipt of a copy of this order.

8. The O.A. is allowed to the extent indicated above.
No order as to costs.


(K.THANKAPPAN)
MEMBER (JUDL.)


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