

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.328 of 2007
Cuttack, this the 19th day of January, 2010

Laxmidhar Nayak Applicant
Versus
Union of India & Ors. 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)

.....
Shri Laxmidhar Nayak, aged about 59 years, Son of Late Krushna Charan Nayak, a permanent resident of Village & Post-Baral Pokhari, PS&District-Bhadrak, at present working as Junior Trackman under the Section Engineer (P.Way), East Coast Railway, Bhadrak.

.....Applicant

By legal practitioner: M/s.S.B.Jena, S.Bhera, S.S.Mohapatra,
Counsel..

-Versus-

1. Union of India service through General Manager, E.Co.Railway, Rail Vihar, Chandrasekhpur, Bhubaneswar-23, Dist. Khurda.
2. The Divisional Railway Manager(P), East Coast Railway, Khurda Road, Po-Jatni, Dist. Khurda, PIN 752 050.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN- 752 050.
4. The Senior Divisional Engineer (Co-ordination), E.Co.Railway, Khurda Road, Khurda, PIN 752 050.
5. The Section Engineer (P>Way), E.Co.Railway, Bhadrak.

....Respondents

Advocate for Respondents: Mr.R.S.Bhera, Counsel

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER(A):-

In this Original Application filed under section 19 of the A.T. Act, 1985, the Applicant seeks quashing of the order under Annexure-A/3 and Annexure-A/4 posting him as Store Khalasi after he was declared medically de-categorized. His contention is that as he was continuing in the post of Sr. Gangman carrying the scale of pay of Rs.800-1150/- (pre-revised) as per the provisions of the Railway after medical de-categorization he should have been adjusted in the same rank carrying the same career advancement, status, pay and all other service perquisites. According to him, he having been given posting lower in rank, the Respondents have not only violated the Rules of the

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Railway, Disabilities Act enacted in the Parliament but also committed gross discrimination between the applicant and other similarly situated employees as many of the employees after being medically de-categorized have been provided alternative appointment not only carrying the same scale but also having the same status and rank etc.

2. Respondents filed their counter in which it has been stated that the applicant was confirmed in the post of gangman w.e.f. 10.11.1991 carrying the time scale of pay of Rs.725-1025/- vide order dated 18.10.1993. Thereafter he was promoted to the post of Sr.Gangman. But he was not given salary in the post of Sr.Gangman nor he was assigned with the duties attached to the post of Sr.Gangman since Accounts department after verification made observation that the very appointment of applicant as gangman itself is repugnant to the observation made by screening authority of the Railway vide letter dated 21.6.1983. Hence, applicant was allowed to continue in the category of gangman notwithstanding his promotion to Sr.Gangman which became infructuous. As such according to the Respondents, as the applicant was declared medically de-categorized while he was continuing in the post of Gangman, providing him alternative appointment to the post of Store Khalasi in Engineering Department was in no way irregular or illegal nor is it contrary to any of the provisions of the Railway made in this regard. Accordingly, Respondents prayed for dismissal of this OA.

3. No rejoinder has been filed. Heard Learned Counsel for both sides and perused the materials placed on record.

4. It has been contended by Learned Counsel for the Applicant that the Applicant is a Matriculate. He was selected and appointed as CPC Gangman under the Civil Engineering Department with effect from

24.12.1967 vide AEN/I/CTC's No. E/39/II/145 dated 22.04.1968. Thereafter, he was screened and empanelled for appointment in Class IV post vide Sr.DPO/KUR's No.P/R/Screening/Class IV/PWI/BHC/dt.16.12.1983 having been declared not fit for Gangman Job but fit for B-I as per vision standard. Vide Ms/KUR's No.SPL/BI/124 dated 20.06.1983/21.06.1983 it was recommended that the applicant is not fit for any posts having duties of sedentary nature. Although he was recommended for absorption in regular class IV post in December, 1983, for the reasons best known to the Respondents he was posted in regular measure as Gangman in scale of Rs.775-1025/- (RSRP) in gang No.30 against the existing vacancy vide AEN/I/CTC's No.E/13/XII/222 dated 29.10.1990 with effect from 10.11.1990 (F/C). He was confirmed as Gangman with effect from 10.11.1991 vide AEN/I/CTC's letter No. E/18/II/133 dated 18.10.1993 (F/D). Thereafter, he was promoted to the post of Sr. Gangman carrying the scale of pay of Rs.800-1150/- with effect from 01.03.1993 vide AEN/N/CTC's letter No.E/11/II/103 dated 05.03.1996. But his pay could not be fixed in the grade of Senior Gangman on the garb of account inspection observation (F/E) in spite of several representations in this connection. Instead of considering his grievance for payment of the appropriate scale meant for the post, vide letter No.E/11/III/162 dated 04.08.1997, he was directed to undergo special medical examination to know whether fit to continue as Gangman. Challenging the said decision as also non-payment of the scale of the Sr. Gangman, though he was discharging the duties of the post, he approached this Tribunal in OA No.541 of 1997 seeking direction to the Respondents to give effect to the order dated 09.03.1996 so far as pay in the grade of Sr. Gangman is concerned and to quash the letter dated 04.08.1997 directing to face special medical examination once again. This Tribunal disposed of the matter by directing the

Respondents to provide an alternative job to the applicant, if not offered already, within a period of 120 days from the receipt of this order. On receipt of the orders of this Tribunal, the Divisional Railway Manager (P), Khurda Road wrote letter dated 19.01.2005 asking the Assistant Divisional Engineer, E.Co. Railways, Jajpur-Keonjhar Road to send copy of medical certificate and other documents for considering the case of applicant for providing him alternative job pursuant to the orders of this Tribunal. According to him with the pay scale of Jr.Gangman he was made to discharge the duties of Sr.Gangman. Meanwhile, the Section Engineer (P.Way), E. Co. Railway, Bhadrak in letter dated 24.4.2007 sent the service sheet of applicant along with others for verification. Thereafter, in letter dated 20.06.2007 the Sr. Divisional Personnel Officer/KUR directed the Applicant along with others to be present on 26.06.2007 at 10.00 AM in his office for medical screening for identifying alternative posts for absorption. In turn, the Assistant Personnel Officer-II, Office of the Divisional Railway Manager (P)/KUR in order dated 29.06.2007 informed that the Applicant was found fit in Bee one as per vision standard but not fit for G/Man but fit for sedentary nature of job he was allotted to be Store Khalasi in Engineering Department. Consequently, the Sr. Divisional Engineer (Co-ordination) in his order dated 04.07.2007 posted the Applicant as Store Khalasi under Section Engineer (W)/BHC in an existing vacancy. His stand is that he has taken up the matter with the higher authority for removal of the injustice caused to him inasmuch as he was allowed to discharge the duties of Sr.Gangman with the lower pay scale of Jr.Trackman. His further stand is that by providing alternative post of Store Khalasi the Respondents have not only acted contrary to the of the Railway made under 304 IREC and paragraphs 1301 to 1311 of IREM, but also violated the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995. The

factual scenario of the matter narrated above has not been disputed by the Respondents either in the counter or in course of hearing. However, Respondents laid emphasis that as the applicant was not continuing as Sr.Gangman his adjustment in the post of Store Khalasi was in no way irregular.

5. We have given our anxious consideration to various points raised and canvassed by the respective parties and perused the materials placed on record. But we find no force in the submission of the Respondents that as the applicant was not paid his salary in view of the objection made by the Accounts department, the order of promotion of applicant to Sr.Gangman dated 5.3.1996 became infructuous. No document has been cited either through counter or in course of hearing that the order of promotion of applicant dated 5.3.1996 has ever been withdrawn or cancelled by the Respondents. As such, we are not in a position to comprehend or to give our concurrence to the stand of the Respondents that the applicant at the time of medical de-categorization was not a Sr.Gangman but was a Gangman. Once it is held that the Applicant was a Sr.Gangman before medical de-categorization, the reliefs claimed by the applicant are consequential having not been controverted by the Respondents that as per the provisions of the Railway, a medically de-categorized employee has to be provided with alternative appointment in the same grade/rank carrying the same scale of pay and other perquisites; especially for the reason that such benefits have already been provided to many such medically de-categorized employees.

6. For the discussions made above, especially for the reason that it is not the case of the Respondents that the order of promotion of the applicant had ever been rescinded, it is held that on medical de-categorization the

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applicant ought to have been provided with alternative appointment in the post having the rank/status/grade/scale of pay of Sr.Gangman and the same having not been done, the Respondents are directed to do it within a period of 45 days from the date of receipt of the order and, thereby entitling the applicant to fixation of pay notionally till his retirement and re-fixation of pension and pensionary benefits accordingly.

7. In the result, this OA stands allowed. No costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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