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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.434 of 2008
Cuttack, this the 01st day of May, 2009

Bibhuti Bhusan Padhiary 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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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)

.....
Bibhuti Bhushan Padhiary, aged about 32 years, son of Late Balaram Padhiary, At/Po.Modipada (Near Jagannath Temple), Sambalpur, PS-Sambalpur, Dist. Sambalpur, Orissa, presently working as Ex-LOCO Pilot/Assistant Driver at Sambalpur Division.

.....Applicants

Advocate for Applicant: M/s.Ganeswar Rath, S.N.Mishra,
T.K.Praharaj, S.Rath

-Vs-

1. Union of India represented by General Manager East Coast Railway, At-Chandra Sekharpur, Bhubaneswr, Dist. Khurda.
2. Divisional Railway Manager (P), East Coast Railway, Sambalpur Division, At/Po.Sambalpur, Sambalpur, Orissa.

Advocate for Respondents: Mr.S.K.Ojha

O R D E R

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

Applicant, Shri B.B.Padhiary, while working as Loco Pilot – II (Goods) in the scale of pay of Rs.5000-8000/- (RPS) was found medically de-categorized from A-1 to C-1 and below category, as per the Rules, on the recommendation of the duly constituted screening committee. He was alternatively appointed to the post of Power Controller in the scale of Rs.5500-9000/- in Mechanical Department of the East Coast Railway vide order dated 12.08.2008. According to the Applicant the posting of the applicant as Power Controller in Mechanical Department of the E.Co.Railway is illegal; because in term

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of the order under Annexure-A/4 the cadre of Power/Crew Controller is no more in existence and that, the post of power/crew controller is an ex cadre post having no promotional avenue at all. His contention is that as per para 2-L of the circular under Annexure-A/4 ,the Drivers drafted to perform the duties hither to, being performed by power/crew controller will not be eligible to be posted as Loco Inspectors or to any benefits specifically admissible to the Loco Inspector/power or crew controllers under the scheme of 25.11.1992 and that, as per the provision of Establishment Sl.No.38/98(2)(g) medically de-categorized staff cannot be posted to such post and that as per the provision of Establishment Sl.No.104.08, copy of which is placed in this OA as Annexure-A/5 medically de-categorized non-gazetted staff should be absorbed in suitable alternative post in regular cadre and not in tenure posts. But violating aforesaid instruction (Annexure-A/5) of the Railway Board, and without seeking option of the applicant, in compliance of natural justice, the Respondents empanelled the applicant for screening test of power/crew controller which is highly illegal, arbitrary, violative of Articles 14 and 16 besides being opposed to the known principles of natural justice. Hence, by filing the present Original Application under section 19 of the A.T.Act, 1985, the Applicant seeks the following reliefs:

- "(a) To quash the impugned order dated 12.8.2008 as per Annexure-A/3 of the Original Application;
- (b) To direct the Railway Authority to post him in suitable alternative post except the Power Controller/Crew Controller.

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(c) To give any other relief/reliefs, direction/directions, order/orders as the Hon'ble Tribunal deems fit and proper."

2. Respondents filed their counter in which it has been stated that the scheme of alternative employment to disabled/medically de-categorized staff of the Railway has been provided in Estt. Srl.No.122/99 and the said provision was kept in view while processing the case of the applicant for providing alternative employment after he was found unfit for certain category of posts. Their stand is that para 1304 of Estt.Srl.No.122/99 provides that the medically de-categorized staff may be absorbed in a post which can be adequately filled up and as far as possible should broadly be in allied categories where their background and experience in earlier post could be utilized. Besides, the administration should ensure that the interest of other staff in service is not adversely affected and no reversion of any officiating railway servant is made to absorb the medically de-categorized staff. Further it has been averred that as per para 1306 (3) ~~that~~ it is necessary to first find suitable alternative employment in the own unit/Division/office/ workshop etc. and in the instant case, the applicant was working as Loco Pilot-II (Goods) which is a running category post and after his medical de-categorization, he has been posted as Power Controller in the scale of Rs.5500-9000/- which is a part and parcel of the running cadre. By posting the applicant in the said post his previous background and experience could be better utilized in the interest of administration. The next contention of the Respondents is that the cadre of power

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controller/crew controller has been merged and added to the running cadre of Mechanical Department. However, certain post of running cadre have been identified and staff have been utilized to perform the duties of power controller/crew controller for smooth functioning of the railway administration and therefore, on the recommendation of the screening committee the applicant was posted as power controller in his parent department i.e. mechanical department of Sambalpur division and not in any other unit division or department. Accordingly, the Respondents prayed for dismissal of this OA being devoid of any merit.

3. By placing copy of the order dated 3rd January, 2008 in OA no. 910/2006 (Akhelesh Dhan v Union of India and others) it has been contended by the learned counsel for the applicant that issues raised in this OA having been settled in favour of the applicant in OA No. 910/2006, this OA is to be allowed. This was opposed by Learned counsel for the Applicant by stating that it is not correct to state that the issues involved and decided in OA No.910/2006 are the same in this OA. In support of the above contention, learned counsel for the Respondents pointed out that due to non-availability of post in the parent department, the applicant in OA No. 715/2006 was posted in commercial department as CTI-II. Subsequently due to agitation made by the departmental people of the commercial department, the applicant was reverted to his former post without any intimation to him which is not the case of the present applicant. His stand is that there has been no principle set out by this Tribunal in the earlier case,

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the earlier order of this Tribunal has no precedent value so as to be made applicable to each and every case. In this connection, he has relied on the decisions of the Hon'ble Apex Court in the cases of Indian Drugs and Pharmaceuticals Ltd (2007) 1 SCC 408, para-4; Delhi Administration v Manoharlal, AIR 2002 SC 3088, paras 5&6; Gangadhar Behera and others v State of Orissa, AIR 2002 SC 3633, para 28 and in the case of Dadu dayalu Mahasabha, Jajpur (Trust) v Mohant Ram Niwas and Another, AIR 2008 SC 2187 , para 19. Accordingly, the Respondents' counsel prayed for dismissal of this OA.

4. After giving our thoughtful consideration to the rival submissions of the parties, perused the materials placed in this OA as also the records of OA No.910/2006. On perusal of the earlier order of this Tribunal it is seen that the stand of the Respondents' counsel that there has been no decision on principle is not correct. In fact this Tribunal after considering all aspects of the matter came to a positive finding which has binding effect to all similarly situated employees of the Railways. The operative part of the order dated 03.01.2008 in OA No.910/2006 reads as under:

“38. We carefully examined the impugned order, the respondents have not assigned the reasons, the provisions of 47 of the said Act 1/96, i.e. Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, and other rules and instructions of the Railway Board are not taken into consideration. The objects of the provisions are very important and should be followed by the competent authority. The medically de-categorized staff can be shifted to any other post in the same pay scale or action to be taken to keep him in supernumerary post under the provisions of the said Act by the competent authority other than the authority who passed an order by

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exercising his powers vested in him. The applicant's service is to be protected as if he was getting all the benefits available to the running staff.

39. After careful consideration of the contentions of either side, citations referred to above and the relevant provisions of IREM, we are of the considered view that the applicant has made out a case for grant of relief and the stand taken by the respondents is absolutely illegal. The respondents are not justified in considering the case of the applicant while issuing the impugned order and the applicant is placed in the list for screening to the post of PC/CC in Mechanical Department. We are of the considered view that the applicant is entitled for the relief as prayed for. Accordingly, we direct the competent authority i.e. respondents to delete the name of the applicant from the panel list dated 30.11.2006 (Annexure A-2) and post the applicant in suitable alternative post, if suitable post is not available, create supernumerary post in accordance with Chapter XIII of IREM Vol.I and section 47 of Act 1 of 1996."

5. In view of the above, we have no hesitation in our mind to hold that the order dated 12.8.2008 is not sustainable. Hence the same is hereby quashed. As a result, the Respondents are directed to post the applicant in a suitable alternative post except the Power Controller/Crew Controller and if suitable post is not available, create supernumerary post in accordance with Chapter XIII of IREM Vol.I and section 47 of Act 1 of 1996. The entire exercise shall be completed within a period of 60(sixty) days from the date of receipt of this order. In the result, this OA stands allowed in the afore-stated terms. No costs.

K. Appan

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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