

Central Administrative Tribunal
Calcutta Bench

CA 707/96

Present : Hon'ble Mrs Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Mr.S.Biswas, Member(A)

Krishna Prasad Shaw, Son of Late Hira Lal aged about 55 years working as Chowkidar at Dankuni Station, E.Rly, under CTFC Liluah, residing at Qrs No.15 Block C HIT Super Market, Ichapur, Damurjala, P.O. Kadamtala, Dist.Howrah

...Applicant

-Vs-

1) Union of India, service through the General Manager, Eastern Rly, 17 Netaji Subhas Road, Calcutta-700001

2) The Dvl. Rly Manager, Eastern Rly., Howrah Dn., P.O. Howrah, Dist.Howrah

3) The Dvl. Personnel Officer, E.Rly, Howrah Dn., P.O. Howrah, Dist.Howrah

4) The Asstt. Personnel Officer, E.Rly, Howrah, P.O. 8 Dist.Howrah

...Respondents

For the applicant : Mr.B.Mukherjee
For the respondents Ms U. Bhattacharjee

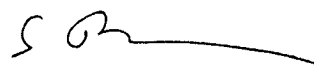
Date of Order : 20/1/03

ORDER

Mr.S.Biswas, Member(A) :

By this application under Section 19 of Administrative Tribunal Act, 1985, the petitioner seeks direction to the respondents for refixing his pay at Rs1070/- w.e.f. April 1992 and payment of arrears. He further prays that his pay be fixed in the scale of Rs825-1150/- which he is entitled to for which reason he wants the post of Labour Mate or Waiting Hall Bearer in the said scale - as a measure of pay protection.

2. While posted as Gateman in Howrah Division (w.e.f. 21-11-67) the applicant met with an accident on 7-3-92 and was hospitalised from 22-4-92. He was treated but discharged on 20-6-92 and again admitted on 6-8-92 and discharged on 29-4-93. He was also examined by the Medical Board held on 23-3-93. The Chief Medical Superintendent's report dated 29-4-93 referring



the examination dated 23-3-93 held that he was unfit for A1, A2, A3, B but fit for C1 and below with walking aid.

3. The applicant was thereafter posted as a Chowkidar on the pay of Rs940/- (in the scale of Rs750-940(RP) with headquarters at Dankuni against a vacant post by order dated 17-8-93 (Annexure A2 to OA).

4. The applicant submitted a representation on 11-11-93 to DRMER Howrah, ^{re} seeking a transfer to SS/Howrah to a job as hall bearer/Labour Mate in the scale of Rs825-1150/- and that he was drawing a consolidated pay of Rs1070/- before the present fixation on medical decategorisation. His pay for several months during the interim period was not paid. He submitted fresh representation on 22-4-94 to DRM without any result.

5. While arguing the case the learned counsel for the applicant further cited the Case Narendra Kumar Chandla V. State of Haryana and others (1996 SCC L&S 882) and further this case requiring pay protection to the medically decategorised railway staff ^{is} in covered ^{by} provisions in the circular of the Rly Board (Annexure C to CA).

6. The respondents disputed the facts submitted by the applicant stating that the applicant submitted a ^{translated} ~~transcribed~~ circular without enclosing the full text in as much as this Circular relates to "decategorisation arising out of accidents in the Course of and arising out of employment or _____ decategorisation arising out of contraction of an occupational disease peculiar to the services in which duties are performed or arising out of accidental injuries received owing to wilful act or negligence of a co-employee or decategorising directly

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arising out of breach of any provision of law or statutory rules by the railway administration".

7. The applicant, it is contended, met with an accident, according to his own admission, on 7-3-92. "The record indicates that the applicant was under sick list with effect from 4-4-92 to 1-4-93 and from 17-2-92 to 6-3-92. The contention of the applicant that the accident took place while in employment has been denied to warrant any benefit of the railway circular in question.

8. However, we find that the respondents tried all avenues to accommodate the applicant to a suitable grade and scale which would give him adequate pay protection as well as an alternative job than facing lay-off. They could only offer him a job of a Chowkidar in the scale of Rs750-940/- which he could do being disabled and substantially protect his pay - though not fully. The applicant without raising any objection has accepted the present job - we are therefore not able to accept the plea any further at this stage that any injustice was done which was against his wish or seeking.

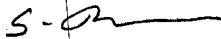
9. We have considered the citation of the learned counsel for the applicant (Narendra Kumar Chandla V. State of Haryana & Others 1994 SCC (L&S) 882). The main dispute in this case was regarding protection of pay of an employee, physically incapacitated due to disease, ^{and} having less qualification. Fortunately, in the case, the scale of LDC (with matriculation) was wide enough to find him a slot - as it is not the present case. Hon'ble Apex Court has observed specifically in para 6 "though Shri M.C. Bhandare the learned counsel for the applicant has attempted to argue for directing the respondents to appoint the applicant as UDC which carry equal pay scale we think that

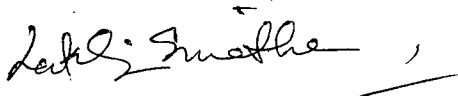
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we can not give such direction". Hence no blanket justification for pay protection was spelt, as we have also seen the case of the applicant is distinguishable from the circular of the Railway Board and the applicant himself has accepted what was offered to him.

10. The only relief that is left out is the period when the applicant had allegedly did not receive any pay and allowances. This period needs to be regularised by the applicant as per leave rules etc.

11. Subject to the aforesaid discussion and observation (para 10) the OA fails on merits and hence, dismissed without cost.


(S. Biswas)
Member(A)


(Smt) Lakshmi Swaminathan
Vice Chairman(J)