

Central Administrative Tribunal
Calcutta Bench

OA No.1034/96

7-6-05

Present : Hon'ble Mr.N.D. Dayal, Member(A)
Hon'ble Mr.K.B.S. Rajan, Member(J)

Dhananjoy Das

-Vs-

S.E. Rly

For the applicant : Mr.A. Chakraborty, Counsel

For the respondents : Ms U. Dutta Sen, Counsel

ORDER

Mr.N.D. Dayal, Member(A)

Upon hearing learned counsel for both sides and going through the pleadings it is seen that the applicant was appointed as a Constable(F) under Asstt. Security Commissioner. During his service period he was declared unfit in B1 category and was asked to appear for fitness in C1 and C2 category. He appeared in the medical examination and was declared fit in C1 and C2 category. He was drawing salary in scale Rs 825-1200/- as Constable, but after decategorisation he was given scale Rs750-900/-. The applicant has therefore relied upon the case of Narendra Kumar Chandla v. State of Haryana and Ors (1994 SCC L&S 882) wherein the Apex Court has held as follows :

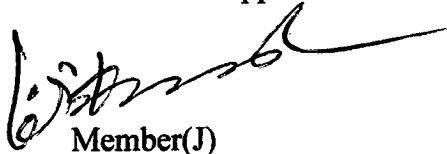
- “7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing

generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs1400-2300/-. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs1400-2300 and direct to pay all the arrears of salary”.

2. It is therefore prayed that the respondents be directed to fix the pay of the applicant in the scale of Rs825-1200/- which he was drawing before decategorisation and all the arrears be paid to him. Ms Dutta Sen, the learned counsel for the respondents has pointed out that the pay of the applicant was protected but there was no rule that the pay scale should also be protected. It is submitted by her that in Narendra Kumar Chandla (supra) the scale of pay of LDC was much lower.

3. Having considered the submissions made by both sides, we are of the view that the applicant's case is covered by the ratio of the judgement of Apex Court in Narendra Kumar Chandla. The respondents are therefore directed to consider the case of the applicant in the light of the judgement of the Hon'ble Supreme Court and pass appropriate orders accordingly within a period of three months from the date of communication of this order and inform the applicant within two weeks thereafter. The applicant shall also be extended the consequential benefit of arrears that may accrue to him.

4. The application is disposed of as above. No costs.


Member(J)


Member(A)