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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 187/2005

DATE OF ORDER: **15th September, 2006**

Bhagwana Ram. : Applicant

Mr. Ashwini Swamy : Advocate for the Petitioner
for Mr. B L Swami

VERSUS

Union of India & Ors. : Respondent(s)

Mr. ~~NK KHANDELWAL~~ : Counsel for the Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. J P Shukla, Administrative Member.



May be 1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒

Not required 2. To be referred to the Reporter or not ? ☒ Yes

No 3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒

May be 4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒ Yes

As endorsed .

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(J P Shukla)
Administrative Member

J.K. Kaushik
(J K Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR**

Original Application No. 187/2005

Date of decision: 15.09.2006

**HON'BLE MR. J K KAUSHIK JUDICIAL MEMBER.
HON'BLE MR. J P SHUKLA. ADMINISTRATIVE MEMBER.**

Bhagwana Ram, s/o Shri Nanu Ram by caste- Swami, aged 47 years, resident of Deeplana, Tehsil Nohar, Dist. Hanumandhar (Rai). Presently on the post of Pointsman (Kantewal A,) Deeplana under Divisional Manager, North Western Railway, Bikaner

: Applicant.

Rep. By Mr. Ashvini Swami for: Counsel for the applicant.
Mr. B.L. Swami

VERSUS

1. Union of India through the General Manager, North Western Railway, Hars. Jaipur.
2. Divisional Personnel Officer, North Western Railway, Bikaner.
3. Assistant Divisional Engineer, North Western Railway, Bikaner.
4. Divisional Railway, Manager, North Western Railway, Bikaner.

: Respondents.

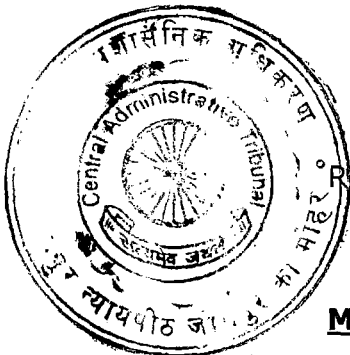
Rep. By Mr. N .K. Khandelwal: Counsel for the respondents.

ORDER

MR. J K KAUSHIK, JUDICIAL MEMBER.

Shri Bhagwana Ram has questioned the validity of order dated 04.02.2005 (Annex. A/1) and order dated 10.06.2005, (Annex. A/2) and has prayed for setting aside the same amongst other reliefs. In the alternative it has been prayed that the respondents be directed to provide him alternative job on the equivalent post by protecting his pay and the scale of pay, which he was holding at the time of his medical decategorization.

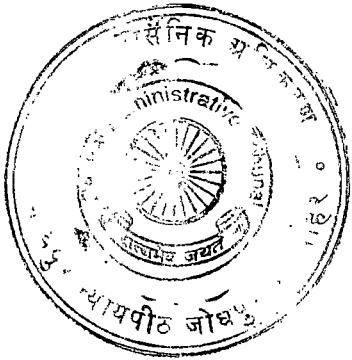
2. With the consent of the learned counsel for both the parties, the case was taken up for final disposal at the stage of admission. We have, accordingly, heard the learned counsel for both the parties at



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considerable length and carefully perused the pleadings as well as records of this case.

3. The indubitable facts considered necessary for resolving the controversy involved in the instant case are that the applicant while holding the post of Points man Gr. 'A' in the pay scale of Rs.3050-4590, came to be medically decategorised from Medical category A-2 to A.3 and below with glasses for DV and NV for the sedentary in nature vide letter of CMS dated 28.01.2004. A supernumerary post was created vide communication dated 08.04.2004 on which the applicant was kept waiting for absorption on an alternative post. The applicant was absorbed on the post of Engine Khalasi in the pay scale of Rs.2750-4400, in the office of ADEN, Bikaner. The applicant joined the alternative post in accordance with the order dated 10.06.2005. He submitted a representation dated 28.12.2005 (annex. A/6) protesting against his absorption on the lower post in the lower pay scale and the same has not yet been decided.



4. As regards the variances in the facts, the respondents in their reply have averred that the applicant was holding the post of Points man 'A' which is a safety category wherein periodical medical check up for vision is mandatory. On medical examination, he was found not fit for Aye two medical category and was found fit for lower category of Aye three. At the time of medical decategorization, he was in the pay scale of Rs. 3050-4590. Efforts were made to provide him alternative post, but owing to his educational qualification, the applicant could not be accommodated in the same grade i.e. No. 3050-4590, which he was holding at the time of his medical decategorization.

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Subsequently, he was found fit for the post of Khalasi in the Engineering Branch in the pay scale of Rs.2750-4400, with protection of pay. The impugned orders are perfectly legal orders issued by the answering respondents and they did not contain any infirmity whatsoever. The grounds raised in the O.A have generally been refuted.

5. The learned counsel for the applicant has reiterated the facts and grounds in the pleadings made on behalf of the applicant as noticed above. He has laid emphasis on the relevant rules and drawn our attention to one of the decisions of a co-coordinating Bench of this Tribunal in the case of **G. Prabhakara Rao vs. The Union of India and ors.** [2004 (1) ATJ 32]. He has also submitted that the controversy involved in the instant case has been settled therein by placing reliance on the judgement of the Apex Court in the case of **Kunal Singh vs. UOI** [2003 (2) SLR 502]. He pointed out that para 9 and 10 of the judgement are relevant for settling up the controversy involved in this case.



6. Per contra, the learned counsel for the respondents with his usual vehemence has opposed the contentions raised on behalf of the applicant. He has reiterated the defence version of the respondents as set out in the reply. He has laid great emphasis on the point that the respondents have made every possible effort to search out alternative job for the applicant and due to constraint of his educational qualification no such equivalent post could be given to him. Therefore, he could not be absorbed in an alternative equivalent post and the respondents were left with no option except to absorb him on the

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lower post by protecting his pay. He also contended that the relevant rules do not prescribe any time limit for providing alternative appointment but the respondents have thought it fit to provide him job within a reasonable time and that is what the respondents have exactly done. Therefore no fault can be fastened with the action of the respondents and the same does not call for any indulgence from this Bench of the Tribunal.

7. We have considered the rival submission put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned there is hardly any dispute. However, we have tried to carry out an incisive analysis and study the matter. We find that the impugned order Annex. A/1 does not make it clear as to what steps had been taken for providing an alternative post to the applicant. In the reply also except mentioning that every effort was made, nothing else is forthcoming. In any case that may not make much difference in settling up the controversy involved in this case. It is a fact that the applicant was holding the post of Pointsman in the pay scale of Rs. 3050-4590 at the time of decategorization. It is also the fact that he was absorbed in a lower post as Engine Khalasi in the pay scale of Rs. 2750-4400. The order does not indicate that his pay has been protected. However, we take the version of the respondents as true on this aspect since in the reply they have mentioned so.

8. Now, we would advert to the legal position regarding the grant of alternative post to a person who has acquired disability during his service. The basic law on the subject is Sec. 47 (1) of 'Persons with'



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Disabilities (Equal opportunities Protection of Rights and Full Participation) Act, 1995" which reads as under:

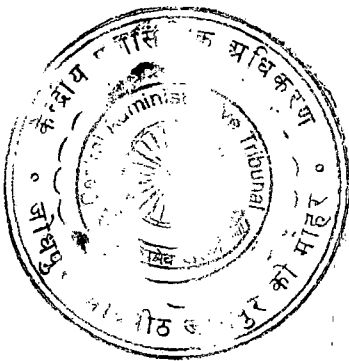
"47 Non discrimination in Government employment-

- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if any employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, **he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which ever is earlier**" (Emphasis supplied)

9. Nextly, the Railway Board, has also framed the specific Rule vide para 1302 and 1303 of the Indian Railway Establishment Manual Vol I and the contents of the relevant portions are extracted as under:



"1302. Classification of Railway Servants declared medically unfit - Railway servants acquiring disability during service and declared medically unfit are divisible into two groups: -

- i. xxx
ii. Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

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- a. Railway Servant totally incapacitated for further service:- xxx
b. Railway Servants disabled/ incapacitated for service in posts held by them but eligible for alternative employment:- Railway servants in Group (ii) of para 1302 above also cease to perform the duties of the post they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway servant concerned to perform the duties in the post beyond that date. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the employee concerned was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

Para 1303 Substituted vide Advance Correction Slip No. 148 issued under Railway Board's letter No. E (NG) I-2001/RE-3/8 dated 01/07/2003 (RBE 113/2003)."

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10. From a conjoint reading of the aforesaid provisions, it is clear that if an employee, after acquiring disability, is not found suitable for the post which he was holding he can be shifted to some other post with the same scale of pay and service benefits and in case it (i.e. to adjust him on a post in the same pay scale and service conditions), was not possible immediately, he should be kept on a supernumerary post until a suitable post is found or he attains the age of superannuation whichever is earlier. In other words one can be absorbed in other post carrying the same scale of pay and service benefits and cannot be absorbed on a lower post in lower scale of pay. This position is also fortified from para 10 of the order in G. Prabhakar Rao's case (supra), on which the learned counsel for the applicant has placed much reliance. We find it expedient to extract the same as under:



" 10. The Hon'ble Supreme Court in the case of Kunal Singh vs. UOI has held that once it is held that employee has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. This Tribunal has also taken the same view in O.A. No. 1368/2002 and has held that when once it is found that the persons has developed serious disability during the course of the employment on account of nature of duties performed by him and was medically decategorised after subjecting him for medical examination by the Medical officer of the Railways, the said benefit is to be extended to him and the employee is to be provided alternate job protecting his scale of pay and the actual pay drawn by him at the time of medical decategorization and if it is not possible to adjust the employee against any post he is to be kept on supernumerary post until a suitable post is available or on attaining the age of superannuation whichever is earlier as per the provisions of Sec. 47 of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" and has quashed the impugned order therein declaring the same as illegal and violation of Sec. 47(1) of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" and the circular instructions issued by the Railway Board in Serial Circular No. 68/97 circular dated 15.04.97 and the Railway Board's letter dated 21.02.1997." (Emphasis supplied)

11. At this juncture, we can only assert that that the controversy involved in the instant case is squarely covered on all fours by the

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aforesaid judgement of the Coordinate Bench of this Tribunal and even if we were to examine the matter independent of the said authority, we would have also reached the same conclusion. In this view of the matter, we have absolutely no hesitation in following the same, even otherwise also we are bound to follow since the same is based on the basis of the verdict of the Apex Court in Kunal Singh's case (supra) and decide this O.A on similar lines.



12. The upshot of the aforesaid discussion leads us to an inescapable conclusion that the OA has ample force and deserves to be accepted. The same stands allowed accordingly. The impugned orders Annex. A/1, Annex. A/2 are hereby quashed with all consequential benefits. However, there shall be no order as to costs.


(J P SHUKLA)
ADMINISTRATIVE MEMBER


(J K KAUSHIK)
JUDICIAL MEMBER.

Jsv.

~~Section officer (Record)~~