

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

ORIGINAL APPLICATION NO. 554/2011
WITH MA.11/2012

Dated this the 11th day of July, 2012

CORAM

HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER

Harish Chandra Joshi S/o Shri Ram Niwas Joshi,
Resident of 6/35, K.k.Colony, Basni, Jodhpur
Presently employed on the post of Supernumerary Post
(Station Master de-categorized) in
Bhagat Ki Kothi, Jodhpur, NWR.Applicant

(By Advocate Mr. J.K.Mishra)

Vs.

1.Union of India through General Manager
HQ Office, North Western Railway,
Malviya Nagar Near Jawahar Circle,
Jaipur.17.

2. Divisional Railway Manager,
North Western Railway, Jodhpur Division
Jodhpur.

3. Senior Divisional Personnel Officer,
North Western Railway, Jodhpur Division,
Jodhpur.Respondents

(By Advocate Mr. Girish Shankhala for R 1-3)

ORDER

Per: Dr. K.B.S.Rajan, Judicial Member

The legal issue involved in this case is whether the applicant, on medical decategorisation from the post of station master carrying the pay scale of Rs.9300 – 34,800 plus grade pay of Rs 4,200/-should not only be posted with the identical pay scale but also that he must be accommodated in a post which carries that pay scale. In the instant case the respondents have committed that the applicants pay

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scale shall be protected but he would be placed against the post of Clerk-cum-Typists (pay scale of Rs 5,200 - 20,200 plus G.P. Of Rs 1900) along with special supernumerary post Grade of Rs 9,300 - 34,800 plus G.P of Rs 4,200/-.

2. The admitted facts of the case are as under:-

The applicant joined the respondents' organization in 1974 and was lastly promoted as Station Master in the grade of Rs 5,500 - 9,000 on 10-04-2006. Having undergone a open heart surgery, he underwent continuous treatment and was subjected to medical examination by a Medical Board for his de-categorization and the Medical Board, on 16-04-2011 came to them conclusion that the applicant is fit for Aye/Two & below with glasses for DV & NV for an alternative job on permanent basis where he has to avoid strenuous work like long distance running, frequent climbing up and down on stairs etc., He should not be employed for train working and train passing duties. Annexure A-2 refers.

3. The applicant had preferred Annexure A-3 Appeal to the Chief Medical Director (CMD).

4. According to the Applicant, his case is covered under the provisions of para 1301 of the Indian Railway Establishment Manual, according to which, Railway servants who fall in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank but should be shifted to some other post with the same pay scale and service

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benefits.

5. According to para 1306 (2) of the said manual, the officer concerned will prepare a vacancy list within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with same scale of pay as was attached to the post he was holding on a regular basis before being declared medically unfit, will be offered to him.

6. The respondents, vide Annexure A-5, dated 12 - 10 - 2011, offered the applicant a post typist, created as supernumerary post, in the pay scale of Rs.9300 - 34,800 with the grade pay of Rs.4200. By Annexure A-1, the order of appointment was issued to the applicant on the above lines.

7. Simultaneously, the Chief medical director (CMD), nominated a medical board and the applicant was admitted in the Railway Hospital at Jodhpur, on 01-11-2011 and the applicant was discharged on 09-11-2011.

8. The contention of the applicant is that the respondents ought to have adjusted the applicant against any of the other posts, in which the pay scales are comparable. Hence, he has claimed the following relief, vide para 8 of the OA which reads as under:-

"(i) That impugned order dated 21.10.2011 (Annexure.A.1) may be declared illegal and the same may be quashed. The respondents may be directed to give alternative appointment to the applicant on a post carrying pay scale of Rs. 9300-34800 + 4200 GP as per rules in force, and allow all consequential benefits.

(ii) That any other direction, or orders may be passed in

favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

9. In their reply, the respondents have at more than one place indicated that the pay scale of the applicant would be protected in the new appointment order and submitted that the applicant has been accommodated as per rules and prayed for dismissal of the O.A.

10. The applicant has filed his rejoinder in which he has attached certain tabulation columns, reflecting the identified vacancies.

Annexure A-9 refers. The applicant has contended that a number of posts with grade pay of Rs 4,200 are available, for which he meets the requisite medical standard.

11. Counsel for the applicant insisted that mere placement of the same pay scale and grade pay alone may not render justice, as the applicant could well be accommodated against almost analogous posts, instead of being pushed down to a lower post of Typist Clerk, albeit, securing the pay scale intact.

12. Counsel for the respondents submitted that the applicant has been accommodated in accordance with law.

13. Arguments were heard and documents perused.

14. Grant of alternative employment, preserving the same emoluments as provided for in the Railway Establishment Manual (Chapter XIII) is based on the provisions of Sec. 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 reads

as follows:

"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 an 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, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

15. The import of Section 47 of the Act was considered by the Apex Court in *Kunal Singh v. Union of India* and in para 9 of the decision it was observed and held as follows:

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of 'disability' and 'person with disability'. It is well settled that in the same enactment if two distinct definitions are given defining a word/ expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. *The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads 'no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service'.* The section further provides that if an 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; *if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation,*

whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."(emphasis added)

16. The case of the applicant has to be dealt with in tune with the provisions of Chapter XIII of the Indian Railway Establishment Manual, especially para 1301 to 1306. Para 1306(5) of the Manual, inter alia reads as under:-

"Nothing in the previous paragraphs however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the Railway servant concerned and must contain full particulars of his services and must be forwarded to the officer to whom addressed or to the authority competent to make the appointment. The result of the application must be intimated to the Railway Servant."

17. In addition, para 313 of the Railway Medical Manual reads as under:-

" 313. MEDICALLY UNFITTED RAILWAY SERVANTS :-

- i. Medically decategorised staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised. For example, traffic running and operating staff need not necessarily be absorbed in the ticket checking cadre alone but they could also be absorbed in other commercial, station or yard category.
- ii. The medically decategorised staff absorbed in alternative posts, whether in the same or other cadre, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher

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grade is to be taken into account.

Provided that if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

- iii. While absorbing the medically decategorised Running Staff in alternative posts, a percentage of basic pay representing the pay element in Running Allowance, as decided by the Government through administrative instructions from time to time, should be added to the minimum as well as maximum of the scale of pay for purposes of identifying 'equivalent' posts and their seniority should then be fixed in the equivalent absorbing posts".

18. The above provisions of the Railway Manual would go to show that the attempt should be made with a view to ensuring that

- (a) the same scale of pay and grade pay are made available to the medically decategorized Railway Servant;
 - (b) placement on decategorization shall be in the same cadre or in the alternative allied categories, where the background and the experience in the earlier categories could be utilized.
- © The applicant is given a choice for the same, for which he has to make an application, vide 1306 (5) of the Manual.

The precise purpose of the above provisions appears to be on a sound rationale. First, when the Railways are to pay the same emoluments to a medically de-categorized Railway Servant, attempt should be such that corresponding extent of service from the individual is extracted. For this purpose, the individual could be accommodated, subject to medical standard attached to the posts, either the same cadre or allied category. Resort to another category, alien to the category to which the individual belonged prior to decategorization, would perhaps pose inconveniences to those already in that cadre/category in respect of future promotion prospects, which contingency may not be there if the posting is within the same category.

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19. It is understood that in so far as Station Masters are concerned, they are given training in certain commercial categories as well and such a training would come handy to the decategorized individuals. As such, the claim of the applicant that he may be accommodated against any of the vacancies in the commercial cadre appears justified.

20. In so far as creation of supernumerary post is concerned, the same is only a stop gap arrangement and that too should be within the same category, as is evident from the provision itself. Here, in the instant case, the respondents have created supernumerary post in an entirely different category. This does not appear to be correct.

21. The respondents have certainly complied with one of the requirements under the provisions of the Railway Establishment manual, i.e. ensuring protection of pay scale by placing the applicant in the scale of pay of Rs 9,300 - 34,800 plus grade pay. However, instead of considering the case of the applicant for alternative employment in the same cadre or in the allied cadre, they have chosen entirely different cadre. They have not categorically stated that it is only after exhausting the first preference i.e. in the same or allied cadre that the applicant has been accommodated in another cadre. The respondents shall try first within the same cadre. In case of no possibility of accommodating within the cadre when the respondents have to take recourse to accommodating the applicant in another cadre, the same may be proximate to the cadre/allied category, of the applicant.

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22. Under these circumstances, it would be advantageous, both to the department and the individual if the posting takes place to such a cadre, where, there is certain exposure to the individual by way of having received training etc. Viewed from this point of view, the applicant has made out a case that in the absence of the posts in the same cadre (of Station Master), the next alternative should be in such a cadre for which the applicant would have been given some training.

23. In view of the above, the OA is allowed. Respondents are directed to first make an attempt to accommodate the applicant in the same cadre (line of promotion of Station Master – such as ASM etc., provided the medical standard required for the said post is fulfilled by the applicant) or any other allied cadre in which the applicant has some exposure. And, it is after so exhausting the same that the respondents should take resort to other cadres. In case, as stated by the applicant, there are vacancies in certain other cadres, where the applicant has some exposure, the respondents should accordingly accommodate the applicant against a suitable post. Till then, the applicant may continue in the existing post of Typist.

24. This order shall be complied with, within a period of four months from the date of communication of this order. No costs.

25. In view of the disposal of the OA as above the MA has become infructuous and the same is dismissed.

Dated this the 11th day of July, 2012

(B K SINHA)
ADMINISTRATIVE MEMBER

(DR.K.B.S. RAJAN)
JUDICIAL MEMBER

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R/C

13/7/12

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Amended by

Virbh

SP

Ref 7

Amended by

13/7/12