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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.100/2013
MA No.126/2013

Jodhpur, this the 3rd day of October, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Purkha Ram s/o Shri Laxman Ram Meghwal, aged 26 years r/o E-27-A,
New Loco Colony, Ratnada, Jodhpur, presently working at Loco Office,
Jodhpur.

.....Applicant

Mr. Mahaveer Vishnoi, counsel for applicant

Vs.

1. Union of India through the General Manager, North West Railway,
Jaipur.
2. Divisional Railway Manager, North West Railway, Jodhpur
3. The Divisional Personnel Officer, North West Railway, Jodhpur.

...Respondents

Dr. Vinay Chhipa, counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicant has filed the present OA against the order dated 4.1.2013 (Ann.A/1) by which he was transferred from the post of RDI Fitter at Jodhpur to the post of Lobby Operator at Samdari and prayed that this application may be allowed and order dated 4.1.2013 may kindly be quashed qua the applicant with further prayer that the respondents may be directed to post the applicant at Jodhpur according to recommendation of the Medical Board.

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2. The facts, as narrated by the applicant, in brief are that after death of his father, the applicant was appointed on compassionate grounds on the post of RDI Fitter on 3.6.2006. He was suffering from disease of Epilepsy and due to this disease, the Medical Board after medical examination declared the applicant unfit for duties of RDI Fitter and directed that the applicant should be given alternative employment on permanent basis. It is averred that after medical de-categorisation, the applicant is working in Loco Office at Jodhpur but vide order dated 4.1.2013, he was transferred from Jodhpur to Samdari on the post of Lobby Operator, which order is under challenge in this OA on the ground that the Medical Board while medically decategorising the applicant directed that the applicant should not be employed in or near running line or moving machinery and never on train running and passing duties and therefore, the post of Lorry Operation is not suitable for the applicant because due to fits of Epilepsy any time accident may occur with him. The applicant has also taken the ground that his mother is suffering from mental disease and taking treatment at Jodhpur and there is no one to look after her.

3. The respondents by way of filing reply have denied the claim of the applicant and submitted that while working on the post of RDI Fitter, the applicant had been declared medically unfit for the post of RDI Fitter vide letter dated 9.10.2012 as the applicant is suffering from Epilepsy. Since the applicant has been declared unfit for the post of RDI Fitter and Medical Board recommended that the applicant should be given alternative job, therefore, he had been called by the Screening Committee so that looking to his past experience, he can be absorbed on alternative and suitable vacant post, where the applicant's past experience can also be utilized and

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ultimately as a result of screening held on 27.12.2012, the Screening Committee made recommendation for absorption of the applicant on the post of Lobby Operator in Pay Band Rs. 5200-20200 Grade Pay Rs. 1900 and ultimately the applicant was posted at Samadari vide order dated 4.1.2013 on the post of Lobby Operator. It is further stated that it is settled position of law that in the matter of absorption/posting it is the employer who decides that where the services of the employee are to be utilized and same thing has been done by the respondent, therefore, there is no illegality and ambiguity in the order dated 4.1.2013. Further stated that the applicant can also manage his mother's treatment from Samadari.

4. Heard the counsel for both the parties. Counsel for the applicant contended that on the ground of medical decategorisation, the Medical Board directed the respondent department to give an alternative employment on permanent basis. The applicant's mother is also under regular treatment at Jodhpur and despite of this fact the respondents have transferred the applicant on the post of Lobby Operator at Samadari railway station. The applicant also filed representation but of no avail. He, therefore, contended that order Ann.A/1 by which he was posted as Lorry Operator at Samadari be quashed qua the applicant and respondent department may be directed to post the applicant at Jodhpur as per the recommendations of the Medical Board.

5. Per contra, counsel for the respondents contended that the Screening Committee made its recommendations for absorption of the applicant on the post of Lobby Operator in the pay band Rs. 5200-20200, Grade pay Rs. 1900 and accordingly the applicant was posted on an alternative and suitable post of Lobby Operator at Samadari vide order

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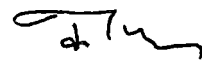
dated 4.1.2013 (Ann.A/1) after medical decategorisation from the post of RDI Fitter. Counsel for the respondents further contended that the applicant has not been transferred from Jodhpur to Samadari but he has been posted as Lobby Operator and thus Ann.A/1 does not amount to transfer of the applicant but it is a posting order on alternative job after medical decategorisation as per recommendations of the Screening Committee. Counsel for the respondents also contended that the applicant himself made a representation Ann.A/4 requesting that he may be posted at Jodhpur so that he can take care of his mother, but the same is pending before the respondents.

6. We have considered rival contention of both the parties and perused the material available on record. In our considered view, order Ann.A/1 is not a transfer order but it is an order of absorption on the post of Lobby Operator after declaring him medically de-categorised on the post of RDI Fitter on the basis of recommendations of the Screening Committee and therefore, grounds as averred by the applicant in the OA to quash the order Ann.A/1 cannot be said to be good and valid grounds. Accordingly, the OA lacks merit and the same is dismissed with no order as to costs.

7. In view of dismissal of the OA, MA No.126/2013 for vacation of interim relief is rendered infructuous and the same is accordingly dismissed as having become infructuous.



(MENNAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

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