

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 934 OF 1997**

Present: Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

Malay Kumar Sen,
Khalasi, Bandel, RRI, S&T Deptt.
E.Rly.
R/o 17, Bangashree Pally, Swamiji Road,
P.O. Brace Bridge, Calcutta-60

Vs

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi
2. General Manager, E. Rly.
17, Netaji Subhas Road,
Calcutta-1
3. Divisional Personnel Officer,
E.Rly. Howrah.
4. Divisional Railway Manager,
E. Rly. Howrah.
5. Sr. Commandant, RPF, Howrah,
E. Rly.
6. Senior DSTE, E.Rly. Howrah
7. Sr. Div. Security Commissioner,
RPF, E.Rly. Howrah(1).

..... Respondents

For the applicant : Mr. B.C.Sinha, Counsel
Ms. C.Sen, Counsel

For the respondents : Mr. R.K.De, Counsel

Date of order : 11.12.01

O R D E R

Per Justice G.L.Gupta, V.C.:

The case of the applicant may be summarised as follows :-

He was appointed as Constable vide order dated 13.9.90 in the R.P.F, Eastern Railway, Howrah. After completion of five years' service, he fell ill and was hospitalised. He underwent treatment. The Medical Deptt. opined that he was not suitable for the job of Constable and he be provided with an alternative job in B-EE category. The applicant was granted leave for some time. On 3.6.96 he was called for screening test and was offered alternative appointment to the post of Khalasi vide letter dt. 16/12/96. The say of the

On 8/1/97

applicant is that the respondents had no authority to provide him with an alternative job at lower category and grant him salary at a lower scale. It has been stated that the applicant after medical decategorisation was paid salary in the scale of Rs. 750-940/whereas while as Constable he was in the higher pay scale of Rs. 825-1200/- It has been prayed that the respondents be directed to make payment of salary to the applicant in the scale in which he was paid salary prior to his medical decategorisation and he should be paid all arrears of salary.

2. In the reply, the respondents have stated that the applicant was medically decategorised, and therefore, protecting his pay, he was given an alternative appointment on the lower scale which the applicant accepted. It has been further stated that the applicant has been withdrawn from the open track and posted as Khalasi with Carpenter under RRI/BDC as per recommendations of the Railway Medical Authority.

3. In the rejoinder, the applicant has stated that the scales of pay of Constable as also of Khalasi have been revised and at present the scale of Constable is Rs. 2750-4400/- and that of the Khalasi is Rs. 2550-3200/-. It has been stated that the applicant had not accepted the post of Khalasi point blank and had accepted it without prejudice to his rights and contentions.

4. We have heard the learned counsel for both parties and perused the documents and provisions with regard to absorption on medical decategorisation.

5. Mr. Sinha, the ld. counsel for the applicant contended that the applicant could not be paid salary in the lower scale because of decategorisation and that he was entitled to salary in the same pay scale which he was getting prior to his medical decategorisation.

D. M. S.

6. Mr. De, the 1d. counsel for the respondents, on the other hand, contended that the applicant having accepted the absorption in the lower pay scale is debarred from challenging his absorption in the lower grade. He further pointed out that the applicant has now been promoted to the higher post of Khalasi Helper vide order dated 8th August, 2000 and having taken the advantage of the promotional post of Khalasi, he cannot challenge the order of his absorption passed on 10.1.97.

7. We have given the matter our anxious consideration.

8. It is admitted position by the parties that the applicant was medically decategorised on 17.12.96 and soon after that a committee approved his name for absorption on 10.1.97 and he was absorbed on the post of Khalasi. It was not disputed during the course of arguments that the applicant has been given promotion to the post of Khalasi Helper in the pay scale of Rs. 2650-4000/- vide order dated 8th August, 2000. It is also not in dispute that the applicant had accepted his absorption on the post of Khalasi.

9. The provisions with regard to medical decategorisation and absorption on the alternative post are contained in Chapter XIII of Indian Railway Establishment Manual, Vol. I (1989 Edition). It has been provided at Para 1306 of Manual that when an employee is declared medically incapacitated, a committee shall examine his case for absorption on the suitable post and after the committee decides the matter, an offer shall be made to the employee concerned under Para 1310 for the proposed post. It is provided at Para 1310 that a railway employee is at liberty to refuse an offer of alternative appointment and in that case he can remain on leave and he will continue to remain eligible for other alternative offers of appointment till his leave expires and efforts should be made to find



a suitable alternative job during the currency of his leave. It has been provided at para 1313 that on absorption in the alternative post, the pay of the railway servant decategorised on account of circumstances which did not arise out of and in the course of his employment will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorisation. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. It is also provided that where the medically unfit railway servant is absorbed in another category on a lower pay, his pay may, on subsequent promotion to higher post, be allowed, by the grant of advance increments, the same or near about the same pay as may have been drawn by them, before being declared medically unfit in his original appointment including officiating appointment, if it is certified that but for being medically incapacitated, the railway servant would have continued in the said appointment. Under Para 1314, the provisions of fixation of seniority of the medically decategorised railway employees absorbed in alternative posts have been provided.

10. A reading of all the Paras of the IREM contained in Chapter XIII makes it clear that an employee can be absorbed on the post carrying lower scale of pay than the one in which the employee was working before decategorisation. It is further evident that a decategorised railway employee has a right to refuse an offer of alternative appointment and may remain on leave. Once the employee accepts the appointment offered to him, may be in the lower pay scale, he has no right to question the absorption in the lower pay scale.

11. The applicant admittedly had agreed for his absorption on the post of Khalasi which was in the lower pay scale. The applicant, therefore, in our opinion, has no right to call in question the order of his absorption. As a matter of fact, he has not questioned the



order of absorption. What he has called in question is that he could not paid salary in the lower pay scale. There being clear provision in the IREM mentioned above, the applicant could be paid salary in the next lower pay scale which has been done in this case. It is significant to point out that the pay of the applicant on the date of decategorisation has been protected. There is also a provision of readjustment of pay on promotion to the higher post. In our considered opinion, the applicant has no legitimate claim of getting the salary in the same pay scale in which he was getting salary before decategorisation.

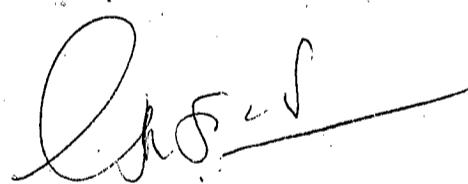
12. It is evident from the reply that the applicant is not working in the open Track and he has been posted with the Carpenter under RRI/BDC.

13. As a result of the above discussion, we have no hesitation in holding that the application does not have any merit and is liable to be dismissed. Consequently, it is hereby dismissed. No costs.

S. Biswas

(S. BISWAS)

MEMBER(A)



(G.L. GUPTA)

VICE CHAIRMAN