

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No.1018 of 1997

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mrs. Meera Chhibber, Judicial Member

Sri Syamal Kumar De, S/o Late Lakshmi
Narayan De, working as Valveman under
CIOW, Howrah Division of Eastern Railway,
residing at 21, Gopal Banerjee Lane,
Howrah-711 101

... Applicant

VS

1. Union of India, through General Manager, Eastern Railway, Fairlie Place, Calcutta-700 001
2. Divisional Railway Manager, Eastern Railway, Howrah
3. Senior Divisional Personnel Officer, Eastern Railway, Howrah
4. Senior Divisional Engineer (Co-od), Eastern Railway, Howrah

... Respondents

For the Applicant : Mr. M. K. Ghosh, counsel
Ms. R. Chakraborty, counsel
For the Respondents: Mr. P. K. Arora, counsel

: : Date of order: 12-03-2002

O R D E R

Meera Chhibber, JM

In this case the applicant has sought for the following
reliefs :

- a) An order directing the respondents to give him a suitable alternative appointment treating his date of appointment as 13.8.1982 in a Grade III post;
- b) An order declaring that the degradation and/or decategorisation of the applicant from Grade III to Grade IV is arbitrary, illegal and malafide;
- c) An order directing the respondents to regularise the service and revise the pay scale of the applicant treating his date of appointment as 13.8.1982.



2. The brief and related facts as narrated by the applicant are that he was appointed as Mechanical Signal Maintainer (Gr.III) in August, 1982. However, in 1984 he became a victim of Schizophrenia, due to which he abstained from duty since July, 1984. He remained under the treatment of Doctor from 25.7.84 to 3.7.91. After recovery when he went to resume his duties, he was not allowed to join the duties inspite of repeated representations. So, being aggrieved he filed OA 674/94 before this Tribunal which was disposed of by an order dated 26.8.94. The operative portion of the order is as follows :

"On perusing the documents, we find that the applicant's place of posting is at Jamalpur. If the applicant is really still in service, he should go and join his appropriate place of posting. There is no documentary evidence to show that he had ever made any attempt to join his duties there and he has been stopped from doing so. However, if the applicant is really in service, he will be at liberty to take appropriate steps to join his duties and if not allowed to join duties, he will make an appropriate representation to that effect to the concerned authority and if his representation is not duly considered by the authority, he may approach the appropriate Bench of the Tribunal, because *prima facie* his place of posting is outside the jurisdiction of this Tribunal."

The applicant states that in terms of the above order, he reported for duty on 13.9.94 to the Chief Signal Inspector, Sahibganj which was under Malda Division, but he was not again allowed to join. So, he filed second OA bearing OA No.705/95 which was disposed of by an order dated 22.8.95 on the following terms:

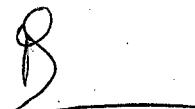
"The applicant shall within a month from today, report for duty before the Chief Signal Telecom Engineer, Eastern Railway, Calcutta, alongwith a copy of this order and the previous order of this Bench of the Tribunal in OA 674 of 1994, as also the documents about his identity. The Chief Signal Telecom Engineer should then take appropriate action on the joining report of the applicant.

10. Be it noted that we have not entered into the merits of the rival contentions of the parties and the Railways are at liberty to take action against the applicant for his prolonged absence from duty, if any."



It is the applicant's case that he again reported for duty on 4.9.95, 6.9.95 and 7.9.95 along with the certified copies of the order, but he was not allowed to join. It was only by a letter dated 29.9.95 the Chief Signal & Telecom Engineer requested the D.R.M., Howrah to verify the identity of the applicant and then he was allowed to join the duty. Since the applicant had claimed that he was suffering from Schizophrenia, he was referred to Hospital for special medical examination when he was declared fit for Bee One category and it was recommended that on medical grounds arrangement should be made to provide him with suitable alternative employment permanently in the said category. The Medical Director further informed that though he is fit for Bee One category, but he is unfit for his original jobs, which may cause loss of control or a relapse of the disorder which may result in loss of life and damage to property and should not climb on a pole or a ladder. Therefore, he may be provided with an alternative job. Finally the DPO issued an order dated 18.12.96 by which applicant was ordered to join as Valveman as proposed by screening committee in the scale of Rs.750-940/- . The applicant joined the duty on 20.12.96 as Valveman. His pay was fixed at Rs.940 + 10 as personal pay vide order dated 3.1.97.

3. The grievance of the applicant in this OA is that though he was initially appointed in Grade III in the scale of Rs. 950-1500/-, but now he has been appointed in the lower scale without protecting his pay scale and he has stated that inspite of his representation his grade from III to IV has not been upgraded. Thus being aggrieved, he has filed the present OA. In support of his arguments he has relied on the case of Narendra Kumar Chandla v. State of Haryana and Ors. (AIR 1995 SC 519), wherein it has been held that every endeavour must be made to adjust him in a post where he could suitably discharge his duties protecting his last drawn salary.

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4. The respondents in their reply have drawn our attention to applicant's own letter dated 16.12.96 addressed to the Divisional Railway Manager, Eastern Railway, Howrah wherein he has specifically stated that in view of Doctor's advice he should be given some alternative appointment. The Railway authorities have offered him the post of Valveman which is acceptable to him and he would have no objection if he is appointed as Valveman although the pay of MSM is higher than Valveman, but if he is allowed to join as Valveman he will not take recourse to any legal action in any court of law. The respondents further stated that in view of the applicant's own letter given in his own handwriting the applicant is estopped from filing this OA and it is liable to be dismissed on this ground alone. Even otherwise they have stated that in view of the recommendation of the Medical Director the applicant was not fit to perform the same original duties. Therefore, he had to be given some alternative appointment and while the alternative appointment was offered to him in the scale of Rs.750-940/-, the pay drawn by him earlier was protected by fixing his pay at Rs.940 + Rs.10 as personal pay to him which is reflected in the order itself. Therefore, according to the respondents no interference is called for in this case.

5. We have carefully considered the entire materials of the case and perused the judgment cited. In fact, in view of the undertaking given by the applicant himself on 16.12.96, this OA ought to have been dismissed at the admission stage itself because having accepted the offer made to him and having joined the same, the applicant cannot turn around and make grievance and file another OA in the Court of law.



6. However, on merits also we find that the respondents have taken care to protect his last pay drawn by adding Rs.10 as personal pay to the highest amount in the scale i.e., by fixing his pay at Rs.940 + 10 as personal which he was drawing before coming to the lower scale. As far as upgradation is concerned since the medical expert had recommended that the applicant should be given some alternative appointment, the respondents have given him the suitable post where according to them, he could have been adjusted. We sitting here in the Court cannot decide which is the alternative post that the applicant can have and definitely he could not have been given the earlier assignment or earlier post as the Medical Director had specifically stated that he is not fit to hold the original post.

7. In view of our findings made above we do not find any good ground for interfering in this matter. The OA is accordingly dismissed with no order as to costs.



(Meera Chhibber)

MEMBER (J)



S. Biswas

(S. Biswas)

MEMBER (A)

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