

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 48/2001

Wednesday, this the 11th day of September, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Thomas Mathew,
S/o K.M. Thomas,
Teacher(Grade IV),
Railway Mixed High School,
Erode, residing at
No.126-D, Railway Colony,
Erode-2.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

1. Union of India, rep. by
The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.
2. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.

... Respondents

(Mr. Thomas Mathew Nellimoottil)

The application having been heard on 11.9.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant, a Post Graduate in English Literature and Bachelor of Education was appointed initially as Assistant Station Master on 6.10.1987 in the scale of pay of Rs.1200-2040/- (Revised Rs.4500-7000). He was promoted as

Station Master Grade III in the scale of Rs.1400-2300/- (Rs.5000-8000 revised) w.e.f. 4.4.1991. While so, the applicant was medically decategorised w.e.f. 12.8.1997 and was rendered unfit to hold the post of Station Master. He was found medically fit in Cee-One Category. Therefore, the applicant submitted a representation dated 20.8.1997 for appointment as Teacher. The applicant was neither appointed to any post nor paid the salary for the period he was kept out of duty. However, by A2 order dated 5.3.1998, the applicant was directed to appear in the suitability test for appointment as Teacher Gr. IV(EM) in the scale of Rs.4500-7000/-. As the applicant was kept out of duty for a long time, he appeared for the suitability test, got selected and was appointed by order A3 dated 2.4.1998 as Teacher Gr.IV/EM in the scale of Rs.4500-7000 against a vacancy. Immediately, thereafter, the applicant coming to know that the Railway Board had passed an order bearing RHE No.88/99 dated 29.4.1999 made a representation A5 dated 25.6.1999 seeking appointment as Teacher Grade III in the scale of Rs.5000-8000/w.e.f. 2.4.98 and for payment of salary for the period between 12.8.1997 to 2.4.1998. Finding no response, he submitted another representation A6 dated 15.8.1999 to the CPO. In response to the above said letters, an order dated 2.8.1999(A7) was issued fixing his pay in the scale of Rs.4500-7000/-. Dissatisfied with this order, the applicant made an appeal to the Chief Personnel Officer, the 4th respondent on 16.8.1999(A8), which was not considered and disposed of. Finding that the applicant had not got the benefit of alternate appointment in an equivalent pay scale and the pay during the period for which he was not on duty, in terms of Section 47 of the Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the applicant has filed this application seeking to set aside Annexure A7, for a

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direction to the respondents to treat the period from 12.2.97 to 12.8.1997 as extra ordinary leave qualifying for drawal of increment and to grant all consequential benefits thereof and to grant the applicant salary and allowances for the period from 13.8.1997 to 2.4.1998 treating the aforesaid period of service as duty, if necessary by creating a supernumerary post and to pay the same forthwith in the scale of pay Rs.5000-8000/- and to grant the applicant the scale of pay of Rs.5000-8000/- with effect from 2.4.1998 with consequential arrears.

2. The respondents in the reply statement contend that the applicant's representation was not received, that he was appointed as Teacher in the scale of Rs.4500-7000/- and therefore the pay scale of Rs.5000-8000/- would be granted to him only after 12 years of service in that grade, that in terms of the Railway Rules, during the period of extra ordinary leave, granted to applicant, he was not entitled to draw salary and that therefore the applicant is not entitled to the reliefs sought in the application. The claim of the applicant for counting the period between 12.2.1997 and 12.8.1997 as qualifying service for increment has been admitted by the respondents.

3. Shri T.C. Govindaswamy, the counsel for the applicant invited our attention to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, which reads as follows :-

"1. No establishment shall dispense with, or reduce in rank an employee who acquired 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:

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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."

4. The fact that the applicant was kept out of employment on medical decategorisation between 12.8.1997 and 2.4.1998 and he was appointed to the post of Teacher is not disputed. The learned counsel of the applicant argued that under the provisions of the Act, quoted above, the applicant was entitled to have this period treated as duty, if necessary by creating supernumerary post and be paid the pay and allowances for the period. The counsel further argued that under Section 47 of the Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, on account of the disability acquired during employment, no employee should be reduced in rank and that the employee has to be accommodated in a post with equivalent pay scale and after making appointment such a pay scale is not possible, the employee has to be kept on a supernumerary post. The Act cover all the establishments under the Government and since the Railway Administration is an establishment of the Government of India, the Counsel argued that the action on the part of the respondents in not granting the benefit to the applicant is not sustainable. The counsel further argued that though Annexure A4 was issued only in the year 1999 the benefit there under is due from 7.2.1996, the date on which the order was brought into force.

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5. Shri Thomas Mathew Nellimootttil, the learned counsel of the respondents on the other hand argued that the applicant having accepted the alternative appointment in the post of Teacher in the scale of Rs.4500-7000, was estopped from claiming the benefit of alternate appointment in an equivalent pay scale. We find no force in the argument of the the learned counsel of the respondents because there cannot be estoppel against statute.

Section 47(1) of the Persons with Disabilities(Equal Opportunities Protection of Rights and Full Participation) Act, 1995 provides that no establishment shall dispense with, or reduce in rank an employee who acquired a disability during his service. Solely on that ground, against this provision in the statute, there cannot be an estoppel. The argument that the Railway Board Circular A4 having been issued only on 29.4.1999 after the applicant was appointed in an alternate post in the year 1998, the applicant is not entitled to any benefit under A4 is also untenable because, the delay in issuing a Circular by the Railway Board would not absolve the Railways, an establishment under the Government from giving effect to the provisions of the Persons with Disabilities(Equal Opportunities Protection of Rights and Full Participation) Act, 1995 which came into force on 7.2.1996

6. In the result, the contention of the respondents are rejected and the application is allowed. We set aside A7 impugned order. The respondents are directed to treat the period of the applicant's service between 12.2.97 and 12.8.1997 as extra ordinary leave qualifying for drawal of increments, to grant the applicant salary and allowances for the period between 13.8.1997 and 2.4.1998 in the scale of pay of Rs.5000-8000/- if necessary by creating a supernumerary post of Teacher in that grade, to grant the applicant the pay scale of Rs.5000-8000 as Grade III

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Teacher from 2.4.1998 and consider him for further promotion in due course taking into account his seniority. The above direction shall be complied with and monetary benefits in the form of arrears of pay and allowances shall be paid to the applicant within three months from the date of receipt of a copy of this order. No costs.

Dated the 11th September, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the representation dated 20.8.87 submitted by the applicant to the 4th respondent.
2. A-2: True copy of the communication No.J/P11/Gen1./Group 'C'/PT dt.5.3.98 issued by the 3rd respondent.
3. A-3: True copy of the communication No.J/P 535/XIV/TCHRS/Vol.II dt.2.4.98.
4. A-4: True copy of the order bearing RBE No.88/99 dated 29.4.99.
5. A-5: True copy of the representation dated 25.6.99 submitted by the applicant to the 4th respondent.
6. A-6: True copy of the representation dated 15.8.99 submitted by the applicant.
7. A-7: True copy of the Memorandum No.J/P 524/XIV/Vol.5 dated 2.8.99 issued by the 3rd respondent.
8. A-8: True copy of the appeal dated 16.8.99 submitted by the applicant to the 4th respondent.

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