

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.472/99

Monday this the 6th day of August, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

S.Ajithkumar
S/o Sankaranarayanan Nair
Junior Clerk
Office of the Senior Divisional Operations
Manager, Southern Railway, Trivandrum
Residing at "Girija"
Asramam P.O.
Kollam.

Applicant.

[By advocate Mr.T.C.Govindaswamy]

Versus

1. Union of India represented by
The General Manager
Southern Railway
Headquarters Office
Park Town P.O.
Madras.
2. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum.
3. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum.

Respondents.

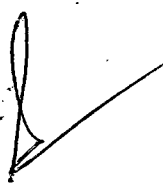
[By advocate Mr.Mathews J.Nedumpara, ACGSC]

Application having been heard on 6th August, 2001, the
Tribunal on the same day delivered the following:

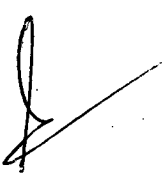
O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-4, to declare that A-2 to
the extent it offers alternative appointment to him in the
lowest scale of pay of Rs. 3050-4590 is arbitrary,
discriminatory and unconstitutional, that he is entitled to be
offered an alternative appointment in a post carrying a scale
of pay of Rs. 6500-10500 with consequential benefits and to
direct the respondents to grant all consequential benefits.




2. Applicant is working now as Junior Clerk in the scale of pay of Rs. 3050-4590 in the Operating Department of Southern Railway. He initially joined the Railways as Goods Guard in the scale of pay of Rs. 1200-2040/4000-6000 on 23.7.90. He was thereafter promoted as Senior Goods Guard in the scale of pay of Rs. 5000-8000. He was working in the said grade on regular basis. While so, on account of kidney failure he became ill and was under treatment since October, 1996. After kidney transplantation he was medically decategorised and held unfit to discharge the duties of Senior Goods Guard during August, 1997. He was offered an alternative appointment in the scale of Rs. 950-1500/3050-4590. He accepted it under protest as per A-1 since he was practically remaining without wages since November, 1996. He was a running staff. As per para 1309 of the Railway Establishment Manual (IREM) Vol.I, the alternative post to be offered to a railway servant should be the best available for which he is suited and should ensure that the loss in emoluments is minimum. While finding an alternative post for medically decategorised running staff 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post'. Since he was in the scale of Rs. 5000-8000, he is entitled to be granted an alternative appointment in a post carrying a scale of pay of Rs. 6500-10500. He is entitled to the alternative appointment under the provisions of Section 47 of "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".



3. Respondents resist the OA contending that as per Note 2 under paragraph 1304 of the IREM, Vol.I 1989 Edition in matters relating to absorption of a medically incapacitated staff in alternative post, the Railway Administration has to ensure that the interest of staff in service is not adversely affected as far as possible. As per para 1309 of IREM, Vol.I, there is only the provision of offering of an alternative post best available to a Railway servant. The applicant has been appointed to the post of Office Clerk in scale of Rs. 3050-4590 which was the post available when the committee met and assessed the suitability of the applicant for appointment in such post. Alternative appointment to a post is not done solely by comparing emoluments of the other post with that of the new one, but it is based on the suitability of the employee to hold the newly offered post. The Railway Administration is not bound to give the medically decategorised employees alternative appointments in equivalent post.

4. Learned counsel appearing for the applicant submitted that though a ground is raised in the OA relying on Section 47 of "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995", this ground is not pressed.

5. There is no dispute that the applicant while working as Senior Goods Guard was medically decategorised and as Senior Goods Guard, he was in the scale of pay of Rs. 5000-8000. It is also not under dispute that at the relevant point of time, applicant was drawing a basic pay of Rs. 5150/-.



6. As per A-2, the applicant on medical decategorisation was offered the post of Office Clerk in the scale of pay of Rs. 3050-4590 as it was found suitable alternative job. Applicant as per A-1 accepted the post of Office Clerk in the scale of pay of Rs. 3050-4590 without prejudice to his claim for absorption in a post in the scale of pay of Rs. 5000-8000 plus 30% fixation in accordance with the rules in force on the subject.


7. Para 1309 of IREM Vol.I reads thus:

"1309. Alternative employment to be suitable.-

- (i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.
- (ii) It would not, however, be appropriate to offer a Group-D post to a railway servant in the Group-C service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who had risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.
- (iii) For the purposes of this paragraph, an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.

- (iv) While finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post' (Board's letter No.E(NG) II-77-RE 3-2 dt. 2.9.77). All cases decided on or after 1.1.73 may be reviewed and benefits as above given only if (a) there had been an acute hardship, and (b) there should be no effect on other. (Board's letter No.E(NG) II-79 RE 3/5 dt.22.5.79). Even in such cases the matter of payment in the equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise.


Note: Care should be taken by Railway Administration to see that the interests of the staff in service are not affected adversely as far as possible and alternative appointment should be offered only in post which the staff can adequately fill. Their suitability for the alternative posts be judged by holding suitability test/interview as prescribed under the extant instructions.

8. Relying on para 1309 of IREM Vol.I, respondents contend that the said para spells out that the Railway Administration is not bound to give medically decategorised employees alternative employment in equivalent posts. The said paragraph says that the alternative post to be offered to a Railway servant should be the best available for which he is suited to ensure that the loss in emoluments is a minimum. It further says that for the purpose of giving alternative appointment if the emoluments are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, that will be considered as suitable. At the same time it says that the figure of 25% is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered suitable if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. So it is in this background the matter is to be viewed.
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9. The applicant has been given the posting of Office Clerk only in the scale of Rs. 3050-4590. Even going by that 25% mentioned in para 1309 of IREM Vol.I the post offered to the applicant as Office Clerk is not in tune with para 1309 of IREM Vol.I.


10. Para 1309 of IREM also says that while finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post'. From A-2 it is clear that the post of Office Clerk in the scale of Rs.3050-4590 offered to the applicant is not in compliance with the true spirit of para 1309 of IREM Vol.I. In any event, he is entitled to get an alternative appointment in the scale of pay of Rs. 5000-8000.

11. As per A-4 the impugned order, the request of the applicant contained in A-3 has been turned down. Since A-4 is not in tune with the provisions contained in para 1309 of IREM, the same is liable to be quashed.



12. Accordingly A-4 is quashed. Second respondent is directed to consider the case of the applicant afresh in the light of the provisions contained in para 1309 of IREM Vol.I and in the light of the observation contained in this order and pass appropriate orders as expeditiously as possible. It is needless to say that when orders are passed by the second respondent it will give the applicant consequential benefits flowing therefrom.

Dated 6th August, 2001.



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M.SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-4 True copy of order No.V/P.612/II/Clerks/Optg. dated 4.3.99 issued by the 3rd respondent.
- A-2 True copy of office order No.T.64/97/Clerks dated 31.12.97 issued by the 3rd respondent.
- A-1 True copy of the letter of protest given by the applicant to the 3rd respondent.