

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 590/2003

Monday, this the 9th day of January, 2006

CORAM:

HON'BLE SMT.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.K.Surendran, S/o Kunju Kunju,
Travelling Ticket Examiner/Sleeper
Palghat Division, Palghat.
R/o Railway Qtrs.No.113-A, Hemambika Nagar, Palghat.

... Applicant.

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

- 1 Union of India, represented by the General Manager
Southern Railway, Head Quarters Office, Chennai.
- 2 The Divisional Railway Manager, Southern Railway
Palghat Division, Palghat.
- 3 The Divisional Personnel Officer, Sourthern Railway
Palghat Division, Palghat.

... Respondents.

(By Advocate Mr.Sunil Jose)

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant presently working as a Travelling Ticket Examiner in scale of
Rs.4000-6000 is aggrieved by the non-feasance on the part of the respondents to

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grant him the scale of pay of Rs.5000-8000 with effect from the date of grant of alternative appointment, on medical decategorisation has filed this O.A for the following reliefs:

"a) Declare that the non-feasance on the part of the respondents, to grant the applicant a posting in the scale of pay of Rs.1400-2300 in the Ticket Checking Cadre w.e.f. 28.12.1991 is arbitrary, discriminatory, contrary to law and unconstitutional.

b) Direct the respondents to grant the applicant the scale of pay of Rs.1400-2300 in the Ticket Checking Cadre with effect from the date he was granted the alternative appointment.

c) Award costs of and incidental to this application

d) Passs such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The facts relevant to the case are that the applicant was initially appointed on a Group-D post on 20.10.1980. He was promoted as Ticket Collector in scale Rs.950-1500 and further promoted to the post of Goods Guard in the scale Rs.1200-2040 on 1.3.1989. He was medically decategorised on 28.10.91 and according to him he ought to have been granted an alternative appointment in a stationary post carrying the scale of pay Rs.1400-2300. The cadre of Goods Guards comes under the category of Traffic Running Staff and for the purpose of arriving at an equivalent scale, 30% is to be added to the minimum and the maximum of the scale of pay of the running post, i.e. Goods Guard in this case. As per Railway Board's letter dated 15.6.1979, the scale of pay of the Stationary Post equivalent to

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that of a Goods Guard is Rs.1400-2300 (IV CPC). Option was called for either to be absorbed in the Trains Clerks Cadre or in the Ticket Checking Staff Cadre. The applicant opted for the Ticket Checking Staff Cadre and accordingly, he ought to have been absorbed as a Travelling Ticket Inspector in the scale Rs.1400-2300 since vacancies were available in that cadre. He was given an alternative appointment on the post of Travelling Ticket Examiner scale Rs.1200-2040 which is one scale below that of the Goods Guards. The applicant joined as Travelling Ticket Examiner on 25.12.91 and his pay was not correctly fixed. By an order dated 13.9.93, his pay was fixed under Rule 1313 of the Indian Railway Establishment Manual (IREM). He continued to make representations based on an International Covenant, Persons with Disabilities (Equal Opportunities) Act, 1996. Under Section 47 of the said Act, a person who is medically decategorised is entitled to have all his rights protected, even by creation of supernumerary post. The respondents department has acted in the case of one Unnikrishnan, who was a Diesel Assistant (Running Staff) in scale of pay Rs.950-1500, granted the benefits. Also in the case of one K.D.Joseph, this benefit was granted. In such circumstances, the applicant submitted representation Annx.A3, which was rejected by Annx.A4. Objection was filed followed by further representations Annx.A6 and A7, but he was not granted the benefit thereby he suffers prejudice, irreparable damages and recurring losses. Therefore, the applicant has filed this O.A.

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3. The respondents have filed a detailed reply statement contending that the applicant is presently working as Travelling Ticket Examiner in scale Rs.4000-6000. Prior to appointment as TTE he was working as Goods Guard in scale Rs.4000-6000. He was found incapable of doing duties of a Goods Guard and recommended by Chief Medical Superintendent, Palghat (CMS) for a job not involving strenuous type of duties and having manual labour. He was not medically de-categorised, making him unfit for the category of Goods Guard. His representation for considering him in the cadre of Ticket Checking where he was working earlier was considered and posted him as TTE in scale Rs.4000-6000, the same scale which he was holding at the time of the recommendation by the CMS. There is no provision to add 30% of pay for fixation of pay in respect of cases, where the employee comes back to his non-running parent cadre from a running cadre, on recommendation for light job. But his pay, on joining in the Ticket Checking cadre was fixed, allowing Running Allowance of 30%. Hence the same has to be reviewed. If he had been medically de-categorised, he would have been eligible for fixation of pay with mileage element of 30%. When Running Staff are medically de-categorised, they would be absorbed against alternative post and 30% mileage element is also to be taken into consideration for identifying equivalent grade. But in the case of applicant the equivalent grade, when mileage element is also added is Rs.5000-8000, if he was medically decategorised. Further in terms of

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Rule 1314 of IREM, even if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted he will not be placed above his erstwhile seniors in the grade of absorption. Therefore, he cannot be extended the benefits of higher fixation of pay or higher scale of pay. The applicant was not medically de-categorised and he is still fit in the medical classification of Goods Guard but he cannot be given job of strenuous nature therefore he was given a light job. He has not protested against his posting as Travelling Ticket Examiner. In fact, his posting was as per his request at Annx.R1. Therefore, he is not eligible for protection of pay as he was not medically de-categorised or eligible for higher scale of pay in terms of Rule 1314 of IREM. His pay has to be revised and refixed, eliminating the mileage element to which a show cause notice has been issued. He was not absorbed against the scale Rs.5000-8000 as he was not medically decategorised so as to render him eligible for the scale. The Administration has taken a lenient view and posted him as TTE. There is no post in the cadre of Guards without strenuous nature of duty. The case of Unnikrishnan is different as he was medically decategorised and thus he was eligible for all rights and privileges granted in such cases. The case of Joseph is also similar to that of Unnikrishnan. The fixation of pay allowed to the applicant is not in order as the same was allowed due to a mistake and now steps are being taken to rectify the mistake. The applicant is not actually stagnating in the scale of pay in which he is working.

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4. The applicant has filed a rejoinder reiterating his contentions in the O.A and further adding that he was found incapable of doing the duties of a Goods Guard and opted for being given an alternative appointment in the Ticket Checking Cadre or Train Clerk Cadre (Annx.A8). If the respondents had a case that the applicant was not entitled to the benefit of 30% pay for identifying equivalence of scale of pay and fixation of pay, that should have been intimated in Annx.A8.

5. The respondents have filed an additional reply statement contending that the medical classification prescribed for the post of Guard is 'Aye Two'. The applicant was not declared unfit in 'Aye Two' medical classification by the CMS, Palghat, as is evident from Annx.R2, but only recommended that the applicant may be given a job not involving heavy manual labour. The matter was again referred to CMS/PGT, seeking clarification, to which it was replied that medical decategorisation is not necessary in such cases and the employee may be given a job not involving strenuous type of duties and heavy manual labour in any category in medical classification 'Aye two' and below (Annx.R3). The applicant was asked to inform the job which he is capable of doing like Ticket Checker (TC), Train Clerk (TNC), etc. and vide Annx.R1, he informed that he may be given a job in TC Branch in which he was previously working. Therefore, the applicant is not entitled for the relief as prayed for.

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6. Mr.T.C.Govindaswamy appeared for the applicant and Mr.Sunil Jose appeared for the respondents.

7. The counsel for the applicant took us to the various pleadings, material and evidence placed on record. He argued that the applicant was a running staff in scale Rs.1200-2040 for which equivalent Stationary Post is in the scale Rs.1400-2300 and even on the date of grant of alternative appointment i.e. 25.12.91, there were vacancies in the cadre of Travelling Train Ticket Inspectors in scale Rs.1400-2300 and taking advantage of the applicant's indigent circumstances he was accommodated only in the lower scale Rs.1200-2040 which was arbitrary, discriminatory and in violation of the Constitution. The counsel for the respondents, on the other hand, persuasively argued that in terms of Rule 1306 of the IREM, in cases of medical decategorisation, a Committee has to be constituted in order to determine suitable alternative employment to such employees. In this case such procedure was not followed since there was no medical decategorisation. The CMS/PGT is the competent authority to certify the fitness of employees whom be given a job not involving strenuous type duties and heavy manual labour in any category on medical classification 'Aye Two' and below. The applicant readily agreed for posting in TC Branch and now he cannot claim for pay parity.

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8. We have given due consideration to the arguments advanced by the learned counsel for the parties and material placed on record.

9. The short question to be decided in this case is whether (i) while working as Goods Guard in the scale of pay Rs.1200-2040, the applicant ought to have been granted an alternative appointment in a stationary post carrying the scale of pay Rs.1400-2300; (ii) when an employee from the cadre of Goods Guards comes under the category of Traffic Running Staff for the purpose of arriving at an equivalent scale, 30% is to be added to the minimum and the maximum of the scale of pay of the running post i.e. Goods Guard, as per Railway Board's letter dated 15.6.79; and (iii) Persons with Disabilities (Equal Opportunities) Act, 1996 is applicable in this case with special reference to Sec.47 of the Act. It is borne out from the records that the applicant had been working as Goods Guard in the scale Rs.1200-2040 with 30% Running Allowance since he is in the category of Traffic Running Staff. Vide letter dated 2.12.91 (Annx.A8) the applicant has been medically decategorised. Since his eye sight was below 'Aye Two' the Chief Medical Superintendent, Palghat, has suggested that he may be given a post not involving strenuous type of duties and having heavy manual labour. On the recommendation of the CMS and considering his request as also looking his experience in the Ticket Checking Cadre, he was posted as TTE. The respondents reiterated that the applicant had never medically decategorised making him unfit in

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a particular category as that of Unnikrishnan mentioned in the O.A. It has also been submitted that in terms of Rule 1306 of IREM, in cases of medical de-categorisation, a committee should be constituted in order to determine suitable alternative employment to such employees. In this case, such procedure was not followed as there was no medical de-categorisation in the case of the applicant. Since CMS, Palghat, who according to the respondents, is competent to certify that the applicant may not be given strenuous type of duties involving heavy manual labour and recommended a job like TC, TNC, etc. which the applicant readily agreed. Annx.R2 is the Medical Report issued by the CMS, Palghat and Annx.R3 is the clarification stating that medical decategorisation is not necessary in such cases. Now the question arises for our consideration is that whether in such circumstances the applicant is entitled to pay fixation, i.e., in arriving at an equivalent scale, 30% is to be added to the minimum and the maximum of the scale of pay of running post. The applicant contended that as per Railway Board's letter dated 15.6.79, the scale of pay of the Stationary Post equivalent to that of a Goods Guard is Rs.1400-2300 (IV CPC). The respondents have tried to distinguish this case and that of Unnikrishnan and K.D.Joseph, stating that since they were medically decategorised, such benefit cannot be granted to the applicant. The counsel for the applicant argued that the medical decategorisation has not been defined in any of the Rules of the Railways. Medically incapacitated, medically unfit, Medical disability, etc. are synonymously used, which is not exactly defined.

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The contention of the applicant is that the medical procedure that should have been followed in the case of medical decategorisation, has not been adopted in his case which resulted in substantial prejudice, irreparable damages and recurring losses because of lower fixation of pay to the applicant. The case of the respondents is that when running staff are medically decategorised they should be absorbed against the alternative post by taking into account 30% mileage element for identifying the equivalent grade. Since he was not medically decategorised 30% mileage element cannot be added. They further contended that even if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted he will not be placed above his erstwhile seniors in the grade of absorption. Therefore, he cannot be extended the benefits of higher fixation of pay or higher scale of pay. In the rejoinder, the applicant categorically stated that 'even today the applicant is prepared to subject himself for re-medical examination and to go back to the Guard's cadre if he was found medically fit to discharge the duties of that post forgoing his seniority in preference to his erstwhile seniors in that grade of absorption'.

10. Now the short point to be considered is whether the applicant has to be considered as medically decategorised and eligible for fixation of pay with mileage element of 30%. The learned counsel for the applicant has brought to our notice the decision reported in 1994 SCC (L&S) 882, Narendra Kumar Chandra

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Vs. State of Haryana & Ors., wherein the Hon'ble Supreme Court was dealing with absorption of employee in a post carrying a pay scale equal to that of his original post but requiring educational qualification higher than that possessed by him. The Hon'ble Supreme court held that direction for absorbing such employee in a post carrying a pay scale equal to that of his original post but requiring educational qualification higher than that possessed by him cannot be given by the Court. However, in view of his being otherwise eligible for another post, a non-essential requirement for appointment to that post directed to be relaxed. It was further observed that right to protection of pay scale in case of employee physically incapacitated by disease absorbed in a lower post, is entitled to protection of pay scale of his original post under Article 21 of the Constitution of India. Right to livelihood has been elaborated by the Court in para-7 of the said judgement. Though that case is exactly not on the point, it declares a general proposition protecting the livelihood.

"7 ..Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board

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to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs.1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs.1400-2300 and direct to pay all the arrears of salary."

11. The Central Administrative Tribunal, Hyderabad Bench in the case of P.Pardhasarathy Vs. Union of India & Ors reported in 2004(2) SLJ (CAT) 29, O.A No.1368/02, interpreted Railway Establishment Manual para 1305 and held that rules do not distinguish between invalidation on own request or otherwise and further declared that one rendered to unfit to do present job is entitled to benefits of Disabilities Act. In that case, the applicant has accepted all the terms and conditions stipulated in the Office Order. He is covered by OM of 21.2.97, 23.1.98, 29.4.99 and 26.6.2002. It is profitable to quote the relevant portion of the said judgment.

7 The learned counsel for the applicant has produced a copy of the Railway Board's letter dated 26.6.2002 wherein they have clarified that absorption of medically decategorised staff in grades lower than the grade held by them on regular basis at the time of their medical decategorisation is contravention of the provisions of the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' and that the provisions of para 1305 of IREM should be strictly complied with. In this clarificatory circular No.122/2002, the Railway Board has referred its earlier letter dated 29.4.99 and the South Central Railway letter dated 21.9.2001. Since it is found

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from the above facts that the case of the applicant falls within the purview of medical decategorisation, in our view, he is entitled for the benefits under Sec.47(1) of "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" and the above circular instructions issued by the Railway Board based on para 1405 IREM."

12. We are in respectful agreement with the proposition that has been laid down by the Hyderabad Bench of the Tribunal. Considering all the aspects, we are of the considered view that the applicant is entitled to the benefit under Section 4 (1) of "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". Here, yet another issue involved in this case is that since the applicant is not now working in the category of Traffic Running Staff, whether 30% is to be added to the minimum and the maximum of the scale of pay of the running post. Taking shelter of the decision of the Hon'ble Supreme Court mentioned above, we are of the view that the applicant is entitled to protection of pay of his original post.

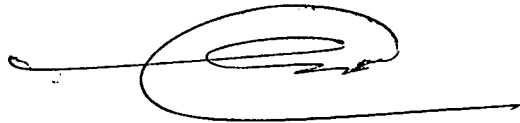
13. In the conspectus of the facts and circumstances and the discussion made above, we direct the respondents to grant the applicant the scale of pay of Rs.1400-2300 in the Ticket Checking Cadre instead of Rs.1200-2040 notionally and difference in the pay will be considered as personal pay. We make it clear that the applicant will not be entitled for any arrears prior to filing of this OA, but the benefit will be available to him from the date of filing of the O.A, i.e. on

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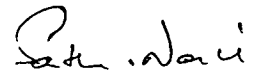
13.7.2003. The respondents shall pass appropriate orders within three months from the date of receipt of a copy of this order.

14. The O.A is allowed as above. In the circumstances no order as to costs.

(Dated, 9th January, 2006)



K.V.SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.590 OF 2003

TUESDAY, this the 14th day of July, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.K. Surendran,
Travelling Ticket Examiner/Sleeper,
Southern Railway /Palghat Division,
residing at Railway Quarters No.113-A,
Hemambika Nagar, Palghat.
2. Sobha Surendran,
W/o. (Late) K.K. Surendran,
Travelling Ticket Examiner/Sleeper,
Southern Railway/Palghat Division
residing at "Athira Nivas",
Near Mariammankovil, Gramam Road,
Palghat.
3. S. Aravind,
S/o. (late) K.K. Surendran,
"Athira Nivas",
Near Mariammankovil, Gramam Road,
Palghat.
4. S. Akshara,
D/o. (late) K.K. Surendran,
"Athira Nivas",
Near Mariammankovil, Gramam Road,
Palghat.

... Applicants

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.

2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

... Respondents

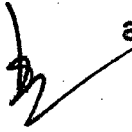
(By Advocate Mr. Sunil Jose)

The application having been heard on 09.07.2009, the Tribunal on 14-07-09 delivered the following:

ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This case was originally disposed of by order dated 9th January 2006 whereby the OA was allowed. However, when the respondents had taken up the case with the High Court, vide CWP No. 10983/2006, the High Court remanded the matter back to the Tribunal, directing that the case has to be considered in accordance with the provisions paragraphs 1301 to 1315 of the Railway Establishment Manual which were in force at the relevant time. Hence, the case has been re-heard.

2. As the applicant to the OA expired on 18th March 2008, the legal heirs were substituted at the High Court itself. However, for the purpose of reference, the term applicant would mean the original applicant.



3. The brief facts are as hereinafter. The applicant was initially employed as a Group D employee in 1980 and later on promoted as a Ticket Collector in 1986 followed by another promotion as Goods Guard in the scale of Rs 1200 – 2040. This post belongs to 'running cadre' and has the medical standard of 'Aye Two'.


4. Sometimes in 1991, when the applicant was in sick list, the medical authorities had opined as under:-

"He has been examined by me today. He is being discharged from sick list; fit for duty. But due to the nature of his sickness, he cannot do any strenuous type of job. Therefore, it is recommended that he may be given a job not involving heavy manual labour" (Annexure R-2 letter dated 28-10-1991) refers."

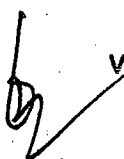
5. The above communication was followed by another communication from the medical authorities vide Annexure R-3 letter dated 19-11-1991, which reads as under:-

"As already advised in this office letter of even No. dated 28-10-91, the above employee may be given a job not involving strenuous type of duties and heavy manual labour. Medical decategorisation is not necessary in such cases.

If his parent department does not have a suitable job for him, it is for the personnel branch to provide him with alternate job in any category in Aye two and below. "



6. On the advice of the medical authorities, the Divisional Office, Personnel Branch, Palghat had, vide Annexure A-8 order dated 02-12-1991 advised the applicant to inform the respondents whether the applicant would be capable of doing job like Ticket Collector(TC), Trains Clerk (TNC) etc., and have also called for the educational qualifications. Accordingly, the applicant exercised his choice of Ticket Collector (as he was earlier functioning in that capacity; see Annexure R-1). Thus, the applicant was given the alternate appointment of Travelling Ticket Examiner in the scale of Rs 1200 – 2040 and the applicant had accepted the same. His pay was fixed in terms of Rule 1313 of IREM. In 1998 the applicant had preferred a representation to afford him any appointment carrying a scale of pay of Rs 1400 – 2300. However, there was no response to the same. It was in December 2001 that the applicant could come across another case of a Goods Guard (Shri K.D. Joseph), medically decategorized in the scale of Rs 4,500 – 7000, having been granted an alternative appointment in a post carrying a scale of pay of Rs 5500 – 9000. On the strength of the above, the applicant penned a representation in March 2002 and September 2002. However, to his shock and dismay, he received annexure A-4 show cause notice stating that the pay scale granted to the applicant was higher than what he was entitled to as his case was to be considered as one of reversion back to parent cadre at his own volition and not as alternative appointment under the medical




decategorization. The applicant resisted the same. However, no final order was passed in that regard. Meanwhile, as stated above, as regards his claim for placement in the scale of Rs 1400 – 2300 from 1991, his case was pending before the High Court and the applicant passed away during the pendency of the said writ petition. After the remand, with the direction that the OA has to be heard afresh, the OA has to be re-heard. It is seen from the OA that the claim of the applicant is that he should be granted alternative employment in a post carrying the pay scale of Rs 5,500 – 9000 (Rs 1400 – 2300 pre-revised) as in the case of K.D. Joseph referred to above.

7. Respondent has resisted the O.A. According to them, the case of the applicant cannot be treated as one of medical de-categorization as no such decategorization had taken place. Thus, this is a simple case of a request from the applicant to revert back to his earlier post and as such, issue of annexure A-4 is in order.

8. The applicant has filed the rejoinder, in which he had annexed Annexure A-8 as already referred to.

9. Counsel for the applicant had taken us through the provisions of Para 1304 to 1315 to hammer home the point that practically there is no difference in the rule position as of 1991 and thereafter and the case



of the applicant is nothing but one falling squarely under medical decategorization.

10. Counsel for the respondents, on the other hand referred to Annexure R-3 wherein it has been stated that there is no requirement of medical categorization in this case and the individual be given any job in any category in Aye two and below. Since Aye two is the category for Goods Guard, the applicant has not been decategorized at all.

11. Arguments were heard and documents perused. First, a look at the relevant provisions as contained in Chapter XIII of IREM and the same are as under:-

"CHAPTER XIII

Absorption of disabled/medically decategorised staff in Alternative Employment -

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

1302. Classification of Railway Servants declared medically unfit - Railway servants acquiring disability during service and declared medically unfit are divisible into two groups: —



(i). Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the 'C' medical category; and

(ii). Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The railway servants both in group(i) and group(ii) of Para 1302 cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the employee concerned was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

(Authority: Ministry of Railways letter No. E (N6)I-2004/RE-3/9 dt. 7.12.2005.) "

12. In so far as the case of the applicant is concerned, he was enjoying the benefits of running allowances etc., and thus, on his


posting as T.T.E. his pay had been fixed under Para 1313 of IREM.

The said para reads as under:-

"1313. Fixation of Pay

(a) On absorption in an 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. For running staff, the fixation will be based on basis pay plus a percentage of such pay in lieu of running allowance as may be in force.

(2) In other cases, viz. (i) and (ii) of para (1) above, on absorption in an alternative post, the pay of the railway servant will be fixed at a stage corresponding to the pay previously drawn in the post held in a substantive capacity or the officiating pay if he was not likely to revert therefrom whichever is higher. 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. Medically unfitted railway servants absorbed in another category on a lower pay may, on subsequent promotion to higher posts, 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 their original appointment, including officiating appointment, if it is certified that but for being medically incapacitated the railway servants would have continued in the officiating appointment and would have normally been confirmed against the post, if the post was permanent, or, if the post was a temporary one sanctioned for a period of one year or more, would have held the post for the duration of the currency of the same.




(b) In cases of decategorization under circumstances arising out of and in the course of employment the pay of a decategorised employee (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically decategorised employee should be allowed on pay plus personal pay as admissible in the absorbing grades.

(No. 78/RLT/4 dt. 22-6-79, 18-7-80 and E(NG)I-86-RE3/3 dt. 9-4-86 RBE 76/86).

13. Once the respondents had offered the applicant an alternative job on the advice of the medical authorities, which is an admitted fact in this case, there is no question of treating the case of the applicant de-linking from medical de-categorization. May be the procedure for medical decategorization would not have been adopted by the authorities but the net result is that he has been advised to be placed in such a post, which does not involve labourious work and the categorization should be maximum Aye Two. The medical authorities have stated that there is no need for medical decategorization. This does not mean that the applicant could be fit enough to function as Goods Guard. It was only to confirm that on proper examination, the

applicant would have been found only of being capable of doing less laborious work. Thus, the contention of the respondents that the applicant had volunteered to be back to his parent cadre is an after thought, and the same cannot be legally held valid. We thus record our clear finding that the applicant, under the facts and circumstances, is to be treated as one who has been medically de-categorized and as such he is entitled to all the attendant benefits as per the Rules. Hence, Annexure A-IV cannot be pressed into service. In any event, in fact, annexure A-4 having not been acted upon by the authorities, and the applicant now not being alive, the same has to be closed at that level.


14. The contention of the applicant before the respondents is that his entitlement is not merely pay protection, but his pay ought to have been in such a scale which has a 30% increase at the minimum and 30% increase at maximum qua Rs 1200 – 2040. This would mean Rs 1400 – 2300. This having not been afforded to him, he has approached the Court. To support his contention, he could find another individual having been similarly situated, but having been afforded pay scale of Rs 5,500 – 9000 (vide the case of KD Joseph, referred to above), and thus contends that there is no justification for placing the applicant in the lower stage. There is substance in the claim of the applicant in so far as pay scale of Rs 1400 – 2300 is



concerned.. We hold that the applicant is entitled to fixation of pay in the scale of 1400 – 2300 from the date he was after the advice of the medical authorities brought back as Ticket Collector.

15. The next question is as to what extent the applicant would be entitled to relief. The pay fixation relates to 1991 and the OA has been filed in 2003. Thus, there is no possibility of the applicant or his legal heir claiming arrears of pay and allowances till 18 months anterior to the date of filing of the OA i.e. July 2003. Claim for arrears of pay has to be restricted effective from the month in which the OA had been filed, i.e. July 2003.

16. Thus, all that could be done is that notional fixation of pay upto June 2003 shall be granted and actual pay became payable to the applicant thereafter i.e. from July 2003, till his demise and family pension to be fixed on the basis of the pay drawn before his demise. Though the applicant has not claimed in his relief in such a comprehensive manner, the relief sought for includes, "such other orders as deemed just, fit and necessary in the facts and circumstances of the case." And powers under the provisions of Rule 24 of the C.A.T. (Procedure) Rules, 1987 provides for such an order being passed as what is being ordered is the actual entitlement of the applicant, which the respondent refused to recognize.



17. Accordingly, this OA is allowed to the extent that it is declared that the applicant (Late K.K. Surendran) had been given the alternative job of TTE on the basis of the advice of the Medical authorities which has to be treated only as one of medical categorization consequent to which the applicant became entitled to be placed in a pay scale higher than that of TTE, in accordance with Rules and his claim for 1400 – 2300 /5000 – 8000 from the 1991 is allowed. However, the legal heirs shall be entitled to the actual benefit only from July 2003, i.e. the month in which the O.A. was filed. The family pension shall be prepared in accordance with the pay that would have been drawn by the said late Surendran on the date of his demise i.e. 18th March 2008. The legal heirs are entitled to arrears of family pension arising therefrom as well.

18. Respondents are directed to comply with this order within a period of four months from the date of communication of this order. No costs.

(Dated, the 14th JULY, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

cvr.