

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 270 of 2009

Friday, this the 5th day of February, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Sunitha K, aged 33 years, W/o. Reji K.S.,
Junior Clerk, Personnel Branch, Office of the Sr.
Divisional Personnel Officer, Southern Railway,
Palghat Division, Palghat, Residing at : "Sreekrishna Nilayam",
Mathur Post, Palakkad-678 577. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
Southern Railway, Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Chief Personnel Officer, Southern Railway,
Headquarters Office, Park Town P.O., Chennai-3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose)

The application having been heard on 05.02.2010, the Tribunal on the
same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The applicant in this OA has sought the following relief:-

"(i) Declare that the non-feasance on the part of the respondents to consider A3 and A5 representations and to absorb the applicant as a Senior Clerk in scale Rs. 5200-20200 with a grade pay of Rs. 2,800/- in the office of the 3rd respondent against one of the vacancies which



was in existence as on 4.1.2006 is arbitrary, discriminatory, contrary to law and unconstitutional;

(ii) Direct the respondents to deem the applicant to have been regularly absorbed against one of the vacancies of Senior Clerks in scale Rs. 4500-7000 (Rs. 5200-20200 with a grade pay of Rs. 2,800/-) with effect from 4.1.2006 and direct further to grant all consequential benefits arising therefrom;

(iii) Direct the respondents to assign the applicant's seniority in the cadre of Senior Clerks of Palghat Division, taking into consideration, the service rendered by her as Assistant Station Master in the scale pay of Rs. 4500-7000 and to grant her all consequential benefits thereof;

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

2. By the Annexure A-3 representation he has submitted that she has joined as an Assistant Station Master in Bilaspur Division of South Eastern Railway in the year 2002 and later on through Inter Railway Mutual Transfer she was posted in Palakkad Division in the year 2004. During her service she acquired physical disability and was medically de-categorized with effect from 3.10.2005. However, she was offered a lower grade post and not equivalent grade. She has also submitted that she was in the advance stage of pregnancy and when she was about to go on maternity leave, she took a decision to continue her service at Divisional Office, Palakkad as Junior Clerk in the pay scale of Rs. 3050-4590/-. Thereafter, she went on maternity leave from 8.5.2006 to 18.9.2006 and further extended up to 16.12.2006. She has therefore, requested to offer her post of Senior Clerk in the equivalent scale of Rs. 4500-7000/- against direct recruitment quota.



3. The respondents in their reply has not disputed the aforesaid facts stated by the applicant. They have submitted that the applicant was initially appointed on compassionate ground as Assistant Station Master in the scale of pay of Rs. 4500-7000/- in Bilaspur Division of South East Central Railway and joined in Railway service with effect from 30.3.2002. She joined Palaghat Division on mutual transfer with effect from 5.4.2004 and while she was working at Kanjikode as Assistant Station Master with effect from 1.5.2004 she was medically de-categorized and declared unfit in A2, A3, B1 and B2 medical classifications and found fit in C1 and below medical classification and therefore, charged against a special supernumerary post of Assistant Station Master in scale of Rs. 4500-7000/- w.e.f. 3.10.2005 pending absorption in alternative employment. While efforts were taken to absorb the medically de-categorized employees in alternative employment, the applicant submitted a representation dated 6.12.2005 requesting for absorption in any department in the administrative side at Divisional Office, Palghat to look after her widowed mother and mentally retarded sisters. The respondents have further submitted that at the time of considering her for absorption in alternative employment in equivalent pay scale of Rs. 4500-7000/- there was no vacancy of Senior Clerk in the scale of Rs. 4500-7000/-. At that time the applicant was in the family way and in an advanced stage of pregnancy. Therefore, she had expressed her willingness to take up posting as Office Clerk in the scale of pay of Rs. 3050-4590/- on bottom seniority and she also declared that she will not claim seniority or protection of pay at a later stage vide her letter dated 6.12.2005. The respondents having found the applicant suitable for



the post of Office Clerk posted her in the scale of pay of Rs. 3050-4590/-.

The applicant joined the said post on 20.1.2006 and her seniority was assigned as per the provisions of paragraph 312 of IREM Volume I as her posting as Office Clerk in lower scale of pay was only as per her own volition.

4. We have heard learned counsel for the applicant and learned counsel for the respondents. It is an admitted fact that the applicant has been declared physically disabled and medically de-categorized with effect from 3.10.2005, while she was working as Assistant Station Master in the scale of pay of Rs. 4500-7000/-. By the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the act) no discrimination can be made in government employment when an employee acquires disability during service. Section 47 of the said act reads as under:-

"47. Non-discrimination in Government employment.-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires 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:

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."

5. The respondents ought to have applied the aforesaid provisions of the Act in the case of the applicant when she was declared medically de-categorized with effect from 3.10.2005 and in the absence of some other post with the same pay and service benefits she should have been kept in a supernumerary post until a suitable post is available or she attained the age of superannuation, whichever is earlier. The contention of the applicant is that when the applicant was medically de-categorized with effect from 3.10.2005, equivalent post which could have been offered to her was Senior Clerk in the pay scale of Rs. 4500-7000/-. Since there was no vacancy available in the said post she should have been continued to be kept in the supernumerary post as they have done vide Annexure R-2 memorandum dated 18/19.10.2005. Learned counsel for the applicant has also relied upon a judgment of the Apex Court in the case of Bhagwan Dass & Anr. Vs. Punjab State Electricity Board - 2008 (1) SCC (L&S) 242. Paragraph 17 which is relevant in this case is reproduced as under:-

"17. From the materials brought before the court by none other than the respondent Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, useless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated 17.7.1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In



this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement."

The other facts that have come out of this case is that the applicant was forced to opt for a lower post because she was denied maternity leave while she was holding the supernumerary post in the pay scale of Rs. 4500-7000/-.

6. In our considered view the aforesaid Act provides for an employee who acquires physical disability and medically de-categorized should be kept in a supernumerary post till the department is in a position to adjust her against any post of the same pay scale or she attains the age of superannuation whichever is earlier. The Railway administration themselves have substituted paragraph 1301 of Chapter XIII of the Indian Railway Establishment Manual to the following effect:-

"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."

7. Obviously the action of the respondents even if it was on the option given by the applicant on the aforesaid compelling circumstances is contrary to the aforesaid provisions contained in Section 47 of the Act as well as the amended provisions contained in Paragraph 1301 of the IREM Volume-I.

8. We, therefore, allow this OA. Accordingly, we direct that the applicant shall be deemed to have been kept against a supernumerary post in



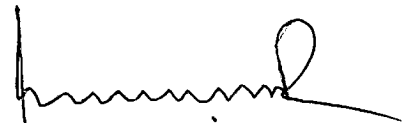
the scale of pay of Rs. 4500-7000/- till she could have been absorbed against the vacancy of Senior Clerk in the scale of pay of Rs. 4500-7000/-.

The respondents shall pay her entire arrears of pay and allowances as if she is continuing in the pay scale of Rs. 4500-7000/- from 3.10.2005 onwards.

The applicant shall also be deemed to have been appointed as Senior Clerk from the date vacancy, if any, in that grade has already occurred. The aforesaid directions of this Tribunal shall be complied with, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"