

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

D.A.No.4/93

THURSDAY, THIS THE 13TH DAY OF JANUARY, 1994.

CORAM

THE HON'BLE MR. N. DHARMADAN, JUDICIAL MEMBER  
THE HON'BLE MR. S. KASIPANDIAN, ADMINISTRATIVE MEMBER

P.S. Unnikrishnan,  
Switchman,  
Southern Railway,  
Morappur,  
Palghat Division. : Applicant

Mr. P. Sivan Pillai : Advocate for applicant

Vs.

1. Union of India ;  
Through the General  
Manager, S. Rly.,  
Madras - 3. : Respondents.
2. The Divisional  
Personnel Officer S.Rly.,  
Palghat.

Mr. M.C. Cherian : Advocate for respondents.

JUDGEMENT

Mr. N. DHARMADAN, JUDICIAL MEMBER.

The applicant, a Switchman, who has been medically de-categorised as per Annexure A 1 order dated 11.8.92, is before us. His limited prayer is to issue a direction to the respondents to appoint him in the post of Platform Supervisor/ Ticket Collector or Office Clerk in the scale of Rs.1200-2040, as he was medically de-categorised w.e.f. 11.8.92. He was declared unfit in Aye Two to Bee Two but fit only in Cee One and Cee Two. After medical decategorisation, awaiting a suitable posting in an alternative post, he took leave. According to him the

the respondents should have given an alternative post in which he may be accommodated considering his medical unfitness protecting his pay scale of Rs.1200-2040. Since no alternative appointment was given he submitted Annexure A-II representation, on 25.8.92. Considering the representation the impugned Annexure III order was issued appointing him as Caretaker in the lower scale of pay of Rs. 950-1500. He objected to the posting by filing a further representation Annexure A-4. He contended that there are a number of vacancies of suitable posts in Palghat Division in which he can be appointed, considering his medical fitness safeguarding his original scale which he was drawing in the post of Switchman before medical decategorisation. Respondents have not considered that representation. Hence, he has approached this Tribunal.

2. While admitting the application on 5.1.93, this Tribunal passed an interim order directing the respondents to allow the applicant to join as Caretaker in terms of Annexure A-III without prejudice to the claims and rights of the applicants to get a suitable posting in accordance with the medical classification protecting his original pay of Rs.1200-2040/-.

3. The respondents have not denied the existence of vacancies pointed out by the applicant but contended that the applicant cannot be posted as an Office-clerk because of the ban on recruitment for filling up of vacancies of Office-clerk. They have not given details

of the ban as to when the same became operation, whether the ban is still in operation or is there any provision for relaxation and any other appointment was issued in relaxation of the ban after its introduction. According to the applicant the ban order is relied on only to deny an appointment to the applicant.. Regarding the filling up of the post of Platform Supervisor in the scale of Rs.260-430 (pre-revised) they have relied on Exhibit R.1 O.M. dated 16.11.83 and submitted that the vacancy of Platform Supervisor can be filled only from Ticket Checking Cadre viz., Ticket Collectors. According to the respondents, a medically de-categorised person cannot be appointed in that post.

4. The applicant has filed a rejoinder and denied all the statements in the reply and produced Annexure A 5 order which is extracted below:

" Shri P. Ramachandran, Goods Guard(unfitted) who was initially absorbed as Clerk Optg. Branch in scale Rs.950-1500 w.e.f 20.7.89 is now absorbed as Sr.Clerk Optg. Branch in scale Rs.1200-2040 and retained in Optg. Br/PGT in terms of Board's letter No.E(NGI-78 SR 6 of 11th January 1979 against existing vacancy."

Thus, according to the applicant, the case of Shri Ramachandran, Goods Guard (unfitted) is similar to the case of applicant. In spite of the medical de-categorisation, Shri Ramachandran was posted as Sr. Clerk protecting his original scale of pay of Rs.1200-2040/-. This order was passed on 6.9.91. Hence, the action of the respondent is discriminatory and arbitrary.

5. Applicant has also relied on the decision reported in S. Narayana & another Vs. UOI & others, 1989(4) CAT 555 SLJ, (TA No.896/88), Shri Teja Singh Vs. The General Manager, N.F. Railway, Maligaon, Guwahati & others, 1987 (I) CAT 647 SLJ. These decisions deal with cases of medically declassified employees and their right to suitable posting after medical disqualifications protecting their original pay which they were drawing before medical disability provided vacancies are available

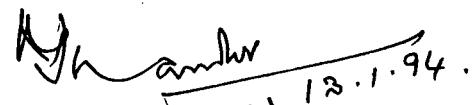
6. In the instant case, the applicant has pointed out the various vacancies in the Palghat Division so as to enable the 2nd respondent to post him in any of such vacancies protecting his pay which he was drawing before his medical unfitness in the light of the law laid down as per the above decisions.

7. Under these circumstances, we are satisfied that the O.A. can be disposed of directing R.2 to consider the appointment of the applicant in any of the vacancies pointed out by the applicant in accordance with law considering the above decisions and Annexure V order relied on by the applicant. Accordingly, this application is disposed of with the directions in the above lines. The directions are to be complied with within a period of four months from the date of the receipt of the copy of the judgement.

8. The application is disposed of as above. There will be no order as to costs.

Dated, 13th January, 1994.

  
(S. KASIPANDIAN)  
ADMINISTRATIVE MEMBER

  
(N. DHARMADAN)  
JUDICIAL MEMBER