

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 346 OF 2010

Wednesday, this the 18th day of May, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSPEH, ADMINISTRATIVE MEMBER**

Baburaj Valasserry
S/o Ayyappan
Tower Wagon Driver/Southern Railway
Office of the Divisional Electrical Engineer
Residing at: "Arund", Near Madrassa Hall
Shornur.

- 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.
Chennai-3.
2. The Additional Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.
3. The Sr.Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
4. The Divisional Electrical Engineer
Traction Distribution, Southern Railway
Palghat Divisional Palghat. - Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 18.05.2011, the Tribunal on
the same day the following:



ORDER**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Aggrieved by his posting to the Retiring Room/Waiting Room/Rest House to discharge the functions of an Attendant, the applicant has filed this Original Application mainly for a direction to the respondents to consider him for absorption in any grade equivalent to the grade of Tower Wagon Driver like Commercial Clerk/Commercial Inspector (ministerial) etc.

2. The applicant while working as Tower Wagon Driver at Palghat in the pay band of Rs.9300-34800/- with GP Rs.4200/- underwent a medical check-up in March 2006. He was found medically not fit in medical classification A-1, which is required for Tower Wagon Driver, but fit for job requiring medical classification C-1 and below. Consequent upon the enactment of "Persons with Disabilities (Equal Opportunities, Protection & Full Participation) Act, 1995," the Indian Railway Establishment Manual was suitably amended. In terms of Para 1306 of IREM, the applicant was charged against a supernumerary post during the year 2006 itself and his services were utilized for various duties. Vide letter dated 14.10.2009, the applicant was directed to work in the office of Divisional Electrical Engineer, Traction Distribution, Palaghat. Subsequently, vide order dated 5.1.2010, he was posted to Retiring Room/Waiting Room/Rest House under the control of Deputy Station Manager/Commercial, Palaghat. The applicant is aggrieved that he is not being considered for absorption in any vacancy in the pay band of Rs.9300-34800/- with GP Rs.4200/- in Ticket Checking Cadre/Commercial Clerks Cadre/Office Clerk Cadre etc.

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3. O.A. No.32/2010 filed by the applicant was disposed of with a direction to the respondents to consider the representation of the applicant. His representation dated 21.1.2010 was rejected vide Annexure-6 order.

4. Applicant contends that Annexure-1 order to the extent it relates to the applicant and Annexure-6 are without application of mind. The applicant was medically de-categorized on 29.3.2006. Despite passage of over 4 years, he has not been provided with an alternative appointment in any of the cadres to which he is suitable. Once an employee is found medically unfit, the respondents are bound to initiate appropriate action for finding an alternative appointment in terms of Para 1306 of IREM. However, the respondents have failed to grant him an alternative employment as provided in Para 1306 of IREM. There are a number of vacancies in the cadre of Commercial Clerk in the pay band of Rs.9300-34800/- with GP Rs.4200/-.

5. In the reply statement filed on behalf of the respondents, it is stated that the applicant is kept on supernumerary post till such time he is adjusted in a post carrying the same or equivalent scale of pay as that of Tower Wagon Driver. The medical classification required for Ticket Checking Cadre is B-2 whereas the applicant is fit in C-1 only. There are no vacancies in the Clerical Cadre both in commercial and ministerial in Palaghat Division. The applicant along with 46 employees who were medically de-categorized was transferred/posted in supernumerary posts vide order dated 5.1.2010. In the said order, almost all the employees including the applicant are posted to Retiring Rooms/Waiting Rooms/Rest House only. The representation of the

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applicant dated 21.1.2010 was considered by the General Manager and was disposed of with a reasoned and speaking order in accordance with the rules. The applicant along with other de-categorized employees was posted to Retiring Room/Rest Gouse/Waiting Room for gainfully utilizing his services in a better way till such time he is permanently absorbed in a suitable post in the pay band of Rs.9300-34800/- with GP Rs.4200/. The applicant was subjected to a screening on 10.1.2007 but no suitable post was identified for his absorption. Efforts are underway to find a suitable job for the applicant.

6. In the rejoinder, the applicant submitted that transferring him by Annexure A-1 order dated 5.1.2010 to unspecified duties discharged by Group-D employees is arbitrary and discriminatory. The object and purpose of Section 47 of "Persons with Disabilities (Equal Opportunities, Protection & Full Participation) Act, 1995" is not served at all. Annexure-2 circular dated 29.4.1999 specifically specifies that a Railway Servant who fails in vision test or otherwise by virtue of his disability acquired during service and who 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. As long as an alternative employment is not identified the applicant has got every right to claim that the alternative employment originally conferred be maintained.

7. In the additional reply statement the respondents submitted that there is no reduction in the pay of the applicant in his present post and there is no other hardship caused to him. Filling up a post is the

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prerogative of administration according to the requirement of post/service suitability and medical fitness for the post.

8. We have heard Mr.T.C.Govindaswamy, learned counsel for the applicant and Mr. Varghese John for Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

9. The applicant had acquired physical disability while in service. He was placed in a supernumerary post with no reduction in emoluments in the year 2006, as per provisions of "Persons with Disabilities (Equal Opportunities, Protection & Full Participation) Act, 1995" and Railway Board's orders in RBE No.89/99 dated 29.4.1999. He was screened for providing alternative appointment on 10.01.2007. As no suitable vacancy could be identified pending provisions of alternative employment the applicant was temporarily transferred to Sr.DEE/TRD/O/PGT on 14.10.2009. Upto this point, no finger can be raised against the respondents.

10. For gainfully utilizing the services of 47 de-categorized staff including the applicant, the applicant was posted to various units vide order dated 05.01.2010. Most of them including the applicant were posted to Waiting Room/Retiring Room/Rest House, without specifying their duties. The apprehension of the applicant that he has to discharge the functions of an Attendant below his status as Tower Wagon Driver, is not dispelled or disputed by the respondents. Whether he can be gainfully employed or whether he will provide good service as an Attendant, if he is not inclined to discharge the functions of an Attendant, is doubtful. For the sake of record, he is gainfully utilized by

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the respondents. Evidently, the applicant is aggrieved. Dumping him in the Waiting Room/Retiring Room/Rest House is not exactly in tune with the instructions dated 29.4.1999. As per IREM 1301, a Railway servant who has acquired disability during service 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. In the instant case, although there is no loss in emoluments, the post to which the applicant is shifted is not carrying the same pay scale as that of a Tower Wagon Driver and considering the nature of duties he has to discharge, there is definitely reduction in rank. If that is not the case, the respondents have not stated so.

11. Sensitivity is the hallmark of good administration especially when dealing with persons who acquire disability while in service. Though the respondents have made efforts and are still making efforts to find a suitable post for the applicant, sending him to the Waiting Room against his will displays, even if inadvertently, lack of sensitivity on their part. As observed by the Apex Court in AIR 2008 SC 990, what the law permits to the disabled is no charity or largesse but their right as equal citizens of the country. Even 5 years after acquiring disability, if the respondents are not successful in finding a suitable post for the applicant as stipulated, it is not exactly commendable. The applicant has been functioning in the supernumerary post w.e.f. 29.3.2006 doing various duties assigned to him. Such an engagement can be continued till an alternative suitable post equivalent to the post of Tower Wagon Driver is identified by the respondents.



12. In view of the above, the OA is disposed of, with a direction to the respondents to assign the applicant a suitable post in accordance with RBE instructions dated 29.4.1999 in regard to physically disabled persons within a period of three months, failing which he should be posted in the supernumerary post as indicated above. No order as to costs.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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