

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.375/94

Thursday, this the 22nd day of December, 1994.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

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M Krishna Das, Head Train Examiner (HTXR),
Controller, Control Office, Southern Railway,
Palakkad.

.....Applicant

By Advocate Shri MR Rajendran Nair.

vs.

1. The Chairman, Railway Board, New Delhi.
2. The Chief Personnel Officer, Southern Railway, Madras.
3. The Chief Rolling Stock Engineer,
Southern Railway, Madras.
4. The Divisional Personnel Officer,
Palakkad Division, Palakkad.

.....Respondents

By Advocate Shri KV Sachidanandan.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is working as Head Train Examiner in Palghat was promoted by order dated 18.8.93 as Chief Train Examiner. Before the order could be implemented, by order dated 7.10.93 (A3), the promotion orders were cancelled on the ground that applicant was fit only in Medical Classification CI, whereas the Chief Train Examiner post requires a Medical Classification of BI. It is not in dispute that the applicant is a physically handicapped person, but the contention is that despite his handicap, respondents have employed him in duties which require higher medical classification

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than CI. Applicant relies on A4 which states that the continuance of the applicant as Train Examiner will be subject to satisfactory performance of the duties assigned to him. He also has produced a certificate A7 which shows that his work as TXR Controller was 'outstanding'. It is the contention of the applicant that despite his handicap, he can be promoted as Chief Train Examiner and asked to perform duties in a stationary post which according to him, was available in Palghat at the relevant time, but was filled up by a person who was not physically handicapped and who could very well have been deployed in a non-stationary post. Applicant, therefore, prays that he may be promoted as originally ordered in the post of Chief Train Examiner and provided in Palghat itself in a stationary post which was available earlier and which the respondents could make available to applicant even now, if they so choose.

2. Respondents have strongly opposed the contentions of the applicant. According to them, promotion to the post of Chief Train Examiner was issued without noticing the unsuitability of the applicant on medical grounds and on the physical disability of the applicant becoming known to Headquarters, the promotion orders were cancelled. According to respondents, the post of CTXR requires a higher medical classification than what the applicant has. They further state that applicant was posted as Train Examiner to be utilised as Carriage and Wagon Controller purely on humanitarian grounds and subject to the condition that he will not have any claim for promotion to higher grades in the Train Examiner Cadre.

3. Learned counsel for applicant cited several decisions which support applicant's claim for higher scale of pay equal to that of Chief Train Examiner, despite his handicap. In Narendra Kumar Chandla vs. State of Haryana and others, (1994) 4 SCC 460, the Supreme Court stated:

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"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."

Learned counsel for applicant also cited the cases of Shrawan Kumar Jha vs. State of Bihar, AIR 1991 SC 309, S Govindaraju vs. Kerala State Road Transport Corporation & another, 1986 (2) SLR 326 and Dr Rashlal Yadav vs. State of Bihar and others, (1994) 5 SCC 267.

4. The impugned order A1 states that "purely on humanitarian grounds even though not medically fit for the TXR (Train Examiner) cadre", applicant will be retained in the Control Office in Palghat Division as Head Train Examiner, "till a suitable alternate post in an identical grade is identified". We understand the 'identical grade' to mean an alternate post in the grade of Chief Train Examiner.

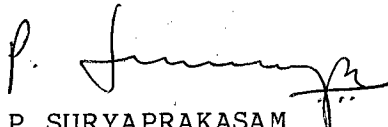
5. After hearing the counsel on both sides, we permit applicant to make a representation to the first respondent setting out the grounds on which he considers himself fit to discharge the duties of the post equivalent to a Chief Train Examiner, within a period of one month. If such a representation is made, 1st respondent will examine what relief can be given to applicant on humanitarian grounds keeping in view the various rulings of Courts cited by the applicant and our observations at para 4 above. First respondent will pass appropriate orders on the representation within a period of four months from the date of receipt of the representation. Till the representation is disposed of, applicant will be allowed to continue

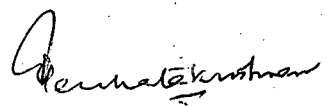
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in the present post in Palghat and the orders passed in A3 will be kept in abeyance. Thereafter, the direction to keep A3 in abeyance will abate and the matter will be governed by the orders passed on the representation by first respondent.

6. Application is disposed of with the above direction. No costs.

Dated the 22nd December, 1994.


P SURYAPRAKASAM
JUDICIAL MEMBER


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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List of Annexures

- Annexure A1: True copy of the order No.P(S)535/IV/HTXR/
Vol.III dated 27.1.94 issued by 2nd
respondent to the applicant.
- Annexure AIII True copy of the office Memo No.J/P 524/
V/Cadre Restructuring (TXR) dated 7.10.93
issued by the 4th respondent to the applicant.
- Annexure AIV : True copy of the office order No.J/MM 62/82
dated 25.9.82 issued by DME/C&W PGT to the
applicant.
- Annexure VII: True copy of the certificate of Merit
dated 13.4.87 issued by Divisional
Railway Manager to the applicant.