

1.

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.483/2005

Date of order : 29<sup>th</sup> November, 2005

C O R A M

Hon'ble Mr. Shankar Prasad, Member [Admn.]  
Hon'ble Ms. Sadhna Srivastava, Member [Judicial]

Prem Kumar Nandan, S/o Sri Chhote Nandan, resident of Mohalla  
Bhijkhachak, P.O.- Anisabad, P.S. Gardanibagh, District - Patna.  
..... Applicant

Vrs.

1. The Union of India through the Chairman, Railway Board, New Delhi.
2. The General Manager[P], Eastern Railway, Fairlay Place, Howrah.
3. Divisional Railway Manager, Asansol.
4. Divisional Personnel Officer, Asansol.
5. Senior Divisional Personnel Officer, Eastern Railway, Asansol.
6. Station Manager, Kalubathan Station, District - Dhanbad.

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Respondents

Counsel for the applicant : Shri S.C.Mitra

Counsel for the respondents : Shri A.A.Khan, S.C. *Shankar Prasad*

2.

ORDER (ORAL)

By Shankar Prasad, Member [Admn.] :-

This matter has been taken for final hearing with the consent of both counsels.

2. The applicant has been asked to appear before screening committee, vide order dated 27<sup>th</sup> Sept., 2004 [Annexure-A/4] and pursuant to this order, the applicant has been medically decategorised vide order dated 11.10.2004 [Annexure-A/3]. A supernumerary post has also been created vide order dated 28<sup>th</sup> October, 2004.

It appears that thereafter the applicant has been offered the post of MCM [Fitter] in the lower scale of Rs.5000-8000 [Annexure-A/5] to which he has objected and requested for considering him in ministerial cadre. The respondents have thereafter offered him the post of Primary Teacher which is in a still lower scale. The applicant has also objected to this offer.

3. The ld. counsel for the applicant states that the applicant is also not being paid from 4.12.2004.

4. We have heard the ld. counsel of the parties. The respondents along with their reply have enclosed a copy of the Railway Board's circular RBE 92/2002, circulated vide CPO's Sl. No.91[8]/2002. Para 2 of the aforesaid

*Shankar Prasad*

order is as follows :-

"The matter has been considered by this Ministry who wish to clarify that absorption of medically decategorised staff in grades[s] lower than the grade held by them on regular basis at the time of their medical decategorisation is in contravention of the provisions of the Act. However, in cases where for want of posts in the same/equivalent grade such employees are engaged in productive work by deploying them in posts not carrying the same equivalent scale of pay, while they may work against such posts they should continue to be kept on supernumerary posts in the grade[s] in which they were working on regular basis at the time of their medical decategorisation, till such time they are adjusted in the post carrying the same or equivalent scale[s] of pay. This will be in keeping with the provisions contained in para 1305 of IREM, as incorporated vide ACS No.77, referred to in the preceding para."

There is also an endorsement below this Railway Board's letter which is as follows :-

"Index No.1049 : Board have ordered for protection of grade and status and status of medically decategorised employees."

5. The Railway Board has issued this order in continuation of order dated 29.4.1999 issued in accordance with the provisions of the persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995. *Shankar*


6. A copy of 1999 order modifying the earlier chapter 13 of IREM is not on record. It is, however, clear from the clarification which is on record that the applicant has to be either absorbed in equivalent post or has to be allowed to work against a supernumerary post. The action of the respondents in offering the post in lower scales of pay is in total disregard of the Railway Board's instruction.

7. We, accordingly, quash and set aside the order dated 17<sup>th</sup> November, 2004 offering him the post of M.C.M. [Fitter] in the scale of Rs.5000-8000 and order dated 30<sup>th</sup> June, 2005 offering him the post of Primary Teacher, even in move lower grade.

8. We further direct the respondents to take action strictly in accordance with the Railway Board's circular on the subject. The arrears of salary, if not actually paid, shall be paid to the applicant within two months of the receipt of this order. In case the payment is not made within the aforesaid period, 9 per cent interest per annum shall be payable from the expiry of that date till the date of payment.

9. The O.A. is, accordingly, allowed with cost.

  
[ Sadhna Srivastava ]M[J]

  
[ Shankar Prasad ]M[A]

mps.