

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 1032/96

MUMBAI, THIS THE 22nd DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sitaram Marya
Peon working in Bombay Division
Western Railway.
At present residing at
Sanjay Gandhi Nagar
Maurya Chawl No.3, Room No.4
Devi pada, Borivili (East)
Mumbai - 400066.Applicant

(By Advocate Shri S.S.Karkera)

V E R S U S

UNION OF INDIA : THROUGH

1. The General Manager
Western Railway
Headquarters, Churchgate
Bombay - 400020.
2. The Divisional Railway Manager
Bombay Central, Western Railway
Bombay.
3. The Divisional Security
- Commissioner, RPF, Bombay Central
Western Railway, Bombay - 400008.
....Respondents

(By Advocate Shri A.L.Kasturey)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Sita Ram Maurya, applicant has sought that the order dated 15-2-96 posting him as Peon on medical de-categorization be quashed and set aside and that he be appointed to a post having the same rank and scale, which he has been drawing.

2. Heard Shri S.S.Karkera and Shri A.L.Kasturey, learned counsel for the applicant and the respondents respectively.

3. The applicant who has joined as Rakshak in Railway Protection Force, the respondents, on 16-1-1963, became a Naik in 1983. He worked with them till 19-1-1993 when he fell ill. He was admitted in the Hospitals in Surat and thereafter in Mumbai. In December 1993 he was declared fit to re-join duty with recommendation that he be given a job where communication was not a vital part of his duty. The enquiries were made by the respondents for identify a suitable post for him. Few months later he made a request that either a suitable post be made available to him or he be permitted to retire with facility being given for job for his son. The same has not been done by the respondents. However, on 15-2-1996 the applicant was informed that he is posted as Peon in the scale of pay of Rs. 750-940/- and he accepted the same because he did not have any other source of income. Thereafter he made representation against the reduction in his pay which was incorrect and also indicated that there were posts like that of Chowkidar etc. against which he could be adjusted in the same salary. Neither any job was given to him and for quite some time nor was he given any salary between January 1994 to January 1996 and finally he has been posted as Peon. Though he has put in adequate number of years, he has infact been demoted, which was illegal, unlawful and arbitrary and that he should have been posted as Chowkidar or on some clerical post etc. in equivalent pay instead of reducing his emoluments. The above was forcefully reiterated by Shri S.S.Karkera, learned counsel.

4. In the reply, the respondents point out that having duly joined as Peon in pursuance of order dated

15-2-1996, the applicant is estopped from raising any alternate claim as he has now done. The applicant who joined as "Rakshak" in 1963 became a Naik in 1983 under the restructuring of the Cadre. His case is governed by regulations relating to Absorption of medically incapacitated staff in alternative employment as permitted under IREM, Chapter XIII. A medically incapacitated railway servant who is permanent is eligible to be appointed substantively to alternative post subject to the suitability. In this case the applicant had reported sick on 19-1-1993 and reported for his duty on 14-9-1993. In between he was on sick leave and the same period has been duly adjusted. Thereafter he was medically examined by the Screening Committee on 5-10-1994. He was recategorised and was considered eligible to be appointed in some less onerous job including that of a Chowkidar in Rest Rooms etc, but due to non-availability of the above posts, he was screened for the post of Peon, as the decategorised employee. R.P.F. where he has been working being a Armed force, there was no possibility of finding a suitable job for him except the one which was available and the same had been offered to him. His having been given a alternative job, there was no question of giving any compassionate appointment to his son and his offer of conditional voluntary retirement could also not be considered in law. It is further stated that he has been paid salary for whatever period, he had worked and also in terms of the leave and for the period beyond that he could not be accommodated. The Departments' action has been absolutely correct and covered by the instructions under IREM. They have accomodated the applicant in consonance with the instructions of TREM and, therefore, there was

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no reason for the applicant to have any grievance, Shri Kasturey, learned counsel for the respondents points out that in view of the above the applicant shall not have any further grievance.

5. We have carefully considered the matter with specific reference to the rival contentions. In this case the applicant has challenged reduction in his rank from that of Naik to Peon following medical de-categorization/re-categorization. According to him, the respondents should have found another suitable job for him keeping in mind his physical inability or permitted him to retire voluntarily with a promise of employment to his son. On the other hand, the respondents states that having accepted the new job offered to him, ^{is} he estopped from making a different claim subsequently and that he does not have any right to claim that he should be given a job only of his choice, more so as his pay has been protected. Keeping in mind the fact he has spent nearly 30 years with the respondents' organisation, his right for protection of his claim against removal on account of decategorization is justified. The decision of the Hon'ble Supreme Court, which has been referred to by him in Narendra Kumar Chandla Vs. State of Haryana & ors. (1994 (2) ATJ 420), also supports his claim. The respondents have not violated the saidright, but have in accordance with the detailed procedure laid down in IREM, after making enquiries, offered him an alternate job. The fact, however, is that instead of the post of Naik to which he had been promoted in 1993, he has been given a job of Peon, as it was not possible for the organisatin to find out a job equivalent to what he has been holding before

his decategorization. At the same time it is found that while they have placed him in the lower scale of Rs. 750-940/-, they have given him the emoluments by placing him at the maximum of the new lower scale, but permitting him to draw the emoluments which he was receiving earlier in the higher scale, the difference being made up by way of personal pay. This is in consonance with the policy laid down by the Govt. and the position in law. The applicant cannot have a right to claim that inspite of de-categorization of his abilities and performance in service of the organisation, they should persist with him at a higher scale and grant him equivalent pay. So long his pay is protected he cannot have any specific complaint. That being the case. The respondents' view that once he has accepted the post he cannot go back and seek fresh relief deserves endorsement. With regard to the question of extending any compassionate appointment to his son, it has to be pointed out that the same is not a matter of right, but only a matter of concession and there cannot be any conditionality as the applicant seeks to do. Further, till the applicant is in job, the said question does not arise. The respondents have done what is expected from them and no further or additional relief is legally possible.

6. The applicant has not made out any convincing case for the grant of reliefs sought. The application fails and is accordingly dismissed. No costs.

(GURUDAN S. RAMPI)
MEMBER (A)

(S.L.JAIN)
MEMBER (J)

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