

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1028 OF 1995

Dated this the 14th day of September, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.Kuldip Singh - Member (J)

(14-09-2001)

B.D.Koli,
Chargeman Grade 'A',
Central Railways, Kalwa Car Shed,
Kalwa District Thane,
C/o G.S.Walia,
Advocate High Court,
16, Maharashtra Bhawan,
Bora Masjid Street,
Fort, Bombay 400 001.
(By Advocate Shri G.S.Walia)

VERSUS

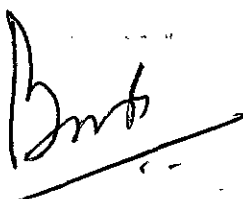
1. Union of India
through the General Manager,
Central Railway,
Bombay, C.S.T.
2. Divisional Railway Manager,
Central Railway,
Mumbai, C.S.T.
3. Senior Divisional Electrical
Engineer,
TRS, Kurla Carshed,
Central Railways, Kurla.
4. Divisional Electrical Engineer,
TRS, Kalwa Carshed,
Central Railway, Kalwa,
Thane.
(By Advocate Shri S.C.Dhawan) - Respondents

ORDER

Per: Hon'ble Mr.B.N.Bahadur - Member (A) -

The applicant in this case comes up to the Tribunal seeking the relief, in substance, for the quashing and setting aside of impugned orders dated 22.6.1995 and 28.6.1995 (page 16-A

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and 16-B of the Paper Book). The applicant seeks a direction to the respondents to post the applicant as Chargeman Grade 'A' in the scale of Rs.1600-2660/- or in any other alternative post in the same scale and provide him consequential benefits including wages for the period from 28.9.1994 to 26.6.1995 along with interest.

2. The facts of the case put forth by the applicant are that while he was employed as Chargeman Grade 'A' at Kalwa Car Shed in the scale of Rs.1600 - 2660/-, he met with an accident on a Railway track on 8.4.1994 because of which his left foot had to be amputated above the ankle. He received treatment at Railway Hospital till 27.9.1994 after which the hospital authorities issued a fitness certificate to him with remarks "fit for sedentary job". It is stated by the applicant that he has not been found unsuitable or decategorised from the medical category of B-1 which he held. He contends, he reported to the Kalwa Workshop for resumption of duties on 28.9.1994 and was put to work for about a fortnight and only on 16.10.1994 was he compelled to proceed on leave for six months w.e.f. 28.9.1994. He did this under the belief of the instructions to find him a suitable placement and did not come on leave voluntarily.

3. The applicant further states that in March, 1995 he was asked to accept a job of an Announcer at a Railway station after an interview with the Committee members by which he was severely aggrieved. On making another representation to General Manager he was ordered to be accommodated as Clerk in the lower scale of Rs. 1400-2300/- (Exhibit 'D'/'E'). In the further part of the OA, the applicant lists his grievances on being offered the post

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of Head Clerk. In fact we find from Para 16 of respondents reply that the applicant submitted his willingness to accept the job and accepted it in June, 1995.

4. The respondents have filed a written statement of reply in detail stating that the applicant, who met with an accident, when not on duty, had been declared medically fit for duty only for sedentary job and, therefore cannot claim his right to continue on the original post. All claims of the applicant are resisted and it is further stated that there is no sedentary job or post in the respondents' organisation at Kurla for Chargeman 'A' and that such posts have very sensitive duties demanding high physical ability. The standard of disability as shown by the certificate did not allow the respondents to post the applicant in the original job, and since there was no sedentary post which could be offered to him in Kalwa Car Shed, he has been provided with sedentary duties.

5. The respondents further state that leave was sanctioned to the applicant as per his own request and deny that the applicant was taken back on duty on 28.9.1994 as alleged or that he was compelled to go on leave. Six months leave has been sanctioned to him.

6. The respondents further state that in view of the medical certificate declaring him fit only for sedentary job, he has been considered for the job of Senior Clerk in the grade of Rs.1400-2300/- and appointed accordingly in the office of Senior,

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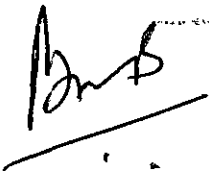
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DEE (TRS), Kalwa. The respondents also state that they had taken effort to find a suitable job with emoluments as near as possible to applicant's earlier emoluments. The applicant has willingly accepted the said job. It is further stated that there was no vacancy at that time in the higher grade of Office Superintendent i.e. Rs. 1600 - 2660/-. The other part/s of the written statement seeks to provide para-wise comments on the averments in the OA:

7. We have seen all papers in the case and have heard learned counsel on both sides viz. Shri G.S.Walia for the applicant and Shri S.C.Dhawan for the respondents. The learned counsel for the applicant took us over the aforesaid facts in detail and first made the point that Category B - 1 includes both sedentary and non-sedentary jobs and that even within the same category of Chargeman Grade I a sedentary job could easily have been provided to the applicant. The main burden of his argument was that a job in the equivalent pay scale should have been provided. He emphasised the point taken in Para 4.6 of O.A. to the effect that he was never decategorised from the post of Chargeman Grade 'A' or medically decategorised in Category B - 1. In fact the certificate of fitness for sedentary job implies that it is fitness for category B-1.

8. The learned counsel for the applicant further pleaded that the justification for the stand taken should be assessed vis-a-vis the rules on the subject of placement of such employees and not merely the arguments taken in the written statement.

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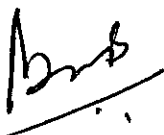


in any case the alternative job should have been provided in the same pay scale at least in any other post. Also the applicant does not require very high medical standards of physical fitness for the post of Chargeman Grade 'A' and that the respondents attitude has been one of high handedness and was harsh and illegal. The learned counsel referred to Para 313 of the Indian Railway Establishment Manual and took us over to the relevant portion to make the point that the tenor of the rule is that a helpful attitude should be taken for such cases, and pleaded that the rule should be so construed. The point of seniority was also briefly mentioned by the learned counsel as a consequent relief.

9. The learned counsel for the respondents made the point that it was clear and undisputed that the applicant had suffered a major physical disability and the fact that he has been medically declared fit only for sedentary duties shows that he is affected vis-a-vis the present duties. He reiterated the points made in para 5 of the Respondents' Written Statement regarding the onerous physical duties of Chargeman Grade 'A'. Shri Dhavan re-emphasized the point that the applicant was never taken back in Westing House post, as alleged, and the facts in this regard are as mentioned in the written statement. He reiterated that there was no availability of any sedentary job for a Chargeman..

10. The learned counsel then referred to Para 1309 (Page 161) of the Indian Railway Establishment Manual and stated that the respondents have followed what is laid down, and provided for, in

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the rules. He emphasised sub para 3 of the rules and made the point that a grade lower only by less than 25% has been provided and that full efforts were made in this connection to help the applicant. He also referred to Para 1036 and challenged the contention that discrimination was made in Vikram's case where details were not provided by the Applicant.

11. Rearguing the matter briefly Shri Walia made the point that at least pay of the applicant should be protected, if equivalent job cannot be given. He re-emphasised the point that the respondents never considered him for alternative job and also pleaded that seniority should be provided as per Para 313 (ii) of the IREM.

12. One of the important factors on which this case will need to be adjudicated are the relevant provisions in the IREM cited on behalf of both sides. We reproduce the relevant portions here -

"1309. Alternative employment to be suitable -

- (i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept offer or reject it.
- (ii) It would not, however, be appropriate to offer a Group 'D' post to a railway servant in the Group 'C' service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who had risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.

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- (iii) For the purposes of this paragraph, an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be indeed on its merits. The underlying object is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependants.
- (iv) While finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post' (Board's letter No.E (NG) II - 77-RE 3-2 dt.2.9.77). All cases decided on or after 1.1.1973 may be reviewed and benefits as above given only if (a) there had been an acute hardship, and (b) there should be no effect on others. (Board's letters No.E(NG) II-79 RE 3/5 dt. 22.5.79. Even in such cases the matter of payment in the equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise."

While emphasising that alternative post to be offered should be best available for the concerned employee, it is further stated that it would be appropriate to offer a Group 'D' post to a

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Railway servant in Group 'C' if emoluments are similar. It is also stated that in sub para 3 of 1309 that " alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments.....". We have seen this para as a whole.

13. Para 313 which comes under Chapter III of the IREM relates to seniority of Non-Gazetted Railway Servants and is sub-titled "Medically Unfitted Railway Servants" , this rule is also seen by us.

14. Now the first point that arises is that it is unfortunately true that the applicant has suffered medical decategorisation and has developed a disability as can be seen from the records-(about 50%). Thus the provision of alternative employment is fully justified. The point made on behalf of the applicant is that he could very well undertake the same duties in the Car Shed even as Chargeman Grade 'A' and that they are sedentary posts even in the category of Chargeman Grade 'A'. We have gone through the duties described and the stand taken and cannot substitute our opinion to the needs of the Indian Railways in terms of medical fitness of employees especially in the background of the sensitive and safety related nature of the job prescribed. Consequently, when it is categorically stated by Respondents that there are no sedentary posts as Chargeman Grade

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'A' we cannot doubt their assessment, in the absence of anything on record to prove to the contrary. In this connection, it is difficult to go by the contention made on behalf of the applicant that he was never medically decategorised in the medical certificate and also that therefore it has to be taken by implication that he is certified fit for Category B-1 in medical terms. On going through the medical certificate as also the other details pointed out at para 6 of the written statement of the respondents, we are not convinced that such a conclusion can be drawn. This would be a very mechanical reading of the certificate in the face of facts before us. Now once having therefore concluded that it is justifiable for the respondents to provide the applicant with alternative employment we proceed to examine whether this has been done in terms of the rules:

14. It is stated clearly that the respondents have made full efforts to provide work in terms of the rules especially Para 1309 and there is nothing that shows to the contrary. (Some time was also available in view of the applicant having been on leave). We especially went through the provisions made in sub - para (iii) of Para 1309 of the IREM whether is clearly laid down as follows -

"For the purposes of this paragraph an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert."

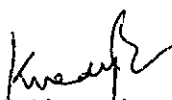
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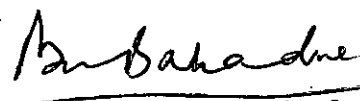
15. This is a very important provision and it is clear that rules in this regard, as stipulated in sub para (iii) have been followed. The provisions of Para 313 of the IREM indeed do not contradict the other provisions and in fact are relevant on the point of seniority, and how it is to be fitted.

16. In view of the above discussions we are not convinced that the applicant can be provided the relief that he seeks. In regard to the point of seniority urged during argument on behalf of the applicant, we find that this is not one of the reliefs sought. However, we do hope that the respondents will take action to fix seniority of the applicants, on the merits of his case, and in accordance with law/rules, if not already done.

17. In the consequence, this OA is dismissed. No order as to costs.


(Kuldip Singh)
Member (J)

mbm.


(B.N. Bahadur) 14.9.01
Member (A)