

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 590 of 2004

Gwalior, this the 21st day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Jwala Prasad Yadav, S/o. Nanku Yadav,
Age 57 years, Occupation Ganitor at
CTCC, Ujjain. Applicant

(By Advocate – Shri K.C. Raikwar)

V e r s u s

1. UOI, through the GM, W. Rly.,
Church Gate, Mumbai.
2. The CMD, Church Gate,
Mumbai.
3. The DRM, Devisal Office,
Do Batti, Ratlam.
4. Mr. Gyan Dutta Pandya, Sr.
DMODRM Office, Ratlam.
5. Mr. V.K. Vishnu, ASM, Neemach. Respondents

(By Advocate – Shri V. Saran)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“(a) to quash Anx. A-1 dated 19.2.2004,

(b) to declare Anx. A-11 as illegal and without jurisdiction,

(c) to allow the applicant to continue on the post of ASM at Balsa with retrospective effect with same pay scale and consequential benefit.”



2. The brief facts of the case are that the applicant had been working since 31.5.1967 on various posts and has been passing medical examinations in A/2 medical category in the year 1968, 1972 and 1975. The applicant is suffering from polio in his left leg and he is lurching while walking due to defect in polio affected leg. The lurching gait has not been interfering with the effective performance of the duties since his appointment. At the time of medical examination since 1967 to 2001 the medical officer has not pointed out the applicant as not suitable for the appointment against post nominated for the applicant. They have not pointed out that the lurching shall cause any obstruction in discharge of his duties as per para 511(7)(I) of medical manual. In the note of the letter of appointment on the post of ASM at Neemach dated 7.2.1989 issued by the respondent No. 2 it is clearly mentioned in last paragraph that left leg of the applicant is defective and there is lurching in gait and even then the medical officer has not pointed out any defect in the medical fitness of the applicant as the lurching was not any obstacle in discharging his duty as ASM. The applicant has worked on Group-C and Group-D posts since 31.5.1967 his Pointsman, Cabinman, Gateman and Telegraph Signaler. He was promoted on the post of ASM on 19.7.1990 to 2.9.2002. The special medical Board comprising three members has conducted the medical examination without any other test and declared the applicant unfit for A/2 medical category. The applicant preferred an appeal and the CMD, Mumbai asked some queries through letter dated 11.12.2003. The respondent No. 2 has informed the applicant on 28.3.2002 that he was medically decategorised due to safety point of view but did not mention any reason. The applicant is reduced in post and pay scale. The applicant has filed the representation (Annexure A-19) against the reduction of pay scale but no reply was given to him. Hence, this Original Application is filed.



3. Heard the learned counsel for the parties and carefully perused the pleadings and records.
4. It is argued on behalf of the applicant that he had served on many Group-C and Group-D posts since 31.5.1967 as Pointsman, Cabinman, Gateman and Telegraph Signaler. He was promoted on the post of ASM on 19.7.1990 to 2.9.2002 and he had cleared all medical examination in A/2 category. All of a sudden without any complaint or enquiry a special medical examination was conducted with regard to the applicant and he was declared unfit for A/2 medical category. The Doctor who have conducted the medical examination has not shown any reason for physical handicappedness, which is likely to hamper the work or enhance the occupational risks to the worker himself or to the others. There was no complaint against the work, conduct and integrity of the applicant during the whole service. By the special medical examination the applicant is adversely affected. Hence, the applicant is legally entitled for the reliefs claimed.
5. In reply the learned counsel for the respondents argued that the order for special medical examination was passed due to certain remarks in the confidential report with regard to the leg of the applicant. The applicant has PPP(L) lower limb since the age of 7 years. The applicant did not join the Railway services under the handicap quota. He joined as Waterman and later on promoted on the post of Telegraph Signaler in the year 1981. In the year 1983 he was promoted on the post of ASM. The applicant has got post polio residual paralysis of the left lower limb with wasting of left thigh, leg and foot muscle with equino curve deformity at left foot and pelvie obliquity. He has dorsolumber scoliosis also with the result he cannot run. He has got difficulty in squatting and getting up and climbing stairs due to weakness of muscles. Due to the above disabilities, the applicant was not found fit for a category job where safety is involved. Hence, the applicant was decategorised to 'Bee One' and under medical

category with glasses both DV & NV. According to the provisions contained in para 1303 of IREM an employee can be given an alternative appointment after creation of a post but since at the time of passing of the order impugned, there did not exist any post with the same pay scale, therefore, the applicant had to be put in the lower pay scale but at the same time the applicant's pay was protected. The learned counsel for the respondents has drawn our attention towards Annexure A-19 dated 26.3.2004 in which the applicant has mentioned that he be placed in the same pay scale of Rs. 5000-8000/- He has also drawn our attention towards the order dated 25.2.2004 (Annexure A-18) in which it is mentioned that with regard to the employees who are medically decategorised, the screening test will be held in the Divisional Office on 3.3.2004 for substitute posting and the name of the applicant is mentioned at serial No. 1. Thus, the pay of the applicant is protected. Hence, the action of the respondents is perfectly legal and justified and this Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that a special medical examination of the applicant was conducted by three doctors and they found him unfit for A/2 medical category and the applicant was declared medically decategorised. The respondents in the reply has mentioned that applicant has got post polio residual paralysis of the left lower limb with wasting of left thigh, leg and foot muscle with equino curve deformity at left foot and pelvie obliquity and he has also dorsolumber scoliosis, with the result he cannot run. He has got difficulty in squatting and getting up and climbing stairs due to weakness of muscles. Hence, due to the above disabilities, the applicant was not found fit for a category job where safety is involved and he was decategorised to 'Bee One' and under medical category with glasses both DV & NV. It was also mentioned by the respondents that according to the provisions contained in para 1303 of IREM an employee can be given an alternative appointment after creation



