

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

CIRCUIT AT INDORE

Date of Decision : 5-9-2003

O. A. No. 792/1998.

Purshottam Singh Rathore, S/o Shri Pancham Singh Ji
Rathore, Office Superintendent, Loco, Western Railway,
Nimach.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Do Batti,
Ratlam.

... Respondents.

Shri A. N. Bhatt counsel for the applicant.
Shri Y. I. Mehta counsel for the respondents.

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Hon'ble Mr. V. K. Majotra, counsel for the applicant.
Hon'ble Mr. J. K. Kaushik, counsel for the respondents.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Shri P. S. Rathore has filed this Original Application
with the following prayers :-

"8.1 Humble applicant was found suitable for the
post of Station Supdt, scale Rs.2000-3200 (RP)
by a high power committee on 24.4.97 (Annexure A/4)
and therefore this Hon'ble Tribunal may be pleased
to quash the subsequent screening result notified
on 20.6.97-Annexure A/3.

8.2 The applicant was unnecessarily kept on forced
leave from 24.4.97 to 23.8.97. The said period may
be ordered to be treated as 'duty' instead of
'leave'.

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8.3 Applicant's posting as Office Superintendent scale Rs.2000-3200 (RP) may be quashed and he may be ordered to be posted as Station Supdt. scale Rs. 2000-3200 (RP) in his parent line."

2. The material facts of this case are at a very narrow compass. The applicant while working on the post of Deputy Train Controller in the scale of Rs.2000-3200 was found medically unfit to continue on the said post by the Chief Medical Superintendent on 28.01.1997. He was recommended for change of job where mental tension is least possible and also job is not involving frequent night duties.

3. A Screening Committee was constituted on 14.03.1997 for recommending the case of the applicant for alternative job. He was found fit for the post of Deputy Station Superintendent on 24.4.97. He was also asked his choice which the applicant accordingly gave. It is also averred that on file the orders have also ^{been} passed for posting the applicant on the said post at Bijaynagar. However, the posting orders were not released and he was continued on forced leave. He was again asked to appear before the Screening Committee on 02.07.1997. He represented the matter to the Competent Authority but due to compelling reasons he appeared before the Screening Committee. Without cancelling his earlier suitability he was declared fit for the post of Office Superintendent on 08.07.1997 and he joined on the post of Office Superintendent, under protest. His protest representation came to be disposed of with a remark that nothing can be done now. His forced leave period was from 24.4.97 to 23.08.97 i.e. 4 months.

4. The OA has been filed on number of grounds mentioned therein.

5. The respondents have contested the case and have filed a detailed reply to the OA. It has been submitted that though the Screening Committee recommended his case for the post of Deputy Station Superintendent (DSS, for short) but the Competent Authority did not approve it for the reasons which have been recorded and placed the matter for review before the Screening Committee and thereafter the applicant has been absorbed on the alternative post of Office Superintendent. It has been averred that as per Para 1304 of IREM Vol.1 one has to remain ~~on~~ on leave till a suitable alternative job is found and, therefore, this OA deserves to be dismissed.

6. A very short rejoinder without any brief verification has been filed which cannot be read as a part of this case.

7. We have heard the learned counsel for the parties and have carefully perused the records of this case.

8. Learned Counsel for the applicant has been very fair and has submitted that he does not press the Prayer No.8.1 and 8.3 and only press the Prayer No. 8.2. He has submitted that the complete material was before the Screening Committee and if he was to be absorbed on the post of Office Superintendent nothing prevented the Committee to recommend his case and for none of his fault he remained on forced leave from 24.4.97 to 23.08.97. The said period ought to have been treated as duty instead of leave and the same should be credited in his account as leave and he restricted his relief to that extent.

9. On the contrary, learned counsel for the respondents reiterated the grounds of defence as narrated in the reply.

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Learned Counsel for the respondents was confronted with a question as to why the applicant should not be allowed the due emoluments by treating him kept on a supernumerary post until the suitable post is available as per Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and why only for 4 months, why not the complete period of about 8 months he should be treated on duty and paid all his emoluments. Learned counsel for the respondents has drawn out attention to the definition of the very disability and has submitted that the disability which is defined as per this Act does not cover the case of the applicant inasmuch as the applicant was not even decategorised and it was only observed that he should be given a lighter job in the same category. He has satisfied us that the case of the applicant was not of a disability as defined in the said act. On the other hand, he has drawn our attention to Para 1304 of the IREM and has submitted that they have acted strictly in accordance with law and no illegality has been committed. It has been submitted that the post of DSS involved hard duties. It also involved night duties and in the interest of safety of the Railways as well as of the particular individual, the Competent Authority did not approve the absorption of the applicant on the post of DSS and rightly so the applicant has abandoned his claim on this post.

10. We have considered the rival contentions raised on behalf of both the parties. As regards the Para 47 of Persons with Disabilities (Equal opportunities, protection of rights and full participation) Act, 1995, we have already given our observation in the aforesaid para and are of

firm opinion that the applicant did not suffer from the disability and his case is not covered under the aforesaid act. The case of the applicant in fact is covered by Para 1304 of IREM, the relevant portion of the same is extracted as under :-

"1304. Railway servants incapacitated for service in posts held by them.

- (a) Permanent Railway servants-A permanent railway servant in group (ii) of Para 1302 above must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the Leave Rules by which he is governed, from the date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit, his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should be extended by grant of extraordinary leave, subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post."

11. As per the aforesaid provision one could be kept on leave for a period of 6 months and thereafter he can be granted the extra ordinary leave and the same has been done in the present case. We are unable to subscribe our views with the contention of the learned counsel for the applicant as to in what way the applicant has been wronged. We find that the respondents have acted in a very fair manner and well in accordance with the rules. Thus, there is absolutely no illegality or injustice which could have been said to be done to the applicant and thus no interference is called from this Tribunal in the matter.

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12. In the premises, the OA is devoid of any merit and substance. The same fails and stands dismissed with no order as to costs.

J. K. Kaushik
(J. K. KAUSHIK)
MEMBER (J)

V. K. Majotra
(V. K. MAJOTRA)
MEMBER (A)

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अत्रोहित:-

- (1) सचिव, उत्तर न्यायालय का एसेसिएशन, जबलपुर
- (2) ~~जज/डी/डी/डी/यु~~के काउंसल
- (3) ~~जज/डी/डी/डी/यु~~के काउंसल
- (4) न्यायालय, के.ए.ए., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

A. N. Bhatt, Galkam
Y I mehta, Adu Indore.

Traced
17/9/03