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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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Pronounced on: 17.7.2015

Reserved on: 15.07.2015

OA. No. 060/00348/2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

Teju Ram son of Sh. Ram Dass age 58 years working as Technician III, Traction Distribution (TRD), JRC, office of Senior Section Engineer/TRD, Northern Railway, Jalandhar Cantt., Punjab.

.....Applicant

BY ADVOCATE: SH. D.R. SHARMA

VERSUS

1. Union of India through General Manager (P), Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Personnel Officer, Northern Railway, Ferozepur.
3. The Divisional Railway Manager (Personnel), Northern Railway, Ferozepur.

.....Respondents

BY ADVOCATE: SH. LAKHINDER BIR SINGH

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA filed under Section 19 of the Administrative Tribunals Act, 1985 is directed against order dated 31.3.2014 (Annexure

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A-1) whereby instead of promoting the applicant on the post of Tech-II/TRD pursuant to having been declared passed in the requisite trade test for the purpose, applicant has been ordered to be posted on Pump Operator Duty which consists of duties in shifts and strenuous physical exertion. This action of the respondents is arbitrary and unsustainable because vide order dated 07.06.2012 passed in earlier OA No. 615/PB/2012 filed by the applicant, this Tribunal had directed respondents to either constitute the Medical Board for examination of the applicant afresh or to take a final decision on the examination already done and thereafter pass appropriate orders for medical de-categorization of applicant. Respondents were further directed to see the feasibility of assigning lighter duties to applicant. Thereafter, applicant has already been medically de-categorized and declared permanently unfit for such work and ordered to be posted in Ministerial clerical at the same station i.e. under Elec/TRD/JRC, for the purpose of charging pay and other service benefits w.e.f. 18.07.2012 vide order dated 24.07.2012 (Annexure A-9) and thereafter again has been found suitable to be utilized by Branch Officer in same category vide order dated 14.8.2012.(Annexure A-7).

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2. Further, the applicant has impugned the order dated 28.04.2014 whereby his representation dated 24.04.2014 has been rejected without considering the earlier order of the Tribunal and the plea of the applicant in the right perspective to promote him on the post of Tech-II/HRD pursuant to passing of requisite trade test held on 25.05.2013 for the promotion of Tech-III/TRD to Tech-II/TRD(Annexure A-1/1). In the result dated 20.06.2013 (Annexure A-6), 19 Tech-III were declared pass and the name of applicant figured at Sr. No. 07. Juniors from Serial No. 8 to 19 have been given promotion and posting and as such besides financial losses, applicant is losing seniority also.

3. In the grounds for relief, it has inter alia been stated as follows:-

- (i) Pursuant to directions of this Tribunal, the applicant has already been medically decategorized and declared Permanently Unfit for such work and ordered to be posted in Ministerial clerical at the same station i.e. under Elect/TRD/JRC, for the purpose of charging pay and other service benefits w.e.f. 18.07.2012, vide order dated 24.07.2012 and thereafter again has been found suitable to be utilized by Branch Officer in same category vide order dated 14.08.2012.
- (ii) Earlier also on his medical examination by the doctors of All India Institute of Medical Sciences (AIIMS), applicant's case was recommended for giving him lighter job permanently. Thereafter, the respondents constituted a Medical Board and applicant was physically examined. The respondents failed to consider and appreciate that in the matter of absorption of disabled/medically decategorized staff in alternative posts, Railway administration

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should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilized.

4. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. However, it has been stated that merely performing ministerial functions for some time does not mean that the applicant becomes a part of the ministerial cadre nor he has been absorbed in an alternate ministerial post. The post of Plant operator/Pump operator for which the applicant has been found suitable vide Annexure A-1/A dated 8.4.2014, Annexure A-1 dated 31.3.2014 and Annexure A-1/1 dated 28.4.2014, is a non-ministerial, technical cadre post. It does not involve strenuous physical exertion but is a sitting job of turning on and off the electronic switch controlling the water connection to the Railway colonies and receiving and noting down the colony water complaints in the register.

5. It is further stated that the applicant was not absorbed in any specific alternate post vide Annexure A-7 dated 14.8.2012. Rather, he was temporarily utilized by the Branch Officer as per recommendations of the Medical Board. Had he been permanently absorbed in an alternate post, his specific post would have been indicated and the supernumerary post of Tech-III created vide Annexure A-8 dated 28.7.2012 would have

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been abolished. The Specific Alternate Post of Pump Operator (now Plant Operator) was found for the applicant vide Annexure A-1 dated 31.3.2014 after being adjudged suitable for the same by the nominated Standing Committee on 25.3.2014.

6. Besides, the prayer of the applicant for promotion as Tech.II on the basis of the Trade test is contradictory to his stand that he is permanently medically unfit for the feeder post of Tech III. The applicant who is medically unfit permanently for discharging the functions of the lower feeder post, cannot be promoted to the next higher post of Tech II.

7. Arguments advanced by the learned counsel for the parties were heard when they reiterated the content of the OA, rejoinder and the written statement respectively.


8. We have given our careful consideration to the material on record and the arguments advanced by the learned counsel. The plea of the applicant that he should be promoted as Tech-II/TRD since he has passed the requisite trade test is not acceptable as the applicant has been medically de-categorized since he was not held to be fit for working as Tech-III/TRD. A person who is medically unfit to work as Tech-III level, can obviously not be promoted to the Tech-II level. In the light of the

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submissions of the respondents that a Pump Operator is only required to switch on and off the electronic switches controlling the water connections to the Railway colonies and receiving and noting down the complaints relating to water supply submitted by the residents of the colonies in the complaint register, the assignment of Pump Operator Electrical after his medical decategorization cannot be considered to be a strenuous job.

9. Hence, there is no merit in the OA and the same is rejected.
No costs.


(RAJWANT SANDHU)
MEMBER(A)


(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 17.7.2015.

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