

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00038/2015

Monday, this the 26th day of March, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

P. Sasi Kumar,
 aged 45 years,
 S/o. P. Kunhunni,
 Assistant Loco Pilot (Supernumerary Post)/
 Southern Railway/Ernakulam Junction
 /Trivandrum Division,
 Permanent Address :
 Padanayakath House, Chembra,
 Tiruvegapura PO, Palakkad District,
 Pin – 679 304.

..... **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India,
 represented by the General Manager,
 Southern Railway,
 Headquarters Office, Park Town PO,
 Chennai – 600 003.
2. The Divisional Personnel Officer,
 Southern Railway,
 Trivandrum Division,
 Thiruvananthapuram – 695 014.
3. The Chief Medical Superintendent,
 Southern Railway,
 Trivandrum Division, Pettah,
 Thiruvananthapuram – 695 024.

..... **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil)

This application having been heard on 14.03.2018, the Tribunal on
 26.03.2018 delivered the following:

ORDER

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

Applicant is currently put on a supernumerary post as Assistant Loco Pilot at Ernakulam Junction. He is aggrieved by Annexure A1 order issued by the respondents refusing the benefit of promotion granted to him as Senior Assistant Loco Pilot vide Annexure A3 office order dated 29.5.2014 on the ground that he was under sick list. Annexure A1 states that in the order granting promotion it was clearly mentioned that promotion will take effect only from the date of shouldering higher responsibility. According to the applicant being an Assistant Loco Pilot he had to undergo periodical medical examination for adjudging his fitness in 'Aye One' medical classification in terms of Paragraph 514 of Indian Railway Medical Manual (for short, IRMM) Volume-I, a copy of which is marked as Annexure A2. He states that he reported for periodical medical examination before the Senior Medical Officer, Southern Railway, Trivandrum on 1.4.2014. No decision was taken for certifying the applicant 'fit' or 'unfit' in 'Aye One' classification and finally on 6.8.2014 he was declared medically 'unfit' in 'Aye One' medical classification and it was during the intervening period between 1.4.2014 and 6.8.2014 (i.e. the date on which he was declared medically unfit) he was promoted to the post of Senior Assistant Loco Pilot as per Annexure A3 order dated 29.5.2014. The applicant states that the post of Senior Loco Pilot is a non-functional post with no additional duties or responsibilities. His grievance is that after he was rendered medically unfit with effect from 6.8.2014 he was put in a supernumerary post only in the lower post of Assistant Loco Pilot. According to him since the period

between 1.4.2014 and 6.8.2014 was not treated as duty, the benefit of promotion could not be availed of by him. Though he had submitted Annexure A4 representation dated 10.9.2014 the same was rejected by the impugned Annexure A1 order. The relief he seeks is as under:

- “(i) Call for the records leading to the issue of A1 and quash the same;
- (ii) Declare that the respondents are bound to treat the period spent by the applicant on periodical medical examination for the period between 1.4.2014 and 6.8.2014 as duty in terms of Rule 524 of the Indian Railway Medical Manual Vol. I, with all consequential benefits arising therefrom.
- (iii) Declare that the respondents are bound to give the applicant the benefit of promotion as Senior Assistant Loco Pilot in PB-1 Rs. 5200-20200 + GP Rs. 2,400/- with effect from the date of A3 (29.5.2014), with all consequential benefits arising there from.
- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. Respondents railway filed reply statement contending that on the same day when the applicant had attended Railway Hospital, Trivandrum on 1.4.2014 for the mandatory periodical medical examination he was diagnosed and declared medically 'unfit' for the post he was holding. Thereafter he was referred for ayurvedic treatment at his request on his own cost and risk. He was placed under sick list for ayurvedic treatment at his own cost and risk between 2.4.2014 and 30.7.2014 during which period he was under ayurvedic treatment and such period will not be treated as duty. The posting of the applicant on supernumerary post was done in terms of the provisions of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereafter referred to as the PWD Act]. However, he will not be entitled to the pay benefits of running staff. Respondents pray for rejecting the OA.

3. We have heard Shri T.C. Govindaswamy, learned counsel appearing for the applicant and learned Standing Counsel for the Railways appearing for the respondents. Perused the record.

4. It appears from the pleadings of the applicant that his case revolves around the contention that the time taken by the respondents from 1.4.2014 i.e. the date on which he reported for periodical medical examination to 6.8.2014 has to be treated as duty and that the promotion which came to him in the interregnum should have been granted to him. It is also contended by the applicant that the time taken by the respondents between 1.4.2014 i.e. the date on which he reported for periodical medical examination at Trivandrum to 6.8.2014 (i.e. the date on which he was declared medically 'unfit' for the post he was holding) was on account of the lapses on the part of the respondents.

5. The respondents on the other hand contend that the applicant was found to be medically unfit on 1.4.2014 itself and therefore, he could not have been entrusted with the duties in the promotional post. Further the respondents state that the applicant had made a request for getting treated under the ayurvedic system of medicine which was allowed at his own cost and risk and hence that period cannot be treated as duty.

6. Referring to paragraph 524 of Annexure A2 IRMM Volume-I learned counsel for the applicant submitted that the period of waiting on account of

the delay in taking decision by the medical authorities should be treated as duty for the employee and therefore, the applicant is entitled to treat the period between 1.4.2014 to 6.8.2014 as duty and therefore, he ought to have been given the opportunity to enjoy the benefits of promotion to the post of Senior Assistant Loco Pilot vide Annexure A3 office order.

7. Annexure R1 is the photo copy of the prescription memo maintained by medical department of Southern Railway wherein the applicant is shown to have been diagnosed as a case of 'pigmentary epithelium detachment of the left eye'. Annexure R1 further shows that earlier he was evaluated at Railway Hospital, Palakkad and Railway Hospital, PER and that during the periodical medical review at Railway hospital Thiruvananthapuram he was advised for review on 30.4.2014 but on that date while permitting the applicant to resort to ayurvedic treatment at his own cost and risk he was directed to come for further review on 14.5.2014. On 14.5.2014 he was asked to come again for review after 10 days and on 24th May, 2014 when he attended the hospital for review he was directed to come on 15.6.2014. Nevertheless, Annexure R1 shows that the respondents took time till 6.8.2014 for issuing Annexure A5 medical unfitness certificate.

8. Annexure R1 clearly shows that the applicant had serious eye ailment. All the while applicant was holding the post of Assistant Loco Pilot. According to the applicant had he been allowed to join the promotion post granted to him vide Annexure A3 during the period between 1.4.2014 and 6.8.2014, he could have enjoyed the promotion and could avail of the

benefits of the higher post when he was given supernumerary post after Annexure A5 medical decategorisation.

9. Though the applicant contends that the post of Senior Assistant Loco Pilot is only a non-functional promotion, we note that it does carry a higher Grade Pay than the Grade Pay of Assistant Loco Pilot. Annexure A3 promotion order shows that the Assistant Loco Pilot is in the Pay Band-1 Rs. 5,200-20,200/- with Grade Pay of Rs. 1,900/- and that of Senior Assistant Loco Pilot is in PB-1 Rs. 5,200-20,200/- with Grade Pay of Rs. 2,400/-.

10. The question whether the applicant could be considered for the promotion post of Senior Assistant Loco Pilot during the period between 1.4.2014 and 6.8.2014 requires to be examined both from the factual and legal points of view. Annexure R1 shows that on 1.4.2014 itself the applicant was found to have the problem in his eyes 'with a raised lesion close to fovea, macular cyst' which was seen earlier by two other railway hospitals. Obviously, the problem he had in his eye was related to the effectiveness of vision. This, of course, is a matter of serious concern for the respondent railway, especially when the applicant was working as Assistant Loco Pilot responsible for running of trains. In such a circumstance, even though it took a long time to medically decategorise the applicant vide Annexure A5, it would have been a vexing problem for the Railways whether to grant such promotion to the applicant or not.

11. Learned counsel for the applicant argued that by virtue of the provisions of Section 47(2) of the PWD Act he ought not to have been denied promotion. S. 47 (2) reads:

“.....(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

However, in *Union of India v. Devendra Kumar Pant & Ors.* - (2009) 14 SCC 546 the apex court had categorically held that if promotion is denied on the ground that it will affect the safety, security and performance, then it is not a denial of promotion '*merely* on the ground of his disability' as envisaged in S.47(2) of the PWD Act but is denial of promotion **by reason of disability plus something more**, that is, the adverse effect of disability upon employee's performance of higher duties or functions attached to the promotional post.

12. Even if the argument of the applicant that the promotion post of Senior Assistant Loco Pilot is only a non-functional promotion is accepted, such a post is nevertheless a post having the responsibility of running trains as Loco Pilot. If the employee who suffers visual impairment or problem with the eye is allowed to continue as Loco Pilot - whether as Assistant Loco Pilot or as Senior Assistant Loco Pilot - it would be at the cost of public safety, security, interest of the employee and fellow employees and also in the interest of the administration. The apex court in *Devendra Kumar Pant (supra)* has clearly held that Section 47(2) of the PWD Act

which prohibits denial of promotion *merely* on the ground of the person's disability cannot be pressed in to service for seeking promotion if the employee is unable to meet the higher minimum standards on account of such disability, keeping in view of the safety, security and efficiency.

13. Therefore the argument of the applicant that he ought to have been granted promotion in the interregnum period between 1.4.2014 and 6.8.2014 - irrespective of the question whether it has to be treated as duty or otherwise - is highly specious and is intended only to masquerade the medical condition existed at that time pertaining to his visual acuity. In the above circumstance, the contention of the applicant that the long delay occurred between 1.4.2014 to 6.8.2014 for declaring him medically decategorized and fit for alternative employment in 'Bee One' category was due to the latches on the part of the respondents, is misleading and convoluted too.

14. Suffice it to say that the applicant has not made out a sustainable case before this Tribunal. We dismiss the OA. Parties shall suffer their own costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00038/2015**APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of letter bearing No. V/P.535/VI/ALP/Vol.VII dated 10.10.2014, issued by the 2nd respondent.
- Annexure A2** – True copy of Chapter V of the Indian Railway Medical Manual Vol. I.
- Annexure A3** – True copy of Office order bearing No. 27/2014/Ele(Op) dated 29.5.2014, issued by the 2nd respondent.
- Annexure A4** – True copy of representation dated 10.9.2014, addressed to the 2nd respondent.
- Annexure A5** – True copy of communication bearing No. V/MD/84/I/UF dated 06.08.2014 issued by the 3rd respondent and addressed to the 2nd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** – True copy of the prescription memo.

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