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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00113/2015

Friday, this the 10th day of August, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Anilkumar.K.R.,
S/o.Ramakrishna Pillai,
Prabhanilayam, Kavalam P.O., Alappuzha.
Helper (C&W) in Mechanical Department of Palghat Division,
Southern Railway. **...Applicant**

(By Advocates – Mr.P.V.Mohanan)

V e r s u s

1. Senior Divisional Personal Officer,
Southern Railway, Divisional Office, Palakkad – 678 002.
2. The General Manager,
Southern Railway, Park Town P.O., Chennai – 3. **...Respondents**

(By Advocate Mrs.P.K.Radhika)

This Original Application having been heard on 6th August 2018, the Tribunal on 10th August 2018 delivered the following :

O R D E R

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/113/2015 is filed by Shri.Anilkumar.K.R against the refusal of the respondents to allot him to an alternative category involving less arduous nature of duty which led the applicant to tender his resignation from the service of the respondents. The reliefs sought in the O.A are as follows :

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1. To call for the records leading to Annexure A-8 and set aside the same.
2. To direct the respondents to grant alternate employment to applicant, such as Peon, Watchman, Gardner etc., or duties involving less arduous nature of work forthwith in Southern Railway with all consequential benefits.
3. To declare that the applicant is entitled to the benefits conferred by Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. (Act 1 of 1996).
4. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

2. The applicant was selected for appointment to the post of Helper (II) (Carriage & Wagon) by order dated 16.10.2012 (Annexure A-1). Due to the arduous nature of duties that he was exposed to, the applicant claims that he developed breathing problems and fell ill. As proof, he has produced copies of medical certificates at Annexure A-2 and Annexure A-3. He also represented to the authorities to allot him less arduous category of work such as Peon or Watch man. However as the respondents refused his entreaties as per Annexure A-8, he decided to resign from the service of the respondents.

3. As grounds he relies on Clause 2007 (4) (b) of Railway Establishment Act which reads :

“ Such of the Casual Labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the Screening Committee, to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification.”

.3.

4. Further it is stated that the respondent is obliged to consider the claim of the applicant for alternative job in terms of Section 47 of Act 1 of 1996 and judgment rendered by the Apex Court reported in **2013 (10) SCC 772 in Union of India v. National Federation of the Blind.**

5. The respondents have filed reply statement wherein it is stated that the applicant had been duly examined and his medical fitness was specified as 'Bee-One'. He was assigned to the post of Helper (Carriage & Wagon) for which specified medical fitness is 'Bee'One'. The applicant joined the post on 22.10.2012. But after attending duties for 11 days he remained absent from 2.11.2012 onwards. In the meanwhile, a letter was received by DRM, Southern Railway, Palghat from Minister of State Shri.Kodikunnil Suresh requesting that the applicant is not physically well and he may be transferred to Palghat Division Office. The applicant was accordingly given a personal hearing and he was informed that his specified medical category was 'Bee-One' and the post to which he has been assigned was the suitable one whereas for the category of Peon the medical classification is 'Cee-One' and those posts are filled up from medically decategorized employees. Thereupon the applicant submitted Annexure A-4 letter dated 7.10.2013 resigning from service and the said resignation was accepted as per Annexure R-3.

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6. Subsequently he submitted Annexure A-7 representation dated 24.1.2014 stating that he would like to withdraw his resignation and again reiterating his request for alternative employment as Peon. He was duly informed by impugned order at Annexure A-8 that his request is not maintainable and his resignation can be treated as withdrawn provided he is willing to continue as Helper (C&W) in Mechanical Department of Palghat Division.

7. It is submitted that the applicant had remained absent from duties from 2.11.2012 after a brief period of 11 days. He did not report to the railway hospital nearest to his working place nor did he ever attempt to meet a Railway Doctor and seek medication. According to the records he continues as medical classification 'Bee One' and has not been decategorized by any Railway Medical Authority. It is further submitted that he cannot claim any benefit under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as his alleged physical condition does not fit in the nature of illnesses mentioned therein.

8. Heard Shri.P.V.Mohanan, learned counsel for the applicant and Smt.P.K.Radhika, learned counsel for the respondents. At the time of final hearing learned counsel for the applicant submitted that the applicant will be satisfied if offer contained in Annexure A-8 order is still open to him.

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9. We feel that the O.A can be disposed of directing the respondents to duly consider the request of the applicant for withdrawing his resignation within a period of 30 days from the date of receipt of a copy of this order.

Ordered accordingly.

10. The O.A is disposed of accordingly. No costs.

(Dated this the 10th day of August 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00113/2015

1. **Annexure A1** - True copy of the proceeding No.J/P.269/V/Mech/Vol.I dated 16.10.2012.
 2. **Annexure A2** - True copy of the Medical Certificate dated 6.8.2013.
 3. **Annexure A3** - True copy of the Medical Certificate dated 15.8.2013.
 4. **Annexure A4** - True copy of the letter dated 7.10.2013.
 5. **Annexure A5** - True copy of the representation dated 25.4.2013.
 6. **Annexure A6** - True copy of the representation dated 24.8.2013.
 7. **Annexure A7** - True copy of the representation dated 24.1.2014.
 8. **Annexure A8** - True copy of the order No.J/P.510/V/KR dated 10.2.2014.
 9. **Annexure R1** - True copy of the relevant portion of Office Order dated 5.11.2012.
 10. **Annexure R2** - True copy of the letter dated 30.9.2013 of Divisional Railway Manager/Palghat.
 11. **Annexure R3** - True copy of the letter dated 12.11.2013 of Senior Divisional Personnel Officer/Palghat.
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