

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 18.10.2018

Reserved on : 09.10.2018

OA No. 060/00402/2017

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Bhagat Ram son of Ram Chander age 54 years resident of Village Maandi, Tehsil and District Panipat, Haryana.

.....Applicant

BY ADVOCATE: **Sh. Ashutosh Kaushik**

Versus

1. Union of India through its Secretary, Indian Railways, Rail Bhawan, New Delhi.
2. Assistant Divisional Engineer, Northern Railways, Panipat, Haryana.
3. Senior Section Engineer (Works), Northern Railways, Panipat, Haryana.

.....Respondents

BY ADVOCATE: **Sh. L.B. Singh**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant was appointed as a Gangman in 1988. He was medically de-categorized in the year 2000 with the advice to do light work and not the heavy duty of Gangman. The applicant started working as a Khalasi, the nature of which duties were lighter. This change was effected as a result of verbal order and no written order was given to the

applicant. The health condition of the applicant worsened and he developed coronary heart disease, acute coronary syndrome and hypertension. The medial record in support of his ailing condition is produced as Annexure-2 series. On 17.05.2016, the applicant was directed to work as a Chowkidar. Applicant submits that the work of Khalasi is for eight hours and a Chowkidar is expected to work for twelve hours. Applicant protests his change of duty from Khalasi to Chowkidar and prays for being given the duty of Khalasi.

2. The second prayer of the applicant is that as a Gangman, he was drawing scale of pay of Rs. 2610-3540. When he was given the lighter duty of Khalasi, he was given a lower pay scale of Rs. 2550-3200 and he thus seeks protection of his pay as a Gangman on medical de-categorization.

3. The applicant has sought multiple prayers through this OA and the third prayer is for granting him equal pay as equated with Suraj Mal son of Tek Chand who is a Chowkidar.

4. The respondents in the reply statement argue that the prayers made by the applicant contradict each other. On one hand, applicant contests his posting as a Khalasi which according to respondents was made on his own request when he was medically de-categorised from the post of Gangman. The respondents also submit that the refixation of his pay on his posting from Gangman to Khalasi is time barred. This argument of the respondents is not acceptable as drawing lesser pay is a continuing cause of action and needs to be addressed. Further, Rule 304

of the Indian Railways Constitution Code produced by applicant as Annexure A-8 reads as follows:-

“304 (1) If any rail employee, during the course of service because of working conditions fail in eye test or otherwise fail, or unable to perform duties because of physical conditions, then he will not be terminated from services and **there will be no reduction in rank. He will be transferred on the same pay scale with all service benefits to some other post.**

(2) Rail employee falling in aforementioned clause, will not perform duties of his post from the date he is declared medically de-categorized. If such employee is not immediately given alternative post work then till appropriate optional post is found he be posted in same pay scale with service benefits on same grade as special additional post on that very post on which he was working prior to declaration of medical de-categorization and efforts be made immediately to find out appropriate optional post for him.

Ref: Persons with disability (Equal opportunity, protection of rights and full participation) Act 1995 and Rail Ministry letter dated 29.4.99 bearing No. E/NG/96/RE 3/9.”

The above rule position very clearly states that in the event of medical de-categorization, if a Railway employee is unable to perform his duty due to his physical condition, there will be no reduction in his rank. He will be transferred from the same pay scale with service benefits to some other post or he will not perform duty of his post from date of reduced de-categorization till an appropriate optional post is formed. In view of above rule position, the applicant is entitled to the pay of Gangman w.e.f. the date when he was medically decategorized and ordered to work as a Khalasi. Hence, this prayer of the applicant is allowed.

5. Respondents also contest Annexure A-2 medical reports dated 16.11.2007 produced from a private hospital by the applicant. If the respondent had any objection about the medical certificate from a private hospital, they should have referred the applicant to a Railway Hospital while decategorizing him from Gangman to Khalasi and further from

Khalasi to Chowkidar. Since the respondents did not adopt this course of action, the private hospital medical certificates are a fate accompli and cannot be rejected at this stage after ten years. That the applicant had a medical condition, has been accepted in 2002 by the respondents when they de-categorised him from Gangman to Khalasi and hence the adverse challenge to the private hospital medical certificate does not hold water.

6. As regards the reassigning of the duties of a Chowkidar to the applicant, we are of the view that the duty of a Chowkidar is generally stationary and applicant is only required to take a round of the premises where he is assigned duty to make sure that the premise is safe and has not been intruded into by any unwarranted elements. Therefore, the argument of the applicant that Chowkidar is hard or stressful duty is not acceptable. There can be nothing more sedentary or not strenuous than a Chowkidar duty. Whereas the duty of a Chowkidar is a sedentary job, the eight hour duty of a Khalasi is very laborious and strenuous. Because the duty of a Chowkidar is sedentary and does not involve physical labour, that is why Government of India which includes respondent Railways have fixed twelve hours of work for the post of a Chowkidar. Once the pay of the applicant as a Gangman is protected as ordered in para 4 above of this order, the respondents can extract any kind of light duty work compliant with his medical condition from the applicant including that of a Chowkidar.

7. That the applicant is drawing less pay in comparison to Kadam Singh and Suraj Mal, argue the respondents, is due to the fact that the applicant remained absent for 161 days in the year 2000-2001 and for 160 days in the year 2001-2002 as revealed from the entries made in the

service book. Whereas we accept this contention of the respondents that a period of long absence may result in non-drawl of increment on the appropriate day if the applicant was not on duty, we give a relief to the applicant to submit a representation in this regard within a period of 45 days from the date of issue of this order and the respondents are required to give a detailed speaking reply as different from the cursory contention made in the reply statement, within a period of 30 days from the receipt of applicant's representation. This reply of the respondents to the applicant should be in a simple language which could be understood by the applicant who claims to be illiterate.

8. Thus Reief (c) at para 8 of the OA is allowed. OA stands disposed of in the above terms in respect of other reliefs prayed for. No order as to costs.



(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*