

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 543/2013

Date of C.A.V. : 27.11.2017

Date of Order : 04.04.2018

Between :

P.Ch.Venkateswarlu,
S/o China Nazar, Aged about 59 years,
Occ : Loco Pilot (SHG.Gr.I),
O/o CCC/BZA, Vijayawada Division,
South Central Railway,
Vijayawada.

... Applicant

And

1. The Union of India, rep. by its
General Manager, South Central Railway,
Rail Nilayam, III Floor, Secunderabad – 500 071.
2. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
3. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada. ... Respondents

Counsel for the Applicant ... Mr.K.Sudhakar Reddy, Advocate
Counsel for the Respondents ... Mrs.A.P.Lakshmi, S.C. for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)
Hon'ble Mrs.Minnie Mathew ... Member (Admn.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (JUDL.) }

The applicant filed the present OA seeking a direction to the respondents to consider his case for absorbing him in suitable alternative grade having same pay scale and service benefits in which he was working at the time of being declared medically unfit.

2. The applicant was promoted from the post of Diesel Assistant to Shunter by order dated 22.01.1998. While he was working as such he was subjected to undergo medical examination in the year 1999 and he was declared medically unfit to work as Shunter and was found fit to work in Aye One and as per the visual standards in a job not involving fire, water, moving machinery vide medical certificate dated 13.10.1999. He was placed at a supernumerary post till an alternative post was identified. After a period of six months he was called for screening in order to provide alternative job. The Committee recommended him for the post of Caretaker in lower grade in scale of Rs.3050-4590. The version of the applicant is that he was forced to accept the said post. He submits that as per the extant instructions existing on the date of screening, the candidates should be provided with the alternative post which is in the same scale prior to their medical decategorization. The respondents however did not identify any equivalent post, but forced him to accept one grade below. In case of Sri D.Paradesi (Shunter), Sri K.Samuel (Assistant Driver), Sri M.Subba Reddy (II Fireman), Sri I.Bhogeswara Rao

(Diesel Assistant) and Sri Sk.Gani (Diesel Assistant) who were also medically decategorised the respondents absorbed them in the scale of Rs.5000-8000 and 4500-7000 scale and thereby the applicant was subjected to great injustice.

3. He further submitted that in terms of Railway Board instructions contained in letter dated 29.04.1999 those employees who are disabled / incapacitated for the further service in the post they are holding but declared fit in lower medical category will be placed in supernumerary post in grade in which they are working at the time of being declared medically unfit pending location of suitable alternative post having same pay scale and service benefits. The said scheme of absorption in the alternative employment of medically decategorised employee is being implemented in Railways from the date of issue of relevant instructions dated 29.04.1999. Subsequently the scheme was made effective from 07.02.1996.

4. He made representations dated 14.12.2005, 16.01.2006 to review his case for absorbing him in suitable alternative grade having same pay scale and service benefits in which he was working at the time of declaring him medically unfit. It is said that the respondents addressed him a letter dated 08.02.2008 advising him that his request for protecting scale and pay in eligible grade is under examination. He was asked to attend the office of R-3 on 30.11.2010 by letter dated 26.11.2010. The applicant was called to attend the screening again on

05.07.2011 by letter dated 27.06.2011.

5. Nextly it is submitted that the respondents failed to identify any alternative post even after screening twice on 12.06.2008 and 05.07.2011. Therefore, he was forced to submit letter dated 07.07.2011 expressing his willingness to accept voluntary retirement and in the said letter he sought for compassionate appointment for his son P.Venkat Rao in terms of PBSC No.92/2005. The applicant's request for voluntary retirement was accepted on 24.10.2011 and he retired w.e.f. 01.11.2011. The respondents however did not provide any compassionate appointment to his son. It is, under these circumstances, he filed the present OA seeking the above mentioned relief.

6. In their counter the respondents inter alia contended as follows :

They submitted at the outset that the OA is liable for dismissal in limini as barred by limitation as the cause of action arose a decade back and further developments in the case will not give a fresh lease of life. They also stated that the OA is liable for dismissal on the grounds of principles of acquiescence and estoppel.

7. After medical decategorisation the applicant was subjected to screening and he was absorbed in the alternative post as Caretaker in Running

Room, Mechanical Department, Vijayawada i.e. in scale Rs.3050-4590. The applicant accepted the post, joined in the said post and worked upto the year 2010. However his pay was fixed by adding 30% of pay element duly protecting the pay. The version of the respondents is that the administration did not find suitable alternative post as per his medical fitness, he was kept on supernumerary post and his services were utilized as Caretaker in scale Rs.4000-6000. Subsequently he opted for voluntary retirement w.e.f. 01.11.2011. Thus the applicant had voluntarily retired from service, all the settlement benefits due to him were paid. Even after retirement also he was granted the fixation benefit vide order dated 08.05.2012.

8. It is further submitted by the respondents that the applicant himself applied for voluntary retirement, which was accepted by the competent authority. Having retired voluntarily and availed all the settlement benefits based on the pay what he was drawing before joining the post of Caretaker, the plea of the applicant to take him back on duty in an equivalent post is not tenable and no relief can be granted in the OA and as such the OA has to be dismissed as devoid of merit.

9. Nextly it is submitted that the applicant continued in the post of Caretaker for a period of six years and thereafter he submitted an appeal to the administration to provide alternative post in equivalent grade. Therefore,

according to the respondents the contention of the applicant that he was forced to join in the lower grade post is baseless. Their version is that when once he accepted and joined the post and worked for about six years, he is estopped from reopening the issue at a later date. As such he was kept in supernumerary post to screen him again for finding suitable alternative post for him. However, as the applicant requested for voluntary retirement without waiting for the action of the administration, his request was accepted and he retired voluntarily w.e.f. 01.11.2011.

10. It is further submitted that notwithstanding the above, he was granted the fixation benefits in scale Rs.4000-6000 with effect from the date of absorption as Caretaker in scale Rs.3050-4590 vide proceedings dated 08.05.2012. Accordingly he was paid all arrears with effect from the date of medical decategorization.

11. It is further submitted that as per the instructions contained in CPO/SC's Circular No.138/1999, 122/2002 and 97/2005 he was called for screening to provide suitable alternative post with equivalent grade pay by keeping him in the supernumerary post in the grade Rs. 4000-6000 in which he was working on regular basis at the time of his medical decategorization and engaging him in a productive work as Caretaker. But the applicant failed to represent before the Screening Committee and further he was extended the

benefit of fixation of pay in equivalent scale of Rs.4000-6000 at a later date. The respondents therefore contend that since the applicant without any protest accepted the lower grade post and worked in the post for a substantial period and voluntarily retired on 01.11.2011 and in view of the fact that the benefits of fixation of pay in equivalent scale of Rs.4000-6000 was extended to him and paid the arrears, the OA is barred by limitation. Since the applicant without waiting for the action proposed to be taken to provide alternative equivalent post, retired voluntarily availed all settlement benefits and as such the plea of the applicant to take him back on duty in an equivalent post is not tenable as per the rules in vogue. Contending as above the respondents sought to dismiss the OA.

12. Heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mrs.A.P.Lakshmi, learned standing counsel for the respondents.

13. The short point for consideration is whether the applicant who voluntarily retired from service w.e.f. 01.11.2011 can pursue the relief prayed for by him in the OA.

14. Admittedly he accepted the lower grade post of Caretaker and continued in the said post for a period of six years and took voluntary retirement w.e.f. 01.11.2011 making a request for compassionate appointment to his son. According to the respondents while the applicant's request for reviewing his case

for providing suitable equivalent alternative post was pending consideration and when he was asked to appear before the Screening Committee he failed to attend the same and had chosen to take voluntary retirement. Though the applicant contended that he was forced to take voluntary retirement, no material is brought on record to show that he was forced to take voluntary retirement. Applicant has to seek the redressal of grievance at appropriate time and as he took voluntary retirement with a request to provide compassionate appointment to his son, as rightly contended by the respondents his claim is barred by limitation.

15. The applicant relied on the order of this Tribunal in OA. 672/2013 wherein the respondents were directed to absorb the applicant therein in the post of Office Superintendent Gr-II in the Pay Band and Grade Pay recommended by the Screening Committee. In the instant case there is no such recommendation by the Screening Committee in favour of the applicant. In the said case before the Tribunal the applicant approached the Tribunal at appropriate time and therefore he was granted relief. The facts of the said case are entirely different from the facts of the present case. Since the applicant without any protest worked in the post of Caretaker for a period of six years and then voluntarily retired from the service, cannot press for the relief prayed for by him in the OA. He is estopped from making any such claim and more over on account of delay and laches on the part of the applicant his claim cannot be considered. The OA itself is not maintainable and accordingly the same is dismissed without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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