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KOLKATA BENCH  
KOLKATA

No.O A /350/1055/ 2016

Date of order : 24.8.18

**Coram** : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Biswanath Murmu, son of Rasik Murmu,  
aged about 45 years, working as Chowkidar,  
under PWI/SSE(P)/Liluah/Eastern Railway,  
residing at Village-Shialagori,  
Post Office – Barui, District-Hooghly,  
Pin-712134, West Bengal

.....Applicant

- Versus -

- I. The Union of India, through the General Manager, Eastern Railway, Kolkata
- II. The Senior Divisional Personnel Officer, Eastern Railway, Howrah-1

.....Respondents

For the applicant : Mr. A. Chakraborty, counsel  
Ms. P. Mondal, counsel

For the respondents : Ms. C. Mukherjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant has assailed an office order dated 16.11.2015 issued by the Senior Divisional Personnel Officer, Eastern Railway, Howrah on the ground that it has been issued in violation of Section 47(1) of Persons With Disabilities(Equal Opportunities, Protection of Rights and Full Participation)Act, 1995(hereinafter referred to PWD Act) and RBE No.89/1999. Further prayer is to grant alternative

appointment to the applicant against a post carrying Grade Pay of Rs.2400 substantively.

2. At hearing ld. counsel for the applicant would draw our attention to the office order dated 16.11.2015, as contained in Annexure A/1, which reveals that the applicant, Biswanath Murmu, a Head Constable under Senior D.S.E., Howrah-I, upon being medically decategorised was rehabilitated in an alternative post of Track Maintainer, Gr.II(Chowkidar) in Grade Pay of Rs.2400/- in Engineering Department and was allowed to draw pay in Grade Pay of Rs.2800/- under MACP Scheme.

3. Ld. counsel for the applicant would strenuously urge that upon medical decategorisation and corresponding rehabilitation the status of the applicant along with pay and scale ought to have been protected.

4. Section 47 of the PWD Act lays down provisions on "Non-discrimination in Government employments" and stipulates the following:-

"(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

PROVIDED that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefit:

PROVIDED FURTHER that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.

(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."

RBE 89/99 envisages as under(extracted with supplied emphasis for clarity):

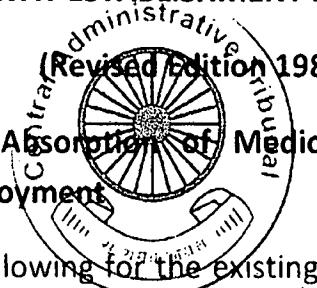
**"Subject: The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Absorption of disabled/ medically decategorised staff in alternative employment – Amendment to IREM.**

[No. E(NG)1/96/RE3/9(2), Dated 29/4/99]

1. The enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has necessitated modification of the existing scheme of absorption in alternative employment of staff medically decategorised.
2. The Ministry of Railways have considered the matter and have decided that the Indian Railway Establishment Manual, Volume-1 (Revised Edition 1989) may be amended as in the Advance Correction Slip No. 77 enclosed.

#### **ADVANCE CORRECTION SLIP NO. 77**

#### **INDIAN RAILWAY ESTABLISHMENT MANUAL VOLUME-I**



**Chapter XIII – Absorption of Medically Incapacitated Staff in Alternative Employment**

**Substitute the following for the existing Chapter XIII and paragraphs 1301-1315 therein:**

#### **CHAPTER XIII**

##### **Absorption of disabled/medically decategorised staff in Alternative Employment :-**

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

##### **1302. Classification of Railway Servants declared medically unfit :-**

Railway servants acquiring disability during service and declared medically unfit are divisible into two groups :-

- (i) Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the 'C' medical category; and

(ii) Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The railway servants both in group (i) and group (ii) of para 1302 above cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

1304. Disabled Medically decategorised staff to be absorbed in posts they can adequately fill : In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations 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 utilised. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

1305. Absorption in posts identified for employment of physically handicapped persons/creation of supernumerary posts. The Railway servants falling in group (i) mentioned in para 1302 above i.e. those who are declared unfit even for the lowest medical category, may be absorbed in a post/category identified as suitable for employment of physically handicapped persons and fresh recruitment to that post/category from open market from amongst physically handicapped withheld. In case the alternative post is not carrying the requisite pay scale, a supernumerary post may be created in

appropriate scale of pay and the employee adjusted against the same keeping the lower grade post vacant by withholding fresh recruitment thereto. The supernumerary posts so created to accommodate a disabled/medically incapacitated employee shall stand abolished as soon as a suitable post in the appropriate scale is found for the Railway servant concerned or the post is vacated by him for other reasons, whichever is earlier.

**1306. Steps to be taken for finding alternative employment :-**

- (1) With a view to determine the categories in which the disabled/medically decategorised Railway servant is suitable for absorption, a committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the disabled/ medically decategorised Railway servant was working, the Railway servant's immediate officer being one of the members of the committee. After the committee has examined the Railway servant and determined his suitability for certain categories of posts the officer under whom the Railway servant was working will proceed to take further action to find suitable alternative employment for him.
- (2) The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with some scale of pay as well as attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.
- (3) It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own unit/division, office, workshop etc. and a register with the details as mentioned in sub-para (6) below will be maintained for this purpose.
- (4) If there is no immediate prospect of employment in his own unit/division office, etc, the name of the Railway servant with particulars as given in sub-para (6) below will be circulated to all other offices or establishments when suitable employment is likely to be found.
- (5) Nothing in the previous paragraphs, however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of

the Railway servant concerned and must contain full particulars of his service and must be forwarded to the officer to whom addressed or to the authority competent to make the appointment. The result of the application must be intimated to the Railway servant.

(6) A register containing the names of all Railway servants declared medically unfit and to be absorbed in alternative post will be maintained by Headquarters, Divisional and other extra-Divisional offices. These registers contain not only the names of the staff of the particular division, etc., but also the names notified to the unit Officer concerned by other unit/offices. This will not, however, absolve officers under whom the Railway servant was last working from continuing their efforts to find suitable employment for the disabled/medically decategorised employee. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows : -

- (i) Serial number.
- (ii) Date on which incapacitated.
- (iii) Name and Father's name.
- (iv) Post last held on regular basis with scale of Pay and rate of pay.
- (v) Educational qualifications — If no educational qualifications, then general remarks regarding knowledge of English, regional language etc.
- (vi) Medical category in which placed.
- (vii) Details of special supernumerary post till absorption in alternative appointment (Para 1303).
- (viii) Date from which absorbed in alternative appointment.
- (ix) Nature and category of alternative appointment.
- (x) Scale of Pay of the alternative post and the pay fixed at.
- (xi) Details of supernumerary posts, if any after absorption in Alternative appointment (Para 1305)
- (xii) Remarks.

(7) If and when a Railway servant is absorbed in a alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On

receipt of such intimation, his name will be deleted from the registers.

(8) Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no disabled medically incapacitated Railway servant who is suitable for the post is available. If any such disabled/medically incapacitated employee is available, he will be given preference over all other categories of staff for appointment."

5. Ld. counsel would draw our attention to amended Rule 304 of IRÉC Volume-I amended in accordance with Section 47 of the Act that envisages the following:-

"304(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

(2) A Railway servant failing in clause (1) above ceases to perform the duties of the post he is holding from the date he is declared medically unfit for the present post. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately."

Citing the aforesaid provisions Ld. counsel would argue that such shifting to an alternative post ought to have been either to a special supernumerary post on a par with his erstwhile position as he was enjoying on regular basis before being declared medically unfit, pending location of suitable alternative employment for him, or to some other "post" of the same pay scale and service benefits as his erstwhile post. The respondents having resorted to demoting a Head Constable to Chowkidar although protecting his pay and scale, has acted contrary to the provisions of the Act, therefore, the office order dated 16.11.2015 qua the

applicant ought to be quashed for the ends of justice and respondents ought to be directed to implement the provisions of Section 47 of the PWD Act and RBE 89/1999.

6. Ld. counsel for the respondents Ms. C. Mukherjee while vehemently opposing the claim would submit that the applicant was adjusted against such alternative post in accordance with his qualification and visual acuity which in our considered opinion was not permissible. The provisions of the PWD Act is unequivocal and univocal that when posting to an alternative post, such alternative post should carry the same pay scale as the applicant was drawing prior to his medical decategorisation. The provisions of RBE 89/1999 is also explicit, clear and unambiguous. A post of Chowkidar carries much lesser pay than that of Head Constable.

7. At this juncture, Ld. counsel for the applicant would refer to a decision of this Tribunal in O.A.No.37/2016 wherein, having noticed that a Constable was adjusted against a post of Chowkidar, which was undoubtedly a lower post, this Tribunal had disposed it of with a direction upon the respondents to immediately find out a suitable alternative adjustment for the applicant in scrupulous observation of Rule 1301 to 1307 as contained in RBE 89/1999 within one month and till such time not to compel the applicant to join the post of transfer.

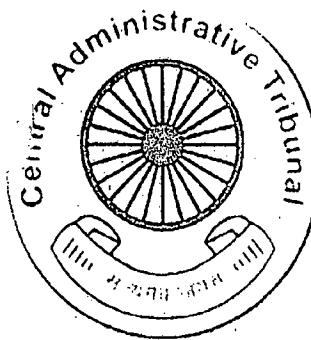
8. Ld. counsel for the applicant would further refer to the decision of the Hon'ble High Court in WPCT No.105 of 2016 where order passed in O.A.No.37/2016(supra) was affirmed.

9. Ld. counsels were heard and materials on record were perused.

10. In as much inarguably and indubitably the applicant would deserve adjustment against a supernumerary post pending location of a suitable alternative "post" with the same pay scale and service benefits in which the applicant was working on regular basis before being declared medically unfit, without reduction in rank, we dispose of the present O.A. with a direction upon the respondents to make efforts to locate a suitable alternative post for the applicant in accordance with RBE 89/1999 and pending such location to adjust the applicant against appropriate supernumerary post in accordance with RBE 89/99, <sup>the said</sup> extracted supra.

11. Appropriate orders be issued within eight weeks from the date of receipt of a copy of this order. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member



(Bidisha Banerjee)  
Judicial Member

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