

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00459/2016

Date of order : 7.4.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BIBEKANANDA BANERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.C.Sinha, counsel

For the respondents : Mr.S.K.Das, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard the ld. Counsels for the parties.
3. The applicant, a medically declassified running post holder (Driver) is aggrieved as upon his medical de-categorisation he has been absorbed as Commercial Clerk instead of being drafted to perform the normal duty of Power/Crew Controller (PCNI/CCNL) that he was entitled to by virtue of RBE 9/98, particularly para 2(g) thereof, which reads as under :

"Medically declassified drivers will be eligible to be drafted to perform the duties of Power/Crew Controllers. In their case, the tenure rule of three years under Para (f) above will not be applicable. However, if their performance is not found satisfactory, in addition to action under D&AR, as they cannot go back to Running duties, they will be considered for alternative jobs following the rules applicable to medically de-classified employees."

4. As a Crew Controller he was also entitled to reckoning element of Running Allowance to be added to him in terms of Rule 1307 and Rule 1308 of IREM Vol. I which stipulates the following :

1307. Element of Running Allowance to be reckoned while finding alternative post to disabled medically declassified running staff :- In order to determine the same scale of pay for the purpose of absorbing a disabled/ medically declassified running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of Pay of the running staff. If the scale of Pay so

arrived at is not identical with the scale of Pay already existing, the same may be replaced by the equivalent existing scale of pay.

1308. Fixation of Pay : The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically de-categorisation. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay.

But because of his posting as Commercial Clerk he was deprived of the benefits supra.

5. Facts would suggest that the applicant as a decategorised Driver was granted the benefits of the allowance in lieu of kilometerage (ALK in short) until a circular dt. 141.04 was issued to make it clear that medically decategorised Drivers allowed to perform duties of Crew Controller were ineligible to the grant of any benefit specifically admissible to the running staff on the premise that such decategorised Drivers ceased to be running staff. Accordingly, it was clarified that the benefit of allowance in lieu of kilometerage (ALK) was not admissible to medically decategorised Drivers working as Crew Controllers. Following the aforesaid clarificatory Circular No. 12/2004 dated 14.1.2004, the applicant who was drawing ALK was denied further benefit of the same which led to the institution of one OA before this Tribunal. This Tribunal, as it appears from its order dated 10.2.2011, took the view that following his medical de-categorisation the respondent ceased to be a running staff and as he had been performing stationary duties he was not entitled to any Running Allowance. The Hon'ble High Court, on being approached by the applicant, however, took the view that even after his medical de-categorisation the respondent continued to remain in the cadre of Driver (the said cadre included the post of Crew Controller). Hence he was entitled to ALK.

6. When the order of the Hon'ble High Court was assailed before the Hon'ble Apex Court in **UOI -vs- B.Banerjee Civil Appeal No. 7298 of 2013**, the order was set aside and consequently excess amount paid towards ALK was recovered but the applicant was not posted back as CCNL/PCNL. Being

aggrieved applicant submitted representations seeking his correct posting which yielded no fruitful result.

7. Thus the OA has been filed seeking the following reliefs :

- a) To set aside the quash the impugned letter No. EQ/Alt.App/AE-20/11 dated 6.8.2012 issued by DPO (IC)/E.Rly./SDAH as regard applicant is concerned;
- b) To set aside and quash the impugned office order No. E.3/Comml/.De-Cat/2012.Pt-1 dated 30.8.12 issued by DPO for Sr. DPO/E.Rly./SDAH.
- c) To set aside and quash the impugned office order No. E.3/Comml/.De-Cat/2012.Pt-1 dated 4.2.2013 issued by DPO for Sr. DPO/E.Rly./SDAH.
- d) To direct the respondents to grant absorption/posting to the applicant as Power Controller/Crew Controller forthwith.

8. The Hon'ble Apex Court supra noted the following :

"The basic facts that would require notice were not in dispute. The applicant while serving as a Diesel Driver (Goods) Grade II was found unfit to work as a Driver in a special medical examination that was held on 5.1.2005. He was, however, allowed to work as a Crew Controller. Both categories of employees i.e. regular Drivers and medically de-categorised Drivers in the post of Crew Controller were being paid ALK."

9. In as much as the Hon'ble Apex Court (supra) noted as such and decided the matter treating the applicant as a decategorised running staff adjusted against a post of "Crew Controller", his utilisation against the post of a Commercial Clerk was highly illegal. Such a declaration while the applicant was not so posted, could not be countenanced. Similar recordings were noted in the orders passed by this Tribunal as well as Hon'ble High Court, suggestive of the fact that consistently false declarations were made on oath by the respondents, before this Tribunal, before the Hon'ble High Court as also before the Hon'ble Apex Court, that the applicant was posted as a Crew Controller, which false declaration on oath were fit enough to invite action under Contempt of Courts Act and proceeding for imprisonment.

10. Therefore in my considered opinion the authorities should rectify their error and get themselves purged of immediately by ordering posting in terms of

their declaration before the Courts w.e.f. the date he was shown adjusted as such

11. Posting orders be issued within one month and be reported to this Tribunal by way of a compliance report, to avoid any legal complications, so that this Tribunal is not compelled to initiate suo motu proceedings.

12. Accordingly the OA would stand disposed of. No order is passed as to costs.

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(BIDISHA BANERJEE)
MEMBER (J)

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