

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application Nos.180/00081/2018
& 180/968/2018**

Wednesday, this the 12th day of June, 2019

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

O.A 180/81/2018

P.K.Ajithprasad, Aged 52 years
S/o.Narayanan,
Employed as Station Superintendent,
Mahe Railway Station.
Residing at Anugrah, Pookodu P.O.,
Pattiam, Thalassery, Kannur – 670 691.

..... **Applicant**

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India represented by the General Manager
Southern Railway, Park Town, Chennai – 600 003
2. Chief Medical Director, Headquarters Hospital
Southern Railway, Perambur
Chennai – 600 023
3. Chief Medical Superintendent, Railway Hospital
Southern Railway, Palghat – 678 002
4. Senior Divisional Operations Manager
Southern Railway, Palghat Division
Palghat – 678 002
5. Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat – 678 002

..... **Respondents**

(By Advocate – Mr.Asif K.H)

O.A 180/00968/2018

P.K.Ajithprasad, Aged 52 years
S/o.Narayanan,
Employed as Station Superintendent,
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Palghat – 678 002
6. Station Manager
Southern Railway
Mahe, Kozhikode – 673 309

..... **Respondents**

(By Advocate – Mr.Asif K.H)

These Original Applications having been heard on 4.6.2019, the Tribunal on 12.6.2019 delivered the following:

O R D E R

Per: Mr.Ashish Kalia, Judicial Member

Original Application Nos.180/00081/18 and 180/00968/18 are filed by Mr.P.K.Ajith Prasad, Station Superintendent, Mahe Railway Station. The reliefs sought in the Original Applications are as follows:

“O.A 81/2018:

(I) Declare that the applicant is entitled to be treated as a “Person with Bench mark disability) and placed on a Supernumerary post with all attendant benefits with effect from 11.9.2017 or 10.10.2017 or 8.11.2017 as deemed fit by this Hon'ble Tribunal and; direct the respondents accordingly.

(II) Quash Annexure A6, A8 and A9

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- (III) Direct the respondents to consider the applicant for alternative appointment as Office Superintendent against one of the ten posts notified under Annexure A11
- (IV) Away costs of and incidental to this application.

(V) Pass such other orders or directions as deemed fit.

O.A 968/2018:

- (i) To quash Annexure A-19
- (ii) To declare that the applicant certified as disabled by the competent authority under the Act is entitled to protection of pay and other emoluments in terms of Section 47 of the persons with Disabilities Act 1995 and Section 20(4) of the Rights of Persons with Disabilities Act 2016.
- (iii) To direct the respondents to permit the applicant to join duty at Mahe and to continue to be employed by providing suitable alternative job as per Disability Rules and Screening Committee decision in light of Annexure A15 issued in pursuant to the medical de-categorization.
- (iv) Direct the respondents to pay regular monthly salary to the applicant along with arrears of pay with effect from 7th November 2017.
- (v) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (vi) Grant the cost of this Original Application.”

2. The applicant commenced his service as Assistant Station Master.

While working as such, during the year 1993, applicant had suffered a serious road accident, wherein 12 other railway employees were also seriously injured, taking away the life of the one Station Master. This accident had caused serious spine injuries which were later developed and diagnosed as 'Sciatica' by Railway doctors. The compression of spine at L4-L5 made him handicapped to perform normal human functions, so the medical board of the District Hospital had assessed him as having 40%

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disability. Applicant has undergone several treatments including physiotherapy as well as Ayurveda. Earlier applicant had approached this Tribunal by filing O.A 822/2011 challenging the action initiated against him by the respondents alleging that he had failed to appear before the Railway Doctor as per the schedule. The O.A was allowed by this Tribunal by Order dated 22.7.2013. It is submitted that as per the procedure being followed by the respondents, they would have medically de-categorized the applicant and posted him in a suitable sedentary job.

3. It is further submitted that the applicant had undergone various medical examinations at Perambur and returned to DMO with instructions to undergo physiotherapy and to report back after a period of 10 days. In terms of the instructions, applicant underwent physiotherapy treatment at Government Hospital, Mahe from 19.9.2017 to 29.09.2017 and reported back at Perambur on 3.10.2017 and finally they recommended light duty assignment. The 4th respondent vide his letter dated 16.10.2017 informed the 3rd respondent that it is not possible to accommodate the applicant in a light job.

4. As the continued treatment took away all the leave due to his credit, applicant had requested as early on 16.10.2017 to debit the sick period against the 'leave not due' or 'extra ordinary leave'. Same was rejected by the 3rd respondent. Under the circumstances, the applicant had approached the Medical Authorities in Kannur District, as prescribed in the Disability Act 2016, for necessary examinations as prescribed in the rules. Lastly, it is

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submitted that the applicant had obtained Disability Certificate in terms of the Disabilities Act, 2016 on 08.11.2017. As per the provisions, a disable person is entitled for 24 months' special disability leave. As per Section 47 of the Disability Act, 1995, in case a serving employee acquires disability while in service, he would be protected with benefits without revision of pay. A notice was issued by the respondents advising the applicant to apply for 'leave not due' (half pay) or 'extra ordinary leave' (without pay). The 5th respondent issued another letter pointing out that he avoided posting to a lighter section and that he was not medically de-categorized by Railway Medical Authorities. However, respondents in compliance with the interim order passed by this Tribunal in O.A 81/2018, disbursed the salary. The applicant is aggrieved by the discriminatory attitude shown to him by respondent nos.4 and 5 by denying light duty as recommended by the medical team. Hence he approached this Tribunal.

5. Notices were issued and Mr. Asif.K.H appeared on behalf of the respondents. A reply statement has been filed. It is submitted therein that earlier the applicant had filed O.A No.81/2018 seeking to declare that he is entitled to be treated as a 'Person with Bench mark disability and placed on a supernumerary post with all attendant benefits with effect from 11.9.2017 or 10.10.2017 or 8.11.2017 and quash Annexures A6, A8 and A9 orders therein and direct the respondents to consider the applicant for alternative appointment as Office Superintendent and other consequential benefits. It is further submitted that the applicant should have waited for the Medical Board, which will be constituted in normal case had the Medical Doctor of

Railway Hospital find it is necessary to refer the case for evaluation by a Medical Board as stipulated in the IRMM, Rule 561. Instead, the applicant subjected himself before another Medical Board and the applicant had chosen not to present himself before the Railway Medical authorities. It is further submitted that the applicant, who is well aware of his financial position and leave credit to his account, had declined to accept the option of availing Leave Not Due when such an offer was extended to him vide Annexure A-7 and had painted a picture of sympathy. The applicant had not adhered the Medical Attendance Rules making him marked as absent for the period from 2.10.2017 to 20.11.2017. The allegation that the respondents is having a vindictive attitude towards him is baseless. Para (4) of Rule 561 of Indian Railway Medical Manual stipulates that “if the competent authority indicates its inability to provide temporary light duty or change of occupation, the employee should be kept on sick list till he is fit for duty or is de-categorized. The period of waiting shall not exceed six months.” Therefore, it is clear that the maximum period an employee would wait for an evaluation by Medical Board will be normally six months. It is submitted that the respondents could not have acted based on a private medical certificate as it is against the statutory provisions and respondents cannot shift the applicant to a sedentary job based on a private medical certificate and can act only on advice from the Medical Department of the Railways. Ultimately, the applicant was recommended for light duty which was extended for a further period. Hence, they prayed for dismissal of the Original Application.

6. Heard Mr.V.Sajith Kumar, learned counsel for the applicant and Mr.Asif.K.H, learned counsel for the respondents and perused the records.

7. The applicant herein has approached this Tribunal for redressal of his grievances that to get the benefit under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Section 47 of the same reads as follows:

“47. Non-discrimination in Government employments.—

(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 benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a 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.”

8. No doubt, the applicant had suffered a road accident along with 12 other officials while serving with the respondents . Ultimately, the applicant was declared as having 40% disability and thus entitled for benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. We are not convinced with regard to the way Railway authorities have treated their employees who met with an accident during the course of duty and rather they are stick to the technicalities alone. The certificate issued by the District Hospital is not disputed by the

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respondents nor they have constituted their own Medical Board. Rather allegation has been made against the applicant when he met the non-railway hospital for getting requisite certificate. The fact remains that the applicant's disability is adjudicated by the competent authority as medically disabled by 40%. Thus, this Tribunal is of the view that the applicant is entitled for benefits under Section 47 of the Persons with Disabilities Act and under the relevant rules of the Railways. The applicant should be given the benefit of disabled leave and he should be given light duties. During the course of the argument it is informed by the learned counsel that the applicant has been now engaged with administrative duties. To some extent, relief is granted to the applicant by the department itself. Thus, other relief such as leave due under the Disabilities Act shall be given to the applicant by taking requisite forms. The applicant will co-operate in this regard. As regards salary, the same is to be paid to the applicant which is still due. Same shall be considered by the respondents in accordance with the Disabilities Act. This shall be complied with by the respondents within three months from the date of receipt of a copy of this order.

9. These Original Applications are allowed as above. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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**(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

List of Annexures

O.A No.968 of 2018

Annexure A1 - A true copy of the Medical Certificate of disability dated 21.11.2017 issued by the Government General Hospital, Thalassery.

Annexure A2 - A true copy of the certificate dated 20.10.2016 issued by Dr.Rajeev, Consultant Orthopedic of Government District Hospital ,Thalassery

Annexure A3 - A true copy of letter No.J/T 20/SM dated 16.10.2017 issued by the 4th respondent

Annexure A4 - A true copy of the prescription Memo No.1770/17/CAN by the Medical Department of Southern Railway

Annexure A5 - A true copy of the letter No.J/T.20/SM dated 15.12.2017 issued by the 4th respondent to 3rd respondent

Annexure A6 - A true copy of the representation dated 13.12.2017 submitted by the applicant

Annexure A7 - A true copy of the letter No.J/P.721/S&WI/EDVR dated 12.12.2017 issued by the 5th respondent

Annexure A8 - A true copy of the Letter No.J/P.535 & VIII/SS/TI/Vol.II dated 20/22.12.17 issued by the 5th respondent

Annexure A9 - A true copy of the Railway Board Order No.E(P&A) 1-2017/CPC/LE-5 dated 30.08.2017 issued by the Railway Board

Annexure A10 - A true copy of Interim Order dated 19.02.2018 in O.A 81/2018

Annexure A11 - A true copy of the certificate date 17/07/2018 issued by the Medical Division Office Palakkad

Annexure A12 - The true copy of the Letter dated 19.7.2018 issued by the Station Master

Annexure A13 - A true copy of the letter dated 20.07.2018 issued by the 4th respondent

Annexure A14 - A true copy of the letter dated 20.07.2018

submitted by Applicant to the 4th respondent

Annexure A15 - A true copy of the Letter No.J/P509/VIII/UT 911 dated 28.8.2018 issued by the Senior DPO/PGT

Annexure A16 - A true copy of the representations dated 13.8.2018 submitted by the applicant to the 4th respondent

Annexure A17 - A true copy of the representations dated 3.9.2018 submitted by the applicant to the 4th respondent

Annexure A18 - A true copy of the representation dated 21.9.2018 submitted by the applicant

Annexure A19 - A true copy of the charge sheet dated 8.10.2018 issued by the 4th respondent

Annexure A20 - A true copy of objection dated 11.11.2018 submitted by the applicant

Annexure R1 - True copy of the salary bill for the month of December 2018

Annexure R2 - True copy of legal notice dated 8.9.2018

Annexure R3 - True copy of Office Order No.T2/02/2019 dated 16.1.2019

Annexure R4 - True copy of Station Manager/Southern Railway/Shoranur, letter dated 21.1.2019.

O.A 81/2018:

Annexure A1 - True copy of the Certificate of Disability No.9367/2017 dated 8.11.2017 issued by the District Disability Assessment Board, Government General Hospital, Thalassery, Kannur District

Annexure A2 - True copy of the certificate dated 20.10.2016 issued by the Consultant Orthopedics, General Hospital, Thalassery

Annexure A3 - True copy of the representation dated 12.9.2017 submitted by the applicant

Annexure A4 - True copy of the letter No.J/T.20/sm dated 16.10.2017 issued by the 4th respondent

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Annexure A10 - True copy of the Railway Board order RBE No.107/2017 dated 30.8.2017

Annexure A11 - True copy of the notification No.J/P.135/Re-engagement dated 21.11.2017

Annexure A12(a) - True extract copy of the Sections 2(e), 2(r), 20, 89 and 102 of Rights of Persons with Disabilities Act 2016

Annexure A12(b) - True extracts of Rules 17 to 20 of Rights of Persons with Disabilities Rules

Annexure R1 - True copy of the salary till for the month of February 2018

Annexure R2 - True copy of the letter no.J/MD.105/Court, dated 1.3.2018

Annexure A 13 - True copy of the Unique disability ID number KL 0210619650002386 dated 21.2.2018 issued to the applicant.

Annexure R-13 - A true copy of the Memorandum dated 28.8.2018

Annexure R-14 - A true copy of the letter dated 6.9.2018

Annexure R-15 - Copy of the letter dated 11.9.2018

Annexure R-16 - A true copy of letter dated 10.8.2018

Annexure R-17 - A true copy of legal notice dated 8.9.2018 addressed to the Station Superintendent, Mahe

Annexure R-18 - A true copy of the legal notice dated 25.9.2018, addressed to the Divisional Personnel Officer

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Annexure R-3 - True copy of letter No.J/MD.84/Dec, dated 14.3.2018

Annexure R-4 - True copy of the letter dated 23.3.2018 given by the applicant

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