

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 854 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

T.Rama Prasad Verma, aged about 42 years, S/o S.Siva Prasad Verma, resident of At/PO-Titilagarh, Dist-bolangir, at present working as Crew Controller, Office of Loco Booking Office, East Coast Railway, Titilagarh, Dist-Bolangir.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Divisional Railway Manager, East Coast Railway, Sambalpur Division, At/PO-Modipada, Dist.-Sambalpur.
3. Sr.Divisional Mechanical Engineer, East Coast Railway, Sambalpur Division, At/PO-Modipada, Dist.-Sambalpur.
4. Divisional Railway manager (Personnel), East Coast Railway, Sambalpur Division, At/PO-Modipada, Dist.-Sambalpur.

.....Respondents.

For the applicant : Mr.S.Das, counsel

For the respondents: Mr.S.P.Mohanty, counsel

Heard & reserved on : 11.9.2019

Order on : 17.9.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant seeks the following reliefs in this OA:-

- “(i) Admit the Original Application.
- (ii) Call for the records.
- (iii) Quash the impugned office order dt. 27.8.2015 under Annexure-9 and in consequence whereof quash the orders dtd. 11.9.2009 and 18.9.2009 under Annexures-1 and 2 respectively declare the same as illegal, arbitrary and not sustainable in the eye of law;
- (iv) And further be pleased to declare the impugned order dt. 27.8.2015, 11.9.2009 and 18.9.2009 under Annexures-9, 1 and 2 respectively are contrary to the provision provided under Section 47 of Act-1 of 1996 and the amendment brought to the IREM Vol-I vide RBE No. 89/99.
- (v) Direct the Railway Authorities to post the applicant in a suitable alternative post except the post of Power Controller/Crew Controller carrying similar scale of pay and service benefit in terms of the amendment brought to the IREM Vol-I vide RBE No. 89/99 and in terms of Section-47 of Act-I of 1996.
- (vi) And also pass any other appropriate order(s)/direction(s) as this Hon'ble Tribunal may deems fit and proper keeping in view the fact and circumstances of the case.”

2. The applicant was initially appointed as Asst. Loco Pilot on 27.3.1998 and was medically de-categorized on 11.9.2009 from A-1 to C-1 category. Then he was posted as Crew Controller, Sambalpur division. On 24.4.2013, he applied for transfer to Waltair division, which was rejected vide order dated 3.5.2013 (Annexure-4). He was again asked for option on 3.7.2014 for transfer. The applicant submitted a representation dated 25.5.2015 (Annexure-7) for alternative appointment. This representation was rejected vide order dated 27.8.2015 (Annexure-9), which is challenged in this OA.

3. The grounds in the OA are that the post of the Crew Controller is an ex-cadre post and his posting after medical de-categorization violated the circular dated 29.4.1999 of the Railway Board (Annexure-8 of the OA). It is further stated that the cadre of the Crew Controller has been abolished in 1998 and the posts have been included in the cadre of Loco Pilots, for which the applicant was found to be medically unfit. It is stated that as per the rule 1301 of the circular dated 29.4.1999, the applicant was entitled for posting in a similar post with similar service benefit as his earlier cadre. Hence, the case of the applicant should have been reconsidered as per the circular dated 29.4.1999 instead of rejecting it vide the impugned order dated 27.8.2015 (Annexure-9).

4. The Counter filed by the respondents did not dispute the facts and opposed the grounds advanced in the OA. It is stated that he was posted as Crew Controller as alternate posting. His representation for transfer to Waltair division was not approved as the post of Crew Controller was not a recruitment grade post. It is stated that the said post has been added to the cadre of Drivers and in this post, inter-divisional transfer is not allowed. It is stated that if the applicant gives option for the post of Jr. Clerk, his case may be considered for inter divisional transfer.

5. The Rejoinder filed by the applicant did not raise any fresh grounds. It is stated that the circulars No. 227/2000 and 143/2002 will not be applicable as the applicant has not declined his alternate posting and in compliance of the order he had joined as Crew Controller. But he found that in such post, the applicant is losing many benefits that he would have been entitled if he would have been posted in accordance with the circular dated 29.4.1999. Hence, he had submitted a representation for consideration, but the same was wrongly rejected.

6. The matter was heard. The applicant's counsel reiterated the stand taken in the pleadings of the applicant and he also filed the written note of submission and copy of the following judgments in support of the applicant's case:-

1. Kailash Chandra Mahanta -vs- Union of India & Others [OA 27/2014, CAT,Cuttack Bench]

2. Bibhuti Bhusan Padhiary –vs- Union of India & Others [OA 434/2008, CAT, Cuttack Bench]
3. Union of India & Others –vs- Suresh Chandra Swain [WP(C) No. 2826/2010 of High Court of Orissa]

7. Learned counsel for the respondents was also heard. He reiterated the averments in the Counter. He submitted that the applicant's case has been duly considered and his request for inter-divisional transfer could not be accepted for the reason mentioned in the order of rejection.

8. Learned counsel for the applicant has filed a copy of the order dated 1.5.2009 of the Tribunal passed in OA No. 434/2008, in which under similar circumstances, it was held by the Tribunal that the post of Crew Controller was not a suitable post for the medically de-categorized Loco Pilot and the OA was allowed by quashing the order by which the case was rejected and by directing the respondents to post the applicant in an alternate post other than the post of Crew Controller. The order dated 1.5.2009 was challenged before Hon'ble High Court in the W.P. (C) No. 2826/2010, which was dismissed vide order dated 28.9.2011 of Hon'ble High Court. Another similar case of the medically de-categorized Loco Pilot, this Tribunal vide order dated 26.7.2019 in OA No. 27/2014, the OA was allowed in part with direction to the respondents to re-consider the matter in the light of the decision of the Tribunal in OA No. 434/2008.

9. On perusal of the cases cited by the learned counsel for the applicant, we are of the view that the case of the present applicant is similar to the case of the applicant in OA No. 434/2008 and OA No. 27/2014 and the judgments cited by the applicant's counsel, will fully cover the case of the present applicant.

10. In view of the above, the applicant's case for an alternative posting other than the post of Crew Controller deserves to be considered by the respondents. Hence, the impugned order dated 27.8.2015 (Annexure-9) is set aside and the respondents are directed to re-consider the alternative posting of the applicant to any post other than the post of Crew Controller in accordance with the RBE No.89/1999 dated 29.4.1999 (Annexure-8), keeping in mind the order dated 1.5.2009 of this Tribunal in OA No. 434/2008, within four months from the date of receipt of a copy of this order.

11. The OA is allowed in part as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)