

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00257/2016 and
Misc. Application No. 040/00045/2017

Date of Order: This, the 15th day of October 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Sri Tarak Sarkar
son of Late Amulya Sarkar
B. B. C. Colony, Pandu, Guwahati – 12
Dist. Kamrup (Metro), Assam.

...Applicant

By Advocates: Sri N.N. Karmakar & Sri B.B. Rabha

-VERSUS-

1. Deleted
2. The General Manager
N. F. Railway, Maligaon, Guwhati- 11
Dist. Kamrup (M), Assam.
3. The General Manager (P)
N.F. Railway, Maligoan, Guwahati – 11
Dist. Kamrup (M) Assam.
4. The Chief personnel Officer, N.F. Railway
Maligon, Guwahati – 11, Dist. Kamrup (M), Assam.
5. The Senior Personnel Officer
Engineering, N.F. Railway
Maligon, Guwahati – 11, Dist. Kamrup (M), Assam.
6. The Divisional Railway Manager (P)
N.F. Railway, Rangiya, P.O. Rangiya Pin – 781354.

... Respondents

By Advocates: Sri H.K. Das, Railway Advocate

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

This O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- 8.(a) set aside the impugned Office Order No. 50/2015 dated 29.06.2015 (Annexure-A13) passed by the SPO/Engg./MLG (respondent No. 5) and the impugned Order dated 25.06.2016 (Annexure-22) passed by General Manager, N.F. Railway, Maligon (respondent No. 2);
- (b) direct the respondents to adjust or absorb the applicant in any suitable alternative employment in B-2 medical category post within 6 months from the date of receipt of this order with the same pay scale and service benefits of the Senior Track Maintainer Grade III post in which he was working on regular basis before being declared medically unfit;
- (c) direct the respondents to keep the applicant on a special supernumerary post in the grade of Senior Track Maintainer Grade III in which the applicant was working on regular basis before being declared medically unfit with the same pay scale and service benefits until suitable alternative employment is located;
- (d) release the applicant's salary due to him for the period from 17.06.2014 to 05.08.2014 when he was kept out of a job; and
- (e) release the applicant's salary due to him for the period from January, 2016 to May, 2016 during which he was not allowed to discharge his duties without any order to that effect;

Explanation of the grounds for such reliefs and the legal provisions relied upon:

- (i) For reliefs sought in paras (a) and (b) above, Mali is C-1 medical category post which is not a suitable

alternative post of Senior Track maintainer Grade III post. The suitable alternative post of Sr. Track Maintainer Grade III is Station Ticket Inspector in B-2 medical category job. The applicant relies upon the following legal provisions:-

- (a) Medical Categories of Railway posts containing ANNEXURE IV of IRMM (VO.I) which is annexed herewith as ANNEXURE-A23.
- (b) Medical classification of different categories of Railway staff containing page of IRMM (Vo.I) which is annexed herewith as ANNEXURE –A24.
- (c) Rules 1308 to 1310 of IREM (Vol. I) annexed as ANNEXURE-A16 above of this application.
- (ii) For relief sought in para (c) above, the applicant relies upon the following legal provisions:-
 - (a) Rule 1303 of IREM (Vol. I) annexed as ANNEXURE-A15 above of this application.
- (iii) For relief sought in para (d) above, the applicant relies upon the following legal provisions:-

- (a) Salary Bill for April, 2014 (Annexure-A8) of this application which proves that the applicant is a regular Railway employees having service of Sr. Track Maintainer Grade III under SSE/P.Way/RNY.
- (b) Two pages of "Thoughts for better 'Dasha' And 'Disha' of Track Maintainer Cadre on Indian Railways containing Clause 3.3 and Avenue Chart (AVC) for Career progression (ANNEXURE A14) above.

- (IV) For the relief sought in para (e) above, the applicant relies upon the following legal provisions:-

- (a) Direction given by Order dated 04.04.2016 (Annexure-A19) passed by this Hon'ble Tribunal in O.A. No 040/00102/2016.
- (b) Letter dated 27.05.2016 of SSE/P.Way/RNY along with order dated 24.05.2016 and 18.05.2016 (ANNEXURE-A20) above.

2. Brief facts as narrated by the applicant in the O.A. are that the General Manager (P), N.F. Railway, Maligaon by an office order dated 18.03.1999, appointed the him as Emergency Peon in the scale of Rs. 2550-3200/- attached to Dy. Cos/I/MLG against an existing vacancy at the first instance for a period of 3 months on condition that such period would be extended further on receipt of a certificate from the controlling officer that the services of the applicant is satisfactory and he can be continued further. Accordingly, he continued his services as Emergency Peon. By an office order dated 14.10.1999, the General Manager (P), N.F. Railway, Maligaon terminated the services of the applicant. The Chief Personnel Officer, N.F. Railway, Maligaon, by office order dated 08.10.2002, appointed the applicant as a Trackman on pay Rs. 2610-3540/- per month plus usual allowances as admissible from time to time. Accordingly, by an office order dated 28.11.2002, he was posted as a Trackman under SSE/P.way/BG/RNY and accordingly, he joined the service of Trackman on 02.12.2012 at Rangiya. Being physically handicapped, the SSE/P.Way/BG/RNY engaged the applicant as Office Peon in the office of Mechanical Carriage Department, Rangiya for a period from 03.12.2002 to 31.07.2003 and then in the office of MTS Control Department for a period from 01.08.2003 to 31.10.2003 and then in the office of DRM/Rangia for a period from 01.11.2003 to 16.06.2014. He was

conferred seniority with GP of Rs. 1900/- with effect from April 2014 for which he was promoted from Track Maintainer Grade IV to Track Maintainer Grade III whereas he was not allowed to work for a period of 50 days from 17.06.2014 to 05.08.2014 treating him as Master Roll Worker and his pay of this period was stopped. His salary for the period from January 2016 to May 2016 was also stopped by the competent authority.

3. Grounds for reliefs as narrated by the applicant are as follows:

(A) Because the order dated 14.10.99 (Annexure-A2) terminating the applicant's previous service of Substitute Emergency Peon was passed violating the legal provisions laid down in Clauses 4.1, 4.2 and 5.1 of the Master Circular no. 20/91 dated 29.01.91. These provisions are extracted below:

- 4.1 Substitute engaged should be paid regular scale of pay and allowances admissible to the post against which they have been appointed irrespective of the nature or duration of the vacancy.
- 4.2 They should be allowed all the rights and privileges as are admissible to temporary Railway employees on completion of four months continuous service.
- 5.1 Substitute who have acquired temporary status should be screened by a Screening Committee and not by Selection Boards constituted for this purpose before being absorbed in regular Group 'C' (Class III) and Group 'D' (Class IV) posts.

Such a Screening Committee should consist of at least three members, one of whom should belong to the SC/ST communities and another to minority communities" "(Board's letter No.E(NG)II/83/RR-1/7 dated 1.6.83)."

- ii) Because the subsequent order 08.10.02 (Annexure-A5) by which the applicant is appointed Trackman means that the applicant is not reinstated in his former services of

Emergency Peon in compliance with the Award dated 13.03.2002 (Annexure-A3) passed by the Industrial Tribunal, Guwahati in Reference Case no. 4(c)/2001 but the said appointment order refers that it is made as per award dated 13.03.2002 (Annexure-A3) of the Industrial Tribunal, Guwahati.

- iii) Because the Appointment Order 08.10.2002 (Annexure-A5) by which the applicant is appointed Trackman with the connivance of the applicant's physical disability for the job. The applicant submitted his Physically Handicapped Certificate dated 23.09.2000 (Annexure – A4) issued by the Gauhati Medical College before the appointing authority along with his application for the post.
- (iv) Because the Appointment Order 08.10.02 (Annexure-A5) as Trackman implies that the applicant is fit for B-1 medical category job. Trackman is B-1 Medical Category Job but not A-3 Medical Category Job.
- v) Because the Appointment Order dated 08.10.2002 (Annexure-A5) is made ante the Medical Examination Report dated 16.10.2002 (Annexure-A6) by the Trackman is held in A-3 Medical Category Job. On the other hand, the Railway Medical Examiner has not considered the applicant's physically handicapped certificate (Annexure-A4).
- vi) Because the SSE/P.Way/RNY engaged the applicant first for a period from 02.12.2002 to 05.08.2014 to discharge the duties of Office Peon in C-2 medical category job and, then, to perform the duties of Office Chowkidar in C-2 medical category job from 06.08.2014 considering his Physically Handicapped Certificate dated 23.09.2000 (Annexure-A4).
- vii) Because the salary Bill for April/2014 (Annexure-A8) establishes a case that the first MACP is granted to the applicant affording him Grade Pay Rs. 1900 with effect from April/2014. For this, the applicant is now Sr. Track Maintainer Grade III Category but not Track Maintainer Grade IV.

Two pages of "Thoughts for better 'Dasha' And 'Disha' of Track Maintenance Cadre on Indian Railways containing Clause 3.3 and Avenue Chart (AVC) for Career progression are annexed herewith as ANNEXURE-A14.

- viii) Because the impugned order dated 16.6.14 of stopping the pay of the month of June/2014 of the applicant passed by ADEN/RNY on the body of Letter dated 13.06.2014 [Annexure-A9)1)] stopping the disbursement of

pay of June- July/2014 of the applicant has no force in law because he is not a Master Roll worker but he is a Railway servant having his regular services of Track Maintainer Grade III.

- ix) Because the impugned Office Order No. 50/2015 dated 29.06.2015 (Annexure-A13) by which the applicant is absorbed as Mail from Sr. Track Maintainer Grade III has been passed in contravention of (1) Physically Handicapped Certificate (Annexure-A4), (2) GM(P)'s Office Order dated 04.09.2014 (Annexure-A11) for change of category and (3) Certificate of recommendation for alternative employment dated 05.02.2015 (Annexure-A12) for change of category.
- x) Because the impugned office Order No. 50/2015 dated 29.06.2015 is violative of law laid down in para 1303 of the India Railway Establishment Manual (Vo.I) which direct to adjust against or absorbed in any suitable alternative post otherwise, he may be kept on a special supernumerary post in the Grade in which he was working on regular basis before being declare medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment stating immediately.
- xi) Because the impugned Office Order No. 50/2015 dated 29.06.2015 is violative of the provisions of law laid down in Paras 1309 and 1310 of the Indian Railway Establishment Manual (Vo.I).
- xii) Because the provisions of law laid down in Rule 1311(1) of the India Railway Establishment Manual (Vo.I) is not applicable to the applicant's case. The applicant's case does not fall in "Other types of cases" in which the incumbent is treated as the incumbent transferred on his own request. The Office Order dated 04.09.2014 (Annexure-A11) proves that the Appointing Authority [General Manager (P)] has got the applicant's case recommended for a change of category on medical ground. Law laid down in Rule 1311(1) of IREM(Vo.I) applies to a case in which the incumbent himself gets his case recommended for a change of category on medical ground. The impugned Office Order No. 50/2015 dated 29.06.2015 (Annexure-A13) is, therefore, perverse as it contains words "transferred and posted under Sr. DEN/C/Maligaon on his own request."

4. The respondent authorities have filed their written statement on 05.04.2017. Apart from narrating background of the

legal duel between the applicant and the respondents, they have pointed out at para 8 of their written statement that based on availability of posts and administrative requirement, the applicant was appointed as Trackman which falls in B1 medical category. The law is well settled by the Hon'ble Apex Court in absorption that an employee has no legally enforceable right to claim any particular post and respondents has the discretion of selecting the post.

5. In response to various paras in the written statement, they also pointed that some of the claims/statements of the applicant made in the O.A. are not factually correct and are not borne out by records. At para 29, they stated that prior to his medical de-categorization, the applicant was working as Track Maintainer Grade-IV in Grade Pay of Rs. 1800/- and has been ordered alternative absorption in the post of Mali in Grade Pay of Rs. 1800 i.e. in the same pay band and service benefits in which the applicant was working on regular basis before being declared medically unfit.

6. We have carefully gone through the submissions of both the parties and also given detail hearing to the arguments put forward by them. It is observed that in the medical re-categorization of the applicant vide order under No. H/174/T.S.[MB]/Engg./RNY/Loose/51, Annexure-A12, Page 48 to the O.A., the applicant was recommended for 'Alternative Employment' on Medical Ground in

‘B-2 & below medical category’. Accordingly, he has been given/absorbed the job of **‘Mali’** protracting his existing pay and Grade Pay and transferred and posted under Sr. DEN/C/Maligaon on his own request. This post of Mali, as per the list of category, falls under C1 which is below B2.

7. We have further carefully gone through the speaking order under No. E/283/38/IRMT(Engg) dated 30.06.2016 (Annexure – A22, page 80 to the O.A.). It is true that one does not have the right to demand of particular post or level of post. Appointment to a particular post/level of post is subject to medical fitness, technical and educational qualification. The applicant has been found to be unfit to continue as Trackman due to his medical condition. In reference to the letter No. H/SS/49 dated 28.01.2014, Medical Board by Divisional Medical Committee was held on 03.02.2015 at N.F. Railway Hospital, Rangiya and the Board had recommended offer of ‘Alternative Employment’ on Medical ground in B2 & below medical category.

8. We have also gone through the list of posts in the B2 wherefrom it appears that there are as many as 13 Groups and each Group having certain number of posts falling under each Group. It is indeed clear from the records that the applicant having found unfit to be a Trackman and would be medically fit for B2 or below. The

respondent authorities in the speaking order under No. E/283/38/IRMT(Engg) dated 30.06.2016 (Annexure – A22, page 80 to the O.A.) have not indicated that the applicant was educationally and technically unfit to be appointed under any of the posts under B2 category. It appears that they have not considered the applicant at all for appointing in any one of the post enumerated under B2 depending upon his educational qualification etc., his medical condition having been found to be fit in that category by the Medical board.

9. Considering the above picture as emerged in all fairness to him, the applicant has right to be considered in B2 first and if found not suitable for any one of the posts in the B2 category, the respondent authorities can consider and appoint him in any one of the posts below B2 category. With this observation, the speaking order under No. E/283/38/IRMT(Engg) dated 30.06.2016 (Annexure – A22, page 80 to the O.A.) is hereby quashed and set aside. The respondent authorities are hereby directed to examine and consider the applicant once again in any one of the posts in B2 category depending upon his qualifications etc. within a period of four months' from the date of receipt of this order.

10. As regards to the salary for the period of absence from 17.06.2014 to 05.08.2014 and from January 2016 to May 2016, the

issue shall be settled by the respondent authorities as per the leave rules, applicable to the applicant.

11. With the above observations and directions, O.A. stands disposed of.

12. Consequently, M.A. No. 040/00045/2017 also stands disposed of.

13. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)