

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/01518/2018
M.A. 350/00889/2018

Date of order: 1.7.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ms. Rumpa Mondal,
Daughter of Kamal Krishna Mondal,
Gorkhara Malir Bagan, Rajpur,
Sonarpur,
P.O. : Sonarpur,
Dist.: South 24 Parganas,
Pin - 700 150.

... Applicant

VERSUS -

1. Union of India,
Services through the General Manager,
17, Netaji Subhas Road,
Fairlie Place,
Eastern Railway,
Kolkata - 700 001.
2. The Divisional Railway Manager,
Divisional Railway Manager Building,
Kaiser Street,
Sealdah Division,
Eastern Railway,
Sealdah,
Kolkata - 700 014.
3. The Senior Divisional Engineer (Co-ordination),
Divisional Railway Manager Building,
Kaiser Street,
Sealdah Division,
Eastern Railway,
Kolkata - 700 014.
4. Principal Chief Personnel Officer,
17, Netaji Subhas Road,
Fairlie Place,
Eastern Railway,
Kolkata - 700 001.

.. Respondents

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For the Applicant : Ms. B. Ghosal, Counsel

For the Respondents : Mr. K. Sarkar, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) To direct the concerned respondents, more particularly the respondent No. 2 to decategorise and/or re-post the applicant at a station nearer to her home as per the notification issued by the Railway Board, time to time, forthwith, and consider the representation dated 2.12.2017.

(b) To direct the concerned respondents to transmit and authenticate and produce all the records in connection with the aforesaid matter before this Honble Tribunal, so that conscionable justice may be done to the applicant upon hearing the parties.

(c) And to pass such other or further order or orders and/or direction or directions as to this Honble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings, documents on record.

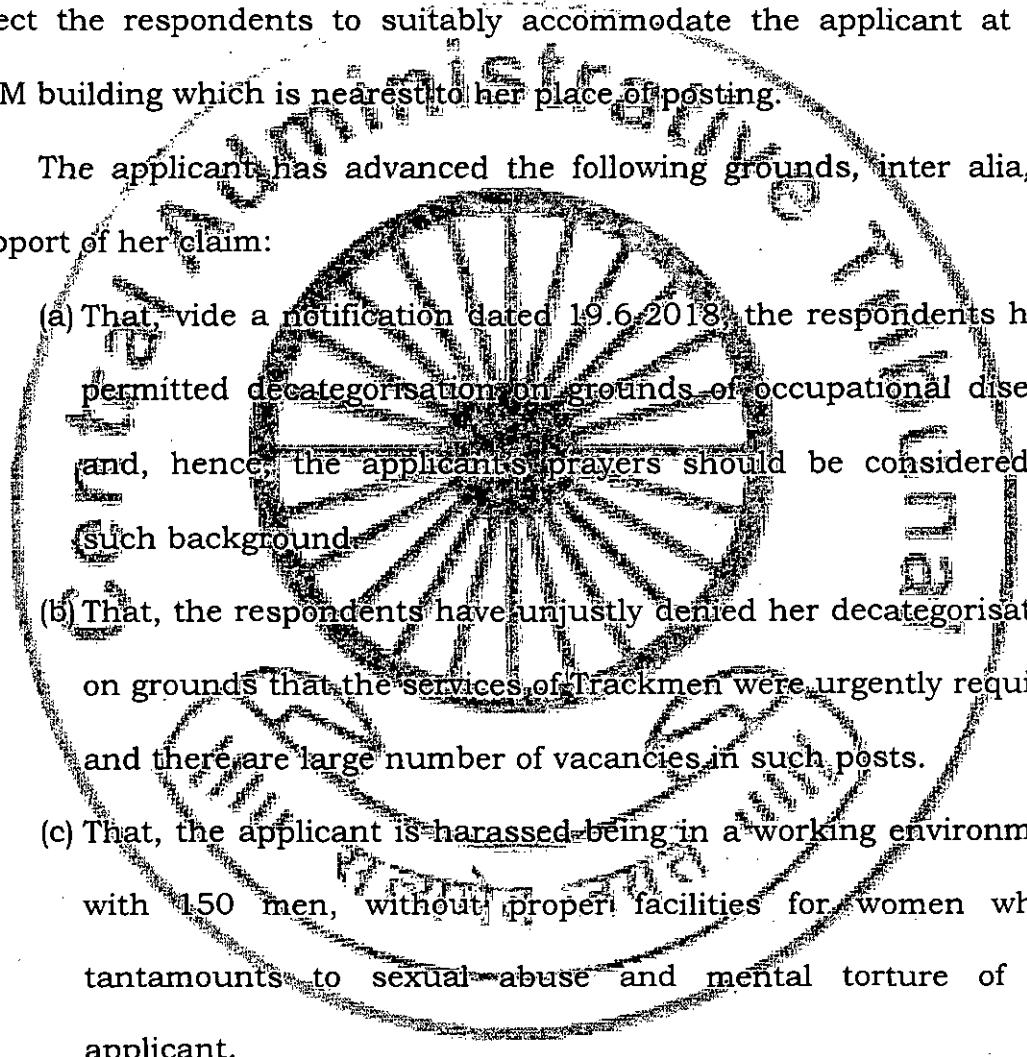
3. The case of the applicant, as articulated through her Ld. Counsel, is that, the applicant was appointed on temporary basis vide orders dated 1.1.2013 and posted as a Trackman w.e.f. 8.2.2013 vide orders dated 22.3.2013. She has been working in the said post till date.

That, the applicant had been made to work on various official jobs for about five years. Vide a circular dated 15.2017, however, the applicant was mandated to perform duties on maintenance of Tracks. Being the only lady Track Maintainer Gr. III working along with 200 male track maintainers, the applicant was in a constrained situation as she was posted in a particular station where there were no adequate facilities for women employees. Further, the applicant developed a serious allergy on account of dust pollution compounded with urinary track infection on

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account of her inability to use facilities through the working hours and, that, although the applicant had been representing to the respondents for a change of category of her post, the respondents, not having decided in her favour, and, being aggrieved, the applicant has approached the Tribunal for the above mentioned relief. It was also alleged during hearing that, the applicant, upon feeling harassed, had lodged a general diary in the concerned Police Station which prompted the Tribunal to direct the respondents to suitably accommodate the applicant at the DRM building which is nearest to her place of posting.

The applicant has advanced the following grounds, inter alia, in support of her claim:

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- (a) That, vide a notification dated 19.6.2018, the respondents have permitted decategorisation on grounds of occupational disease and, hence, the applicant's prayers should be considered in such background.
 - (b) That, the respondents have unjustly denied her decategorisation on grounds that the services of Trackmen were urgently required and there are large number of vacancies in such posts.
 - (c) That, the applicant is harassed being in a working environment with 150 men, without proper facilities for women which tantamounts to sexual abuse and mental torture of the applicant.

4. The respondents, per contra, in their written statement, and also during hearing, have opposed the claim of the applicant as follows:-

- (a) That, the applicant was appointed against LARSGESS in lieu of her father's job. That, he father was a Keyman in the Unit and she could only be appointed as a Keyman under the provisions of LARSGESS which rule that the beneficiary of the LARSGESS will be

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appointed to the post surrendered by the employee, who voluntarily retires in favour of his dependant beneficiary family member.

(b) The applicant refused to work as Keyman and, hence, was engaged as a Trackman on 22.3.2013.

(c) That, the applicant has been posted such a gang unit which is close to her residence.

(d) That, there is no dearth of urinals in the said Ballygunge Station along with available 'Pay & Use-Toilets'.

(e) That, other lady Trackmen also work at the Ballygunge Station and till now nobody has raised a complaint on dearth of basic facilities or sexual harassment.

(f) That, although directed by the Tribunal on 2.11.2018, there is no post of Trackman available in the DRM building to accommodate the applicant and hence an M.A. 889 of 2018 has been filed for recalling of interim order dated 2.11.2018.

(g) Regarding decategorisation, the Railway Board's guidelines dated 14.11.2013 (RBE No. 121/2013) rules that, to be eligible for decategorisation, the employee has to reach the age of 33 years and that the lower age limit has been specifically mentioned in RBE No. 86/2012 and also in para 179 of IREM Vol I 1989.

(h) That the entire section under SSE/P.W/BGA has been divided into 13 sub sections called gang unit headed by one mate, one keyman and 15 to 20 Trackmen and that there is another lady Trackman, who is posted in the same Gang Unit with the applicant. Further, 19 other ladies work under SSE/P/W/BGA, and nobody had ever raised the issue of sexual harassment, excepting the applicant.

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- (i) The applicant is also desirous of being posted near her home in which event she has to be relegated to the bottom seniority.

5. The issue that has to be decided upon in this instant O.A. is whether the applicant is entitled to de-categorisation on grounds of her occupational disease.

6.1. Annexure A-1 to the O.A. is her provisional appointment to the post of Keyman dated 1.1.2014. In page 2 of the same, the applicant has accepted the offer on terms and condition stated in the said appointment order. According to the respondents, despite such assurance, she refused to work as a Keyman, and, hence, was accommodated on 22.2.2013 to the post of Trackman. Thereafter, the applicant raised issues on occupational disease and submitted large number of representations as annexed at A-3 series to the O.A. Her main contention was that she was suffering from chronic allergy along with urinary track infection.

The Ld. Counsel for the applicant draws our attention to master circular No. 25 which relates to absorption of medically decategorised non-gazetted staff in alternative jobs. The same is extracted for adjudication of the present matter:-

MASTER CIRCULAR

Master Circular No. 25

Absorption of Medically De-categorised Non-gazetted Staff in Alternative Jobs.

Instructions on the subject of "Absorption of medically decategorised" non-Gazetted staff on the Indian Railways are contained in the Indian Railway Establishment Code, Indian Railway Establishment Manual and in the various circulars issued by the Railway Board from time to time. Issue of consolidated instructions has been engaging the attention of this Ministry for some time past. They have now decided to issue consolidated instructions on the subject of "Absorption of medically decategorised non- Gazetted staff in the form of a Master Circular as below for the information and guidance of all concerned.

2. The medical decategorisation benefits are applicable only to staff who are subjected to periodical medical examination and will not be extended in the case of staff belonging to categories not requiring periodical medical examination and are given change of category.

para 2 may be treated as deleted - No. ENG/I-93/RE-3/6, dated 18.06.1996 (RBE 48/1996)

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3. Causes of medical decategorisation:- Causes, which lead to medical decategorisation, may be divided into following groups: —

- i. Decategorisation arising out of natural causes such as ageing process, deterioration of visual acuity including colour perception in the ordinary course;
- ii. Decategorisation arising out of injuries received owing to negligence of an employee himself or decategorisation arising out of lack of personal hygiene, want of ordinary care in regard to health by the employee or arising out of his/ her various habits such as addiction to drinks, drugs, smoke etc., and arising out of failure to take ordinary and proper precautions in performance of duties by the employee;
- iii. Decategorisation arising out of accidents arising out of and in the course of employment;
- iv. Decategorisation arising out of contraction of an occupational disease, disease peculiar to the service in which duties are performed. This will comprise of cases of those persons who will be covered by the occupational disease specified in Paras - A, B or C of Schedule-III to the Workmen's Compensation Act, 1923. Cases in which Railway employees contract dermatitis in the course of their handling diesel and other mineral oil also would be treated as occupational disease for the purpose of these orders;
- v. Decategorisation arising out of accidental injuries received owing to willful act or negligence of a co-employee; and
- vi. Decategorisation directly arising out of breach of any provision of law or statutory rules by the Railway Administration.

[No.78/E/RLT/4 dated 22.06.1979, 78/E/RLT/4 dated 18.07.1980 and E[NG]I/86/RE 3/5 dated 20.11.1986 (RBE-224/86)]

4. Classification of medical decategorisation:

The Railway servant declared medically unfitted/decategorised can be classified in two categories: —

- a. Those completely incapacitated for further service in any post on the Railway i.e. those who cannot be declared fit even in the "C" medical category; and
- b. Those incapacitated for further service in the post they are holding but declared fit in lower medical category and eligible for retention in service in posts corresponding to the lower medical category."

We would particularly highlight the following paragraph as contained therein:-

"2. The medical decategorisation benefits are applicable only to staff who are subjected to periodical medical examination and will not be extended in the case of staff belonging to categories not requiring periodical medical examination and are given change of category."

Hence, according to the master circular, medical decategorisation benefits are applicable only to such staff, who are subjected to periodical

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medical examination and will not be extended in the case of staff belonging to categories not requiring periodical medical examination and are given change of category.

The circular further states as follows:-

"iv. Decategorisation arising out of contraction of an occupational disease, disease peculiar to the service in which duties are performed. This will comprise of cases of those persons who will be covered by the occupational disease specified in Paras - A, B or C of Schedule-III to the Workmen's Compensation Act, 1923. Cases in which Railway employees contract dermatitis in the course of their handling diesel and other mineral oil, also would be treated as occupational disease for the purpose of these orders;"

The above provision lays down that decategorisation arising out of occupational disease or disease peculiar to any duties performed will be covered by the occupational disease specified in Paras - A, B or C of Schedule-III to the Workmen's Compensation Act, 1923.

Hence, as urged by the Ld. Counsel for the applicant, to avail of the benefit of decategorisation on the grounds of occupational disease, the applicant will be required to periodically be subject to medical examination and her occupational disease will have to qualify as specified in Paras - A, B and C of Schedule-III to the Workmen's Compensation Act, 1923.

The respondents have strongly argued that to be qualified for change of category, the employee has to be of the age of 33 years and have furnished IREM Para 179 Vol. I Revised Edition as well as RBE No. 86/ 2012 and 121/2013 in support.

6. We have carefully considered the arguments of the applicant and the respondents. It is undisputed that an employee requires to be

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protected from occupational health hazards and hence deserves consideration under the Rules.

The applicant, is a LARSGESS appointee, a special dispensation in appointment. It is also a fact that as per Rules, to be eligible for medical decategorization, the minimum age is 33 years, as evidenced by provisions of RBE and IREM.

Having deliberated on the rival contentions, we direct the concerned respondent authorities as follows:

(a) Prima facie, we hold that any employee should be posted in a situation where the working environment upholds the dignity of the employee and also provides safety and security therein. Considering in particular, the sensitivity of women employees, the applicant be forthwith posted only in a gang unit where there are at least two other female members in the unit. Needless to say, with inclusion of female members in the gang unit, there should be adequate facilities for the lady employees.

(b) Once, the applicant reaches the qualifying age, she would be at liberty to represent for medical decategorisation and, if so represented, shall thereafter be subjected to periodical medical examination if so entitled, as per the rules and provisos contained in Master Circular No. 25. If the applicant strictly fulfils the provisions of such Master Circular, the respondent authorities will take steps to decategorise her as per law.

It is also stated herein that the applicant has to apprise herself with the contents of the Master Circular No. 25 and its implications and

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would be required to adhere to the terms and conditions contained in the said circular.

7. With these directions, the O.A. is disposed of.

M.A. No. 350/00889/2018 filed by the respondents for recalling the order dated 2.11.2018 passed in O.A. No. 1518 of 2018 stands disposed of accordingly.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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