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CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No.739 of 2012

Dated of order: 02.02.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

MUKUL CHAND  
V/S  
E.RAILWAY

For the Applicant: Ms.P.Chatterjee, Counsel

For the Respondents: Mr.B.L.Gangopadhyay, Counsel.

ORDER

JUSTICE VISHNU CHANDRA GUPTA, JM:

Heard the parties.

2. This OA has been filed by the applicants U/s. 19 of the  
A.T. Act, 1985 seeking the following reliefs:

"(a) A mandatory direction to re-fix the pension and other retiral dues by re-fixing the basic pay of the applicant having reckoned on the basis of basic pay Rs. 1090/- by adding one increment became due for the year 1996 in his substantive scale before Medical de categorization and without reduction to fix the basic pay in the de categorised scale in accordance with the law envisaged in Railway statutory Rule 304 of the Indian Railway Establishment Code Vol. I (1985/2003 edition) and to re-fix the pension according to the said



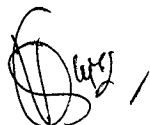
enhanced basic pay fixed in the substantive scale after de categorization and to pay the arrears of pension and the arrears of pension and the arrears of all other retiral benefits with 18% interest thereon from the date the retiral benefits became payable till the date of actual payment; and

(b) a mandatory direction to count the entire service of the applicant as qualifying for pension and to pay the arrears of pension and all other retiral benefits having treated the purported non qualifying and/or disqualifying the 3 years 7 months of service as qualifying for pension and for all other terminal benefits and pay the arrears with 18% interest therein for the date terminal benefits became payable till the date of actual payment;

(c) Any such further order or orders and/or direction or directions as to Your Lordships may deem fit and proper."

(Extracted as such)

3. The brief facts of this case are that the applicant was working as a gateman in the Eastern Railway. During his service tenure, he suffered an injury and became disabled and therefore, posted as Chowkidar. According to him his pay was reduced. It has been contended by the learned counsel for the applicant that in view Rule 304 of Chapter 3 of the Railway Establishment Code, the applicant ought not to have been reverted to a lower post on account of disability and he ought to have been given a suitable post without reducing his salary which he was getting. The



relevant portion of the aforesaid rule is re produced herein below for ready reference:

**"304. Termination of service on account of inefficiency due to failure to conform to the requisite standard of physical fitness.**(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

(2) A Railway servant falling in Clause (1) above ceases to perform the duties of the post he is holding from the date he is declared medically unfit for the present post. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit, pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately.

(Authority : Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 and Ministry of Railways letter No. E(NG)I/96/RE3/9 dt.29-4-99)

Note.- The term former emoluments in the case of running staff will include 40% of pay in the revised scales of pay.

**Railway Ministry's decisions.**(1) Where a temporary employee has become medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the employee should be granted leave due plus extraordinary leave so as to make a total period of 6

*(Signature)*

months within which alternative employment must be found.

(2) Where a temporary employee has become medically unfit for the post held by him on account of circumstances which did not arise out of and in the course of his employment, the benefit under this rule will not be admissible. It has, however, been decided that while it is strictly not obligatory to find alternative employment for such an employee, every effort should nonetheless be made to find alternative employment. The employee concerned should be granted such leave as is due to him plus extraordinary leave not exceeding 3 months, the total not exceeding 6 months. If no alternative employment can be found in this period, the employee should be discharged from service.

(3) The above rule is applicable only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex-gratia measure.

(4) The Medically de-categorised Railway employee waiting for absorption in alternative post may be allowed to commute the period of LHAP on production of medical certificate, subject to certification that the employee is not fit to hold the post from which he proceeded on leave. The commutation will, however, be admissible only up to the stage that an alternative post is offered to him by the administration."

4. Reply has been filed by the Respondents and the applicant has also filed rejoinder.

5. The learned counsel for the Respondents drew our attention to the order dated 20.02.2002, at Annexure-R/1, to contend that there is no cause



for the Applicant to file this OA. The order dated 20.02.2002, at Annexure-R/2, is reproduced hereunder for ready reference:

"E.Rly

Date - 20.02.2002

No.6/2

### OFFICE ORDER

In terms of I.R.E.M, the pay of Shri Mulukchand Gatekeeper under SE/P.Way/Rampurhat, who on being declared medically de categorized and posted as Chowkidar under the Unit of Sr.SE/Works/Rampurhat in scale Rs. 750-940, RP on 28.03.97 is hereby refixed as under:

On the scrutiny y of service record in reference to his grievance recorded in the grievance register.

Pay as drawn			Pay as should be drawn		
Pay	Scale of pay	Date	Pay	Scale of pay	Date
Rs.1090/-	800-1150/-	01.8.1995	1090/-	800-1150/-	01.9.95
Rs.940/-	750-940/-	28.3.97	3370/-	2650-4000/-	1.1.1996
	(Being de categorized and Posted as Chowkidar)			(as per 5 <sup>th</sup> PC)	
Rs.2960/-	2550-3200/-	28.03.97	3200/- +170/- pp	2550-3200/-	
	(As per 5 <sup>th</sup> PC)		(being de categorized posted as Chowkidar)		
Rs.3020/-	-do-	01.03.98	3200/-	-do-	1.3.1998
Rs.3080/-	-do-	01.3.99	3200/- +160+110/- Spl pay	1.3.99	
Rs.3140/-	-do-	01.3.2000	3200 +60 Spl pay +110 pp	1.3.2000	
Rs.3235/-	2650-4000/-	16.6.2000	3370	2650-4000/-	16.6.2K
Rs.3300/-	2650-4000/-	1.6.2001	3440/-	do	1.6.2001"

6. The applicant did not dispute the correctness of the aforesaid order at Annexure-R/1. On the strength of this order dated 20.02.2002, it seems that all the grievances which the applicant raised in this OA have already been redressed. This fact has not been brought to the notice of this Tribunal by the applicant while filing this OA. It is not in dispute that he is getting pension on the basis of the last pay drawn i.e. Rs. 3720/ and this is the pay which the applicant might have drawn while continuing in the post of Gatekeeper.

(Signature)

7. In view of the above, this OA sans any merit and is accordingly dismissed. However, considering the status of the applicant there shall be no order as to costs.

(Ms. Jaya Das Gupta)  
Admn. Member

(Justice V.C. Gupta)  
Judicial Member

krm