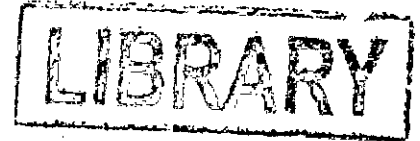


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00962/2019

Date of order: 19.7.2019

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

Vijay Kumar Manjhi,
Son of Late Mahadeo Manjhi,
Aged about 46 years,
Worked as Constable and now under
Supernumerary post in
Railway Protection Force,
Under Security Commissioner,
CLW, residing at St. No. 44,
Quarter No. 2/C,
Post Office - Chittaranjan,
District - West Burdwan,
Pin - 713331.

... Applicant

- VERSUS -

1. The Union of India,
General Manager,
Chittaranjan Locomotive Works,
P.O. - Chittaranjan,
District - Burdwan West,
Pin - 713331.

2. The Principal Chief Personnel Officer,
Chittaranjan Locomotive Works,
P.O. - Chittaranjan,
District - Burdwan West,
Pin - 713331.

3. The Assistant Personnel Officer,
Chittaranjan Locomotive Works,
P.O. - Chittaranjan,
District - Burdwan West,
Pin - 713331.

.... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

B

For the Respondents : Mr. K. Sarkar, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

Aggrieved with order dated 24.5.2019 (A-3) whereby and whereunder the applicant, a medically decategorised Constable in the grade pay of Rs. 2000/- has been adjusted against a post of Helper, a post operated in the grade pay of Rs. 1800/-, albeit with protection of pay scale, this O.A. has been filed to seek the following relief:-

"(a) Office Order No. GMA/AU/348 dated 24.5.2019 issued by Assistant Personnel Officer (HQ) on behalf of Principal Chief Personnel Officer in respect of the applicant cannot be sustained in the eye of law and therefore the same may be quashed.

(b) An order do issue directing the respondent to make efforts to locate suitable alternation post in respect of the applicant in accordance with RBE. 89/1999 and decision given by the Medical Board."

2. Ld. Counsel, in order to contend that the applicant ought to have been adjusted against a suitable alternative post carrying the same scale & grade pay as Constable, would rely upon the following:-

(1) Hon'ble Apex Court decision in ***Kunal Singh v. Union of India and another 2003 SCC (L&S) 482*** in regard to applicability of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, wherein it was held as under:-

"An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intend to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalid pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act."

2. RBE No. 89/99 which lays down the procedure to be followed in cases of medical decategorisation as extracted infra:

B

RBE No. 89/99

Subject: The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Absorption of disabled/medically decategorised staff in alternative employment – Amendment to IREM.

[No. E(NG)/I/96/RE3/9(2), dated 29.4.99]

1. The enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has necessitated modification of the existing scheme of absorption in alternative employment of staff medically decategorised.
2. The Ministry of Railways have considered the matter and have decided that the Indian Railway Establishment Manual, Volume – I (Revised Edition 1989) may be amended as in the Advance Correction Slip No. 77 enclosed.

ADVANCE CORRECTION SLIP NO. 77
INDIAN RAILWAY ESTABLISHMENT MANUAL VOLUME- I
(Revised Edition 1989)

Chapter XIII – Absorption of Medically Incapacitated Staff in Alternative Employment.

Substitute the following for the existing Chapter XIII and paragraphs 1301-1315 therein:

Absorption of disabled/medically decategorised staff in Alternative Employment:-

1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service 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.

1302. Classification of Railway Servants declared medically unfit:-

Railway servants acquiring disability during service and declared medically unfit are divisible into two groups:-

- (i) Those completely disabled for further service in any post in the Railway, i.e. those who cannot be declared fit even in the 'C' medical category; and
- (ii) Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303. The railway servants both in group (i) and group (ii) of para 1302 above cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond that date. 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. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

1304. **Disabled Medically decategorised staff to be absorbed in posts they can adequately fill:-** In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be

utilized. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

1305. Absorption in posts identified for employment of physically handicapped persons/creation of supernumerary posts. The Railway servants falling in group (i) mentioned in para 1302 above i.e. those who are declared unfit even for the lowest medical category, may be absorbed in a post/category identified as suitable for employment of physically handicapped persons and fresh recruitment to that post/category from open market from amongst physically handicapped withheld. In case the alternative post is not carrying the requisite pay scale, a supernumerary post may be created in appropriate scale of pay and the employee adjusted against the same keeping the lower grade post vacant by withholding fresh recruitment thereto. The supernumerary post so created to accommodate a disabled/medically incapacitated employee shall stand abolished as soon as a suitable post in the appropriate scale is found for the Railway servant concerned or the post is vacated by him for other reasons, whichever is earlier.

1306. Steps to be taken for finding alternative employment -

(1) With a view to determine the categories in which the disabled/medically decategorised Railway servant is suitable for absorption, a committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the disabled/medically decategorised Railway servant was working. The Railway servant's immediate officer being one of the members of the committee. After the committee has examined the Railway servant and determined his suitability for certain categories of posts the officer under whom the Railway servant was working will proceed to take further action to find suitable alternative employment for him.

(2) The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the disabled/medically incapacitated Railway servant has been found suitable and a post with some scale of pay as was attached to the post he was holding on regular basis before being declared medically unfit, will be offered to him.

(3) It will be the responsibility primarily of the officer under whom the concerned Railway servant was directly working to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own unit/division, office, workshop etc. and a register with the details as mentioned in sub-para (6) below will be maintained for this purpose.

(4) If there is no immediate prospect of employment in his own unit/division office, etc., the name of the Railway servant with particulars as given in sub para (6) below will be circulated to all other offices or establishments when suitable employment is likely to be found.

(5) Nothing in the previous paragraphs, however, debars a Railway servant from applying for a particular post for which he is likely to be deemed suitable and it is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the Railway servant concerned and must contain full particulars of his service and must be forwarded to the officer to whom addressed or to the authority competent to make appointment. The result of the application must be intimated to the Railway servant.

(6) A register containing the names of all Railway servants declared medically unfit and to be absorbed in alternative post will be maintained by Headquarters, Divisional and other extra-Divisional offices. These registers contain not only the names of the staff of the particular division, etc., but also the names notified to the unit Officer concerned by other unit/offices. This will not, however, absolve officers under whom the Railway servant was last working from continuing their efforts to find suitable employment for the disabled/medically decategorised employee. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows:-

- (i) Serial number.
- (ii) Date on which incapacitated.
- (iii) Name and Father's name.
- (iv) Post last held on regular basis with scale of Pay and rate of Pay.
- (v) Educational qualifications - If no educational qualifications, then general remarks regarding knowledge of English, regional language etc.
- (vi) Medical category in which placed.
- (vii) Details of special supernumerary post till absorption in alternative appointment (Para 1303).
- (viii) Date from which absorbed in alternative appointment.
- (ix) Nature and category of alternative appointment.
- (x) Scale of Pay of the alternative post and the pay fixed at.
- (xi) Details of supernumerary post, if any after absorption in Alternative appointment (Para 1305).
- (xii) Remarks.

(7) If and when a Railway servant is absorbed in an alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On receipt of such intimation, his name will be deleted from the registers.

(8) Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no disabled medically incapacitated Railway servant who is suitable for the post is available. If any such disabled/medically incapacitated employee is available, he will be given preference over all other categories of staff for appointment."

(3) The order passed by this Tribunal in O.A. No. 1055 of 2016 where having discussed the implication of Section 47 supra and provisions of RBE No. 89/99, this Tribunal held:-

"..... The provisions of the PWD Act is unequivocal and univocal that when posting to an alternative post, such alternative post should carry the same pay scale as the applicant was drawing prior to his medical decategorisation. The provisions of RBE 89/1999 is also explicit, clear and unambiguous. A post of Chowkidar carries much lesser pay than that of Head Constable.

7. At this juncture, Id. Counsel for the applicant would refer to a decision of this Tribunal in O.A. No. 37 / 2016 wherein having noticed that a Constable was adjusted against a post of Chowkidar, which was undoubtedly a lower post, this Tribunal had disposed it of with a direction upon the respondents to immediately find out a suitable alternative adjustment for the applicant in scrupulous observation of Rule 1301 to 1307 as contained in RBE 89/1999 within one month and till such time not to compel the applicant to join the post of transfer.

8. Id. Counsel for the applicant would further refer to the decision of the Hon'ble High Court in WPCT No. 105 of 2016 where order passed in O.A. No. 37/2016 (supra) was affirmed.

9. Id. Counsels were heard and materials on record were perused.

10. In as much inarguably and indubitably the applicant would deserve adjustment against a supernumerary post pending location of a suitable "alternative post" with the same pay scale and service benefits in which the applicant was working on regular basis before being declared medically unfit, without reduction in rank, we dispose of the present O.A. with a direction upon the respondents to make efforts to locate a suitable alternative post for the applicant in accordance with RBE 89/1999 and pending such location to adjust the applicant against appropriate supernumerary post in accordance with the said RBE No. 89/99, extracted supra."

3. We note that the applicant deserves to be adjusted against a suitable equivalent post carrying the same grade pay as that of Constable, but he has been adjusted against a lower post, albeit with protection of pay and scale, but such adjustment is in clear violation of the rules and decisions cited supra. While, the respondents, on the other hand, have failed to demonstrate why the applicant would not deserve protection in terms of Section 47, RBE No. 89/99 etc., i.e. adjustment against a suitable equivalent post.

4. In such view of the matter, we allow the O.A. and direct the authorities to make efforts to locate a suitable alternative post for the applicant in accordance with RBE 89/1999 and pending such location to adjust the applicant against appropriate supernumerary post in accordance with RBE 89/99. Necessary orders be issued within two months.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP