

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 350/00037/2016

Date of order : 27.1.16

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. P.K.Basu, Administrative Member

GOPAL KRISHNA DEBNATH

VS

UNION OF INDIA &amp; ORS.

For the applicant : Mr.A.Chakraborty, counsel  
Ms.P.Mondal, counsel

For the respondents : Ms. C.Mukherjee, counsel

O R D E RMs. Bidisha Banerjee, J.M.

The applicant has assailed an office order dated 16.11.15 issue by the *Personnel officer* Sr. Divisional Engineer/DR/HWH whereby and whereunder on being medically declassified the applicant who was serving as a Constable has been rehabilitated in an alternative post of Chowkidar with Grade Pay Rs.1900/- However, he has been allowed to continue with his Grade Pay Rs. 2800/- under MACP Scheme as he was drawing earlier.

2. The ld. Counsel for the applicant would draw our attention to RBE 89/99 on "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Absorption of disabled/medically declassified staff in alternative employment - Amendment to IREM." The correction to Rule 1301, 1302 and 1303 of IREM, Vol. I has been provided as under :

**"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 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 employee concerned 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."

Therefore the ld. Counsel would argue that the respondents were bound to keep him in a post without reduction in his rank with same pay scale and service benefits. Placing him in the lower post of Chowkidar would definitely connote a reduction in rank which the rules do not permit. Therefore the respondents should cancel their order dated 30.11.15 and grant appropriate posting to the applicant commensurate to his erstwhile rank.

3. Ld. Counsel also submitted that immediately on his medical decategorisation he had to be adjusted against a special supernumerary post in case no appropriate posting was immediately available. Instead the respondents having adjusted him against the post of Chowkidar have acted in arbitrary exercise of power.

4. Ld. Counsel for the respondents would submit that she was not in a position to submit on behalf of the respondents why the applicant was adjusted against the post of Chowkidar.

5. Be that as it may, a cursory glance at the order impugned in the OA would prove that a "Constable" has been adjusted against a post of "Chowkidar", which undoubtedly would be <sup>an</sup> lower post. Therefore the OA is disposed of with a direction upon the respondents to immediately find out a suitable alternative adjustment for the applicant in scrupulous observation of Rules 1301-1307 as

contained in RBE 89/99 within one month from the date of communication of this order. Till such time the applicant shall not be compelled to join the post of Chowkidar.

6. The OA is accordingly disposed of. No order is passed as to costs.

~~(P.K.BASU)~~  
MEMBER (A)

~~(BIDISHA BANERJEE)~~  
MEMBER (J)

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