
(2022) 12 CAT CK 0018
In the Central Administrative Tribunal
Case No : Original Application No. 184 Of 2020

Ashok Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 47

Citation : (2022) 12 CAT CK 0018

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : P.K. Mishra, S.C. Mishra

Final Decision : Allowed

Judgement

Om Prakash-VII, Member (J)

1. The applicant has filed this O.A. for the following reliefs:-

- a) Issue an order or direction in the nature of certiorari to quash and set aside the impugned screening result dated 17.12.2018 and 21.01.2020 (Annexure A-1).
- b) Issue an order or direction in the nature of mandamus to the respondents to absorb the applicant on the suitable cadre post as per provisions of Master Circular No. 25 with all consequential benefits.
- c) Issue any further orders or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- d) Award the appropriate cost in favour of the applicant.

2. Heard learned counsel for parties.

3. Learned counsel for the applicant argued that the applicant was posted as Loco Pilot Goods in Loco Running Cadre and has been declared medically "unfit as Aye one as LPC/Optg/Age and fit Aye one and below medical category for other job on medical ground where fine and coarse movement of hand is not

much required i.e. writing/heavy work etc. Screening Committee was conducted on 2.2.2018 to find out a suitable alternative job of medically decategorized Group C employee. Result of the Screening Committee was declared vide order dated 8.2.2018 and 14.3.2018, wherein applicant was allotted the Ex-cadre/tenure post of Crew Controller/Traction Loco Controller/Power Controller against the statutory rules and Indian Railway Establishment Manual in short IREM Provision. Applicant moved representation dated 1.5.2018. Respondents again constituted a Screening Committee, which met on 20.11.2018 and again recommended vide impugned order dated 17.12.2018 that "The employee should be continued as CC/TLC/ PCOR in his previous cadre. Applicant filed O.A. No. 1176/2019, which was decided by this Tribunal vide order dated 20.11.2019 to consider and decide the representation of the applicant dated 1.2.2019 by passing reasoned and speaking order taking into instructions and law on the subject matter. Representation of the applicant was decided by the respondent No. 5 vide impugned order dated 21.1.2020, by which it is stated that no irregularity has been committed while offering the alternative employment to the applicant.

4. Learned counsel for the respondents argued that Screening of the applicant was conducted as per provision and existing rules of Railway Master Circular No. 25 para 6.1 and 6.2, and applicant has been allotted alternative job of PC/TC/CC, as applicant was working in running cadre.

5. Learned counsel for the applicant filed rejoinder reply, in which it is stated that point 6.8 of the Master Circular 25, clearly provides that "Medically decategorised staff should be absorbed in suitable alternative posts in regular cadre only and not in tenure posts", whereas respondents have absorbed the applicant on tenure post by which, applicant will be debarred from the future seniority, chance of promotions and will suffer irreparable monetary loss not only during service period, his pensionary benefits will also be affected.

6. We have considered the rival submissions and have gone through the entire record.

7. Point 6.8 of the Master Circular 25 clearly provides that "Medically decategorised staff should be absorbed in suitable alternative posts in regular cadre only and not in tenure posts", but Screening committee has recommended the case of the applicant for absorption for non -cadre post i.e. PC/TC/CC as per point No. 6.1 and 6.2 of the Master Circular 25.

8. Learned counsel for the applicant has submitted that in similar facts and circumstances, Cuttack Bench of this Tribunal in O.A. No. 434/2008 (Bibhuti Bhusan Pandey Vs. Union of India and others) relying on judgment and order passed by the same Bench in O.A. No. 910/2006 had allowed the O.A. and quashed the order dated 12.8.2008. The operative portion of para 4 and 5 of the judgment is reproduced below:-

"4. After giving our thoughtful consideration to the rival submissions of the

parties, perused the materials placed in this OA as also the records of OA No.910/2006. On perusal of the earlier order of this Tribunal it is seen that the stand of the Respondents' counsel that there has been no decision on principle is not correct. In fact this Tribunal after considering all aspects of the matter came to a positive finding which has binding effect to all similarly situated employees of the Railways. The operative part of the order dated 03.01.2008 in OA No.910/2006 reads as under:

"38. We carefully examined the impugned order, the respondents have not assigned the reasons, the provisions of 47 of the said Act 1/96, i.e. Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, and other rules and instructions of the Railway Board are not taken into consideration. The objects of the provisions are very important and should be followed by the competent authority. The medically dc-categorized staff can be shifted to any other post in the same pay scale or action to be taken to keep him in supernumerary post under the provisions of the said Act by the competent authority other than the authority who passed an order by L exercising his powers vested in him. The applicant's service is to be protected as if he was getting all the benefits available to the running staff.

39. After careful consideration of the contentions of either side, citations referred to above and the relevant provisions of IREM, we are of the considered view that the applicant has made out a case for grant of relief and the stand taken by the respondents is absolutely illegal. The respondents are not justified in considering the case of the applicant while issuing the impugned order and the applicant is placed in the list for screening to the post of PC/CC in Mechanical Department. We are of the considered view that the applicant is entitled for the relief as prayed for. Accordingly, we direct the competent authority i.e. respondents to delete the name of the applicant from the panel list dated 30.11.2006 (Annexure A-2) and post the applicant in suitable alternative post, if suitable post is not available, create supernumerary post in accordance with Chapter XIII of IREM Vol.1 and section 47 of Act 1 of 1996."

5. In view of the above, we have no hesitation in our mind to hold that the order dated 12.8.2008 is not sustainable. Hence the same is hereby quashed. As a result, the Respondents are directed to post the applicant in a suitable alternative post except the Power Controller! Crew Controller and if suitable post is not available, create supernumerary post in accordance with Chapter XIII of IREM Vol.1 and section 47 of Act 1 of 1996. The entire exercise shall be completed within a period of 60(sixty) days from the date of receipt of this order. In the result, this OA stands allowed in the afore-stated terms. No costs."

9. In the instant matter, if the facts and circumstances disclosed by the parties are compared with the facts and circumstances of O.A. No. 434/2008 and O.A. No. 910/2006 as referred above by the learned counsel for the applicant, we are of the view that applicant is entitled to the benefit of point No. 6.8 of the Master Circular 25. Decisions rendered in the aforesaid O.As can safely be adopted to

settle the issue involved in the present O.A.

10. In view of the above, we have no hesitation in our mind to hold that the orders dated 17.12.2018 and 21.1.2020 are not sustainable. Hence the same are hereby quashed. As a result, the Respondents are directed to post the applicant in a suitable alternative post except the PC/TC/CC and if suitable post is not available, create supernumerary post in accordance with Chapter XIII of IREM Vol.1 and section 47 of Act 1 of 1996 and in the light of point No. 6.8 of the Master Circular No. 25. The entire exercise shall be completed within a period of 60(sixty) days from the date of receipt of this order.

11. In the result, the OA stands allowed in the afore-stated terms

12. There shall be no order as to costs.