
(2018) 12 CAT CK 0079

In the Central Administrative Tribunal

Case No : Original Application No. 3704 Of 2012

Sanjay Kumar

APPELLANT

Vs

Union Of India And Anr.

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0079

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : VSR Krishna, Shailendra Tiwari, Meenu Mainee

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J

1. The applicant joined the Railway Protection Force (for short, RPF) as a Constable. He was medically de-categorised through an order dated 02.09.1992. In compliance with the requirement under the relevant service regulations, the Railways appointed him as Parcel Porter on 28.11.1997. Rule - 1314 of IREM provides for appointment of the medically de-categorised persons in a suitable, equivalent vacancy and if the vacancy is not immediately available, they are to be continued in a lower category post.

2. The vacancies of TCR arose in the Railways. 30% of those vacancies are earmarked for accommodating the medically de-categorised persons, subject to their clearing the qualifying examination. The applicant seems to have been successful in the examination. However, at the stage of medical examination, the earlier de-categorisation was taken into account and on finding that applicant cannot be entrusted with duties that require standing for long time, appointment was denied to him. The same is challenged in the O.A.

3. The applicant contends that when he is able to discharge the functions in a strenuous job, like Parcel Porter, he can certainly discharge the functions of TCR.

Reference is made to the earlier litigation that ensued in the matter.

4. The respondents filed their counter affidavit opposing the O.A. It is stated that though the applicant participated in the selection process for the post of TCR, Medical Board found that he cannot be entrusted with the duties that requires standing for long time and, accordingly, the impugned order was passed.

5. We heard Ms. Meenu Mainee, learned counsel for the applicant and Mr. V. S. R. Krishna and Mr. Shailendra Tiwari, learned counsel for the respondents.

6. On being medically de-categorised in the year 1992 as Constable in RPF, the applicant was accommodated as Parcel Porter in the year 1997. The relevant rules protect the rights of such persons, and require them to be accommodated in posts of equivalent status. Obviously as an interim measure, such persons are required to be accommodated even in lower category of post, in the event of a suitable vacancy not being available immediately. It is in this context, that the applicant has been appointed as Parcel Porter, which appears to be lower than the Constable in RPF.

7. When the vacancies in the post of TCR became available, the respondents permitted the applicant to participate in the limited recruitment process. He was successful in all other aspects but in the context of medical fitness, the Medical Board took note of the findings recorded by the Medical Board when the applicant was de-categorised from the RPF. It was mentioned that the de-categorisation of this nature is permanent in character and the applicant cannot be entrusted with strenuous duties.

8. Howsoever convincing arguments advanced on behalf of the applicant may be, we cannot substitute our opinion in the one of the Medical Board. As regards equivalence also, we cannot undertake the task of calibrating the duties of post of Parcel Porter on the one hand and that of the post of TCR on the other hand.

9. As of now, right of the applicant to be considered for appointment against the post, equivalent to that of Constable is still intact. Mere fact that he was not held eligible for the post of TCR does not have adverse effect on that. Though reference is made to the earlier litigation, we find that the same does not have relevance at this stage.

10. We, therefore, dispose the O. A. upholding the order impugned herein but directing that respondents shall consider the case of the applicant for recruitment to the post, which is equivalent to the Constable, RPF, as and when vacancy arises. There shall be no order as to costs.