
(2012) 10 AP CK 0130

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23238 of 2012 and Batch

Union of India and Others

APPELLANT

Vs

Th. Rathan Raju and Another

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47(1)

Citation : (2013) 3 ALD 147 : (2013) 2 ALT 729

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : C.V. Rajeev Reddy, for the Appellant; K.R.K.V. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondents in all these writ petitions who were working in different posts in the South Central Railway were recommended for absorption in alternative posts on medical decategorisation. Alleging that they are not accommodated in the alternative posts carrying the same scale of pay as provided under Paras 1307 and 1308 of the Indian Railway Establishment Manual (IREM), they filed OA Nos. 152 of 2010, 416 of 2010, 1081 of 2009, 151 of 2010 and 209 of 2010 in the Central Administrative Tribunal, Hyderabad Bench. By separate orders dated 22.3.2012 the Tribunal disposed of the said O.As. with directions to absorb them in compliance with Paras 1307 and 1308 of IREM. The said orders are assailed in these writ petitions filed by the South Central Railway. We have heard Sri C.V. Rajiv Reddy, the learned Counsel appearing for the writ petitioners and Sri K.R.K.V. Prasad, the learned Counsel appearing for the respondents/applicants before the Tribunal.

2. Consequent to the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Paras 1301 to 1315 of Chapter XIII of Indian Railway Establishment Manual have been

substituted providing for absorption of medically incapacitated staff in alternative employment in tune with Section 47(1) of the said Act.

3. The relevant paras of IREM are extracted hereunder for proper appreciation of the controversy involved:

Para 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.

Para 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).....

Para 1307. Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorised running staff--In order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing, the same may be replaced by the equivalent existing scale of pay.

Para 1308. Fixation of pay.--The pay of the disabled/medically decategorised

Railway Servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically decategorisation. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay representing the pay element of running allowance as may be in force. If the basic pay so arrived at does not correspond to any stage in the absorbing grade the pay may be fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly if the pay so arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the minimum and the difference may be allowed as personal pay to be absorbed in future increments/increase in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance should be allowed on pay plus personal pay, if any, in the absorbing grade.

4. As could be seen, Para 1303 of IREM provides that the Railway Servants who acquired disability during service and declared medically unfit cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. However, they should be absorbed in any suitable alternative post with the same pay scale and service benefits. Para 1306 further provides that a Committee consisting of 2/3 officers posted at headquarters of the officer under whom the disabled/medically decategorised Railway Servant was working should examine such medically decategorised Railway Servant with a view to determine the categories in which he is suitable for absorption. After the Committee has examined the Railway Servant and determined his suitability for certain categories of posts, the further steps to be taken to find suitable alternative employment and the procedure to be followed for absorption has been specified in detail from clauses (2) to (8) of Para 1306 of IREM.

5. Paras 1307 and 1308 of IREM specifically deal with the determination of the scale of pay for the purpose of absorbing the medically decategorised running staff in the alternative employment.

6. It is evident from Paras 1307 and 1308 of IREM that the medically decategorised running staff are treated differently from the stationary servants. So far as the medically decategorised running staff is concerned, it is provided under Para 1307 that an amount equal to such percentage of pay in lieu of running allowance as may be in force has to be added to the minimum and maximum of the scale of pay of the running staff. Para 1308 further provides that for running staff the fixation of pay shall be based on the basic pay plus a percentage of their basic pay representing the pay element of running allowance as may be in force.

7. Some of the medically decategorized running staff had earlier filed OA No. 283 of 2008 and OA No. 634 of 2008 aggrieved by the inaction on the part of the South Central Railways in giving the postings for alternative employment in spite of the recommendations made by the Committee. The Tribunal allowed the O.As.

by order dated 20.4.2009 holding that the applicants were entitled to the respective postings as decided by the Committee and that the Railways had no right to subject the applicants for second medical test in view of Para 522(1)(ii) of IREM.

8. The Railways filed WP Nos. 18065 and 17708 of 2009 challenging the above said order passed by the Tribunal contending that the conclusion of the Tribunal that the Railways had no power to send the employees to second medical examination was erroneous. It was contended on behalf of the Railways that a Special Medical Board was constituted to review the cases of the applicants therein for alternative employment on medical decategorization and they were waiting for the outcome of the Special Medical Board.

9. This Court disposed of the writ petitions by order dated 9.9.2009 holding that the power of the Railways to subject the employees to the second medical test is referable to Para 522(2)(ii) and therefore the interpretation placed by the Tribunal on the basis of Para 522(1)(ii) of IREM is not correct. However, on merits it was held that since the medical invalidation of the applicants was not doubted and the Committee had already recommended their cases for alternative employment, referring their cases for second medical test did not arise. It was also observed that the decision to send the employees to second medical test had to be taken before their cases for allotment of alternative employment was taken up. Thus it was concluded that the action of the Railways in not posting the applicants therein to the alternative posts as per the recommendation of the Committee was unjustified.

10. It is not disputed before this Court that the above order passed by the Division Bench in WP Nos. 18065 and 17708 of 2009 has become final.

11. The applicants in the present batch of cases also approached the Tribunal with similar grievance. All the applicants were declared medically unfit to continue in the posts initially held by them and their cases were considered by the Screening Committee constituted under Para 1306 of IREM for recommending alternative employment on decategorization. In spite of such recommendations, some of the applicants were not given alternative postings and for others, though postings were given, they were not in accordance with the recommendations made by the Screening Committee. Hence they approached the Tribunal below and the orders under challenge came to be passed by the Tribunal directing the respondents therein (writ petitioners before us) to comply with the provisions of Paras 1307 and 1308 of IREM.

12. It is to be noticed that all the applicants are medically decategorised running staff. Relying upon Para 1307 of IREM, all of them claimed Allowance in Lieu of Kilometerage (ALK) apart from posting in alternative posts. However the Tribunal below rejected the claim for ALK holding that on a combined interpretation of Paras 1307 and 1308 of IREM the medically decategorised employees belonging to the Running Staff are not entitled to the Allowance in Lieu of Kilometerage and

instead an amount equal to percentage of pay in lieu of running allowance would be added to their basic pay not only for fixation of pay but also for the purpose of finding an alternative post.

13. It is pleaded in the writ petitions that it is not feasible to apply the instructions in Para 1307 after the VI-CPC scales have been enforced. It is also contended that as the V-CPC scales ceased to exist w.e.f. 31.12.2005 and that the employees had opted for VI-CPC Scales, the concept of adding 30% to the minimum and maximum of pay scales for identifying the suitable scale/ post and equating it to VI-CPC scale/post would be contrary to law. Thus, according to the writ petitioners, the implementation of impugned orders passed by the Tribunal would result in violating Grade Pay of VI-CPC. It is also pleaded that since the Railways have ensured that there will be no drop in emoluments/grade/scale/rank to the applicants while absorbing in the alternative employment, the Tribunal below ought not to have passed the impugned orders.

14. Sri C.V. Rajiv Reddy, the learned Counsel appearing for the writ petitioners contended that the VI Central Pay Commission (CPC) Scales have come into force w.e.f. 1.1.2006 thereby replacing the earlier Running Pay Bands with Grade Pay and therefore the recommendations made by the Committee during the subsistence of V-CPC Scales under Para 1307 of IREM is not feasible for implementation since there is no equivalent existing scale of pay. It is also contended that since no identical/equivalent Running Pay Band or an identical or equivalent Grade Pay exists in VI-CPC Scales, the principle of adding 30% of pay element to Grade Pay as provided in Para 1307 cannot be applied.

15. The learned Counsel would further contend that the orders of the Tribunal being without reasons, they are liable to be set aside on that ground alone. In support of the said contention, the learned Counsel relied upon Director, Horticulture Punjab and Others Vs. Jagjivan Parshad, and The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others,

16. On the other hand, Sri K.R.K.V. Prasad, the learned Counsel appearing for the respondents (applicants before the Tribunal) contended that the writ petitioners cannot plead that it is not feasible to apply Para 1307 of IREM after the enforcement of VI-CPC and even assuming that there is any ambiguity with regard to pay fixation after the enforcement of the VI-CPC, they should have sought the necessary clarification from the Railway Board. Placing reliance upon a letter of the Railway Board, dated 25.4.2011, the learned Counsel further contended that in fact the question of equivalence of grades of running staff with that of stationary staff for the purpose of promotion to the posts in stationary categories where both running and stationary staff were eligible has already been reviewed on the basis of the scales of pay recommended by the VI-CPC and instructions have been communicated to all the General Managers.

17. Having given our thoughtful consideration to the rival submissions made by the learned Counsel on either side, it appears to us that the issue relating to the

alternative employment to be provided to the medically decategorized Railway employees has already been decided by this Court in WP Nos. 18065 and 17708 of 2009. This Court held in the said decision that though the power of Railways to subject the employees to the second medical test is referable to Para 522(2)(ii) of IREM, where the medical invalidation is not in dispute and the Screening Committee had already recommended for alternative employment, the question of second medical test does not arise. This Court also deprecated the delay on the part of the Railways in implementing the recommendations of the Screening Committee having regard to the specific provision in Para 1303 which provides for absorbing on a special supernumerary post.

18. Therefore, the orders under challenge cannot be found fault with on the ground that no specific reasons were assigned while directing to comply with the provisions of IREM to alternative employment to the medically decategorized employees and the decision in Jagjivan Parshad's case (*supra*), cited by the learned Counsel for the writ petitioners cannot be of any assistance to substantiate his contentions.

19. Coming to the merits of the case, we found that though all the applicants are medically decategorized employees and are similarly situated, the facts leading to filing the O.As. before the Tribunal are slightly different. Therefore we propose to consider each case referring to the relevant facts in brief and the conclusions arrived at by the Tribunal.

WP No. 23238 of 2012:

20. The respondent in WP No. 23238 of 2012 (applicant in OA No. 152 of 2010) was working as Senior Assistant Loco Pilot carrying pay scale of Rs. 9300-34800 Grade Pay of Rs. 4,200/-. Admittedly he was subjected to medical test in July/August, 2008 and the Screening Committee recommended the alternative post to be given on medical decategorization. Though initially he was given the posting as Technician Gr.III erroneously considering him as Assistant Loco Pilot, instead of Senior Assistant Loco Pilot, subsequently, by proceedings dated 3.6.2010 the applicant was given the post of Technician-II (Mechanical Wing) carrying pay scale of Rs. 5200-20200 (Grade Pay of Rs. 2,400/-). According to the applicant, the said order dated 3.6.2010 giving him the alternative post of Technician-II carrying lesser grade pay and thus resulting in financial loss as well as effecting his career prospects was not in tune with the recommendation made by the Screening Committee. It is relevant to note that what was the actual recommendation made by the Screening Committee was not revealed by the Railways except contending that the alternative posting given by the proceedings dated 3.6.2010 was unexceptionable.

21. In the circumstances, the Tribunal below while setting aside the order dated 3.6.2010 disposed of the O.A. directing the respondents/petitioners herein to absorb the applicant and pay the emoluments to him as per Paras 1307 and 1308 of IREM, the effect of which was discussed in paragraphs 7 to 10 of the

order under challenge. It was also observed by the Tribunal that the IREM had been issued by the Railway Board and therefore the respondents (writ petitioners) cannot take the stand that it is not feasible to apply the instructions issued by the Railway Board and if they have any grievance in that regard nothing prevented them from approaching the Railway Board for doing the needful.

22. It may be pointed out that even before this Court the writ petitioners have not produced the recommendations made by the Screening Committee after the applicant was subjected to the test in July/August 2008.

23. As held by the Division Bench of this Court in WP Nos. 18065 and 17708 of 2009, the writ petitioners are bound by the recommendation of the Screening Committee with regard to the alternative post, if necessary by creating a supernumerary post. We also find force in the submission of the learned Counsel for the respondent herein/applicant that it is not open to the writ petitioners to contend that it is not feasible to implement the recommendation of the Screening Committee after enforcement of VI CPC. As rightly held by the Tribunal below, even assuming that the writ petitioners have any grievance, they should have approached the Railway Board for necessary clarifications/instructions.

24. Hence the Tribunal below was justified in setting aside the proceedings dated 3.6.2010.

WP No. 23239 of 2012:

25. The respondent in WP No. 23239 of 2012 (the applicant in OA No. 416 of 2010) while working as a Loco Pilot (Goods) in the scale of Rs. 5000-8000 (5th CPC) was medically decategorised and the Screening Committee recommended to accommodate him in the post of Commercial Supervisor in the scale of Rs. 6500-10500 (RPS) vide memo dated 20/23.7.2007. However the applicant was not given the posting and he was again subjected to screening tests on 28.8.2008, 28.10.2009 and 30.10.2009. Hence he filed OA No. 416 of 2010 seeking a declaration that the inaction on the part of the respondents in implementing the recommendations of the Committee, dated 20/23.7.2007 is arbitrary and illegal.

26. It was pleaded in the counter filed on behalf of the Railways that the applicant cannot have any grievance since he had been placed on a supernumerary post in the grade in which he was working on regular basis before being medically decategorized with same pay scale and service benefits and without loss of emoluments.

27. By the order under challenge, the Tribunal held that there was no justification either for subjecting the applicant to repeated screening or for not implementing the memorandum dated 20/23.7.2007. Accordingly, while holding that the inaction on the part of the respondents/writ petitioners was unfair and arbitrary, the O.A. was disposed of with a direction to absorb the applicant in terms of the

memorandum dated 20/23.7.2007 and fix his pay as per Para 1308 of IREM according to which the pay of running staff has to be fixed based on the basic pay plus a percentage of their basic pay representing the pay element of running allowance as may be in force.

28. The said order of the Tribunal in our considered opinion does not suffer from any error warranting interference in this writ petition. Both the conclusions of the Tribunal that the applicant should not be subjected to repeated screening tests and that he should be absorbed in terms of the recommendations of the Screening Committee vide proceedings dated 20/23.7.2007 are in accordance with law.

WP No. 23244 of 2012:

29. The applicant in OA No. 1081 of 2009 (1st respondent in WP No. 23244 of 2012, who was working as Loco Pilot (Goods) on medical decategorization, was recommended by the Screening Committee for the post of Chief Ticket Inspector (CTI) carrying scale of Rs. 6500-10500 (RPS) (Commercial) vide proceedings dated 13.11.2006. In spite of the same, he was not given posting and on the other hand he was again subjected to another screening on 28.10.2009. Pursuant thereto, by proceedings dated 16.12.2009 the applicant was posted as Junior Engineer Gr-II. Aggrieved by the same, he filed the OA No. 1081 of 2009.

30. In the counter filed on behalf of the respondents/writ petitioners herein, it was contended that the recommendations dated 13.11.2006 could not be enforced due to administrative exigencies and the applicant was put to another screening in October, 2009 and thus he was offered the post of JE-II Mechanical Wing.

31. The Tribunal did not accept the stand taken in the counter and accordingly while setting aside the order dated 16.12.2009 disposed of the O.A. directing that the applicant should be absorbed as per the memorandum, dated 13.11.2006 whereunder the Screening Committee recommended his case for the post of Chief Ticket Inspector (Commercial Department).

32. We have already held that the Railway employees cannot be subjected to repeated tests. Since the applicant was admittedly subjected to medical test by the Screening Committee on 20.10.2006 and alternative employment was already recommended, the writ petitioners are bound to implement the same. Hence the order dated 16.12.2009 which was impugned in the O.A. was rightly set aside by the Tribunal and there is no justifiable reason to interfere with the said order.

WP No. 23246 of 2012 and WP No. 23251 of 2012:

33. The respondent in WP No. 23246 of 2012 i.e., the applicant in OA No. 151 of 2010 was working as a Loco Pilot (Shunting) Gr.I with pay scale of Rs. 9300-34800 with grade pay of Rs. 4,200/-. On medical decategorisation, he was absorbed as Junior Engineer-II (Electrical) carrying pay scale of Rs. 9300-34800

with grade pay of Rs. 4,200/- by proceedings dated 16.12.2009.

34. The respondent in WP No. 23251 of 2012 i.e., the applicant in OA No. 209 of 2010 was working as Loco Pilot (Mail/Express) in the scale of Rs. 6000-9800. On being medically decategorised, he was absorbed in the post of Section Controller in the scale of Rs. 9300-34800 plus grade pay of Rs. 4,200/- vide proceedings dated 10.12.2009.

35. Aggrieved by the above said proceedings dated 16.12.2009 and 10.12.2009, OA Nos. 151 and 209 of 2010 respectively have been filed. Their case was that the alternative postings given under the said proceedings were not in terms of the recommendation of the Screening Committee.

36. The applicants in both OA No. 209 of 2010 and OA No. 151 of 2010 claim that they are entitled to be absorbed in the alternative cadre carrying pay scale of Rs. 9300-34800 with grade pay of Rs. 4,600/- in terms of the medical recommendation.

37. The Tribunal below disposed of the O.As. by setting aside the impugned orders dated 16.12.2009 and 10.12.2009 and directing the respondents/writ petitioners herein to comply with the provisions of the Paras 1307 and 1308 of IREM. However no sufficient reasons were assigned by the Tribunal below to arrive at a conclusion that the said recommendations were not in accordance with Para 1307 of IREM. At any rate, even according to the respondents/writ petitioners herein, the objections raised by the applicants are yet to be considered. Moreover, what was the alternative employment actually recommended by the Screening Committee while decategorizing the applicants has not been disclosed by the writ petitioners. Hence it cannot be concluded at this stage that the alternative postings given vide proceedings dated 16.12.2009 and 10.12.2009 were illegal.

38. Therefore, we deem it appropriate to set aside the orders of the Tribunal in OA No. 151 of 2010 and OA No. 209 of 2010 and the writ petitions are disposed of with the following directions:

39. The writ petitioners shall serve upon the respondents herein/applicants in OA No. 151 of 2010 and OA No. 209 of 2010, the copy of the proceedings of the Screening Committee recommending the alternative postings to the applicants within two weeks from the date of receipt of this order and it is open to the applicants to submit their fresh objections, if any, within four weeks from the date of receipt of the copy of the proceedings of the Screening Committee. If any such objections are received within the time fixed above, the writ petitioners shall consider the same and pass appropriate orders in accordance with law and communicate the same to the applicants within eight weeks from the date of receipt of objections. Till such time, status quo obtaining as on today in all respects shall be maintained.

40. In the result, WP Nos. 23238, 23239 and 23244 of 2012 are dismissed and

WP Nos. 23246 and 23251 of 2012 are disposed of in terms of the above directions. No costs. Miscellaneous petitions, if any, pending shall stand closed.