

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27124 of 2006

A.Pitchai

... Petitioner

Vs.

1. Southern Railway
Rep. by its Senior Divisional
Personnel Officer, Chennai - 3.

2. The Chief Security Commissioner,
Railway Protection Force,
Moore Market Complex,
Chennai.

3. The Senior Divisional Security Commissioner,
Railway Protection Force,
5th Floor, Divisional Office,
Park Town,
Chennai - 3.

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Proceedings No.M/P.353/CC/WP 39124/2003 dated 30.06.2006 passed by the 1st respondent and quash the same and consequently direct the respondents to promote the petitioner as Senior Clerk in the pay scale of Rs.4500-7000 with financial upgradation as and when it was due and with all benefits including the hospital leave of 204 days to the leave account and pay the salary for the same to the petitioner.

For Petitioner : Ms.V.J.Latha
For Respondents : Mr.P.T.Ramkumar

O R D E R

The petitioner has filed this writ petition challenging the proceedings dated 30.06.2006 passed by the first respondent, seeking to quash the same and to consequently direct the respondents to promote the petitioner as Senior Clerk in the pay scale of Rs.4500-7000 with financial upgradation as and when it was due, with all benefits including the hospital leave of 204

days to the leave account and pay the salary for the same to the petitioner.

2.The case of the petitioner is that he joined the services of the Railway Protection Force, which is a para-military force on 10.11.1980 and he was confirmed in service on 06.08.1981 as Rakshak after completing the training period. In the year 1994, the petitioner was promoted to the post of Naik. While he was on duty on 09.09.1996, he sustained injury in his right eye due to spilling of cement article while checking the cement loads and he lost his vision. The first respondent de-categorised the petitioner medically and declared him as 'medically unfit' for the post of Naik, in which post he was drawing a pay scale of Rs.3050/- - Rs.4590/-.

3.The petitioner further states that since he was declared as 'medically unfit' for the post of Naik, he was absorbed in an alternate cadre as Lascar in the pay scale of Rs.750/- - Rs.940/-. Hence, the petitioner gave a representation on 06.11.1997 seeking to provide an alternate appointment in the same scale of pay in which he was declared as 'medically unfit'. Thereafter, the petitioner was posted as Peon in the pay scale of Rs.2550/- - Rs.3200/- and posted to Senior DEE/O/MAS and subsequently, on 20.11.1998, the petitioner was absorbed as Records Sorter in the pay scale of Rs.2650/- - Rs.4000/-.

4.The petitioner further states that inspite of his repeated representations since he was absorbed in lesser scale of pay than the scale of pay in which he was originally working, he filed writ petition in W.P.No.39124 of 2003 seeking issuance of Writ of Mandamus directing the respondent therein to provide alternative appointment to the petitioner as that of Head Constable in the pay scale of Rs.3200 - 85 - 4900 with effect from the date of reduction in rank with continuity in service. This Court vide order dated 06.03.2006 disposed of the writ

petition directing the respondent therein to appoint the petitioner in some post carrying the same scale of pay which he was drawing prior to his medical de-categorisation and pay the arrears of salary from the date of his appointment as peon.

5.The petitioner further states that thereafter though the first respondent has revised his pay, has not given him the promotion which he was entitled to and would further state that though he was paid compensation for the loss of his vision in the right eye, the leave period from 10.09.1996 to 01.04.1997 namely, 204 days has not been credited to his leave account and salary for the said 204 days of hospital leave has also not been paid to him. Hence, the petitioner has filed this writ petition.

6.The learned counsel appearing for the petitioner would submit that when the petitioner was working as Naik, he sustained injury in his right eye due to spilling of cement article while checking the cement loads and he lost his vision. This Court passed an order dated 06.03.2006 protecting the petitioner by directing the respondent therein to appoint the petitioner in some post carrying the same scale of pay which he was drawing prior to his medical de-categorisation. However, the respondents though granted the pay scale of Rs.3050/- - Rs.4590/- by creating supernumerary post to the petitioner, has not granted any further promotion.

7.The learned counsel appearing for the petitioner would further submit that there is a provision for granting hospital leave as per the leave rule 554 of Chapter 5 of the Indian Railway Establishment Code. However, though the petitioner sustained injury in his right eye due to spilling of cement article while checking the cement loads and lost his vision during the course of employment, he was not granted the hospital leave.

8.The learned counsel appearing for the respondents would submit that the petitioner was declared medically unfit after he lost his vision in the right eye. Immediately thereafter, in compliance of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the petitioner was given alternative employment as Lascar, thereafter he was absorbed as Peon and thereafter promoted as Records Sorter. Subsequently, as per the order of this Court dated 06.03.2006 made in W.P.No.39124 of 2003, the petitioner's scale of pay was protected by creating supernumerary post. The petitioner's request for promotion as Clerk cannot be considered since the qualification required for promotional post is a degree whereas, the petitioner has acquired only IX Standard.

9.The learned counsel appearing for the respondents would further submit that hospital leave is applicable to a person if the person sustain injury during the course of employment. However, as per his instructions, the petitioner has not sustained injury during the course of employment. Hence, hospital leave is not applicable to the petitioner. However, on perusal of leave rule 554 of Chapter 5 of the Indian Railway Establishment Code, the learned counsel fairly conceded that since the petitioner sustained injuries while he was in employment, the leave period from 10.09.1996 to 01.04.1997 namely, 204 days may be considered as hospital leave.

10. Heard the arguments advanced on either side and perused the materials available on record.

11. On a perusal of entire records it is known that the petitioner has lost his vision during the course of employment. The first respondent de-categorised the petitioner medically and declared him as 'medically unfit' for the post of Naik. Accordingly, in compliance of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the petitioner was given alternative employment. Initially, he was absorbed as Lascar, thereafter as Peon and thereafter he was promoted as Record Sorter. Thereafter, in compliance with the order of this Court dated 06.03.2006, the scale of pay which the petitioner was drawing before he sustained injury was given to him by creating supernumerary post. Hence pay protection has been granted to the petitioner. However, the petitioner's claim for next level of promotion has not been considered.

12. Admittedly, the petitioner has acquired only IX Standard qualification, whereas, the qualification required for the next level of promotion is a Degree. Unless the petitioner acquire a Degree, the petitioner cannot be considered for the next level of promotion. Hence, further promotion cannot be granted to the petitioner.

13. In view of the above, the petitioner's prayer to direct the respondents to promote him as Senior Clerk in the pay scale of Rs.4500/- - Rs.7000/- cannot be granted for lack of qualification.

14. This Court is fully satisfied that the petitioner sustained injury in his right eye due to spilling of cement article while checking the cement loads, while he was on duty and he lost his vision. He was admitted in hospital and was taking treatment. It is useful to extract hereunder leave rule 554 of Chapter 5 of the Indian Railway Establishment Code:

"554. Hospital leave. - (1) Hospital leave may be granted to railway servants other than in Group A or Group B, while under medical treatment for illness or injuries if such illness or injury is directly due to risks incurred in the course of official duties."

15. In view of the above, I am inclined to issue a direction to the respondents to sanction hospital leave to the petitioner. Accordingly, the respondents are directed to sanction the leave period from 10.09.1996 to 01.04.1997 namely, 204 days, during which period the petitioner took treatment in the hospital, as hospital leave and grant the benefits to the petitioner. The

said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

16. With the above directions, the writ petition is partly allowed. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Senior Divisional
Personnel Officer, Southern Railway
Chennai - 3.
2. The Chief Security Commissioner,
Railway Protection Force,
Moore Market Complex,
Chennai.
3. The Senior Divisional Security Commissioner,
Railway Protection Force,
5th Floor, Divisional Office,
Park Town,
Chennai - 3.

+1 CC to Mr. P.T. Ramkumar, Advocate sr 35171.

+1 CC to Ms. V.J. Latha, Advocate sr 35143.

सत्यमेव जयते

W.P.No.27124 of 2006

NA (CO)
SP (20/06/2018)

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