

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1401 of 2019**

E. Laxman Rao S/o Late E.Y. Ram Murthy Aged About 48 Years Presently Working As Junior Clerk/Commercial SECR Bilaspur, R/o Qr.No.4/5, North East Clony Bilaspur, District- Bilaspur, Chhattisgarh.- 495004.

---- Petitioner**Versus**

1. The Administrative Member Central Administration Tribunal, Jabalpur, Bench, Jabalpur, Madhya Pradesh.
2. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi- 110011.
3. The General Manager South East Central Railway, New G.M. Building, Bilaspur, SECR Bilaspur, Chhattisgarh. Pin- 495004.
4. Sr. Divisional Commercial Manager South East Central Railway, New Zonal Building 1st Floor, D-Block, Bilaspur, Chhattisgarh, Pin- 495004.
5. The Sr. Divisional Personnel Officer Head Quarter, South East Central Railway, Bilaspur, District- Bilaspur, Chhattisgarh. Pin- 495004.
6. Chief Medical Director South East Central Railway, Bilaspur, Post And District- Bilaspur, Chhattisgarh.- 495004.
7. Chief Medical Superintendent Central Hospital, SECR, Bilaspur, District- Bilaspur, Chhattisgarh. Pin- 495004.
8. The Divisional Personnel Officer SECR Bilaspur, District- Bilaspur, Chhattisgarh. Pin- 495004.

---- Respondents

For Petitioner	:	Shri Ajay Kumar Barik, Advocate.
For Respondents	:	Shri Bhupendra Singh, Standing Counsel.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****27.02.2019**

1. Heard learned counsel for the parties.
2. The Petitioner is assailing the order dated 22.01.2019 passed in Review Application No.203/00002/2019 by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (hereinafter referred to as the 'Tribunal').

3. An Original Application No.203/00557/2016 was filed by the present Petitioner for direction upon the Respondent-Railway authorities to send him for re-medical examination and to restore him back on the post of TTE.
4. Limited facts for us to be noticed is that the Petitioner was working on the post of TTE. He suffered a stroke which led to his medical examination and de-categorization in terms of the policy in existence. The employee got accommodated on a lighter post and responsibility as a Junior Clerk. After having worked for a couple of years, he demanded another medical or re-medical examination for certification that he is now capable of being restored back on the original post of TTE.
5. The Tribunal examined the fact as also demanded the relevant rule under which a medically de-categorized employee adjusted on a post would be required to be again medically examined for restoration to his original post or a higher post.
6. No such rule was produced before the Tribunal, therefore, the OA was dismissed on 03.07.2018. A review was preferred which too has been dismissed on identical ground that no rule even in review has been produced which could form the basis for revisiting the earlier order of the Tribunal in the OA.
7. The Tribunal in fact held that the power of judicial review is controlled not only by law but also principles enunciated by various Courts, details of which have been taken note of by the Tribunal in the order of review, which is subject matter of challenge before us.
8. The Court put the same question before the counsel representing the Petitioner for which no answer was given either in the OA or review application, as to where the provision or rule exists for such re-medical examination. Reliance was placed before the Tribunal in review application on a so-called order of

High Court of Madhya Pradesh of a case of *R.P. Dwivedi v. Union of India and Others* which was *Writ Petition No.12964 of 2016* decided on *04.10.2017*. The Tribunal took note of the fact that the issue before the High Court was not re-medical examination, but non-holding of a medical examination.

9. In absence of any provision, any rule much less the service rule, re-examination is not a matter of right of an employee. Even otherwise, the stand of the Railways is that once a decision is taken on the basis of medical de-categorization and an employee is adjusted against the post suitable for him, it creates a right in favour of others as well. Therefore, the position once settled cannot be allowed to be unsettled at the behest and demand and convenience of an employee. Even otherwise the original post of TTE is not available as he had no lien on it.
10. We do not find that the Tribunal has taken an erroneous view in the above stated background. The writ application therefore has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge