

11.10.2023
rpan/17

WPCT 86 of 2023
Union of India & Others
– Versus –
Somnath Ray

Mr. Pulakesh Bajpayee,
Mr. Pradip Kumar Kundu
... for the Petitioners.
Mr. Ashok Chakraborty,
Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
... for the Respondents.

The present writ petition has been preferred challenging an order dated 22nd November, 2022 passed in an original application, being O.A./ 350/ 01755/ 2022.

Shorn of unnecessary details, the facts are that while the applicant/respondent herein was working as Constable in the Railway Protection Force in the Grade Pay of Rs.2,400/-, which was further enhanced to Rs.2,800/- on account of MACP scheme, he was sent for a medical examination whereupon it was diagnosed that he was suffering from '*Surgically intervened post implant removed, old case of fracture olecranon right side with stiffness of right elbow*' and it was opined that his medical condition is not fit for his present job as Constable. Accordingly, by an office order dated 31st August, 2022 he was recommended for appointment to a lower grade post of Carpenter - II in the medical department in Grade Pay of Rs.2,400/-

with all medical precautions as advised by the Medical Board since suitable alternative post was not available. Aggrieved thereby, the respondent submitted a representation on 8th September, 2022 stating *inter alia* that he was not willing to join the said post of Carpenter - II and he should be given all the rightful entitlements in terms of Para 1303 and 1304 of the Indian Railway Establishment Manual Volume – I (in short, IREM). Such prayer was, however, regretted by a memo dated 30th September, 2022. Challenging the memoranda dated 31st August, 2022 and 30th September, 2022, the respondent approached the learned Tribunal.

Mr. Bajpayee, learned advocate appearing for the petitioners submits that the learned Tribunal did not adjudicate the dispute in its proper perspective. The respondent was offered the post of Carpenter - II in the Grade Pay of Rs.2,400/- with all pay protection as per admissible rules in view of his disability but he refused to join. Upon such refusal, he cannot turn back and insist that his case needs re-examination so that he can be absorbed in a suitable vacancy equivalent to the scale of pay enjoyed by him prior his medical unfitness. Such issue was glossed over by the learned Tribunal and no finding was returned on the said issue. Such infirmity in the order warrants interference in the present writ petition.

Per contra, Mr. Ray, learned advocate appearing for the respondent submits that clause 1303 of the IREM confers a right upon the respondent to be adjusted against or absorbed in a suitable alternative post and clause 1304 provides for placement in allied categories and in the event he cannot be immediately adjusted he may be kept in a special supernumerary post in the grade in which he was working on regular basis before being declared medically unfit. In view thereof, the respondent cannot be compelled to join a lower grade post, as offered by the petitioners. Placing reliance upon an unreported judgment of this Court in the case of *Bikash Roy Vs. Union of India & Anr.* passed in WPCT 56 of 2021, he submits that a meaningful reading of the provisions of the IREM leaves no doubt that the service of a Railway servant, who fails in his vision test, should not be dispensed or reduced in rank but he is to be shifted to some other post with same pay scale and service benefits irrespective of having accepted the lower grade post without prejudice to his rights. The photocopy of the original application, as produced by Mr. Ray, be kept on record.

He argues that considering the remarks incorporated in column – 6 in the memo dated 31st August, 2022, the learned Tribunal arrived at a finding that the job of a Carpenter involving flexibility of the right elbow and use of right upper arm and lower arm

post may not be an appropriate alternative employment for the respondent.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

We do not find any reason to interfere with the observation of the learned Tribunal that the order dated 30th September, 2022 by which the respondent's prayer for re-examination was rejected, was a cryptic one and the same has, accordingly, been rightly set aside. The provisions of IREM, as placed before us, need to be considered together and not in isolation. A composite reading of the same reveals that a person declared medically unfit cannot be placed in a lower grade post. It is the obligation of the authorities not to downgrade him but to adjust and absorb him in a suitable alternative post in the grade in which he was working on regular basis before being declared medically unfit. The provisions further reveal that in the event such post is not available, the employee must be kept on a special supernumerary post in the grade in which he was working on regular basis before being declared medically unfit. In the said conspectus, the learned Tribunal rightly directed that alternative employment should be searched out and be offered to the respondent within a specified period and that till such time, as per the provisions of the RBE No. 89 /

99, the respondent should not be deprived of his rightful entitlements.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned and the same does not suffer from any substantial failure of justice or any manifest injustice warranting interference of this Court.

Accordingly, the writ petition, being WPCT 86 of 2023 is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Rai Chattopadhyay, J.) (Tapabrata Chakraborty, J.)