

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 164 of 2024

Union of India & Ors.

Vs.

Biswanath Chakraborty

For the Petitioners : Mr. Indrajeet Dasgupta,
Ms. Amrita Pandey.

For the Respondent : Mr. Chiradip Sinha,
Mr. S.S. Mondal.

Judgment on : September 2, 2025

Madhuresh Prasad, J.:

1. The present petitioner was the respondent before the Central Administrative Tribunal, Kolkata Bench, (hereinafter referred as "Tribunal"). The Original Application, O.A No. 191 of 2021 was filed seeking quashing of the Speaking Order dated 29.09.2020 issued by the Senior Divisional Personnel Officer (Eastern Railway, Howrah). The Speaking Order was passed on representation dated 13.01.2020 made by the applicant in terms of an order passed by the Tribunal on the applicant's earlier Original Application bearing O.A. No. 356 of 2016.
2. The applicant's Original Application bearing O.A. No. 191 of 2021 was disposed of by the Tribunal substantially allowing the relief prayed by the applicant.

3. Briefly stating, the facts of the case are that the applicant/ respondent in the present proceedings was appointed in South Western Railway on 14.07.2009 as an Assistant LOCO Pilot (Diesel) (hereinafter referred to as "ALP"). He was appointed in the Mysore Division. While working there he met with an accident on 21.06.2010. The accident required the petitioner to undergo surgery and he was sick from 21.06.2010 to 02.02.2011. Thereafter, fitness certificate was issued by the Divisional Hospital at Mysore. He joined duty on 03.02.2011.
4. In view of such circumstances the petitioner on his own request was transferred to Howrah Division of Eastern Railway as a special case. He joined at Howrah Division on 16.07.2012 as ALP. While working in Howrah Division the petitioner was sent for medical check-up on 01.04.2013. Subsequently petitioner's special medical examination was conducted till 20.09.2013. Thereafter, he was declared fit from 23.09.2013 but for alternative job in A-1 and below category.
5. The petitioner, in the meantime, was promoted to the post of Senior ALP in Pay Band-1 Rs. 5,200/--20,200/- carrying Grade Pay Rs. 2,400/-. The promotion was with effect from 28.05.2013, but by an order dated 26.06.2013. The petitioner received the benefit of the promotion to the post of Senior ALP in Grade Pay of Rs. 2,400/- from 28.05.2013, and drew salary in the said Grade Pay from June 2013.
6. The petitioner was decategorized thereafter, vide order dated 18.11.2013. As a result, the petitioner was posted as drafted Crew Controller in Grade Pay of Rs.1,900/-.
7. The petitioner's grievances are:

- i. Though he was declared 40% disabled permanently vide an assessment report dated 29.04.2015, accepted by the Railway but he was not granted the due benefits such as:
 - a. Double Transport Allowance,
 - b. 4 days Special Casual Leave in a year and,
 - c. Grade Pay attached to the position (Senior ALP) from which he was decategorized, together with all service benefits.
 - ii. Salary for the period 02.04.2013 to 22.09.2013 during which period the Special Medical Examination was conducted.
8. The Tribunal has taken note of the fact that the applicant was already receiving pay in the scale of Rs. 5,200/--20,200/- carrying Grade Pay of Rs. 2,400/- which is apparent from the pay slips issued for the month of June and July 2013. It has also taken note of an office order dated 11.09.2013 from which it appears that he was receiving salary in Grade Pay of Rs. 2,400/-. The Tribunal has thus found that the petitioner's promotion as Senior ALP with effect from 28.05.2013 was acted upon by the authorities. The fact that the petitioner was on leave during the said period, therefore, has not been considered relevant by the Tribunal. Relying upon Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "1995 Act") the Tribunal has held that the applicant after his medical decategorisation may be shifted to some other post in the same pay scale and service benefits as the post of Senior ALP. The Tribunal thus held that if the decategorisation disentitled the petitioner to perform the duty of Senior ALP, then he could be shifted to some other post provided the

other post carried the same pay scale and service benefits i.e. scale of Rs. 5,200/--20,200/-, carrying Grade Pay of Rs. 2,400/-.

9. The Tribunal held that the petitioner cannot be denied the benefit of promotion merely on the ground of his disability/ decategorisation. Insofar as his claim for transport allowance at double rates, and 4 days special casual leave, the Tribunal has taken note of the fact that this allowance is admissible to orthopedically handicap employees only, on recommendation of the Orthopedic Department or a Government Civil Hospital. Since, there is no such recommendation, and since the applicant raised a reasonable likelihood of bias against Dr. S. Basu who had earlier assessed his disability at 15%, enhanced by the Appellate Board to 40%, the Tribunal in the interest of justice and to ensure fairness directed his Medical Examination by an Orthopedic specialist in the Railway Hospital or Government Civil Hospital, if necessary. The authorities were thus directed to take a decision in respect of these claims, which direction the petitioner's advocate is not disputing. The O.A. was thus disposed of.
10. The learned Counsel for the petitioner Union of India, submits that the impugned decision of the Tribunal based on the provisions contained in the 1995 Act is not sustainable. He has submitted that the petitioner was on leave at the time the promotion was granted to the post of Senior ALP. He did not perform the duties of this promoted post. Before he could assume duties of the promoted post, the petitioner was decategorized and, therefore, he cannot stake any claim for the benefits attached to the promoted post of Senior ALP, or benefits at par with the said promoted post.

11. The learned Counsel further submitted that there is a prescribed physical standard for the post of ALP/ Senior ALP. A candidate who does not possess the requisite physical standard cannot claim any right to discharge duties or occupy such a promotional post, by virtue of the provisions contained in Section 47 of the 1995 Act. The conclusions of the Tribunal, therefore, are unsustainable.
12. The learned Counsel for the applicant (respondent) on the other hand submitted that he suffered an accident in the course of his employment. He was subjected to medical examination, thereafter a medical board was convened on 21.09.2013, as is apparent from 'Annexure A-5' being the letter dated 20.09.2013. Pursuant to such medical board the petitioner was issued a certificate dated 23.09.2013 certifying him to be fit for duty from 23.09.2013 in A-1 and below category. After undertaking an exercise of screening, the authorities, on 18.11.2013, have issued the order placing the petitioner in the post of Crew Controller under Senior DME (P). But in the Pay Band-1 Rs. 5,200/- Rs.20,200/- in the Grade Pay of Rs. 1,900/-. In this order the petitioner has wrongly been shown as being an ALP (D), even though prior to issuance of such order, the petitioner had already been promoted as Senior ALP (D) in pay band I Rs. 5,200/--20,200/-, carrying Grade Pay Rs. 2,400/- vide office order dated 26.06.2013, w.e.f. 28.05.2013.
13. The learned advocate for the applicant relied upon one Master Circular No.25 (hereinafter referred as Master Circular for the sake of brevity) issued by the Ministry which provides that when an employee is decategorized due to accident in the course of his employment, he is entitled to absorption in a suitable alternative post in a regular cadre, on a priority basis. He submitted

that as per the result of the promotion process declaring the petitioner fit to be promoted as Senior ALP (D), the promotion was to be affected on his resumption to regular duty. The impugned action of the respondents in posting the petitioner on the post of Crew Controller, in a pay lesser than the pay of the promoted post of Sr. ALP, is in contravention of the provisions contained in the Master Circular.

14. We have considered the rival submissions, perused the records, including the written argument filed by the respondent/ appellant before the Tribunal. The only contentious issue is whether the applicant can claim benefit of the promotion in terms of the office order dated 26.06.2013, promoting him as Senior ALP, even though he could not join the promoted post, prior to his medical decategorisation.

15. The learned Advocate for the Union of India has challenged the Tribunal's finding in favour of the applicant, in this regard. He submits that it is a settled law that benefits of a promoted post can be claimed only from the date an incumbent assumes the duties of the higher post. As noted above, he has also argued that benefit of the promoted post of Sr. ALP requires a higher level of fitness, since passenger safety is a prime consideration in discharge of duty on the post. This post, therefore, cannot be claimed by the petitioner in view of his medical decategorisation as per provisions contained Section 47 of the 1995 Act.

16. We find no substance in such submissions, since we are of the considered opinion that even if we were to accept that Section 47 of the 1995 Act stood in the way of the applicant's claim to the benefits of the promoted post of Senior ALP, the same would not inure to the benefit of the present petitioner. This is for the

reason that there is no dispute that applicant's service is governed by the Master Circular, which was issued by the Ministry of Railways, for "**Absorption of Medically De-categorised Non-gazetted Staff in Alternative Jobs**". Clause 3(iii) of the Master Circular recognizes decategorisation due to accidents arising out of and in the course of employment, and it is not in dispute that applicant was medically decategorized on account of an accident sustained by him in the course of discharge of his duties. Therefore, the petitioner's claim is covered by Clause 3(iii) of the Master Circular. Clause 6.8 of the Master Circular provides for absorption on a suitable alternative post in regular category only. Clause 7.2 of this Master Circular provides that for granting benefit under the Master Circular, the cause of decategorisation is required to be born in mind, wherein "*accident*" is accorded the first priority. The petitioner sustained injuries in an accident while on duty. Therefore, he is entitled to be accorded first priority for grant of benefit.

17. Clause 10.4 of this Master Circular reads:

"10.4.If before medical decategorisation an employee is empanelled or trade tested and if the panel or trade test list is valid even at the time of decategorisation and vacancy arises in the parent department whilst the panel or the list is still in force, the decategorised employee must be considered for giving him the benefit of promotion which he would have received but for his decategorisation subject to the following conditions:

- a. The benefit will be admissible only in cases where the medical decategorisation is owing to:
 - i. Accidents, which arose out of and in the course of employment,*
 - ii. Accidental injuries received due to willful act or negligence of co-employee.**
- b. The benefit will be admissible only if the relevant panel (in the case of selection posts) or suitability list (in the case of non- selection posts) including posts filled through trade test is valid on the date from which the benefit is due.*
- c. The benefit will be limited only to the initial fixation of pay in the higher posts; subsequent incremental benefit will be admissible."*

18. Plain reading of this provision reveals its intention. The same contemplates that if an employee is empaneled or trade tested, and if the panel is valid at the time of decategorisation the decategorized employee must be considered for giving him the benefit of promotion, which he would have received but for his decategorisation, subject to the condition that the accident arose out of and in the course of employment. Therefore, the petitioner's case is squarely covered by this provision. There is no dispute that the accident was sustained by the petitioner in the course of his employment. It is also not in dispute that the promotion granted to him as Senior ALP by an office order dated 11.09.2013, was still in force since it contained a stipulation in the following terms:

"Promotion of Sri Biswanath Chakraborty, ALP (D)/ HLO will be effective on his resumption to Rg. Duty."

19. As per this stipulation in the office order dated 11.09.2013, notifying the petitioner's promotion as Senior ALP, the authorities, have held the petitioner entitled to the benefit of promotion on resumption of his duties. Thus, from perusal of the office order dated 11.09.2013 it is apparent that authorities have notified his promotion to be effective from the date of resumption of his regular duty, as contemplated under the Master Circular.

20. It is nobody's case that the petitioner neglected in joining the promoted post. The petitioner was incapacitated from joining the promoted post on account of his undergoing medical examination and procedures in connection with the injuries sustained in the course of, and in discharge of his duties. We thus find that in terms of the Master Circular, and as per office order of promotion dated 11.09.2013, the petitioner is entitled to the benefit of the promoted posts of

Senior ALP. He is entitled to avail the promotional benefits, even if he is required to be shifted to some other post carrying the pay scale and other service benefits attached with the post of Senior ALP in the Pay Band I (Rs. 5,200/--20,200/-), with Grade Pay Rs. 2,400/-w.e.f. the date of promotion to the said post (26.06.2013). The Tribunal has directed grant of such benefit to the petitioner but relying on the 1995 Act. However, since we have found the petitioner entitled to the same benefits in terms of the Master Circular, the entitlement of the petitioner under the impugned order of the Tribunal does not undergo any change, requiring any interference with the order and directions contained in the order of the Central Administrative Tribunal Kolkata Bench dated 04.07.2023, in O.A. No. 191 of 2021.

21. We, therefore, find no reason to interfere with the order and directions contained therein. There is no occasion for this Court to exercise its extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution of India to interfere with the order passed by the Tribunal. The writ petition is accordingly dismissed.

22. Insofar as the Tribunal's direction to grant the consequential benefits of the promoted post of Senior ALP, we are inclined to provide a time limit for grant of such benefit. We, therefore, direct that such benefit should be extended to the petitioner and consequential monetary dues be paid within eight weeks from the date of receipts/ production of a copy of this order.

23. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

24. At the time of delivery of judgment, the learned Advocates representing the parties have informed the Court that the petitioner has already been granted the other benefits claimed by him.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

A.D.