

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

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Original Application No. 2029 of 1994

Date of decision : This the 23rd day of July, 1999.

HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

HON'BLE SRI N.SAHU, ADMINISTRATIVE MEMBER.

Shri Suraj Bhan
Son of Shri Matadin
Head Clerk
Under Dy. Chief Mechanical Engineer,
Diesel Shed, Northern Railway
Shakurbasti,
Delhi

...Applicant

By Advocate : Sri B.S. Maine

-versus-

1. The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi

...Respondents

By Advocate : Sri V.S.R. Krishna

ORDER (ORAL)

BARUAH J(V.C.).

The applicant in the OA is seeking directions to the respondents to absorb him in the same grade of Rs. 1600-2660 from the date when the vacancy of the said arose in the office in which the applicant had been working together with consequential benefits. The facts are :

The applicant was originally appointed Loco Cleaner. At the relevant time he was in the grade of Rs. 1350-2200. Thereafter he was declassified on 4.1.1989, and absorbed him as Head Clerk in the scale of Rs. 1400-2300. He protested against it. On 10.5.90 vacancy arose. Instead of giving him the said grade and the post Gulab Singh was given the post who was declassified on 19.8.89. Besides the applicant was senior to Gulab

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✓ Singh. According to the applicant he should have been offered the post and grade of Rs.1600-2660 immediately when vacancy arose. This was however not done. Being aggrieved by the action of the respondents the applicant submitted Annexure A-5 representation dated 4.1.1989. As nothing was done the applicant submitted Annexure A-4 representation dated 24.8.90. Meanwhile the Railway Board issued Annexure A-6 instructions giving details regarding comparison of grades of running staff with those of stationary staff for the purpose of promotion/selection. According to Mr. Maine, the learned counsel for the applicant this was also relevant for determining the equivalent grade of the applicant. As per the said instructions the scale of Rs.1350-2200 is equivalent to Rs.1600-2660. The representations have not yet been disposed of. Hence the present application.

2. We have heard learned counsel for the parties. Respondents have filed written statement controverting the averments made in the application. Mr.B.S. Maine learned counsel for the applicant has drawn our attention to Rule 2314(C) of IREM (Vol.1) 1989. As per the said clause, when an employee is decategorised and equivalent post is not available he should be offered for absorption in a lower grade with pay protection. It should be open in such cases for an employee to accept a lower grade with a request that if a vacancy he held before categorisation occurs, he should be considered for the same giving preference.

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We quote the relevant portion of the said rule:

" Quite often it happens that due to vacancies not being available in equivalent grades a medically decategorised employee has to be offered absorption in a lower grade. In some cases such employee refuse the lower grades in the hope of vacancies in higher grades materialising. It should be open in such cases for an employee to accept a lower grade with a request that if a vacancy in a grade equivalent to what he held before decategorisation occurs in the same cadre he should be considered eligible for the same in preference to a junior medically decategorised employee. While the employee can be expected to put in an application when this contingency happens, it is also necessary for the administration suo moto, when considering a subsequently decategorised employee for absorption in a cadre to look into cases where senior decategorised employees may have been absorbed in lower grades in the same cadre during previous three years and initiate a review. Cases decided need not be reopened unless there are very exceptional circumstances."

3. From the above rules, it is clear that a medically decategorised person may be posted to a lower grade if equivalent post is not available. However, when such vacancy occurred in the grade he was entitled to, should be offered to in preference to his juniors.

4. In the present case Golab Singh was admittedly junior to the applicant and he was also decategorised later than the applicant. If that be so, the applicant was definitely entitled to get the post. Mr. Krishna submits that the applicant should have made a request when he accepted the lower grade as he did not make any request he was not entitled to the benefit of the rule quoted above. We find this submission of Shri Krishna is too a technical ground. The rule

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has been made to encourage person to go to lower grade with a hope that he will get the due grade as and when vacancy arises. If his claim rejects on the ground of his failure to make request the very object of the rules will be frustrated. In this case also, the applicant protested and thereafter he accepted lower post in all probability he did it with a hope that he would get his due post.

5. In view of the above, we are of the opinion that the applicant was deprived of his due when vacancy occurred. We, therefore, disposed of this application with direction to the respondents to give the scale/grade of Rs. 1640-2660 to the applicant in the available existing vacancy.

N.Sahu

(N.SAHU)
MEMBER(A)

D.N.Baruah

(D.N.BARUAH)
VICE-CHAIRMAN

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