

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.324 of 1989

this 28 th day of January, 1994

Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman (J)
Hon'ble Mr. B.K. Singh, Member (A)

Mohan Lal Chugh
Mohan Lal Chugh,
Retired HTC, Hissar,
502, Sector 14,
Sonapat (Haryana)

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Applicant

By Advocate: Shri P.P. Khurana

VERSUS

1. Union of India, through
The Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Bikaner Division,
Bikaner.

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Respondents

By Advocate: None present

O R D E R

(Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.324/89, *Mohan Lal Chugh* as applicant Vs. Union of India, through Secretary, Railway Board, General Manager, Northern Railway and DRM, Bikaner, as respondents, has been filed against order No. PCM/729-E-III/TC/MC passed by DRM, Bikaner dated 10.12.88 relating to denial of seniority in the grade of Ticket Collector and also taking away the benefits of

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seniority already granted, without giving an opportunity to show cause.

2. The applicant joined Railways as Traffic Signaller on 27.3.1951 in the scale of pay of Rs.60-130.

He retired from the Railway service on 31.10.85 as Head Ticket Collector. The applicant was suffering from cramps of fingers and filed a representation for change of category from Traffic Signaller to the category of Ticket Collector on 17.4.53, in the same grade of pay of Rs. 60-130. This was followed by representations dated 17.5.57 and 26.4.58. However, there was no response from Railway Administration. It is alleged by the applicant that in 1959 the disease was aggravated and he filed a representation dated 17.7.59 vide annexure A-I for change on medical ground, enclosing a certificate from private doctor. The certificate reads as under:-

"Certified that I have examined Shri M.L. Chugh, Traffic Signaller, Hissar. He is suffering from telegraphic cramps with consequential neuralgis of right arm. He is also suffering from pits and tranchems. In my opinion he is not fit to work as Signaller due to telegraphic cramps and the only treatment for which is to avoid this job."

3. The respondent No.3, DRM, Bikaner, referred the case to the Divisional Medical Officer, Railways, Bikaner, who concurred with the finding of the private medical practitioner and w.e.f. 12.12.59 the applicant's category was changed and he was appointed as Ticket Collector. A copy of the letter dated 24.11.59 is marked as annexure A-2 of the paper-book. Vide letter dated 12.8.59 (annexure A-3) the applicant had been offered the post of Commercial Clerk/^{coaching clerk} and he declined to accept these posts. The applicant also wrote a letter dated 14.8.59 to Railway Administration that the job of Commercial Clerk/^{coaching clerk} involved continuous use of hands and fingers and as such he would not be in a position to

of these.
accept any/ He, however, accepted the offer of bottom seniority as Ticket Collector vide letter dated 19.8.59 (annexure A-5) of the paper-book. After this acceptance of rock bottom seniority, he was taken in the category of Ticket Collector (TC) w.e.f. 12.12.59.

4. The applicant represented on 8.12.61 and 3.12.63 (annexure P-6) that though he was declared medically unfit by the private medical practitioner which also had the concurrence ^{of} the Divisional Medical Officer (DMO), Bikaner, he should have been treated as medically decategorised w.,e.f. 12.12.59 and on receipt of the opinion of the DMO, he should have been given the seniority below those TCs who had equal length of service and who were drawing equal pay. Rule 313 (a) (i) and (ii) of Indian Railway Establishment Manual, Vol.I revised edition, 1989, deals with medically unfit Railway servants. It reads as under:-

"313. MEDICALLY UNFITTED RAILWAY SERVANTS:

(a) (i) Medically decategorised staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised. For example, traffic running and operating staff need not necessarily be absorbed in the ticket checking cadre alone but they could also be absorbed in other commercial, station or yard categories.

(ii) The medically decategorised staff absorbed in alternative posts, whether in the same or other cadre, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher grade is to be taken into account.

Provided that if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption."

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All the representations regarding medical decategorisation have been all collectively marked as annexure P-7 of the paper-book.

5. After seven years the respondent No.2, i.e. General Manager, Northern Railway, referred the case of the applicant back to the DMO, Bikaner through the respondent No.3 on the ground that the previous report dated 7.9.59 submitted by the DMO, Bikaner, was not specific regarding the medical decategorisation of the applicant and his shifting to the alternative category. The DMO was asked to reject the case of the applicant. The DMO, Bikaner, in reply, reported as under:-

"Examined on date. He is still considered unfit for the post of Signaller. On medical grounds, it is recommended that he should be absorbed in some alternative job permanently."

This report confirms the opinion already given by the DMO on 7.9.59 with the remark that the applicant still continues to suffer from the disease. After this medical report the applicant was declared medically unfit for the post of Traffic Signaller and absorbed in the alternative category of TC w.e.f. 19.10.66 on the basis of length of service rendered in the corresponding grade by him. It is worthwhile to mention that the applicant had already been permanently absorbed in the category of TC on 12.12.59 and he was confirmed as such on 9.5.64. Copy of the letter concerned dated 5.1.67 is marked as annexure

A-8. Further representations dated 18.8.68, 4.10.68, 22.10.68 and 19.8.69 have all been annexed to this application with a prayer to assign the correct seniority. The GM, Northern Railway sent a reply saying



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that when the applicant was taken and absorbed in the category of TC on 12.12.59, it was not a case of medical unfitness. Hence initially the decision taken by the respondent No.3, i.e. DRM, Bikaner, to assign him bottom seniority was held to be correct. It was, further pointed out that reference to the DMO, Bikaner was bad since the applicant had already agreed to rock bottom seniority below all permanent and temporary TCs w.e.f. 12.12.59.

6. It seems that various representations filed by the applicant aroused the ire of the authorities who turned down his request for medical decategorisation from 12.12.59 and also snatched the benefits granted to him in 1966 as a result of Railways own orders dated 5.1.67.

It has been alleged by the applicant that but for these representations the benefits enjoyed by him would have remained intact and would have enabled him to draw pension on retirement on the basis of a higher pay-scale which was subsequently withdrawn.

7. If bottom seniority as accepted by the applicant was to be given effect to, there was no point in referring the case of the applicant to the DMO, Bikaner for his medical opinion on the certificate submitted by the applicant from private medical practitioner. It is only on the confirmation by the DMO, Bikaner that enabled the authorities especially the DRM, Bikaner, to consider the case of the applicant for medical decategorisation and to absorb him permanently w.e.f. 1959 instead of 1969 on the basis of length of service in the corresponding grade. It has been averred that the Administration could not snatch the benefits which had already accrued to the applicant without even extending the opportunity of show cause since this meant reduction of his pay from higher grade to lower grade. On this subject several representations were filed by the applicant and these have been collectively marked as annexure A-11.

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8. When the case of the applicant was again referred to DMO, Bikaner on 19.10.66, the latter reiterated his view that the applicant continued to suffer from finger cramps and was unfit for the post of Traffic Signaller. The applicant was, therefore, allowed to continue as TC on medical grounds. Copy of the letter dated 14.9.85 rejecting the prayer of the applicant for reconsideration of his case is marked as annexure A-12 of the paper-book.

9. It is also a fact that the petitioner went to Pension Adalat with letters dated 23.7.86 and 28.7.86 (annexure A-13). But since the matter was already pending with the Tribunal, these representations were not considered. Subsequently, he filed a representation to Mr. P. Chidambaram, the then Minister of State for Personnel, Public Grievance and Pensions, dated 17.4.87 (Annexure A-14). Further representations dated 2.2.87, 14.5.87, 4.12.87 and 5.1.88 are all marked as Annexure-15 of the paper-book. The respondent No.3 on receipt of various representations from the Department of Pensions & Pensioners' Welfare again examined and rejected these and communicated the same vide letter dated 12.2.88 (annexure A-16). The applicant further represented to the Minister of State, Pensions & Pensioners' Welfare, vide annexure A-17 and A-18 and copies of acknowledgements to these representations are placed at annexure A-19.

10. the applicant has sought the following reliefs:

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(i) The applicant be assigned seniority from the date of his actual posting as TC, i.e. 12.12.59, treating him to have been posted on the advice of DMO, Bikaner as medically decategorised from that date from the category of Traffic Signaller to that of TC;

(ii) To grant all consequential benefits including fixation of pay, arrears of pay etc.

11. A notice was issued to the respondents who filed their reply and contested this application and grant of reliefs prayed for.

12. Heard Shri P.P. Khurana, the learned counsel for the applicant and perused the record of the case. None was present on behalf of the respondents. A perusal of the record shows that the right to file counter affidavit had been forfeited on 13.10.89 but later on the basis of ^{an}MP they were permitted to file counter which was taken on record.

13. On perusal of the counter and the rejoinder it is clear that while working as Traffic Signaller, the applicant applied on 17.4.53, 7.5.53 and 26.4.58 for change of category. It is also admitted that he accepted the loss of seniority and agreed to rock bottom ^{seniority} on the basis of option given to him. It is clear that there was no mention of medical grounds then. The applicant again requested on 17.7.59 for a change of category on medical grounds enclosing a certificate from a private medical practitioner, Dr. Hakim Rai, West Patel Nagar, New Delhi. It is also admitted that the case of the applicant was referred to DMO, Bikaner who gave his opinion on the basis of medical certificate from Dr. Hakim Rai confirming the opinion of the private medical practitioner, Dr. Rai. On the basis of medical advice and opinion of DMO, Bikaner, the applicant was considered medically unfit to do the job of Traffic

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Signaller and, therefore, offered the alternative job of Commercial Clerk/Coaching Clerk which he declined to accept on grounds that at this will involve continuous use of fingers. On 19.8.59 he was asked to give written declaration to accept rock bottom seniority, which he did, and accordingly he was absorbed as TC on 12.12.59. It is only later that the matter was reopened by the GM, Northern Railway, who did not agree with the DRM, Bikaner to treat this transfer on the basis of medical decategorisation. The GM treated it as a transfer on the request of the applicant and that is the reason why he declared that the report of the DMO, Bikaner was not specific and the DMO was asked to be specific regarding the disease from which the applicant was suffering. The subsequent ^{advice} of the DMO, Bikaner, said that the applicant continued to suffer from the disease and on the basis of this latest report the applicant was declared to be medically unfit and shifted on medical ground to the job of TC w.e.f. 19.10.66.

14. The facts admitted in the counter and also in the rejoinder are that the applicant was taken as TC after getting an endorsement from the DMO, Bikaner on the certificate of the private practitioner and then was permanently absorbed in that category w.e.f. 12.12.59. It is also admitted that he was confirmed as TC in the grade of Rs.110-180 w.e.f. 9.5.64. It is also admitted that he was promoted as TC in the grade of 130-212 on 5.1.67.

15. The order of reversion passed in 1969 and reducing the pay of the applicant from Rs.130-212 to 110-180 was a kind of reversion by way of punishment. Hence Article 311 (2) of the Constitution gets attracted

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as the government servant ought to have been given a reasonable opportunity of showing cause against the action of reduction of pay. Protection of Art. 311 (2) in such a case is available to affected government servant. Where a person is appointed substantively to a permanent post, he normally acquires the right to hold that post until under rules he attains the age of superannuation or is compulsorily retired. In the absence of a contract, expressed or implied, or service rule, he cannot be reduced in rank nor can his pay be reduced. Reversion of a public servant appointed substantively to a grade or scale of pay, to a lower grade operates as a forfeiture of his rights and inflicts a punishment and thus he has to be afforded a reasonable opportunity to show cause. In this case the applicant was not guilty of any misconduct, negligence, inefficiency or other disqualifications to warrant reversion from the scale of Rs.130-212 to Rs.110-180. This is recognised in explanation to Rule 49 of the 1930 Classification Rules -- Civil Service (Classification, Control and Appeal) Rules, 1930 which corresponds to Rule 1702 of the Indian Railway Establishment Code and Rule 3 of All India Service (Discipline and Appeal) Rules 1955 and Rule 13 of Central Civil Services (Classification, Control & Appeal) Rules, 1957.

16. The principle is that when a government servant has a right to a rank under the terms of employment, express or implied, or under the rules governing the conditions of his service, his reduction to a lower pay-scale, prima facie, is a punishment for it operates as a forfeiture of his right to hold that post or that rank and get the emoluments and other benefits attached thereto.



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17. Article 311 (2) will apply if there is reduction in rank or deprivation of benefits and perks attached to a rank. Action of the General Manager, Northern Railway, in case of the applicant is tantamount to reduction in rank and thus Art. 311(2) of the Constitution gets attracted as this could not be done without affording reasonable opportunity to the applicant to show cause and observing the principles of natural justice. Reduction in rank or reduction of pay-scale entails penal consequences and therefore provisions of Art.311(2) have got to be complied with. In view of these observations the order of Railway authorities reducing the pay-scale of the applicant retrospectively is quashed and set aside. The pay-scale which he was drawing is well protected under Rule 313(a) (i) and (ii) of the Indian Railway Establishment Manual, as quoted above. On that ground also the applicant can neither be reduced in rank nor can his emoluments be reduced. It is therefore made clear that irrespective of the date of his absorption, he would be entitled to be placed below those who have the same length of service and who were drawing the same scale of pay. The entire exercise has been of academic interest only.

18. Accordingly, the application is allowed and the orders of the General Manager, Northern Railway, are quashed and set aside. The petitioner will be entitled to all consequential benefits including restoration of his pay, re-fixation of his pension on the basis of the pay-scale and arrears which he could have drawn on the




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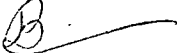
date of his retirement, as if he was never reverted, with 10% as interest on arrears of pay and pension. The respondents are directed to comply with these directions within a period of two months from the date of receipt of this order.

There shall be no order as to costs.


(B.K. SINGH)
MEMBER


(S.K. DHAON)
VICE CHAIRMAN

Concurrence made
SKG


11/9

11.4.1994

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Present: Shri P.P. Khurana, counsel for the applicant.

It has been brought to our notice that there is a typographical error in the judgment delivered on 28th of January 1994, insofar as the name of the applicant ~~name~~ has been misspelt. Instead of Manohar Lal Chugh, Mohan Lal Chugh has been typed out. We therefore, make necessary corrections in our judgment wherever required.

Let a certified copy of ^{corrected} the judgment be issued to the parties.


(B.K. Singh)
Member (A)


(S.K. Dhaon)
Vice Chairman (J)

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