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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.583/90

DATE OF DECISION: 31.8.1990.

SHRI P.N. BHUTANI & SIX OTHERS

APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI B.S. MAINEE

COUNSEL FOR THE APPLICANTS

SHRI P.S. MAHENDRU

COUNSEL FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Shri P.N. Bhutani and six others who are serving in various capacities in the category of ministerial staff in the operating branch of the Divisional Railway Manager's office, Northern Railway, New Delhi, have filed this application under Section 19 of the Administrative Tribunals Act, 1985. They have challenged the impugned order No.729/E-22/2360 dated 22.9.1988 of the respondents, posting Shri Aditya Kumar Sharma, a medically decategorised ASM as Head Clerk (Rs.1400-2300) in operating branch of the Divisional Railway Manager's (DRM) office by down-grading the vacant post of Assistant Superintendent (Rs.1600-2660). Their grievance is that contrary to the assurance held out to them vide letter dated 31.1.1967 (page 15 of the paper book), the respondents are continuing to post most of the medically decategorised operating staff in the ministerial category of the operating branch of the DRM office, to the prejudice of their chances of promotion. They have, therefore,

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prayed for a direction to the respondents to distribute the medically decategorised staff already posted in the operating branch on a proportionate basis to various ministerial cadres based on the strength of each cadre and that similarly future postings may regulated on the same basis.

2. The respondents in their written reply have denied the position putforth by the applicants in the OA and averred that the medically decategorised staff are normally absorbed in the same branch to which such staff belong; when an appropriate vacancy is not available in the same branch, such staff are then absorbed in other branches where a suitable vacancy exists. The contention of the applicants that the medically decategorised staff is posted only in the operating branch has also been contested by quoting specific cases where decategorised ASMs have been absorbed in the Medical, Personnel or other branches. The respondents have contended that it is not practicable to follow the so-called assurance given vide letter dated 31.1.1967 (page 15 of the paper book). Further the order which has been challenged relates to the posting of Shri Aditya Kumar Sharma and since he has not been impleaded in the case, the application is stated to suffer from the defect of non-joinder of the parties properly.

3. Advocate, Shri B.S. Mainee, who appeared for the applicants drew our attention to the averment made in the application that six vacancies which arose during the period of 31.1.1987 to 30.11.1988 in the operating branch, consequent to retirement of some officials have all been filled up by appointing medically decategorised ASMs. The learned counsel for the applicant further submitted that filling up the vacancies at senior level in Group 'C' category produced a chain reaction, resulting in denial

of promotion not to one but to many others who are in the promotion channel. He further submitted that the ASMs handle both operating and commercial work at the railway stations and even though five vacancies had arisen in the commercial branch and 16 in personnel branch during 1987-89, yet not a single decategorised operating staff was posted in these branches. The short point therefore made by the learned counsel is that absorption of the decategorised staff should be evenly dispersed among various cadres so that there is no serious adverse impact on the promotional prospects of the staff working in any cadre.

4. Advocate, Shri P.S. Mahendru, appeared for the respondents, submitted that the decategorised staff are absorbed in alternative jobs in accordance with the well established procedure. While normally the decategorised staff are posted in the branch to which they belong, if no vacancy is available in that branch, endeavours are made to find an appropriate position for them in other branches where vacancies are available.

5. As directed by us, the learned counsel for the ~~XXXXXXXXXXXXXXXXXXXX~~ respondents submitted the relevant rules regulating absorption of medically decategorised staff as contained in the Indian Railway Establishment Manual, on 25.8.1989. Rule 152 R-I lays:-

"A railway servant who fails in vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies but not incapable of performing other duties, should not be discharged forthwith but should be granted leave under Rule-2237-A R-II".

Thus it is incumbent on the respondent, railway to absorb permanent staff in alternative jobs where an employee is

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found to be capable of performing other duties. Alternative employment has to be found as expeditiously as possible and must be of suitable nature and on reasonable emoluments, having regard to the emoluments previously drawn by the railway servants (2601 IREM). Paragraph 2605 of IREM provides that "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 post could be utilised." Paragraph 2606 further details the procedure to be followed for finding alternative employment. It has inter alia been envisaged that a committee consisting of three officers shall determine the categories in which a disabled railway servant is suitable for absorption. Once the category/post has been determined, it is the duty of the officer under whom the railway servant was working, to identify for him suitable alternative employment. The procedure prescribed in paragraph-2601-2615 is very elaborate and need not be gone into for our purpose. It will be sufficient to note that the Screening Committee of three officers including one from Personnel and one from the department which the employee belongs to is ordinarily to be set up to review the case of the decategorised employee and to find the alternative job. Further the Committee has to locate the alternative job "in allied categories where their background and experience in earlier post could be utilised."

The procedure not only safeguards the interest of the decategorised staff, it also takes care of the staff who are already working in that particular branch having a specific channel of promotion. In this connection Note-2 below Rule 2604 (IREM) makes the following provisions:-

"In the matter of absorption of a medically incapacitated staff in alternative posts, Railway administrations, should take care to ensure that the interests of staff

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in service are not adversely affected as far as possible. The alternative appointment should be offered only in posts which the staff can adequately fill."

6. The learned counsel for the applicants had stressed that since the duties of the ASMs include both commercial and operating work, decategorised SMS/ASMs should proportionately be absorbed in the commercial branch. The nature of the duties of the ASMs/SMS depends on the station of their posting. All ASMs/SMS do not necessarily handle commercial work. We therefore do not intend to go into the details of this question.

We are also not impressed by the respondents' letter dated 31.1.1967 (page 15 of the paper book) purporting to give assurance regarding absorption of decategorised staff on proportionate basis. All that this letter says is that "efforts have been made to absorb traffic staff in T & C branches, Mechanical staff in Mechanical branches and so on. Yet in future cases it would be kept in view that each cadre gets the same proportionate number of medically unfitted staff (percentage-wise)." First the letter does not give any categorical assurance. All it says is that "....kept in view..". Secondly there is no such provision of proportionate absorption in the statutory rules. Such letters/executive in such claims cannot over-ride the statutory provisions.

In the circumstances of the case, we do not find any merit in the application and would not like to give any direction to the respondents except referring them to the rules contained in Chapter XXVI of the Indian Railway Establishment Manual for absorption of medically incapacitated in alternative employment to ensure that decategorised

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staff is absorbed in accordance therewith. The OA is disposed of at the admission stage itself without any orders as to the costs.

The interim order passed on 18.5.1990 and continued thereafter is hereby vacated.

I.K. Rasgotra
(I.K. RASGOTRA) 31/8/90
MEMBER (A)

T.S. Oberoi 31/8/90
(T.S. OBEROI)
MEMBER (J)