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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1999/93

NEW DELHI, this 17<sup>th</sup> day of December, 1993

Hon'ble Shri C.J. Roy, Member (J)

Shri Kaushal Veer Sharma  
s/o Shri Uday Veer Sharma  
292/1, Railway Colony  
Shakurbasti, Delhi

.. Applicant

By Shri S.K. Sawhney, Advocate

Versus

Union of India, through

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

2. The Divisional Railway Manager  
Northern Railway  
DRM Office, New Delhi

.. Respondents

By Shri S.A. Matto, Advocate

ORDER

The applicant has opposed the order dated 17.9.91 transferring him to the post of Enquiry & Reservation Clerk and claiming a relief to post him back in the Personnel Branch of DRM's office, where he states he had acquired a lien, and also absorb him in the scale of Rs.1400-2300.

2. Briefly stated, the facts of the case are that the applicant, while working as Assistant Station Master in the scale of Rs.1400-2300, he was medically declared unfit for the said post involving telephone handling and crossing of yards and public dealing, vide order dated 18.3.87 (Annexure A-4). Thus, the applicant was placed on leave in order to find an alternative job for him. Later on he was recommended by a Committee of Three Officers to be absorbed as Senior Clerk in the pay scale of Rs.1240-2040, for which he gave his willingness and he resumed duty ~~as clerk~~ on 10.4.87 in the DCOS, Shakurbasti after keeping his lien in the Personnel Branch of DRM Office.

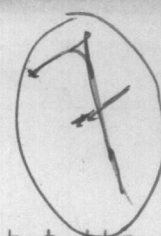
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After working in Shakurbasti till 20.6.89, the applicant was transferred to his original office, i.e. DRM Office where he gave his joining report on 22.6.89. But he was kept waiting without issuing any order and was not paid wages for July, 89, for which he made a representation on 4.8.89 followed by a reminder on 15.9.89. Then, vide letter dated 29.9.89, the applicant was asked to appear again before a committee of 3 officers for adjudging his suitability and reconsideration of his posting. He was also asked to give his acceptance for the post of Head Clerk in transportation Branch of Northern Railway, vide letter dated 6.12.89. The applicant sent a protest letter on 11.12.89, followed by a reminder dated 18.6.90, but vide order dated 31.7.90, the applicant was posted under Loco-Foreman, Delhi, whereagain he was not taken on duty.

Then, by order dated 24.1.91 he was posted to Personnel Branch, thus keeping him away from duty from 22.6.89 to 24.1.91. Not only this, he was issued with another order dated 5.2.91 informing the applicant that fixation of his lien in a particular Branch was under consideration.

The applicant was also called to appear before a Committee vide letter dated 26.7.91 for adjudging his suitability, to which the applicant appeared under protest. But he was issued with the impugned order, which he claims to be illegal. Hence this application, seeking a relief cited supra,

3. The respondents have filed their counter denying the averments made by the applicant. They submit that the impugned order was passed because the suitability of the applicant was adjudged and he was offered the post of Sr. Clerk (Rs.1200-2040) in operating Ministerial group vide order dated 8.1.87 till the occurrence of vacancy in grade Rs.1400-2300, but he could not be absorbed due to the stay by the Hon'ble Tribunal, by which the respondents were restrained from posting any further medically deca-  
tegorised staff in the operating branch.



4. The respondents further aver that the applicant could not be absorbed in the scale of Rs.1400-2300 due to some administrative reasons and, therefore, he was allowed to work Senior Clerk (Rs.1200-2040) upto 17.9.91, after which he was adjudged suitable by a Committee of three officers and he was posted as Enquiry & Reservation Clerk (E&RC in short) in the scale of Rs.1400-2300, vide order dated 19.9.91.

Regarding the period the applicant was kept waiting, i.e. from 22.6.89 to 24.1.91, the respondents say that the applicant was adjusted for the post of Head Clerk but due to stay of Hon'ble Court, the applicant could not be absorbed in the grade of Rs.1400-2300 because he was medically decategorised and that period was treated as "leave due". In view of this position, the respondents say that the applicant is not entitled for the relief he has claimed.

5. The applicant has filed his rejoinder more or less reasserting what he has stated in the OA.

6. I have heard the counsel for both the parties and perused the records.

7. Now the short point for consideration is whether the applicant is entitled for the relief prayed for.

8. The contention of the applicant is that when he has been absorbed in the Personnel Branch, DRM Office vide order dated 6.4.87 and that his lien existed there vide letter dated 29.6.89, he should have been allowed the post of Head Clerk (Rs.1400-2300) in the same Branch. The respondents deny this by saying that the applicant was called for suitability to compensate his grade i.e. Rs.1400-2300 because he was medically decategorised for the post of ASM Grade Rs.1400-2300.

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9. As regards the allegation of the applicant in para 5 of his OA that the act of the respondents in not posting him in 'P' Branch and ordering his posting as E&RC is illegal, the respondents aver that the applicant was offered the post of Sr. Clerk in Operating Ministerial Group vide letter dated 8.1.87 till the occurrence of vacancy in grade Rs.1400-2300 but he could not be absorbed due to stay from the Tribunal by which the respondents were restrained from posting any further medically decategorised staff in the operating branch. I have seen the copy of Tribunal's order dated 18.5.90, given to me by the applicant's counsel across the bar. The stay is granted for only 'Operating' Branch and not for 'P' branch or any other branch.

10. The applicant further avers that he has not received any reply to his representation dated 24.7.92 against the impugned order dated 17.9.91.

11. After having gone through the material placed before me and after listening to the arguments of both the parties, I feel it is a fit case for giving a direction.

12. The respondents are directed to dispose of the representation dated 24.7.92, if not already disposed of so far, within a period of two months. If the representation is already disposed of, the applicant may make another representation, which will be disposed of by the respondents within two months from its <sup>date of</sup> receipt. If the applicant is aggrieved even after that, he is given liberty to approach the Tribunal again.

*W. Roy*  
(C.J. Roy)  
Member (J)