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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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O.A. 2358/1993

New Delhi, dated the 27th Sep., 1994

CORAM

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)  
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Padam Narain Sharma  
D-867, Street No.13A,  
Ashok Nagar, Wazirabad Road Side  
Delhi-93

... Applicant

(By Advocate Shri S.K.Sawhney )

V/s

1. Union of India through  
Genl. Manager,  
Northern Railway,  
Baroda House,  
New Delhi

2. Divisional Railway Manager,  
Northern Railway,  
Chelmsford Road, New Delhi

... Respondents

(By Advocate Shri B.K.Agarwal )

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman(A))

The applicant is aggrieved by the Annual notice  
of the Divisional Personnel Officer(Spl.) Northern Railway,  
New Delhi issued on 28-7-1992 which reads as follows:-

" Shri Padam Narain Sharma son of Behari Lal  
Sharma Hd.TXR grade Rs 1600-2600, DLI who has  
been declared Medically Unfit by Sr.DMO/Delhi  
vide letter No.66/Med/NDLS/91 dated 24.6.91  
permanently for the duties of his original post  
and was placed on leave due w.e.f. 24.6.91, is  
hereby retired from service with immediate effect  
as recommended by the Committee of three  
officers as there is no suitable vacancy." ..

The grievance of the applicant is that he has been so retired without following the Rules contained in the I.R.E.M. Vol.II i.e. (Ann.A.8) Rules 1305 and 1306. According to the Rule 1306(1) a committee of three <sup>U</sup> ~~of~~ should examine ~~the case~~ / determine the categories of posts for absorption in alternative employment of medically incapacitated persons. One of the members should be Railway Servants immediate officer. It is alleged that in his case, this has not been done. Another ground taken by him is that under Rule 1305, the authority is required to make attempts to absorb a disabled Railway servant not only within the District/Division or Department but in another District/Division or Department. Attention is also drawn to another provision in Rule 1306 (7) which requires the name to be recorded in register at various offices. When the case was filed in 3rd November, 1993 he was only about 51 years and therefore, he had some more years to go for retirement. In the circumstances, he has prayed for quashing of Ann.A.1 order and to direct the respondents to consider the applicant for alternative employment as Asstt.Supdt. in the ministerial cadre of Mechanical Branch where vacancies were existing and/or take necessary steps under Rules 1306 to found out suitable job for the applicant.

2. The respondents have filed a reply in which the allegations are denied. It is stated that the Committee which considered his case consisted of three officers and one of them was his immediate officer. It is also stated that no vacancy was available on the date when the Committee gave its decision.

3. When the matter was heard on an earlier occasion we directed the learned counsel for the respondents to file an affidavit in respect of the basic issues involved. Such an affidavit has been filed by Shri S. u nil Misra, Divisional Personnel Officer (N.R.) New Delhi.

4. We have heard the parties.

5. The affidavit states that the Committee consisted of the Divisional Personnel Officer, Divisional Traffic Manager and Divisional Engineer. Learned counsel for the applicant points out from the pages showing the 'contents' of the I.R.E.M. that there is a Mechanical and Electrical Engineering Department and Civil Engineering Department. The Head of the former Department is Divisional Mech. and Electrical Engineer while the head of the latter

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is Divisional Engineer. The applicant was a Head Train Examiner. His Head of Department is the Divisional Mechanical & Electrical Engineer. He, therefore, points out that the Committee did not include the officer under whom the applicant immediately worked. Learned counsel for the respondents was unable to satisfy us on this ground. This affidavit does not clear this issue. We, therefore, find that the Committee was not properly constituted.

6. The applicant has contended that ~~he~~ was medically incapacitated on 24.6.1991, a vacancy of Asstt. Supdt. (Mechanical) arose on 31.10.1991. Instead of considering the applicant for that position, Shri J.K. Saxena, the empanelled candidate, was promoted to that post. The affidavit states that this vacancy arose on 31-10-1991 on the retirement of Shri Thakur Dass Batra and was filled by Shri J.K. Saxena. By doing so, respondents have violated Rule 1308 which says that before any post is filled or promotion is ordered, the officer concerned will refer to his register to see that no medically incapacitated people are waiting for appointment.

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7. Para 2 of the affidavit reads as under :-

" That the administration explored every possibility to accommodate the applicant in an alternative suitable vacancy both in this Division and in other divisions. Other Divisions were contacted on phone in order to quicken the process of absorption of the applicant to avoid any harassment to the applicant either physically or monetarily. No suitable vacancy according to his qualifications which is VIII Standard and mental fitness could be found. <sup>12</sup> The claim that other divisions were contacted on phone to ascertain vacancy, lacks credibility. The normal procedure is correspondence. We cannot believe that respondents became so conscious of promptitude that they took pains to ascertain the position on phone. That is not done.

Further what is claimed to be done does not also satisfy the requirement of Rule 1305, which requires attempts to be made to absorb the employee not only within the District/Division

but also in <sup>12</sup> another departments.

8. In the circumstances, we find that this O.A. has to be allowed. The question is what relief should be given. Ld. counsel for the applicant pressed that the applicant was unjustly denied employment. He has been retired and is getting pension. He requests, that, atleast the difference between last pay and pension, may be given. <sup>12</sup> Ld. counsel for the respondents states that, in the interest of justice the respondents be merely directed to comply with the

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Rules and the applicant be given employment.

9. We have considered the matter. We are satisfied that the respondents have violated the rules. Therefore, the applicant would be entitled to the differences w.e.f. from the date this OA was filed.

10. In the circumstances, we dispose of this OA by quashing the Ann.A.1 order. Respondents are now directed to comply with provisions of Rules 1305, 1306 and 1308 of the I.R.E.M. and give the applicant an alternate employment, as expeditiously as possible. In the meanwhile, the respondents shall pay to the applicant the difference between the gross emoluments drawn by the applicant before retirement and the gross pension given to the applicant every month, with effect from 1.11.1993 (i.e. the month in which the OA was filed) until he is given an alternate employment. The arrears on this account shall be paid within two months from the date of receipt of this order. On being given alternate employment, the respondents may pass appropriate orders in respect of pensionary dues paid, other than monthly pension. OA disposed of as above.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member(J)

*✓*  
27.9.94  
(N.V. Krishnan )  
Vice Chairman (A)