

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of October, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 1348 of 1997

Kamla Shanker Dwivedi, a/a 45 years, son of Sri Paras Nath Dwivedi, resident of 151-Gariwan Tola, Allahabad presently posted as Head Inquiry Cum-Reservation Clerk, Northern Railway, Allahabad..... Applicant.

Counsel for applicant : Sri S. Agarwal.

Versus

1. Union of India through the Secretary, Ministry of Railways New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Alld.
4. Divisional Personnel Officer, Northern Railway, Allahabad
5. Zahiruddin, son of Late Naseemuddin, r/o 354, Colonelganj Allahabad..... Respondents.

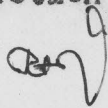
Counsel for respondents : Sri Lalji Sinha.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S. Agarwal, learned counsel for applicant, counsel for respondents and perused the pleadings.

2. The applicant, ~~who was~~ initially appointed as Guard Goods w.e.f. 13.1.1977, was medically decategorised in the scale of Rs.1200-2040 in the year 1987 in which year he was absorbed in the grade of Reservation-Cum-Enquiry Clerk in the scale of Rs.1200-2040 after screening by the Screening Committee. It appears that Respondent No.5, who was similarly medically decategorised <sup>came to be</sup> absorbed as Reservation Cum-Enquiry Clerk in the grade of Rs.1200-2040 on 7.11.99, filed an O.A. which was disposed of vide order dated 4.6.97 and pursuant to the direction given by the Tribunal, the



5th Respondent has been given the absorption from due date. The applicant who earlier filed representation staking his<sup>2</sup> claim in higher grade filed reminder representation particularly relying on the case of Respondent No.5. The said representation <sup>has</sup> ~~had~~ been rejected by the impugned order dated 5.9.97 which reads as under :-

"No. EC-5/Absorption/E&RC/K.S.Weivedi Office of the  
Divl. Rly. Manager  
Northern Rly.  
Allahabad.

Shri K.S. Dwivedi(Hd. E&RC)  
N. Rly./Allahabad.

Through : C.R.S./Ald.

Reg :- Your request for allowing benefit of promotion and fixation of pay in higher grade.

Ref:- Your representation dt. 14/8/97 on the above subject.

-----

In reference to your representation cited above, it is to inform you that you have been absorbed as E&RC Gr. Rs. 1200-2040 (RPS) after Screening by the Screening Committee which has already been accepted by you.

As regards Shri Zaheeruddin he has been allowed benefits as per Hon'ble CAT/ALD's judgement in O.A. No.499/1995 which is not applicable in your case.

Sd/  
for Divl. Personnel Officer.  
Northern Rly/Allahabad."

3. It is submitted by the learned counsel appearing for the applicant that the applicant was a running staff and in the case of running staff the former emoluments, for <sup>and identification of equivalent post,</sup> the purpose of comparison, will be basic pay plus percentage of such pay in lieu of running allowance as may be enforced. For this purpose, counsel for applicant has placed reliance on paragraph 1039 of I.E.R.M. Vol-I as well as Master Circular No.E(NG)I/90RE-3/2, New Delhi dated 24.4.1991 issued by the Govt. of India, Ministry of Railway, a copy

*Handwritten signature*

of which has been annexed as Annexure A-9 to the O.A. Learned counsel has placed reliance on paragraphs 6.7. and 9.4, 9.5 and 9.6 of the said circular in support of his claim that for the purpose of comparison and identification of equivalent post, the further emoluments including the running allowance ought to have been taken into consideration by the Railway Administration. The representation, it is submitted by the counsel, was rejected without taking into consideration the aforesaid provision. Counsel for the respondents, on the other hand, submits that the O.A. is highly belated and is liable to be dismissed on this ground alone. It is also submitted by the counsel that the applicant has not filed even delay condonation application and further that <sup>the</sup> master circular was issued on 24.4.91 i.e. much after the applicant was absorbed as Enquiry-Cum-Reservation Clerk in the year 1987 and, therefore, the applicant cannot take advantage of the said circular which cannot be given effect retrospectively. It is also submitted by the counsel that no representation <sup>was</sup> filed <sup>in</sup> ~~earlier~~ <sup>earlier</sup> ~~that~~ <sup>one</sup> which had been rejected by the Respondents, <sup>has</sup> ~~been received~~. Learned counsel has placed reliance on the case in the State of Karnataka & others Vs. S.M. Kotrayya & others 1996 SCC (I&S) 1488 in support of his contention that the O.A. being highly belated <sup>ted</sup> ought not to be entertained.

4. Having heard counsel for the parties we are of the view that the O.A., which has already been admitted, cannot now be dismissed as time barred particularly in view of the fact that it is within limitation from the date of rejection of the representation, and The representation was ~~not~~ rejected on the ground of delay and latches.

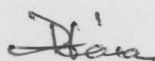
5. So far as the question of entitlement of the applicant to get his running allowance taken into consideration for the purpose of comparison and identification of equivalent post is concerned, we are of the view that

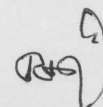
DR

since this aspect of the matter has not been examined by the Competent Authority, it would be apt and proper to remit the matter back to the Divisional Personnel Officer, North Central Railway, Allahabad to examine the matter afresh in accordance with law and in the light of circular aforestated and take appropriate decision in accordance with law.

6. Accordingly, the O.A. succeeds and allowed in part and the impugned order dated 5.9.97 (Annexure A-1) is quashed. The competent authority is directed to decide the representation of the applicant in accordance with law within a period of four months from the date of receipt of a copy of this order. It would be open to the parties to raise all the pleas open to them in law.

No order as to costs.

  
A.M.

  
V.C.

Asthana/