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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 880 of 1988

Allahabad this the 31st day of Jan. 1996

Hon'ble Dr. R.K. Saxena, Member ( Jud. )  
Hon'ble Mr. D.S. Baweja, Member ( Admn. )

Pooran Chand S/o Gyasi, R/o 223, Sagar Gate, Jhansi.

By Advocate Shri V.K. Burman

APPLICANT

versus

1. Union of India through General Manager, Central  
Railway, Bombay V.T.

RESPONDENT

By Advocate Shri A.K. Gaur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member ( J )

By this application, the applicant is seeking directions to the respondent to re-determine his seniority, or alternatively to decide the representation dated 13.11.1987.

2. Brief facts of the case are that the applicant was initially appointed in the Loco Shed on 04.12.1955. He got due promotions and was ultimately promoted as Assistant Driver (Diesel) in the grade of Rs.290-350 (RS). In the year 1981, the applicant fell ill. On getting recovered, he appeared for medical examination in which he was de categorised for category A-1. He was, however, found suitable.

for category C-1.

3. The applicant was offered alternative job of clerk on his being de categorised for category A-1. He was placed in the grade of Rs.260-400/- which was applicable to junior clerks. According to him, there were three grades of clerks. They were grades of junior clerk (Rs.260-400), Senior Clerk (Rs.339-560) and Head Clerk (Rs.425-700). The applicant, at the time of decategorisation, was drawing basic salary of Rs.308-00 as Assistant Driver. He claims that his salary, according to rules, should have been Rs.308-00 plus 30% of the same totalling Rs.400-00. His grievance is that he is neither given the salary of Senior Clerk or Head Clerk, nor was he considered for promotion. He further contends that even the increment was not given to him. It is also averred that juniors to him such as S/ Shri G.D. Verma, N.D. Sahu, Ganpat Rao who joined the service in 1956, had been promoted as Head Clerks whereas he was continuing as junior clerk. Several representations which were made in this connection, are also alleged to have gone unheard. Hence, this O.A.

4. The respondent contested the case on several grounds. The promotion on the post of

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Fireman B in the grade of Rs.290-350/- w.e.f. 16.6.76 is stated but promotion on the post of Asstt. Driver (Diesel) is denied. It is averred that the applicant was declared medically unfit on 19.11.1981 and was decategorised for the category A-1. It is submitted that the applicant was absorbed as Junior Clerk in the grade of Rs.260-400 (RS) Rs.950-1500/-. He (the applicant) was promoted on adhoc basis on 12.8.88 as he failed to appear in suitability test twice. Three representations on 07.5.85, 17.8.87 and 25.1.88 are admitted but, it was not disclosed if they were decided and decision communicated or not. It is averred that the applicant was given seniority from the date when he was promoted as Fireman 'B' and thus, there was no occasion for refixation of grade or seniority.

5. The applicant filed rejoinder wherein it was reasserted that he was promoted as Asstt. Driver (Diesel) alongwith four other persons. The annexure R.A.-1 was mentioned to have been filed. Rejoinder speaks about seven annexures but none of them is on file. It is reiterated that he ought to have been given the post of Senior Clerk and the salary after fixing in accordance with the rules. He further pleaded that he was never informed about the suitability test for the post of Senior Clerk or Head Clerk.

6. We have heard the learned counsel for the parties and have perused the record.

7. There is no dispute so far as the fact of decategorisation and subsequent absorption as Junior Clerk of the applicant is concerned. The contention of the applicant is that he was decategorised as A-1 when he was holding the post of Asstt. Driver(Diesel) but this fact is contradicted by the respondents. The applicant mentioned in the rejoinder to have filed annexures h.A.-1 to h.A.-7 in support of the fact that he was Asstt. Driver(Diesel) but these annexures were not found on record. It appears that they were, no doubt mentioned, but not filed. Thus there is no proof if the applicant was ever promoted as Asstt. Driver (Diesel). The burden of proof lay on the applicant to establish if he was holding the post of Asstt. Driver(Diesel) but he failed.

8. The applicant has referred to para 313 of Indian Railway Establishment Manual which deals with absorption of medically decategorised employees. He is thereby pleading that neither he has been offered suitable post nor was fixed properly his salary.

9. It appears from the counter-reply that the applicant was decategorised on 19.11.81 but the date of absorption as Junior Clerk has not been shown. The applicant also failed to give any date of absorption. It can, however, be deduced from the averment in para 7 of the O.A. while discussing the expected amount of salary

in the year 1981, that the year of absorption was 1981. If the applicant feels that he was not offered suitable post on absorption, the cause of action arose in 1981. He cannot be allowed to challenge the said action in 1988-after seven years.

10. The absorption of an employee on alternative post has got two aspects. One is the post which is offered and the other is the fixation of salary and seniority. The claim of the applicant for unsuitable post, cannot be allowed to be filed because the same was barred by limitation. So far as the fixation of salary or seniority is concerned, the plea of limitation cannot be taken because it is continuing cause of action. Thus, we can consider if the salary and seniority was correctly fixed or not.

11. The fixation of salary is inter-linked with the post which had been offered in the form of alternative post. Para 1310 of Indian Railway Establishment Manual (herein after referred as I.R.E.M.) Vol.I deals with the offer of alternative employment. The reading of this para shows that the alternative employment must be offered in writing, stating the scale of pay and the rate of pay at which it is proposed to reabsorb him in service. It is further mentioned that on no account should the railway servant be posted to an alternative appointment until he has accepted the post. A railway servant is at liberty to refuse an offer

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of alternative appointment and the leave granted to him, will not be terminated pre-maturely merely because of his refusal. It further speaks that he will continue to remain eligible for other alternative offers of appointment till his leave expires and efforts to find such appointments should, therefore, continue throughout the currency of his leave. In the light of this provision of para 1310, it is to be seen whether the post of Lower Division Clerk (herein after referred as L.D.C.) was offered to the applicant and if, the same was accepted in writing by the applicant. We have already mentioned that these details have not been brought on record and, therefore, it is not possible for us to come to any conclusion. The applicant has come with the averment that his representation which was made in this connection, remained undisposed of. In such a situation, it becomes necessary that the concerned authority should dispose of the pending representations. If, it is not available the applicant may give another representation alongwith the copy of the earlier representations.

12. The matter of seniority is laid down in para 1314 of the I.R.E.M. It speaks that the medically declassified 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

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in the equivalent or corresponding grade irrespective of rate of pay fixed in the grade of absorption.

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.

Again, we find that this matter should have been considered by the concerned authority and detailed speaking order should have been passed.

13. In view of these facts and circumstances, we direct the respondents to dispose of the pending representation. In order to avoid further delay in the matter, we also direct the applicant to submit fresh representation alongwith the copy of earlier representation within a period of 3 weeks from the date of judgment. The respondents are directed to dispose of the said representation within a period of 6 weeks from the date of receipt of the representation and to communicate the same to the applicant within 2 weeks from the date of the decision. The O.A. is disposed of accordingly. No order as to costs.

*S. B. N. G.*  
Member ( A )

*D. D. D.*  
Member ( J )

/M.M./