

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
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Original Application No. 397 of 1993

Allahabad this the 10th day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)
Hon'ble Mr. D.V.R.S.G. Dattatreya, Member (J)

Gyan Shanker Pandey, aged about 36 years, S/o Shri Gauri Shanker Pandey, R/o C/o Sri S.K. Pandey, 29/115, Madhwapur, Allahabad.

Applicant

By Advocate Sri T.S. Pandey

Versus

1. Union of India through its Chief Secretary, Central Government Secretariate, New Delhi.
2. General Manager, Northern Railway, Rail Bhawan, Baroda House, New Delhi.
3. Divisional Railway Manager, N. Rly. Nawab Yusuf Road, Allahabad.
4. Senior Divisional Personnel Officer, Northern Railway, Nawab Yusuf Road, Allahabad.
5. Divisional Electrical Engineer (TH-D) D.R.M. Office, Nawab Yusuf Road, Allahabad.

Respondents

By Advocate -----

ORDER

By Hon'ble Mr. D.S. Baweja, Member (A)

The applicant was initially appointed as Electrical Chargeman in Railways in the grade of Rs.425-700 (Rs.1400-2300) as per order dated 11.6.1982. The applicant was appointed on the working post after completing the training ⁱⁿ at New Delhi Division of Northern Railway.

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Subsequently, the applicant was transferred to Allahabad Division of Northern Railway. The applicant was declared medically unfit for holding the post of Electric Chargeman as per order dated 07.11.84. On being medically decategorised, the applicant was absorbed in the alternative post of Senior Clerk in the pay scale of Rs 330-560 (Rs.1200-2040). As per order dated 12.12.1984, ^{and} the applicant joined on this post. The case of the applicant is that he should have been absorbed ⁱⁿ ~~on~~ the post of Head Clerk in the equivalent grade in terms of the provision contained in ^{Chapter III of} Indian Railway Establishment Manual (Vol.I). The applicant has further contended that even as a Senior Clerk, he has been not allowed seniority from the date of appointment. Referring to the seniority list of Senior Clerks issued in 1987, the applicant alleges that 5 employees, namely, S/Shri A.K. Sinha, T.S. Sharma, Vinod Singh, S.G. Murtaza and J.P. Pandey have been allowed seniority from the date of appointment on being medically decategorised and the applicant has been discriminated. The provisions of para 306 of the Indian Railway Establishment Manual Vol.I have been violated in the case of the applicant. The applicant has also contended that ~~5~~ ^{named above} employees ^{also} have been given the respective pay scales from which they were medically decategorised. The applicant has been subsequently promoted as Head Clerk in the grade of Rs.1400-2300 as per order dated 12.12.1988. The applicant submits that he made several representations against his absorption as Senior Clerk but did not get any reply. His last representation was dated 03.2.93 which has been replied by the respondents as per letter dated 05.3.93 rejecting the claim of the applicant. The applicant was also suspended by

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the order dated 18.7.84 and suspension was subsequently revoked by the order dated 28.8.84. Being aggrieved, the present application has been filed on 19.3.93.

2. In the background of the above facts, the applicant has prayed for the reliefs of quashing the order dated 18.7.84 (A-1), the order dated 12.12.84 (A-2), and Seniority list dated nil of 1987(A-3), and the order dated 12.12.1988(A-4), and to give all consequential benefits with seniority from the date of appointment i.e. 11.6.1982.

3. During the pendency of the O.A., the applicant filed an amendment application challenging the selection of S/Shri N.K. Jaiswal, V.K. Upadhyaya, S.N. Bajpayee, S.K. Khatri, Arun Kumar, A.K. Chandra and Sita Ram as Office Superintendent Grade II as per select list dated 05.7.96 alleging that they were junior to the applicant as they were medically decategorised on a later date. The applicant has also alleged that the name of the applicant at serial 27 in the ^{ity} senior list of Head Clerk issued on 20.11.96 has been shown incorrectly and is illegal. In view of these facts, the applicant has also prayed the quashing of the select list dated 05.7.96(A-17) of Office Superintendent Grade II as well as the seniority list of Head Clerk dated 20.11.96 (A-18).

4. The main thrust of the ^{grounds of the} applicant in support of his claim is that the action taken by the respondents through the impugned orders is in violation of the rules as well as in violation of the Article 309 and 311 of the Constitution of India. In view of this, the reply to his representation dated 05.3.93 given by the respondents is arbitrary, illegal and discriminatory in the eye of law.

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5. As per order dated 13.4.93, it was provided that promotion made on the post of Assistant Superintendent and Superintendent on the basis of the Seniority list of 1987 will be provisional and subject to final decision of this case.

6. The notices were issued to the respondents and several opportunities were allowed to file the counter reply. However, no counter-reply had been filed by the respondents. As per order dated 14.5.97, it was provided that in view of non-filing of the counter-reply inspite of repeated opportunities, the matter will be proceeded ex parte against the respondents.. On the last date of listing, none was present on behalf of the respondents. In view of the earlier order, we proceeded ex parte against the respondents and heard the counsel for the applicant. During the arguments, the learned counsel for the applicant pleaded that since the respondents have failed to file the counter-affidavit inspite of repeated opportunities, ^{it} shows that the ~~averments~~ made by the applicant are accepted by the respondents. The contention of the applicant is fairly accepted by us and the reliefs prayed for ~~are being~~ ^{it} examined taking into account these facts detailed by the applicant.

7. The first relief prayed for by the applicant is quashing of the order dated 18.7.84 (A-1). As per this order, the applicant was placed under suspension. It is noted that the suspension was subsequently revoked as per order dated 28.8.84. With these details, first^{ly} the relief is barred by limitation. The matter has been challenged in the year 1993 after more than 9 years. The applicant has not given any reason as to why the matter was not agitated for seeking the relief within

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the period of limitation as prescribed in Administrative Tribunals Act, 1985. No application for condoning the delay has also been made. Secondly on merits also, we do not find any substance in the prayer made. The applicant has made only vague and scanty pleadings. The applicant does not indicate whether any charge-sheet was issued after revoking of the suspension. He has also not indicated whether any representation against the suspension and as to how the period of suspension ^{is to be} was treated, had been made as per the extant rules. Keeping these observations in view, we are of the view that this relief does not merit consideration.

8. The second relief prayed for is quashing of the order dated 12.12.1984(A-2) through which the applicant was appointed as ~~the~~ Senior Clerk in the grade of Rs.330-560(Rs.1200-2040). on being medically decategorised from the post of Electric Chageman in the grade of Rs.425-700(Rs.1400-2300). This is the core issue as the other reliefs with regard to the seniority as Senior Clerk, promotion, as Head Clerk and further promotions as Office Superintendent and the ^{position in the} /respective seniority ^{of the} list, flow out of the same. The main thrust /argument of the applicant is that before being decategorised, he was working in the scale of Rs.425-700 and, therefore, he should have been absorbed as a Head Clerk in the equivalent grade on being medically decategorised. The applicant seeks support of the rules laid down in chapter III of the Indian Railway Establishment Manual. The applicant has not cited the relevant rules from the Chapter III which applied to the case of the applicant. As per the order dated 26.8.97, the counsel for the applicant was directed to show the rules under which the respondents



were required to accommodate the applicant in the equivalent scale of pay on being medically decategorised. During the hearing, the learned counsel for the applicant made available^a book(" R a i l w a y E s t a b l i s h m e n t R u l e s ") by B.S. Mainee and draw our attention to page 82 of the Book whereⁿ the rules laid down have been relied upon. On going through these rules, we find that the same are not relevant to the absorption in the equivalent grade on being medically decategorised. The rules detailed there are extracted from para 1314 of Chapter XIII of Indian Railway Establishment Manual. It is noted^{that} in para 4.9 of the O.A., the applicant has submitted that he was entitled to be reemployed as Head Clerk in terms of the provisions contained in Chapter III of the Indian Railway Establishment Manual. The applicant has not indicated any specific rule from this Chapter. However, on going through Chapter III, it is noted that it covers the rules governing seniority and not with regard to absorption in a particular grade on being medically decategorised. As indicated earlier, the respondents have not filed any counter affidavit. The applicant has also not cited the relevant rules as brought out earlier above. In view of this, we will examine the claim of the applicant in terms of the rules laid down in chapter XIII " Absorption of medically incapacitated staff ⁱⁿ on alternative employment " On referring to para 1306, it is noted that suitability of medically incapacitated railway employee for absorption in alternative category is to be determined by a Committee of Officers. For this purpose, the committee will examine the railway employee and determine the ~~of~~ suitability of the railway employee for ~~service~~ certain categories of posts. Thereafter, based on recommendation of the committee, the Controlling Officer of the concerned employee will proceed to

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take further action to find suitable alternative employment with ~~emoluments~~ as near as possible to his earlier emoluments. Para 131C lays down that alternative employment will be offered in writing stating the scale of pay and the rate of pay at which it is proposed to ~~absorb~~ absorb the employee. Railway servant is at liberty to refuse the offer of alternative appointment and on no account, the railway servant is to be posted to the alternative appointment until he has accepted the offered post. In the present case, the applicant was offered appointment as Senior Clerk in the grade of Rs.1200-2040. The applicant accepted the same and joined the post. On going through the Original application, we find that there is ^{even} not a whisper of any avowment by the applicant to indicate that he had refused to accept the post offered or made any protest for the same. No copy of any representation made to this effect has been brought out on record. Keeping in view the provisions of rules as discussed above, the applicant cannot agitate the matter ^{later on} for absorption in the higher grade. The applicant had the option to refuse the post offered to him but he did not do so. Keeping this fact ⁱⁿ situation/focus, we are unable to persuade ourselves to find ~~any~~ merit in the relief claimed by the applicant. Further not only there is ^{no} merit in the relief prayed for, but it is also barred by limitation. The applicant was absorbed as Senior Clerk in November '84 and the present application has been filed on 19.3.1993 after several years ^{during} which period the seniority list of Senior Clerks got settled and further promotions in higher grades were also effected.

9. The third relief is quashing of the seniority list dated NIL of 1987 (A-3). It is noted that this ^{is for the Sr. Clerks} seniority list in the grade of Rs.1200-2040. The applicant

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in para 4.10 of the O.A., has submitted that five employees namely S/Sri A.K.Sinha, T.S.Sharma, Vined Singh, S. G. Murtaza and J.P.Pandey have been allowed seniority from the date of appointment on absorption in the alternative category after medical decategorisation while the applicant has been denied seniority from the date of appointment. Thus the applicant has been not only discriminated but the respondents have violated the rules of seniority laid down in para 306 of the Indian Railway Establishment Manual, Volume I. We have carefully gone through para 306 of I.R.E.M. and find that this is not relevant to the case of the applicant. This para lays down that candidates selected for a postment ~~xxx~~ at an earlier selection shall be senior to those selected later irrespective of the date of posting. From the details furnished of the 5 employees referred to above, it is noted that all of them had been appointed earlier to the applicant. We note that para 313 in the same chapter ^{deals} ~~deals~~ with the seniority of medically unfitted railway servants and the submission made by the applicant for seniority will be examined in terms of the provision of the rules laid down in para 313. We note that para 313(d) provides that in case of the staff coming to the new Unit on own request and then medically decategorised, then provision of sub para a(ii) will be applicable to the extent of service in the new Unit. Para 313(ii) stipulate that medically decategorised staff's absorption ^{in the alternative job} ~~in the alternative job~~ will be allowed seniority with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed. From the facts brought out on record by the applicant, it is noted that the applicant was originally posted on Delhi Division (A-8) and was subsequently transferred to Allahabad Divn. Allahabad. The applicant has not disclosed any details with regard to his transfer ⁱⁿ ~~with~~ respect of date of transfer,

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whether the transfer was ^{own} on request or on the administrative ground. Copy of the transfer order has been also not brought on record. We ^{however} also note that in his representation dated 3.2.1993 at A-17, he has mentioned the date of transfer to Allahabad division ^{as} 10.5.1984. Since the applicant has not brought on record any documentary evidence, we are inclined to infer that the applicant was transferred on own request. With this status of transfer, the applicant is entitled for seniority in the grade of Sr. Clerk ^{only} with reference to his ~~10.5.1984~~ total length of service on Allahabad Division since his date of transfer. From the respondents reply dated 3.3.1993 at A-6, this is quite obvious that the respondents have allowed seniority based on the service rendered on Allahabad division in the light of these observations, we fail to find any substance and force in the claim of the applicant that he has been assigned seniority not following the relevant rules. Apart from this, quashing of the seniority list also suffers another infirmity. The applicant has prayed for quashing of entire seniority list. We fail to understand the basis on which the entire seniority list is prayed for ~~it~~ to be quashed. The applicant can be aggrieved with respect to his seniority being not properly allowed based on the claim made by him. This would involve interpolating the name of the applicant at proper place. The applicant has indicated 5 names of the employees alleging that they have been given seniority from the date of appointment. However, he has not stated whether he claims seniority over them. Further the applicant has not disclosed the names over whom he claims seniority in the seniority list of 1987. The applicant has ^{also} not made any one from the seniority list as the respondents. Quashing of the seniority list will adversely affect

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the interest of all those who are in the seniority list. No adverse order can be passed against any body who has not been given opportunity to defend. Any claim for seniority without impleading the employees likely to be affected and being necessary party is not maintainable. In this connection, we refer to the judgment of Hon'ble Supreme court in the case of Rajbeer Singh versus State of Haryana 1996(1) ATJ 416. Keeping these facts in view, the relief prayed for by the applicant for quashing the seniority list is not maintainable on this ground alone.

10. The fourth relief prayed for is quashing of the order dated 12.12.1988 (A-4) as per which the applicant had been promoted as Head Clerk in the grade of Rs.1400-2300. Since we have already recorded our findings with regard to the reliefs 2 and 3 i.e. orders at A-1 & 3, this claim of the applicant does not sustain as it flows from his claim of seniority as Senior Clerk and absorption as Head Clerk.

11. The 5th relief is quashing of the select list dated 5.7.1996 of Office Supdt. grade II which has been added subsequently through an amendment application. It is alleged that S/Sri N.K.Jaiswal, V.K.Upadhyay, S.N.Bajpai, S.K.Khatrri, Arun Kumar, A.K.Chandra and Sita Ram have been all illegally promoted as Office Supdt. Grade II as per select list dated 5.7.96. as they were medically decategorised at a later date than the applicant. The applicant has not furnished any details with regard to the service ~~xxxxxx~~ of the above named employees. It is also not disclosed whether these employees were absorbed directly as Head Clerk or as Senior Clerk. With this vague and sketchy averment, we find it difficult to go into the merit of the relief prayed for. In any way, this relief is not maintainable as the applicant has prayed for quashing of the entire select list without making the employees placed on the ^{select} seniority list as a

party. Even names mentioned and claimed to be junior have been not made as a party. As indicated earlier, no adverse order can be passed against a party without giving opportunity of representing his case. Therefore, in absence of necessary parties being ~~not~~ made as the respondents, prayer for quashing of the select list cannot be entertained and such a prayer is not maintainable.

12. The 6th relief claimed is quashing of the seniority list dated 20.11.1996 for Head Clerk. We have already concluded with the reliefs claimed by the applicant with regard to the absorption in the grade of Rs.1400-2300 and also the seniority list as Sr. Clerk are devoid of any merit. For this relief except making prayer for quashing the seniority list, no ground has been laid down as to why the seniority list deserves to be quashed. It is also not understood ^{to} why the applicant has prayed for quashing of the entire seniority list. In the absence of any averment, we are unable to go into the merit. Further this prayer is ^{also} not maintainable on the ground that the employees placed in the seniority list who are the necessary parties have ^{not} been made the respondents. Keeping in view this, the position of law as ^{stated} earlier, ^{is} equally applicable in this case also.

13. Last prayer is to fix the applicant's present pay scale of Rs.1200-2040 w.e.f 12.12.1994 along with all consequential benefits with further direction to the respondents to fix the seniority from the date of appointment i.e. 11.6.1992. In view of what has been elaborated above and findings ^{ing} have been recorded that there is no merit in the reliefs prayed for, this prayer does not survive.

14. In the result of the above discussion, we are unable to find any merit in this application and the same is accordingly dismissed. No order as to costs. Interim order dated 4.3.1993 is vacated.

Member (J)

Member (A)