

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day...4th June... of 1997.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

ORIGINAL APPLICATION NO. 499 OF 1995.

Zaheeruddin, S/o Late Sri Naseeruddin,
R/o 554, Colonelganj, Allahabad.

..... Applicant.

(By Hon'ble Shri Sanjay Kumar)

Versus

1. The Union of India, through the General Manager,
Northern Railway, New Delhi .
2. The Divisional Railway Manager, Northern Railway,
Allahabad.
3. The Senior Divisional personnel Officer,
Northern Railway, Allahabad.

..... Respondents.

(By Advocate Shri A.K. Gaur)

O R D E R

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

1. This application has been filed with a
prayer to quash the order dated 4.4.1991 and also
to direct the respondents to allow the applicant
the benefit of absorption in the grade of
Rs 1400-2300/- with effect ^{from} 7.11.1990 on being
medically de-categoried.

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2. The applicant was appointed as a Goods Guard on 4.11.1980 in North Eastern Railway. Thereafter on request, he was transferred in 1986 to Allahabad Division of Northern Railway. During periodical medical examination, the applicant was medically de-categorised for ~~the~~ holding of post of Goods Guard. He was given an alternative job as Enquiry-Cum-Reservation Clerk in the grade of Rs 1200-2040/- with effect from 7.11.1990. At the time of medical~~y~~ decategorisation, the applicant was drawing pay of Rs 2040/- at the maximum of the scale of Rs 1200-2040/-.

3. The present application has been filed ~~on~~ ^{with} the grievance that the applicant should have been absorbed in the grade of Rs 1400-2300/- in terms of the provisions of the Railway Board circular dated 2.9.1977 and Para 1309 (iv) of the Indian Railway Establishment Manual (I.R.E.M). As per these rules, in respect of the running staff which includes the Guards, the equivalent grade for absorption is to be identified by adding 30% of the pay in lieu of the running allowance to the minimum ~~and~~ maximum of the scale. Since the applicant was working in the scale of Rs 1200-2040/-, the equated scale by adding 30% of pay should have been with minimum of Rs 1500/- and maximum of Rs 2652/-. Keeping ⁱⁿ this/view, the applicant should have been absorbed in the scale of Rs 1400-2300/- i.e, the next higher scale in which the applicant has been absorbed. The applicant made a representation dated 15.11.1990 against the same and the respondents vide impugned order dt. 4.2.1991 rejected the claim of the applicant.

The applicant thereafter again made representations for reconsideration of his case pointing out the cases of the other colleagues who were similarly decategorised and had been absorbed in the alternative job, having equated scale after adding 30% of pay. However, his case was not reconsidered. Two such cases of Shri Ajit Singh and Shri Rajendra Singh have been cited in the application. The applicant submits that he is under-going a financial loss of Rs 625/- in his pay per month by being absorbed in the lower scale. The applicant contends that the applicant had been discriminated by not following the rules in this case and thereby violating Article 14 and 16 of the Constitution of India. Being aggrieved this application has been filed on 13.6.1995.

4, The respondents have opposed the application through counter reply. The respondents contend that the applicant was examined by the Screening Committee for assigning alternative job and found the applicant fit for the post of Enquiry-Cum-Reservation Clerk in the grade of Rs 1200-2040/-. Further referring to the Note below para 1309, the respondents contend that the instructions laid down in the Foot Note are to be kept in view. In consideration of these *guide* lines, he was offered the post in the scale of Rs 1200-2040/-. The respondents also submit that as per the provisions of Para 1313 (b) of Indian Railway Establishment Manual Volume-I, the pay protection above the maximum of the absorbing grade is to be allowed only when the employee is medically decategorised under the circumstances arising out

and in the course of employment. This is not the case of the applicant as he was medically decategorised during periodical vision test conducted after every three years. The respondents also refute the submission of the applicant with regard to alleged discrimination citing the cases of Shri Rajendra Singh and Shri Ajit Singh. The respondents contended that these cases are distinct and have no relevance as they were not absorbed in the cadre of Enquiry Cum-Reservation Clerk. The respondents, in view of these facts pray that the grounds taken by the applicant are not tenable and the application has no merit and deserves to be quashed.

5. The applicant has contested the averments in the counter affidavit by filing the rejoinder reply. The applicant has reiterated the grounds advanced in the application in support of his claim.

6. We have heard Shri Sanjay Kumar counsel for the applicant and Shri A.K. Gaur counsel for the respondents. We have gone through the material placed on record and also given careful thought to the arguments advanced during the year.

7. It is admitted fact that at the time of medical decategorisation from the post of Goods Guard, the applicant was in the scale of Rs 1200-2040/- and drawing pay at the maximum of scale. It is also admitted fact that rules

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as laid down vide Railway Board's letter dated 2.9.1977 and Para 1309 (iv) of Indian Railway Establishment Manual Volume-I provide that in respect of running staff, the equated grade for absorption in the alternative job is to be arrived at by adding 30% of pay in lieu of the running allowance to the minimum and maximum of the scale of the post from which the employee is medically decategorised. By adding 30% of pay in lieu of the running allowance, the equivalent grade comes to Rs 1400-2300/-. However, actually he has been absorbed in the grade of Rs 1200-2040/- resulting in a loss of emoluments of Rs 612/- per month.

8. The respondents have contested the claim of the applicant on the plea that ~~his~~ suitability of the applicant for the alternative post was assessed by the Screening Committee and the Screening Committee found him fit for the post of Enquiry Cum Reservation Clerk (E.C.R.C) in the grade of Rs 1200-2040/-. As brought out above, the applicant should have been considered for the equivalent grade of Rs 1400-2300/-. On a careful consideration of the averments made by the respondents, we are not convinced by this argument of the respondents. ~~From~~ the submissions made in the counter reply do not disclose whether the Screening Committee considered the suitability of the applicant for the grade of Rs 1400-2300/- and he was not found fit. As per Note below Para 1309 of Indian Railway Establishment Manual Volume-I, we note that suitability is to be judged by holding either suitability test or interview. From the material brought on the record by the respondents we are

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unable to find as to how the suitability of the applicant was to be judged. In para 1306(i) of I. R. E.M it is provided that Screening Committee will determine the suitability of the employee for certain categories of the post, and after this, the concerned officer Incharge under whom the de-categorised employee was working, will proceed to find suitable post among the recommended categories with emoluments as near as possible. This implies that the Screening Committee should have considered the suitability of the applicant for the grade of Rs1400-2300 and recommend the categories of the post for which the applicant was found suitable. In view of these provisions, it is ~~not~~ understandable as to how the Screening Committee recommended a particular grade and a particular category for which the applicant was found fit. The averments made by the respondents on these issues are evasive. The respondents have also chosen not to bring the report of the Screening Committee on record which ~~could~~^{could} have perhaps thrown light on the observations made above. In the absence of adequate materials being brought on record, we are compelled to infer that the applicant's case was not considered to determine suitability for the equated grade of Rs1400-2300 so as not to entail loss in emoluments on absorption in the alternative post.

9. The above referred inference also becomes quite obvious if we consider the other line of argument put forwarded by the respondents. The respondents have defended the absorption of the applicant in the grade of Rs1200-2040/= by taking shelter of the provisions detailed in note below Para 1309.

The note reads as under:-

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" Care should be taken by the Railway Administration to see that the interest of the staff in service are not affected adversely as far as possible and alternative appointment should be offered only in post which the staff can adequately fill."

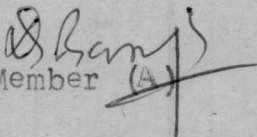
This plea of the respondents contradicts the main argument of the respondents as discussed above that the applicant was found fit for the grade of Rs1200-2040/- by the Screening Committee. If the applicant was found fit for the grade Rs1200-2040/-, then the question of these provisions coming into consideration would not arise. If the Screening Committee had considered the applicant for the equated grade and found him fit for that grade then certainly for absorption in the grade of Rs1400-2300/-, the matter would have required to be gone into to see whether his absorption in the grade of Rs1400-²³⁰⁰~~2040~~/- in the cadre of Enquiry-cum-Reservation clerk would have affected the interest of staff. The applicant has averred that vacancy in the grade of Rs1400-2300/- was available at the time when his case was considered. This fact has not been controverted by the respondents. If it was so, then the applicant's case should have been considered against this vacancy and his suitability determined accordingly. The question of the interest of the serving staff would have then come into picture. However, as concluded above, the applicant's case does not appear to have been considered by the Screening Committee for the grade of Rs1400-2300/-. This argument put forward taking shield ^{of} under the provisions of note below para 1309 appears to be an after-thought.

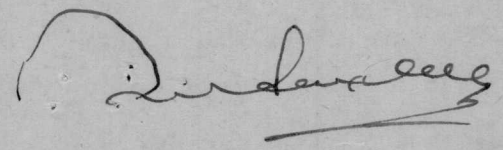
10. The applicant has brought out a few instance of the other staff and particularly, his colleagues as Goods Guard, who had been absorbed in the equated

grade after adding 30% of the pay in lieu of running allowance to the minimum and maximum of the grade. The respondents have contested the same stating that these cases are not similar to the applicant as they have been absorbed in the different cadre. This argument has no force as the cases quoted by the applicant are illustrative of the implementation of the Railway Board's instructions and it is immaterial ~~whether~~ in which cadre absorption was done.

11. It is noted that the applicant has been already promoted in the higher grade of Rs 1400-2300 from 13.12.1991.

12. In consideration of the above facts, we find force and subsistence in the application and the same is allowed quashing order dated 4.2.1991 with the direction that the applicant will be allowed ^{absorption} in the grade of Rs 1400-2300/- from the date of absorption in the alternative post i.e, 7.11.1990. However, the applicant will not ^{be} entitled ^{for} payment of any arrears. No order as to costs.


Member (A)


Member (J)

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