

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 201 OF 2000.

ALLAHABAD THIS THE 23rd DAY OF Nov. 2007.

Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, A.M

Chandra Deo Son of Shri Ram Baran, aged about 57years, resident of Village and Post Khairuddinpur, District Azamgarh.

.....Applicant

(By Advocate: Shri S. S Sharma)

Versus.

1. Union of India owning and representing Northern Railway notice to be served to the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.
3. The Divisional Superintending Engineer (Co-Ordination), Northern Railway, D.R.M Office, Nawab Yusuf Road, Allahabad.

.....Respondents


(By Advocate: Shri P Mathur)

ORDER

By Mr. Justice Khem Karan, V.C.

Applicant (Chandra Deo) has prayed for following relief(s):-

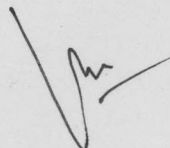
- "(a) That the Hon'ble Tribunal may graciously be pleased to set aside impugned order dated 18.8.98, (Annexure A-1) and to direct the respondents to allow fixation of pay of the applicant in grade Rs. 1400-2300 (RPS) w.e.f. 17.10.94, the date of promotion and posting of the applicant as P.W.M in grade RS. 1400-2300 (RPS).
- (b) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to post the applicant as Head Clerk in grade Rs. 1400-2300 (RPS) the post and grade equivalent to the post of PWM grade Rs.1400-2300 (RPS) we.f. 23.6.97 i.e. from the date the applicant was decategorised on medical ground and posted in clerical cadre.
- (c) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay arrear of pay fixation of the applicant in grade Rs.1400-2300 (RPS) w.e.f. 17.10.94 till the date pay of the applicant is fixed in this grade.
- (d) That the Hon'ble Tribunal may graciously be pleased to allow interest @ 18% per annum compounded annually on the payment of arrear of



pay to the applicant from the date it is due to the applicant till it is actually paid to him.

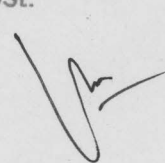
- (e) That the Hon'ble Tribunal may graciously be pleased to allow all consequential benefits in this case.
- (f) That the Hon'ble Tribunal may graciously be pleased to allow cost of applicants and legal fee in favour of the applicant.
- (g) That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as deemed fit and proper under the circumstances of the case".

2. While working as Permanent Way Mate in the pay scale of Rs. 950-1500 (RPS) in the year 1994 under the respondents, applicant was selected for promotion to the post of Permanent Way Mistri, in the pay scale of Rs.1400-2300 (RPS), under 50% promotion quota. There is no dispute that he also passed promotional training Course (P-25), a condition precedent for promotion to that post. He says vide order dated 17.10.1994, Divisional Railway Manager, Allahabad issued promotion and posting order (Annexure 4) and he started working as Permanent Way Mistri in the pay scale of Rs.1400-2300 (RPS) under Permanent Way Inspector, Northern Railway, Bharwari. He alleges that on medical examination, he was declared unfit in category A-3 but was found fit in his original B-1 vision test category (Annexure A-5). According to him as he was medically fit in B-1 category, so he should have been allowed to work as Permanent Way Mistri but Authorities compelled him to work as Permanent Way Mate in the grade of Rs.950-1500 (RPS) (See para 4.15 of the O.A.). It was in the year 1997 that he was again subjected to medical examination and Divisional Medical Officer, Northern Railway, Allahabad declared him fit only in B-2 below with Glasses for D-V (Annexure A-7) and accordingly, he was medically decategorised and was posted as Clerk in the Grade of Rs.950-1500 (RPS). His contention is that as he was already fit in B-2 category, so he was entitled for promotion to the Grade Rs. 1400-2300(RPS) as Permanent Way Mistri and his second contention is that as he was working as Permanent Way



Mistri in the grade of Rs.1400-2300 (RPS) under Permanent Way Inspector, Northern Railway, Bharwari, so on medical decategorization in 1997, should have been posted as Head Clerk in the grade of Rs.1400-2300 (RPS) w.e.f. 23.6.1997. In this way, he says that the impugned order dated 18.8.1998 (Annexure A-1) by which his claim for being posted in Grade Rs. 1400-2300 (RPS) has been rejected, should be quashed and respondents be directed to post him as Head Clerk in the grade of Rs.1400-2300 (RPS) w.e.f 23.6.1997 and pay arrears of pay together with interest at the rate of 18% per annum.

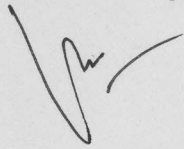
3. The respondents have contested the claim by filing the written reply. According to them, the post of Permanent Way Mistri in the grade of Rs.1400-2300 (RPS) requires that a person should be in medical category of A-3 and since the applicant did not come in that category, so he was rightly not allowed to occupy that post. It is stated that applicant never worked, nor shouldered the higher responsibilities of the post of Permanent Way Mistri in the scale Rs.1400-2300 (RPS), so his claim for being post as Head Clerk in the grade of Rs.1400-2300 (RPS) after medical decategorization is totally ill-founded. The sum and substance of the defence is that the applicant did not fulfill the medical category, required for Permanent Way Mistri, so he was not posted as such nor he worked as such and on medical decategorization in the year 1997 was rightly placed in the Clerical Grade of Rs.950-1500 (RPS), which was equivalent to the grade in which he was working as Permanent Way Mate. It has been said that at present, applicant is working as Senior Clerk in the grade of Rs.4500-7000 in Engineering Branch w.e.f 29.03.2000. It is further stated in para-10 that applicant will be further promoted in the post of Head Clerk in the grade of Rs.1400-2300 as per his seniority and channel of promotion, which infact is a non-selection post.



4. The applicant has filed rejoinder stating in para 4.2 that after his selection for promotion to the post of Permanent Way Mistri and after his having undergone the promotional course (P-25), he was infact posted as Permanent Way Mistri vide order dated 17/10/1994 of Divisional Railway Manager (Annexure A-4 to the O.A.) and so respondents are not correct in saying that he was not promoted to the post of Permanent Way Mistri. It is also stated in para 4 (3) of the rejoinder as he was already working as Permanent Way Mate for which B-1 medical category was required, so he could have been promoted to the post of Permanent Way Mistri with that medical category without the duty of running a Trolley on Railway Tracks. In other words, he wants to say that Permanent Way Mate in vision category of B-1 is eligible for working on the promotional post of Permanent Way Mistri without requiring to run Trolley on a Railway Tracks. He reiterate in para 4.10 of the rejoinder that after medical decategorization in March 1997, he ought to have been posted as Head Clerk in the equivalent grade of Rs.1400-2300 (RPS) and not as Clerk in lower grade of Rs.950-1500 (RPS).

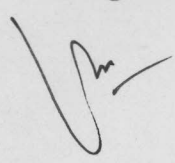
5. We have heard Shri S. S. Sharma, learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents and have gone through the entire material on record.

6. The first submission of Shri S.S. Sharma is that applicant being fit one in B-1 category, could have been allowed to work as Permanent Way Mistri on his promotion in view of para 1018, of Indian Railway Establishment Manual. He has drawn our attention to the portion of this para 1018, where it is stated that B-1 category persons may also work as Permanent Way Mistri. A reading of these provisions makes it clear that Permanent Way Inspectoral

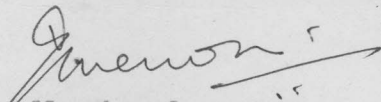


Supervisor Staff failing to fulfill the requisite A-1 category should be removed from open line and may be utilized on Construction Linking Work etc. We think these Rules do not help Shri S.S. Sharma in saying that a permanent Way Mate, can be promoted to the post of Permanent Way Mistry even if he falls below the said medical category. We think this provision. (on page 40 of paper book) applies to those who are working as Permanent Way Mistri but during the course of their working, they fail to fulfill the requisite category. Here in the instant case, the applicant was to be promoted to the post of Permanent Way Mistri but he was not found fit in A-3 category, so according to the respondents was not promoted.

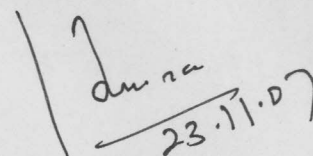
7. Shri S.S. Sharma has submitted that infact applicant was promoted and posted as Permanent Way Mistri vide order dated 17.10.1994 of D.R.M (Annexure -6), so it cannot be said that he was not promoted and posted in the Scale of Rs.1400-2300 (RPS). The respondents have said that he was not posted as Permanent Way Mistri and he never worked as such. A perusal of Para-2 of Annexure A-2, substantiates the contention of respondents. The applicant himself conceded that he could not join as Permanent Way Mistri in the scale of Rs.1400-2300 (RPS). It appears to us that inspite of order dated 17/10/1994, the applicant was not allowed to work on the promotional post of Permanent Way Mistri and before allowing him to do so, he was asked to get himself medically examined and on medical examination, he was not found fit as he do not fulfill the requisite medical category of A-3. There is no material on record to establish that he took over the charge of Permanent Way Mistri or he shouldered the responsibility of Permanent Way Mistri pursuant to promotion order dated 17.10.1994. He remained Permanent Way Mate in the Scale of Rs.950-1500 (RPS) till he was medically decategorized in March



1997. This is also clear from applicant's representation dated 19.12.1995 (Annexure A-9), where he clearly states that instead of allowing him to discharge the functions of Permanent Way Mistry, he was compelled to Work as Permanent Way Mate and no posting orders as Permanent Way Mistry were issued. We do not think the claim of the applicant for being posted as Head Clerk in the scale of Rs.1400-2300 (RPS), after medical decategorization in the year 1997, is fully justified. As on date of medical decategorization in March 1997, he was working as Permanent Way Mate in the pay scale of Rs.950-1500 (RPS), so was rightly posted as Clerk in the equivalent Grade. We find no infirmity in the impugned order dated 18/08/1998 (Annexure A-1) and the O.A deserves to be dismissed. It is accordingly dismissed but with no order as to costs.


Member-A

Manish/-


23.11.07
Vice-Chairman.