

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 292 of 2006

Allahabad this the 27th day of April, 2010

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Indal Prasad aged about 36 years son of Late Shri Laxi Prasad, presently working as Senior Clerk under Dy. FA & CAO, in the office of General Manager, North Central Railway, Headquarters Office, Allahabad.

Applicant

By Advocate: Sri A. Chaturvedi

Vs.

1. Union of India through General Manager, Central Railway, Headquarters Office, CSTM, Mumbai.
2. General Manager, North Central Railway, Headquarters Office, Allahabad.
3. Chief Personnel Officer, Central Railway, Headquarters Office, CSTM, Mumbai.
4. Senior Personnel Officer (CRWS), West Central Railway, Bhopal.
5. Chief Works Manager (CRWS), West Central Railway, Bhopal.

Respondents

By Advocate: Sri Prashant Mathur

ORDER

By Hon'ble Mr. A.K. Gaur, J.M.

The applicant has sought the following relief (s): -

- (i) *The Hon'ble Tribunal may graciously be pleased to partially quash the impugned Office Orders No. 89/2000 dated 29.5.2000 (Annexure A-1) along with the orders/letters dated 9.8.2000 (Annexure A-2), 14.2.2002 (Annexure A-3) and letter dated 26.3.2002 (Annexure A-4) and direct the respondents to post the applicant in an equivalent grade and pay-scale as per law in which pay scale he was working earlier before medical decategorisation in terms of Railway Board's policy Circular No. 89/1999.*

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- (ii) *The Hon'ble Tribunal may further be pleased to direct the respondents to fix his pay and seniority correctly in terms of Railway Board's Circular No. 89/1999 in reference to his junior person name Shri Ram Samujh in his parent unit in clerical category as admissible as per rules and thereafter to allow the same benefits also in new Zone of N.C. Rly. to the applicant where he joined on option.*
- (iii) *The Hon'ble Tribunal may further direct the respondents to give similar benefits of an identically decategorised staff case absorbed in clerical cadre which was decided in O.A. No. 752/1996 K.C. Borkar vs. Union of India and others on 07.09.2001 by the Hon'ble CAT/Jabalpur and implemented by the respondents giving benefits of seniority/promotions in reference to his junior persons.*
- (iv) *Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.*
- (v) *Cost of the Application may also be awarded."*

2. The brief facts of the case are that the applicant was appointed on compassionate ground in Group 'D' service designated as 'YKC' Loco in grade Rs.750-940 on 26.11.1987 in Jhansi Division and further promoted in post of Helper-I/Gr. 800-1150/- on 10.12.1993 under Coach Repair Workshop Bhopal, where he was promoted as Technician Grade III Rs.3050-4590 on 21.06.1994 and further Technician Grade II Rs.4000-6000. The applicant fell ill due to Cardiac problems on 29.07.1998, and declared unfit for B-1 medical category but fit for C-1 medical category with sedentary job by the Chief Medical Superintendent, Central Railway, Bhopal, who also advised the applicant for periodical medical check up and special medical examination. On 15.07.1999, the applicant was referred to Railway Hospital, Perumbur, Madras for heart surgery. On 04.08.1999, the Chief Medical Superintendent, Central Railway, Bhopal wrote to CWM, Coach Repair Workshop, Bhopal to issue Memo No. G-149 B for special medical examination of the applicant and the applicant also requested to comply the instructions as desired by the Chief Medical Superintendent, Central Railway,

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Bhopal, on 17.09.1999, CMD, Bhopal recommended for sedentary job in favour of the applicant. On 11.10.1999, the Chief Works Manager, Coach Repair Workshop, Bhopal instead of issuing Medical Memo G-149 B wrote to Chief Medical Superintendent, Central Railway, Bhopal making queries whether the applicant was fit in any category and if so then in which category. The applicant by application dated 12.11.1999 and 25.11.1999 also requested to change his category from Technician Grade II to any other suitable category on account of his medical de-categorisation due to open-heart surgery and also for his suitable absorption. On 01.12.1999, the Screening Committee also asked to change the category of the applicant on account of his medical decategorisation as per rules and the Committee recommended the applicant to be absorbed in the clerical cadre for which the applicant gave his consent for posting in Clerical cadre. It is stated that on 18.12.1999, the CWM, Coach Repair Workshop, Bhopal wrote to Chief Personnel Officer, Central Railway, Mumbai intimating that there is no post vacant for clerical cadre for giving alternative appointment to the applicant as recommended by the Screening Committee. On 01.03.2000, the applicant was recommended for Clerical (Non-Personnel) work by the Screening Committee keeping in view of his medical decategorisation. No stipulation regarding passing of typing test was made while offering the post in Clerical cadre to the applicant. On 18.01.2000, the CPO, Mechanical, CSTM, asked the Divisional Railway Managers of Central Railway to advise the vacancy position in Clerical cadre for absorption in alternative category to the applicant and as per rules, the applicant was to be offered an equivalent grade post in Clerical cadre (non-personnel) in terms of Paras 1308, 1309 and 1310 of Indian Railway Establishment

Manual, Volume-I. The relevant paragraphs of the aforesaid Manual are quoted below: -

"1308. Fixation of Pay: The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability/medically decategorisation. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowance as may be in force. If the basic pay so arrived at does not correspond to any stage in the absorbing grade the pay may be fixed at the stage just below and the difference allowed as Personal Pay to be absorbed in future increase in pay. Similarly if the pay so arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the minimum (maximum) and the difference may be allowed as personal pay to be absorbed in future increments/increase in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance should be allowed on pay plus personal pay, if any, in the absorbing grade.

1309. Benefit of past service to be allowed : A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the alternative post.

1310. Fixation of seniority of disabled/medically decategorised staff absorbed in alternative employment : The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. This is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption."

3. After medical decategorisation, the applicant was given alternative post of Junior Clerk Grade Rs.3050-4590/- on 30.05.2000 and was sent for training on 31.05.2000. It is alleged that the applicant should have been given the post of Senior Clerk Grade Rs.4500-7000/- in terms of para-1309 of Indian Railway Establishment Manual, Volume-I and his pay should not have been reduced from his pay @ Rs.4300/- p.m. which he was drawing at the time of his medical decategorization. It is also submitted that the applicant should not have been discriminated in giving alternative appointment in violation of Railway Board's instruction's in RBE No. 89/99 dated 08.07.1999 and the provisions contained in Section 47 (1) of "The Persons Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. On

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09.08.2000, the applicant was given posting order by SPO/CRWS/Bhopal after completion of training for Clerical cadre vide letter dated 09.08.2000. The applicant represented on 26.09.2000 that he was eligible for absorption in Grade Rs.4000-6000 with full benefits of seniority and pay fixation in terms for RBE No. 89/99 dated 29.04.1999.

4. According to the applicant, Shri K.S. Borkar, an identically situated medically decategorised staff, absorbed in clerical cadre, had filed an O.A. No. 752 of 1996 K.S. Borkar vs. Union of India and others decided on 07.09.2001 by the Hon'ble CAT, Jabalpur and the Hon'ble Tribunal decided his case and provided him seniority over the junior persons, promoted earlier. The applicant was compelled to pass the typing test in North Central Railway, Allahabad which he passed on 21.06.2005. Therefore, the applicant is entitled for all the promotions as Senior Clerk, Head Clerk and O.S. II as has been granted to his junior namely Shri Ram Samujh presently working as O.S. II under CWM/W.C. Railway, Bhopal. The applicant has represented on 22/24.12.2004, 15.03.2005 and 27.09.2005 and requested the competent authorities to review his case in terms of the Railway Board's Circular No. RBE No. 93/2005 dated 31.05.2005, to provide all the benefits of alternative appointment in an equivalent grade and post in which he was working prior to medical decategorisation.

5. The respondents have filed the Counter Affidavit stating that the applicant was appointed on compassionate ground in Group 'D' service designated as 'YKC' Loco in grade Rs.750-940 on 26.11.1987 in Jhansi Division, which falls under the erstwhile

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Central Railway. Thereafter the applicant was transferred to Coach Rehabilitation Workshop (in short CRWS) Bhopal in the year 1993 and on 12.12.1993 the applicant was promoted as Helper Grade I in pay scale Rs.800-1150 and was subsequently promoted as Technician Grade III in pay scale Rs.3050-4590/- and Technician Grade II in pay scale Rs.4000-6000 on 29.11.1996. The applicant while working as Technician Grade II, suffered heart stroke and had undergone for open-heart surgery. After joining from recovery of the aforesaid surgery, the applicant was subjected to the medical examination by the Railway Medical Board, who had declared him unfit for B-1 medical category but had found fit in C-1 medical category and had recommended for sedentary job. The respondents submitted that in the present Workshop of CRWS, there are seven trades in the artisan category i.e. Fitter, Welder, Coach Repair, Painter, Mill Wright, Operator and Machinist. The requisite medical category for this trade is C-1. The respondents admitted that at the time of medical decategorisation, the applicant was working as Technician Grade II in pay scale Rs.4000-6000 in Welder trade. However, the applicant made a request to the competent authority for his absorption for clerical post and has subsequently requested to change his cadre from Artisan category to the clerical cadre. **The Screening Committee was constituted, and as per rules, since the absorption of the applicant after medical decategorization again involved the change of the category, the benefit of seniority had to be accorded to the applicant from the date of his absorption in the Clerical category and accordingly the applicant was posted as Junior Clerk in the Grade Rs.3050-4590. To avoid any financial loss to the applicant, his balance pay was protected by the Railway administration.** The applicant,

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in pursuance of his representation, has already been apprised the position as on date by passing the requisite order dated 29.05.2000 and subsequent orders determining the seniority vis-à-vis the other staff working in the respective category in view of the amended provisions as contained in Indian Railway Establishment Manual. The claim of the applicant is, thus, devoid of merits and is liable to be dismissed. According to the respondents the Railway Administration has already taken a decision for changing the category of the applicant on his request by protecting his pay and has accorded all benefits due to the applicant from the date of his absorption in the Clerical cadre.

6. The applicant has also filed Misc. Application No. 1626 of 2006 along with the O.A. and prayed for condonation of delay in filing the O.A. In this Misc. Application, applicant has averred all the facts as mentioned in the O.A. The main reason given by the applicant for not filing the Original Application within time is that from the date of first impugned order, he had been representing to the concerned authorities, and under the legal advice, he could not approach the Court earlier.

7. In reply to the aforesaid Misc. Application, the respondents have filed Objection, in which it is stated that the representation of the applicant has already been considered on 26.03.2002, and on the contrary, the present O.A. has been filed on 06.02.2003 (wrong date mentioned by the respondents, as the correct date is 08.03.2006). All the other facts mentioned in the Objection are just repetition of the facts mentioned in the Counter Reply. However,

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the respondents have prayed for rejection of aforesaid Misc. Application.

6. We have heard Sri A. Chaturvedi, learned counsel for the applicant and Sri Prashant Mathur, learned counsel for the respondents, and also carefully perused the pleadings.

7. Learned counsel for the respondents raised a preliminary objection that the O.A. is inordinately time barred and the explanation given by the applicant is not reasonable, and convincing. We have carefully gone through the delay condonation application and the affidavit filed in support thereof. It is stated that the applicant was offered alternative appointment in lower grade and the respondents acted contrary to the statutory provisions contained in the Indian Railway Establishment Manual. The representation of the applicant was replied on 26.03.2002. The applicant thereafter preferred a representation dated 24.12.2004, 15.03.2005 and 27.09.2005 but no response was made by the respondents in this regard. The applicant also stated that the benefit of Judgment in K.C. Borkar's case (O.A. No. 752 of 1996-K.C. Borkar vs. Union of India and others, decided on 07.09.2001) may be extended to him. In the last, it is submitted by the applicant that the seniority and pay fixation is a recurring cause of action and, as such, delay in filing the O.A. may be condoned. The respondents have filed Objection, not supported by an affidavit, to the Delay Condonation Application. Having given our thoughtful consideration to the pleas advanced by the parties' counsel, we are satisfied that the ends of justice would be met in case the delay condonation application is allowed and substantial justice be

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advanced to the applicant. The delay in filing the O.A. is accordingly condoned.

8. Learned counsel for the applicant has vehemently argued that benefit of Judgment rendered in K.C. Borkar's case (supra) deserves to be extended to the applicant. It is also vehemently argued by Sri A. Chaturvedi that the respondents have committed serious illegality in giving alternative appointment to the applicant in the lower grade i.e. Junior Clerk Rs.3050-4590/- instead of an equivalent grade of Rs.4000-6000/-. Sri A. Chaturvedi, learned counsel for the applicant would further contend that the respondents have given complete go-bye to the provisions of the Indian Railway Establishment Manual, and have not assigned proper seniority to the applicant. Sri Prashant Mathur, learned counsel for the respondents submitted that since absorption of the applicant after ^{being} medically decategorised involves change of the category and, as such, as per Rules the benefit of seniority has to be accorded to the applicant from the date of his absorption in the Clerical category and accordingly the applicant was posted as Junior Clerk in the grade of Rs.3050-4590/-. At the same time, in order to avoid any financial loss to the applicant, his balance pay was protected by the Railway administration. We have carefully considered the rival contentions of the parties' counsel and in our considered view, in view of Paragraph 1310 of the Indian Railway Establishment Manual (quoted above), fixation of seniority of a medically decategorised staff absorbed in alternative employment is to be dealt with in the manner enumerated in Para-1310 of the Manual, which clearly indicates that the disabled/medically decategorised staff absorbed in alternative posts, should be allowed

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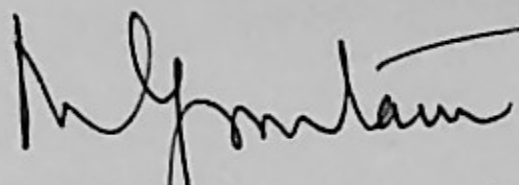
seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. It is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

9. In view of the aforesaid position of the Rules, we are convinced that the respondents have rightly accorded seniority to the applicant from the date of his absorption in the clerical category. We have also noticed that the higher pay of the applicant has been protected in order to avoid financial loss to the applicant in respective cadre. It is also seen from the records that the applicant was absorbed in the clerical category as per his own request and this fact is also considered by the Screening Committee. It is also apparent that the category of the applicant has been changed on his own request, therefore, he is not entitled to get benefit of seniority, as claimed. At the same time, the applicant has failed to indicate any reason by which he could get similar benefit, as has been extended to Sri Ram Samujh, allegedly junior to the applicant. Sri Ram Samujh has been promoted from Group 'D' to Group 'C' in the year 1995. Sri Ram Samujh passed the Typing Test and promoted in higher grade, as per channel of promotion and availability of vacancy. The applicant has never been senior to Sri Ram Samujh, as alleged. Sri Ram Samujh was promoted as Junior Clerk on 16.06.1995 whereas the applicant was absorbed after medical decategorisation and change of cadre on the post of Junior Clerk on 29.05.2000. We have also carefully seen the Judgment in the case

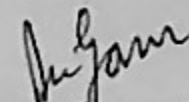
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of K.C. Borkar (supra) and found that the facts of the case are wholly distinguishable in as much as no such request of ^{change of} category was made at the request of the applicant in that O.A. So, the facts of the case, cited by the applicant, are quite different. No other tangible grounds could be raised by the applicant, which may warrant interference by this Tribunal. In our considered view, the applicant has utterly failed to make out any case warranting interference by this Tribunal.

10. In view of the above discussion, we find no merit in the O.A., which is accordingly dismissed. No order as to costs.



Member (A)



Member (J)

/M.M/