

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

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O.A. No. : 417/1995

Date of Order : 01.10.1995

1. Branch Secretary, Vinay Kumar, Northern Railway Men's Union Workshop Branch, Bikaner. (Registered and Recognised) Address: A-171/1, New Railway Colony (Lallgarh), Bikaner.

Shiv Lal Mali, S/o Shri Hira Lal Mali Skilled Moulder Grade II, Shop No. 1, Foundry shop, Mechanical Workshop, Northern Railway, Bikaner, Residence, Hanumanhatta, Opposite Municipal Board, Bikaner.

Applicants.

Versus

Union of India, Through General Manager, Northern Railway Headquarters Baroda House, New Delhi and others.

Respondents.

Mr. Bharat Singh, counsel for the applicant.

Mr. S.S. Vyas, counsel for respondents No. 1 to 4.

None present for respondent No. 5.

COURT :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH :

Applicants, Branch Secretary, Northern Railway Mens' Union, Workshop, Branch, Bikaner and Shiv Lal Mali have filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 4.9.1995, Annexure A/1 including orders of higher authorities mentioned therein and for issuing a direction to the respondents not to change the seniority of applicant No.

Gopal Singh

2 and, further that no action against applicant No. 2 in respect of seniority may be taken against him on the basis of General Manager letter dated 24.8.1999 mentioned in letter dated 4.9.1995.

2. Applicants case is that he joined as Rakshak in Railway Protection Force on 14.2.1971. The applicant was declared medically declassified and unsuitable for the post of Rakshak in Railway Protection Force. Accordingly the applicant was absorbed as temporary Khalasi in Bikaner Workshop with effect from 2.3.1981. The applicant represented for assignment of seniority in terms of relevant rules and finally his seniority was fixed taking the entire service into account vide respondents letter dated 23.9.1994, Annex A/3. Other officials over whom he was gaining seniority were also asked vide this letter dated 23.9.1994 that if they have any objection for assigning the proposed seniority to the applicant they may file their objections within a month. Some of these officials represented against the seniority proposed to be given to the applicant but their representations were duly rejected by the competent authority. The applicant was subsequently promoted to the scale of Rs. 1200-1800 with effect from 26.11.1994. The respondents have now held that the seniority assigned to the applicant was not correct vide their order dated 04.9.1995, Annexure A/1 and letter dated December, 1995, Annexure R/7 and have assigned seniority to the applicant at the bottom of the panel.

3. Applicant's contention is that his case is covered under para 1314 of the Indian Railway Establishment Manual Volume I (IREM, for short) whereas the respondents contend that his case should be governed by para 312, para 313 of

Ans

of the IREM Volume I, for better appreciation of the case relevant paragraphs are reproduced below :-

"312. TRANSFER ON REQUEST - The seniority of railway servants transferred at their own requests from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

313. MEDICALLY UNFITTED RAILWAY SERVANTS. -

(a) (ii) The medically decategorised 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 in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. 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.

Provided that if a 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.

(d) In the case of staff coming to a new unit on own request by accepting bottom seniority and then getting medically decategorised, provision of sub-para (a) (ii) above will be applicable only to the extent of service in the new unit.

1314. (a) Seniority - The medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in 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. This is subject to the proviso that if a 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."

4. It would be seen from the above that a person who has been medically decategorised and is absorbed in the relevant post has to be assigned seniority taking his total length of

length of

service. The contention of the respondents is that the applicant had on his own request sought posting in workshop and also gave undertaking that he is ~~prepared~~ to accept bottom seniority. In this connection we have only to say that when the rules are very clear on the subject such undertaking is of no consequence. Moreover, the applicant was first decategorised and then absorbed in another cadre. He had only given a preference for posting in Bikaner Workshop and, therefore, it cannot be treated that the applicant had applied for transfer to Bikaner workshop. We are, therefore, of the view that the ~~seniority~~ assigned to the applicant taking into account the entire service is covered by the rules on the subject and, therefore, the same cannot be changed to the disadvantage of the applicant.

5. The OA is, therefore, allowed and respondents letter dated 4.9.1995 (Annexure A/1) is set aside and the applicant would continue to enjoy the seniority ~~assigned~~ to him vide respondents letter dated 23.9.1994, Annexure A/3.

6. The parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
MEMBER (A)

AKM
4/10/95
(A. K. MISRA)
MEMBER (J)