

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 274/1997

Date of Order: 24.5.1998

1. Narayan Dass s/o Sri Hari Kishan, r/o Radhnath Sar Ka Kuaa, Near Bheruji Ka Chowk, Bikaner.
2. Smt. Champa Devi w/o Late Shri Kheta Ram, r/o Near Indera Colony, Bikaner.
3. Smt. Baliya Devi w/o Late Shri Ram Pal, r/o Rampura Basti, Lalgarth, Bikaner.

Official Address:

All the above named applicants are Skilled Trimmers GradeII, Trimming Shop (21), Railway Workshop, Bikaner.

... Applicants

VERSUS

The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. The Deputy Chief Mechanical Engineer (W), Northern Railway Workshop, Bikaner.
3. The Assistant Personnel Officer (W), Northern Railway Workshop, Bikaner.
4. Shri Chetan Kumar s/o Shri Kishan Lal, r/o House No. 3/186 Mukta Prasad Nagar, Bikaner, presently working as Skilled Trimer GradeII, Trimming Shop, Railway Workshop, Bikaner through the Deputy Chief Mechanical Engineer (W), Northern Railway, Bikaner.

... Respondents

Mr. Kamal Dave, Counsel for the applicants.

Kamal Dave



Mr. S.S. Vyas, Counsel for the respondents No. 1 to 3.

Mr. S.K. Malik, Counsel for the respondent No. 4.

CORAM:

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

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

The applicants, Narayan Dass, Smt. Champa Devi and Smt. Baliya Devi, have filed this application Under Section 19 of the Administrative Tribunals Act, 1985, seeking for a direction to respondents to modify the order dated 16.7.97 (Annx. A/1) regarding assignment of seniority to Shri Chetan Kumar (respondent No. 4) above Smt. Champa Devi, one of the applicant in this O.A.

2. Brief facts of the case are that Shri Chetan Kumar (respondent No. 4) was medically examined by a Medical Committee and he was found fit in the original category vide Senior Divisional Medical Officer, Lalgarh's letter dated 13.10.1995. While declaring Shri Chetan Kumar (respondent No. 4) fit in the original category, the Medical Committee also advised him to avoid lifting of heavy weights. On the basis of this medical certificate, respondent No. 4 also requested for posting him to Trimming Shop. The case of respondent No. 4 was examined by the Absorption Committee and this committee found him suitable for posting him as Fitter Grade II in Trimming Shop vide Annexure A/6. The Deputy Chief Mechanical Engineer (respondent No. 2) in the meantime vide its letter dated 11.12.1995 had sought suggestions of NRMU and URMU in regard to the proposal for adjustment of Shri Chetan Kumar in Trimming Shop. Shri Chetan Kumar, respondent No. 4, had also approached this Tribunal for implementation of this letter dated 11.12.1995 (Annx. A/3) vide his application No. 109/96 before this Tribunal. While disposing of the above application, this Tribunal had observed vide its order dated 15.5.1997 as under:

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"the Dy. CME(W) proposed that the applicant be adjusted in the Trimming Shop in the Railway Workshop at Bikaner. The respondents have stated that the recommendations of the Absorption Committee have been approved by the Dy.CME(W), Bikaner, but since the matter is sub judice, no order could be passed by respondent No. 2 for the applicant's absorption in the Trimming Shop.

4. In view of the position stated above, we direct the respondents to adjust the applicant in the Trimming shop, Railway Workshop, Bikaner, as expeditiously as possible. The O.A. is allowed accordingly. No order as to costs."

The respondent No. 2 had accordingly issued order dated 16.7.1997 (Annx. A/1) transferring Shri Chetan Kumar to Trimming Shop as Skilled Trimmer Grade II. This order dated 16.7.1997 also assigns the seniority to Shri Chetan Kumar above Smt. Champa Devi one of the applicant in this O.A.

3. The applicants case is that Shri Chetan Kumar (respondent No. 4) was not declared medically unfit and was only advised to avoid lifting of heavy weights and as such he should not have been treated as medically decategorised staff to be absorbed in an alternative posts. The Medical Committee had very clearly stated that the respondent No. 4 was medically fit in the original category and therefore the question of finding an alternative post for him should not have arisen. Further even if the transfer of respondent No. 4 from Wagon Shop to Trimming Shop is considered administratively expedient, he should not have been given the benefit of seniority in terms of Rules 1314 of IREM which deals with seniority of medically decategorised staff. The applicant's contention is that the respondent No. 4 had been transferred to Trimming Shop on his own request and accordingly he should be assigned the bottom seniority in the Trimming Shop, as per rules.

4. The respondents in their reply have stated that in compliance of the order of the Tribunal dated 15.5.1997 in O.A. No. 109/96 and in terms of recommendations of Absorption Committee Shri Chetan Kumar (respondent No. 4) was adjusted in Trimming Shop.

5. We have heard the learned counsel for the parties and perused the records of the case.

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6. It is seen from the records of the case that this Tribunal vide its order dated 15.5.1997 had only issued direction for adjustment of respondent No. 4 in the Trimming Shop as his case of transfer to Trimming Shop was under consideration by the respondent No. 2 in terms of the medical certificate. This Tribunal had not issued any direction about assigning the seniority to respondent No. 4. Since respondent No. 4 was not medically decategorised as such his transfer to Trimming Shop can at best be treated as on his own request or under administration exigencies. He can in no case be treated as medically decategorised staff. In the circumstances, we are of the view that the transfer of respondent No. 4 to Trimming Shop can only be treated as on his own request and he can be assigned seniority in his grade in the Trimming Shop as per rules without treating him as a medically decategorised staff. We, thus, find that the O.A. has merit and deserves to be allowed.

7. The O.A. is accordingly allowed with the following directions:

- i) The impugned order dated 16.7.1997 (Annex. A/1) is set aside.
- ii) Respondent No. 4 should be assigned the seniority in his grade in the Trimming Shop as per rules without treating him as a medically decategorised staff.

8. The parties are left to bear at their own costs.



Gopal Singh

(Gopal Singh)
Administrative Member

A.K. Misra

(A.K. Misra)
Judicial Member

Aviator/

Recd
10/10/88
5/8/88

100% of order
sent to R/4 by
Regd AD vide
No 245
dti 5-6-98
m
5/6/98

Recd
5/6/98

R/4 A.S.
recd & attached
in clura set