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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 16.4.2001

ORIGINAL APPLICATION NO. 206/1999.

Mohd. Hussain S/o Abdul Majid, aged about 47 years
R/o Shaukat Manzil, Gajner Road, Fhad Bazar, Bikaner
presently working on the post of Head Ticket Collector
in the office of Chief Ticket Inspector, Northern
Railway, Bikaner (Rajasthan).

APPLICANT ..

VERSUS

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Bikaner.
3. Divisional Personnel Officer, Northern Railway,
Bikaner.

RESPONDENTS ..

Mr. S. K. Malik, counsel for the applicant.
Mr. K. K. Dave, counsel for the respondents.

CORAM

Hon'ble Mr. A. K. Misra, Judicial Member.
Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant
Mohd. Hussain has filed this application, praying
for setting aside the impugned order dated 16.04.1996/
21.05.1996 (Annexure A-1) and order dated 22.04.1999
(Annexure A-2) and further for a direction to the

Gopal Singh

respondents to assign seniority to the applicant on the post of Ticket Collector in the pay scale of Rs. 950-1500, above the persons who were appointed on the post of Ticket Collector after 01.12.1978, in accordance with Para 1314 of Indian Railway Establishment Manual Volume I.

2. Applicant's case is that while he was working as Fitter Driver Grade-II in the pay scale of Rs. 1200 - 1800 with the respondent's department, he was declared medically unfit and was approved for absorption on the post of Ticket Collector in the pay scale of Rs. 950-1500. Accordingly, the applicant joined the post of Ticket Collector w.e.f. 30.04.1994. The Respondent's Department had issued a seniority list vide their letter dated 30.03.1995 (Annexure A-4), which was challenged by the applicant, as he was not given the benefit of his total service in the pay scale of Rs. 950-1500 while fixing his seniority. The representation of the applicant was rejected vide respondents letter dated 16.04.1996/21.05.1996 (Annexure A-1). Subsequent representation dated 29.12.1998 was also replied to vide respondents letter dated 22.04.1999 (Annexure A-2) stating therein that the seniority assigned to the applicant vide letter dated 16.04.1996/21.05.1996 is correct. Feeling aggrieved, the applicant has filed this O.A.

3. In the counter, it has been stated by the respondents that the applicant has been assigned seniority above all the Ticket Collectors, since, the applicant has been absorbed only as Ticket Collector

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in the pay scale of Rs. 950-1500. The persons who were Ticket Collectors as on 01.12.1978 had reached the promotional post of Head Ticket Collector etc., when the applicant was absorbed as Ticket Collector and as such the applicant cannot be assigned seniority above the persons who had already been promoted to higher posts, higher than the post of Ticket Collector. It has, therefore, been averred by the respondents that the application is misconceived and is liable to be dismissed; it has already been pointed out by the respondents that the application is also hit by limitation.

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

5. The learned counsel for the applicant has cited the case of K. Madhavan & Another Vs. U.O.I. & Ors. reported as AIR 1987 SUPREME COURT 2291, in support of his contention that the applicant is entitled for the benefit of his past service in the Grade of Rs. 950-1500 for the purpose of his seniority on the post of Ticket Collector. In this judgement, it was held by Hon'ble the Apex Court that transfer of Government servant cannot wipe out his length of service in the post from which he has been transferred. The case in hand is ^{not} a case of simple transfer. The applicant has been medically decategorised and was absorbed in the lower grade in a different cadre. Thus, the cited judgement, in our opinion, does not help

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the applicant. Seniority of medically decategorised staff has been dealt with in para 1314 of REM Vol. I. We consider it appropriate to reproduce the same as under : -

" 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.

(b) Medically unfitted direct recruits offered alternative employment should be placed at the bottom of the existing panel of the new category but should take precedence over candidates who are offered appointment in that category from subsequent panels.

(c) The following principles should be followed in absorption in alternative categories after medical decategorisation :

(1) quite often it happens that due to vacancies not being available in equivalent grades a medically decategorized employee has to be offered absorption in a lower grade. In some cases such employees refuse the lower grades in the hope of vacancies in higher grades materialising. It should be open in such cases for an employee to accept a lower grade with a request that if a vacancy in a grade equivalent to what he held before decategorisation occurs in the same cadre he should be considered eligible for the same in preference to a junior medically decategorised employee while the employee can be expected to put in an application when this contingency happens, it is also necessary for the administration suo moto, when considering a subsequently decategorised employee for absorption in a cadre, to look into cases where senior decategorised



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for the higher post, while he accepted absorption on the post of Ticket Collector. It is also seen that the applicant has been assigned seniority above all the Ticket Collectors as on the date of his absorption i.e. 30.04.1994, and he has further been promoted as senior T.C. in the pay scale of Rs. 1200-2040 vide respondents letter dated 24.05.1995 (Annexure A-5) and Head Ticket Collector in the pay scale of Rs. 1400-2300 vide respondents letter dated 26.06.1997 (Annexure A-6). It is because of the assignment of the top seniority to the applicant that he got his promotion to the higher posts before all other Ticket Collectors in his cadre. No doubt, Para 1314 of IREM Vol. I provides that the benefit of entire service in a grade be extended to the medically decategorised employee on his absorption in that grade. It is further, ~~be~~ seen in the instant case that the persons who were appointed as T.C. on or after 01.12.1978 were all occupying higher posts and the applicant could not have been absorbed in higher posts as he was recommended for absorption on the post of Ticket Collector only.

7. It is also seen from records that the applicant was informed about the seniority position in the cadre of Ticket Collectors vide respondents letter dated 16.04.1996/21.05.1996 (Annexure A-1), with reference to his representation against his seniority position indicated in respondents letter dated 30.03.1995 (Annexure A-4). Thus, grievance arose to the applicant on 30.03.1995 and ^{when} the representation

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employees may have been absorbed in lower grades in the same cadre during previous three years and initiate a review. Cases decided before need not be reopened unless there are very exceptional circumstances.

- (2) It is also not the intention that even after review the junior employee already absorbed and working in a higher grade should be displaced to make room for the senior. The senior may be promoted against the next vacancy arising in the grade and relative seniority in that grade refixed taking into account the position before medical decategorisation.
- (3) When a junior has already been absorbed in an equivalent grade but a senior gets medically decategorised during the next three year period and has necessarily to be considered for absorption in the same cadre but no vacancy in a similar grade is available, he may be provisionally absorbed in a lower grade with the understanding that the next vacancy occurring in the higher grade would be given to him. On such vacancy occurring and his being posted therein, seniority should be recast as per (2) above.
- (4) There will be cases where a senior employee was absorbed in a grade taking into account his position before decategorisation and a junior subsequently got promoted to a higher grade but ultimately gets medically decategorised and becomes eligible for alternative employment in a higher grade. It is not the intention that such cases which happened because of the efflux of time should be reviewed".


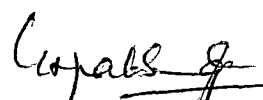
6. It is seen from the provision of Para 1314 of REM Vol. I, that if a medically decategorised employee is offered absorption in a lower grade, it is open to the employee to accept a lower grade post with a request that if a vacancy in a grade equivalent to what he held before decategorisation occurs in the same cadre, he should be considered eligible for the same, in preference to a junior medically decategorised employee. The applicant has not placed anything in record to show that he had made any request for preferential consideration


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thereon was replied to vide Annexure A-1. This application has been filed by the applicant on 02.08.1999, much after the period of limitation was over. The subsequent representation dated 29.12.1998 of the applicant was replied to vide respondents letter dated 22.04.1999 (Annexure A-2). In this letter dated 22.04.1999, it was only informed to the applicant that the seniority assigned to him vide letter dated 16.04.1996/21.05.1996 is correct. The applicant, therefore, cannot count limitation period from 22.04.1999 as this letter only reiterates the position conveyed to the applicant earlier vide letter dated 16.04.1996/21.05.1996. In our opinion, the O.A. is, therefore, hit by limitation also and can be dismissed on that count alone.

8. In the light of above discussion, we do not find any merit in this application and the same deserves to be dismissed.

9. The O.A. is accordingly dismissed with no order as to costs.



(GOPAL SINGH)
Admn. Member


16/4/2001
(A. K. MISRA)
Judl. Member

Part II and III destroyed
in my presence on 28-3-52
under the supervision of
section officer (1) 1952
order 19/1/52
Section Officer (Records)

Recd Copy
Kant
4/1/52

Rev
Blomker
24/4/51