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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 359/1999
T.A. No.

XXXX
XXXX

DATE OF DECISION 31.08.2001

Ram Dutt Yadav ... Petitioner

Mr. Bharat Singh ... Advocate for the Petitioner (s)

Versus

Union of India & Ors. ... Respondent (s)

Mr. Kamal Dave ... Advocate for the Respondent (s)
Nos. 1 to 4.

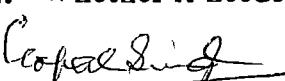
None is present for the respondent No. 5.



The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 31.08.2001

O.A. No. 359/1999

Ram Dutt Yadav S/o Sh. Ram Prasad Yadav Dresser I (Incharge) Northern Railway Divisional Hospital Lallgarh, Bikaner R/o Railway Quarter No. T-71 B behind Railway Dispensary, Railway Colony, Bikaner (Rajasthan).

APPLICANT

VERSUS

1. Union of India Through General Manager, Northern Railway, Headquarters Baroda House, New Delhi and Others.
2. Divisional Railway Manager, Northern Railway, Bikaner (Rajasthan) 334001.
3. Divisional Personnel Officer, Northern Railway Divisional Office, Bikaner (Rajasthan) 334001.
4. Senior Divisional Medical Officer, Northern Railway Divisional Hospital, Lalgarh, Bikaner (Rajasthan) 334001.
5. Shri Shambhu Dayal son of Shri Badlu Ram Dresser I Northern Railway Dispensary Sirsa, District Sirsa (Haryana) R/o Railway Quarter, Sirsa.

RESPONDENTS

Mr. Bharat Singh, counsel for the Applicant.
Mr. Kamal Dave, counsel for Respondent No. 1 to 4.
None present for respondent No. 5.

CORAM

Hon'ble Mr. Justice B. S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member.



ORDER

(per Hon'ble Mr. Justice B.S. Raikote)

Applicant Shri Ram Dutt Yadav has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order Annexure A-1 dated 21.10.1999, by which the applicant was declared 'failed' for the purpose of promotion to the post of Operation Theatre Assistant Grade-I (OTA, for short), in the Medical department of the Northern Railways, Bikaner. The applicant also has sought a direction to fix his pay at Rs. 4,500-7,000, treating him as Dresser-I in terms of R.B.E. No. 100/98 dated 10.05.1998.

2. The applicant contended that earlier he was in OTA/Dresser-II and from this cadre, he was promoted to the post of Dresser-I vide Annexure A-2 dated 15.11.1990 in the pay scale of Rs. 825-1200, and as per the notification R.B.E. No. 100/98 dated 10.05.1998, the pay scale of the Dresser-I/OTA-I, is fixed at Rs.4500-7000. He also stated that in terms of Ministry Letter dated 10.05.1998, the post of Dresser Grade-III/OTA III, in the pay scale of 3050-4590 are to be filled up by process of selection from amongst eligible candidates with a qualification of matriculation. But for the higher post of Dresser-II/OTA-II in the pay scale of Rs.4000-6000 and for Dresser-I/OTA-I in the pay scale at Rs. 4500-7000 are required to be filled on non selection basis. Since the applicant was already in Dresser-I/OTA-I, no selection process was required, and he should have been selected to the post of Dresser-I/OTA-I in the pay scale at Rs. 4500-7000 without any selection test. Therefore, the impugned order declaring him as failed in the selection test for the purpose of promotion to the post of OTA-I/Dresser-I, is illegal. The applicant would have been promoted as OTA-I without taking any such test, or in the alternative, the applicant submits that as per the said Notification No. R.B.E. 100/98 dated 10.05.1998, the applicant is entitled to pay scale at Rs.



4,500-7,000, but his pay scale is fixed at Rs. 4000-6000 illegally, or in the alternative, the applicant may be given this pay scale at Rs.4500-7000 from the date his junior is getting it. Therefore, the applicant is entitled to the reliefs, as prayed for.

3. The respondents by filing counter, denied the case of the applicant. They stated that the applicant being declared 'failed' in the suitability test, ^{conducted} for the purpose of promotion to the post of OTA Grade-I in the pay scale at Rs. 4500-7000, the Annexure A-1 cannot be quashed, nor the applicant is entitled to promotion to the post of OTA Grade-I without passing such test. They have also stated that as per the recommendations of Fifth Pay Commission for introduction of new grade as OTA-I/Dresser-I with higher pay scale of Rs. 4,500-7,000 vide Annexure R/3 dated 22.12.1999, the designation of OTA/Dresser and the cadre position alongwith its pay scale has been modified and accordingly, the pay scale of OTA-III/Dresser-II at Rs. 800-1150 is modified to Rs. 3050-4590, the pay scale of OTA-II/Dresser-I in the pay scale at Rs. 825-1200 is modified to Rs. 4000-6000 and the pay scale of OTA at Rs. 950-1400 is modified to Rs.4000-6000. They stated that OTA-III/Dresser-II with a pay scale of Rs. 3050-4590 is redesignated as OTA Grade-III/Dresser-III with the pay scale at Rs.3050-4590 and OTA-II/Dresser-I with a pay scale of Rs.4000-6000 is redesignated as OTA-II/Dresser-II in the pay scale at Rs. 4000-6000 and the designation of OTA in the pay scale at Rs. 4000-6000 is equated to OTA-I/Dresser-I in the pay scale at Rs. 4500-7000. They stated that the applicant was no doubt Dresser-I on the basis of his promotion order dated 15.11.1990 vide Annexure A-2, but that Dresser-I has now been redesignated as Dresser-II/OTA-II with a pay scale at Rs.825-1200 = Rs. 4000-6000, as per R.B.E. No. 100/98 dated 10.05.1998. Therefore, for becoming a Dresser-I, after the redesignation with new pay scale, the applicant should seek promotion

to that cadre alongwith others on the basis of the suitability adjudged by the competent authority, and straight away the applicant is not entitled to the revised pay scale of Rs. 4500-7000 as Dresser-I, only because he was Dresser-I before redesignation of the said post. Accordingly, he submitted that the applicant being in the pay scale at Rs. 825-1200 = Rs. 4000-6000, cannot get the pay scale at Rs. 4500-7000 without passing suitability test prescribed for revised grade of Dresser-I/OTA-I.

4. Heard and perused the records.

5. The first prayer of the applicant for quashing the order Annexure A-1, *prima facie*, is not sustainable since he is declared failed in the suitability test held for the purpose of promotion to OTA-I/Dresser-I in the pay scale at Rs. 4500-7000. As per the law declared from time and again, this Tribunal cannot sit as an appellate authority over the results of the selection test declared by the competent authority. If the applicant has declared as failed vide Annexure A-1 for the purpose of promotion on OTA-I/Dresser-I on the basis of the suitability test, it is not possible for this Tribunal to take a contrary view. Hence, his prayer for quashing Annexure A/1 is liable to be rejected.

6. Now we take up the alternative prayer of the applicant that his pay scale should be fixed at Rs. 4500-7000 meant for Dresser-I, on the basis of his promotion as Dresser-I vide Annexure A/2 dated 15.11.1990. The learned counsel for the applicant contended that when the applicant has already been promoted as Dresser-I, he could not be treated as Dresser-II, nor the applicant is deemed to be as Dresser-II. As long as his promotion as Dresser-I stands, the applicant is entitled to pay scale of Rs. 4500-7500 as per R.B.E. No. 100/98 dated 10.05.1998. The learned counsel for the applicant

further contended that no order is issued to the applicant, stating that his designation as Dresser-I is modified to Dresser Grade-II. Therefore, the applicant continued to hold the post of Dresser-I, and accordingly, he is entitled to the pay scale of Dresser-I on the basis of R.B.E. No. 100/98.

7. The above prayer of the applicant is based on the name 'Dresser-I' without noticing the redesignation of the existing Dresser-I as Dresser-II vide order dated 24.12.1999 (Annexure R-3). When a policy decision is taken regarding redesignation by refixing the pay scale either on the recommendation of the Fifth Pay Commission or otherwise, no individual order is required to be issued. The applicant should take R.B.E. No. 100/98 or order Annexure R/3 as a whole and not in isolation. R.B.E. No. 100/98 provides as under :-

" R.B.E. No. 100/98

Subject : Introduction of additional pay scales - Recommendation of V CPC. [No. PC-V/98/I/II/18(A), dated 10.05.98].

Consequent upon the implementation of V CPC's recommendations the issue of introduction of new scales for certain categories as recommended by the V CPC has been under consideration of the Board.

2. Introduction of the new pay scales in accordance with the recommendations of the Pay Commission for certain categories of staff was to be effected on functional considerations. The matter has been considered and the Ministry of Railways, with the approval of the President, have decided to introduce new scales in certain categories as indicated in the Annexure to this letter. With a view to simplify the procedure in this regard, it has also been decided to introduce the new scales of pay in accordance with the percentage / numbers indicated in the Annexure. While, implementing these orders the following detailed instructions should be strictly and carefully adhered to:

Date of effect:

(a) The number of posts to be operated in these scales will be with reference to the sanctioned cadre strength as on the date of issue of these orders. Staff who are placed in the higher grades as a result of implementation of these orders will draw pay in the respective higher grade from the date of issue of these orders.

Applicability of various Cadres:

(b) (i) These orders will be applicable to regular cadres on

Open Line Establishment including Workshops and Production Units and will include posts of rest givers and reserves.

(ii) These orders will not be applicable to ex-cadre and work charged posts which will continue to be based on worth of charge.

(iii) These instructions will also not be applicable to Construction Units and Projects.

Pay Fixation:

(c) Staff selected and posted against the higher grade posts as a result of introduction of the new scales will have their pay fixed under Rule 1313 (R-II) [FR-22-I(a)] with the usual option for pay fixation as per extant instructions.

Classification and filling up of vacancies:

(d) The classification of posts and other related issues have been mentioned in the Annexure attached.

Minimum years of Service for promotion to new grade:

(e) The normal minimum eligibility condition of 2 years /3 years service in the immediate lower grade, as appropriate will apply as usual.

Basic functions, duties and responsibilities:

(f) Since the posts are being created on functional considerations, such posts should be pin-pointed and should include duties of higher importance. The benefit will become admissible only to the duly selected staff, and that too after they move to the pin-pointed posts.

Specific instructions given in the foot note of annexure:

(g) While implementing these orders, specific instructions given as foot note, if any, against any category in the enclosed annexure should be strictly and carefully adhered to.

Provision of Reservation:

(h) The existing instructions with regard to reservation of SC/ST will continue to apply while filling up posts in the new grades.

ANNEXURE

DEPARTMENT : MEDICAL

Designation	Pay Scale	% age existing	% age revised	Remarks	Classification and procedure for filling up posts being in- troduced now.	
1.	2.	3.	4.	5.	6.	

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1.	2.	3.	4.	5.	6.
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Category: Hospital & Conservancy Staff-

Category : Cooks

Category: Dresser/O.T. Assistant-

Dresser III/ OTA III	3050-4590	45%	35%	Existing	Selection from eligible candidates with Matric qualification.
Dresser II/ OTA II	4000-6000	55% + 5%	55%	Existing	Non-selection
Dresser-I/ OTA-I	4500-7000	-	5%	New Scale	Non-selection

Category : Lady Health Visitor-

Consistent to R.B.E. No. 100/98 dated 10.05.98, the Northern Railway, Bikaner Division, Bikaner, issued circular dated 22.12.99, providing revised grades of pay and revised designations of O.T. Assistant/Dresser as under:-

कार्यालय मण्डल रेल प्रबन्धक

उत्तर रेलवे बीकानेर

पत्रांक: 293ई/मेडिकल/द्वेषर/भाग-11/पी-4 दिनांक 22.12.99.

समस्त वरि./मण्डल चिकित्सा अधिकारी बीकानेर मण्डल पर

प्रति/- मुख्य चिकित्सा अधिक्षक नालगढ़, मण्डल लेखाधिकारी बीकानेर

विषय :- चिकित्सा विभाग में द्वेषर कोटि के वेतनमान एवं पदनाम के संबंध में।

संदर्भ :- इस कार्यालय का पत्रांक 561ई/1/पीसी-1/जनरल/पी-14 दिनांक 19.2.98 एवं 8.7.98

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महाप्रबन्धक उ.रे.बडोदा हाऊस नई दिल्ली के पत्रांक 561ई/1/-

सीपीसी/97/पार्ट-11 दिनांक 27.1.98 के अन्तर्गत प्राप्त रेलवे बोर्ड के पत्रांक पीसी-1/97/1/आरसजारपी/। दिनांक 16.1.98 की प्रतिलिपि इस कार्यालय के संदर्भित पत्र दिनांक 19.2.98 के द्वारा प्रेषित की गई थी जिसमें ड्रेसर कोटि के वेतनमान को निम्न प्रकार से संशोधित किया गया था

1.1.96 से पूर्व
पदनाम एवं ग्रेड

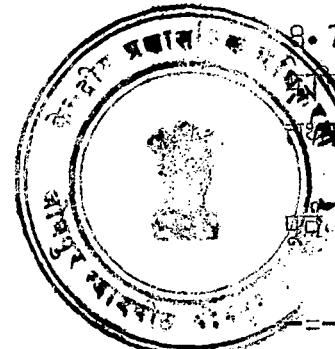
संशोधित
वेतनमान

1. ओ.टी.असिस्टेट-111/800-1150 ड्रैसर-11	ग्रेड रु. 3050-4590
2. ओ.टी.असिस्टेट-11/ 825-1200 ड्रैसर-1	ग्रेड रु. 4000-6000
3. ओ.टी.असिस्टेट 950-1400	ग्रेड रु. 4000-6000

तदपश्चात महापुरुषक बडोदा हाउस नई दिल्ली के पत्रांक 561/सीपीसी/97/पार्ट-11 दिनांक 27.8.98 पी.एस.नं. 11466/97 पीसीवी-461 के अन्तर्गत रेलवे बोर्ड के पत्रांक पीसीवी/1/11/18/ए दिनांक 10.5.98 10.5.98 की प्रतिलिपि प्राप्त हुई जिसे इस कार्यालय के संदर्भित पत्र दिनांक 8.7.98 के द्वारा मेडिकल विभाग की उक्त कोटि के पदनाम एवं कैडर के अन्तर्गत को निम्न प्रकार से संशोधित की सर्वसंबंधित की सूचना, मार्गदर्शन क्रियान्वयन कार्यालय अभियेक हेतु प्रेषित की गई थी ।

एवं पद एवं संशोधित वेतनमान

पुनः संशोधित पदनाम एवं
वेतनमान



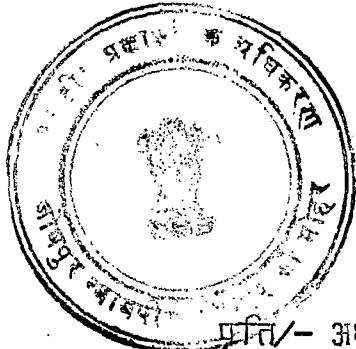
1. ओ.टी.असिस्टेट-111/3050-4590 ड्रैसर-11	ओटी असिस्टेट-111/3050-4690 ड्रैसर-111
2. ओ.टी.असिस्टेट-11/4000-6000 ड्रैसर-1	ओ.टी.असिस्टेट-11/4000-6000 ड्रैसर-1
3. ओ.टी.असिस्टेट 4000-6000	ओ.टी.असिस्टेट-1/4500-7000 ड्रैसर -1

प्राप्त: यह देखे में आया है कि बोर्ड के आदेशों की अवहेलना करते हुए मंडल चिकित्सा प्रभारी कार्यालय के द्वारा के बिल स्केलेटन एवं करना रिकार्ड में अभी भी उक्त कोटि के पुराने पदों का प्रयोग किया जा रहा है जोकि गंभीर विचार है ।

क्रमांक: 9

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अतः उक्त निर्देशों की अनुपालना करते हुए त्रटि को ठीक किया जाये तथा इस कार्यालय को सूचित करें।



वास्ते मण्डल कार्मिक अधिकारी,
उत्तर रेलवे, बीकानेर

प्रति/- अधीक्षक को :- कृपया उक्त कोटि का के बिल पास करते समय यह सुनिश्चित करें कि उक्त त्रुटी को संबंधित प्रभारी के कार्यालय द्वारा ठीक कर दिया गया है।

Admittedly, the applicant was promoted earlier vide Annexure A/2 dated 15.11.90 as Dresser Grade-I in the pay scale at Rs. 825-1200. This Dresser-I is admittedly modified under Annexure R/3 dated 22.12.99 as Dresser-II on the basis of the recommendation of the Fifth Pay Commission and as per R.B.E. No. 100/98, new post of Dresser-I/OTA-I in the pay scale of Rs. 4000-6000 is created. The applicant's earlier designation as Dresser Grade-I in the pay scale at Rs. 825-1200 = Rs. 4000-6000 is modified under Annexure R/3 to Dresser-II with the same pay scale. Annexure R/3 further provides a new pay scale for Dresser-I in the pay scale at Rs. 4500-7000, and the post of Dresser-I, after modification, is made promotional post from Dresser-II. Thus, the applicant being in the old Dresser Grade-I with the pay scale at Rs. 825-1200 (=revised Dresser - II in scale of Rs. 4000-6000), is not entitled to the pay scale of Rs. 4500-7000. Since the applicant as per his own case promoted as Dresser-I in the pay scale at Rs. 825-1200, which is equated to Rs. 4000-6000, the applicant is entitled to same pay scale, i.e. Rs. 4000-6000 only. If he wants the pay scale at Rs. 4500-7000 under the new designation as Dresser-I, he must seek the same only on promotion as per his turn on the basis of the seniority-cum-suitability in the department. But unfortunately, vide impugned order at Annexure A/1, he is declared failed in such suitability test held for the purpose of promotion from the post of

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Dresser-II (earlier Dresser-I) in the pay scale at Rs. 4000-6000 to the post of OTA-I/Dresser-I in the pay scale at Rs. 4500-7000. Therefore, the applicant is not entitled to the pay scale at Rs. 4500-7000. However, the learned counsel for the applicant relied upon the judgement of Hon'ble Rajasthan High Court reported in WLC (Raj.) UC 761 (State of Rajasthan vs. Shiv Prakash Sharma). But the said case does not apply to the issue involved in this case at all. It is not the case of the applicant that any order is passed against him without any authority so as to apply the ratio of the said judgement. The learned counsel relying upon R.B.E. 100/98 and further clarification issued in that context, contended that the applicant should have been promoted to revised O.T. Assistant/Dresser-I on non-selection basis on seniority without impugned suitability test. The learned counsel for the applicant relied upon the clarification No. 58 issued regarding filling up the posts of Dresser Gr.III/ O.T. Asstt. Sr.III in the pay scale of Rs. 3050-4590 in the Medical department.

The clarification reads as under:-

"58. Sub: Filling up of the posts of Dresser Gr.III/O.T. Asstt. Gr.III, Rs. 3050-4590 in Medical Department.

In terms of the Ministry's letter No. PC-V/98/1/11/18(A), dt. 10.5.98, the post of Gr.III/O.T.A. Gr. III (in grade Rs. 3050-4590) are to be filled by process of selection from amongst eligible candidates with qualification of Matriculation. The higher post of Dresser Gr.II (Rs. 4000-6000) and Dresser Gr.I (Rs. 4500-7000) are required to be filled on non-selection basis.

2. It has been brought to the notice of this Ministry that difficulty is being experienced in filling up the posts of Dresser Gr.III/OTA Gr.III for want of suitable Gr.'D' staff with qualification of Matriculation. Both the Federations viz. AIRF and NFIR have also raised this issue for discussion in the ensuing PNM Meetings.

3. The matter has been considered by the Ministry of Railways and it has been decided that the posts of Dresser Gr.III/ OTA Gr.III lying vacant may be filled by promotion of Hospital Attendants without insisting on qualification of Matriculation, as a one time exception, as a special case.

(This also disposes of Southern Rly's letter No. P(S)528/VIII/Avenue Chart, dt. 2.3.2000, Central Rly's letter No. HPB/666/R/Med/Dresser, dt. 31.3.2000, and Western Rly's letter No. E(MD)/834/17/Vol.II, dt. 10.4.2000.)
No. E(NG)-1-2000/PM10/2 dated 30.3.2001."

But in our considered opinion, even this clarification does not help the case of the applicant. This clarification is issued regarding R.B.E. No. 100/98 dated 10.05.98, after the redesignation effected to the existing post of Dressers/OTAs. After redesignation of the existing Dresser-I as Dresser-II, and creating a new Dresser-I, the clarification provides that the promotion from revised Grade-II to revised Grade-I, shall be done on non-selection basis. As we have already pointed out, the applicant's post (old Dresser-I) is now modified in the revised Dresser-II in the pay scale at Rs. 4000-6000, and in case of further promotion to the revised Dresser Grade-I in the pay scale at Rs. 4500-7500, it shall be done on non-selection basis. Para 214 of the Indian Railway Establishment Manual, Vol. I, provides the following method of promotion on non selection basis:

"214. (a) Non-selection posts will be filled by promotion of the senior most suitable Railway servant Suitability whether an individual or a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered.

(b) When, in filling of a non-selection post, a senior Railway servant is passed over the authority making the promotion shall record briefly the reason for such supersession."

From this para 214 of IREM, it is clear that the department may provide "on the basis of the record of service and/or departmental test" for promoting on 'non-selection basis'. In view of this Para 214 of the IREM only, the suitability test was conducted, in which the applicant was declared 'failed', as we have stated above. Therefore, even the above clarification also does not help the applicant. The applicant is claiming the pay scale at Rs. 4500-7000 by confusing himself between old Dresser Grade-I and new redesignated Dresser Grade-I, and nothing more.

8. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."

(GOPAL SINGH)

Adm. Member

(JUSTICE B.S. RAIKOTE)

Vice Chairman

CVR.