

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

1. JA No.69/99

Date of Order : 28/6/2001

2. MA No.50/99 IN (OA No.69/99)

1. Subhash Chand S/o Shri Vatan Chand by caste Verma, aged about 36 years, resident of Purani Lane Gangasahar, Distt. Bikaner at present working as Head Clerk in Electrical Engineering Department, D.R.M.'s Office, Northern Railway, Bikaner.
2. Nath Mal S/o Shri Banshidhar by caste Maru, resident of Purani Lane Gangasahar, Bikaner present working as Head Clerk in Electrical Department, D.R.M.'s Office, Northern Railway, Bikaner.

....APPLICANTS.

VERSUS

1. The Union of India through its General Manager, Northern Railway, Baroda House, Headquarter Office, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner.
3. The Divisional Personnel Officer, Northern Railway, D.R.M.'s Office, Bikaner.
4. The Deputy Chief Mechanical Engineer (Workshop), Northern Railway, Bikaner.
5. Shri Poonam Chand, At present working as Head Clerk on ad-hoc basis in the Electrical Engineering Department under the control of Deputy Chief Mechanical Engineer (Workshop), Northern Railway, Bikaner.
6. Shri Bishwa Lal S/o Shri Sohan Lal, At present working as Head Clerk in the office of Senior Electrical under the control of Electrical Engineering Department, D.R.M.'s Office, Northern Railway, Bikaner.

....RESPONDENTS

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None present for the applicant.

Mr. Manoj Bhandari, counsel for the respondents.



CORAM

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

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A.P. Nagrath)

The two applicants in this OA are working as Head Clerks and are making a grievance against promotion of respondent No.5 as Head Clerk on ad hoc basis and against absorption of respondent No.6 after medical decategorisation as Head Clerk from the category of Guard, both in the Electrical Engineering Department. Respondent No.5 Poonam Chand was promoted as Head Clerk on ad hoc basis vide order dated 2.7.96 Annexure A/1 and respondent No.6, after being medically decategorised, was absorbed as Head Clerk in the Electrical Department vide order dated 5.7.96. The applicants have prayed for quashing and setting aside of these orders and to direct the respondents to determine vacancies of Head Clerks and Office Superintendent Grade-II in the Ministerial Cadre of Electrical Engineering Department and to fill up then up as per rules.

2. This OA has been filed in November 1998 and the impugned orders are dated 2.7.96 and 5.7.96. The applicants have filed MA No.50/99 seeking condonation of delay. The MA was taken up for hearing alongwith the OA
3. The applicant's case in brief is that they are entitled to be considered for promotion to the post of Office Superintendent Gr.-II but the respondents are not considering them and have instead down graded two posts of Office Superintendent Gr.II to the Grade of Head Clerk to accommodate respondents No.5 & 6.



The applicants contend that down grading the posts has <sup>them</sup> result~~ed~~ into depriving/ of their legitimate rights of being promoted as the posts have been down graded and are being operated in the Grade of Head Clerks only. They are also aggrieved by absorption of respondent No.6, after his medical decategorisation, as a Head Clerk in the Electrical Engineering Department. Respondent No.6 was a Guard in the Operating Department and the applicants' argument is that after medical decategorisation he should have been absorbed only in that department. In respect of respondent No.5 who has been promoted in the workshop on ad hoc basis, the applicant's contended that he being a junior person could not have been promoted over- looking the claim of seniors. The applicants' plea is that the department should have conducted the selection to the post of Office Superintendent Gr.II and considered the applicants for such promotion. They made representations from 5.12.95 to 2.4.97 but, they allege that the department has not responded by conducting the selection. Being aggrieved they have filed this OA challenging the action of the department of down grading the posts.

4. The respondents in their written submissions have raised preliminary objection on the ground of <sup>submitted</sup> delay and laches. They have / that the applicants have assailed validity of the orders dated 2.7.96 and 5.7.96 and that the application has been filed <sup>long</sup> after/delay and after the limitation period prescribed under Section 21(1) (a&b) of the Administrative Tribunals Act, 1985 has expired. The respondents have also countered the plea of the applicants stating that the promotion of respondent No.5 on ad hoc basis and induction of <sup>in</sup> respondent No.6 as Head Clerk are / no way detrimental

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to the rights of the applicants. It has been mentioned that the applicants have concealed material facts inasmuch as a written test was held for the post of OS Gr.II on 25.7.98 in which applicant No.1 had himself appeared but could not qualify. Applicant No.2 was not eligible at that time to appear in the selection. In that view, the respondents maintain that the application deserves to be dismissed.

5. It has further been stated by the respondents that the applicants are senior to the two private respondents, Shri Poonam Chand and Shri Bishwa Lal and thus there cannot be any prejudice caused to the right of the applicants because of the position given to the two private respondents.

6. On the day of hearing, there was none present for the applicants, the arguments were heard from the learned counsel for the respondents Mr. Manoj Bhandari. To provide fair opportunity to the other side, the applicants were directed to file written submissions within a week. The written submissions were presented by the learned counsel for the applicants on 24.5.2001. Learned counsel for the respondents, apart from opposing the application on the ground of delay, contended that the applicants have absolutely no cause of grievance as the two private respondents are junior to them and in no way because any infringement to the rights of the applicant for being considered for further promotion, as and when the selections are held, the applicants shall be considered. The learned counsel stressed on the point that the applicants had concealed vital facts specially of the applicant No.1 having appeared in the selection held on 25.7.98 in which he did not qualify.



7. We have considered the arguments advanced by the learned counsel for the respondents, the written arguments filed on behalf of the applicants and also perused the records.

8. We do not find any cause of grievance in so far as the applicants are concerned specially, in view of the fact that both the applicants are senior to the private respondents. They can in no way come in their way for further promotion. We are constrained to observe that the applicants did not come out with all the facts which were material in this case. Down grading of the posts is resorted to by the departments when the posts remain unfilled because of non-availability of suitable candidates. This arrangement can continue only till the next selection is held and suitable candidates are found. Merely down grading the post at a particular point of time does not automatically mean depriving an employee of his rights. We are unable to appreciate the stand taken by the applicants making out grievance against the absorption of respondent No.6. There are specific rules governing absorption of medically decategorised employees, and there is no mandate to absorb a medically decategorised employee necessarily in the same department where he was working earlier. The promotion of respondent No.5 as ad hoc Head Clerk also does not give any cause of grievance to the applicants as he is junior to both of them. Applicant No.1 had already appeared in the selection for the post of OS Gr.II in July, 1998 and was not found suitable. In fact, adequate number of successful candidates were not found which resulted in the posts of OS Gr.II remaining vacant. No harm can come to the rights of the applicants in such a situation when these the posts are down graded to meet/other requirements of

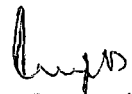


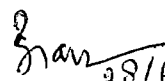
the administration. The applicants have failed to make any case whatsoever in their favour. It is not their stand that the respondents No.5 & 6 have been assigned any superior status. Obviously, no cause for any grievance can arise in such a situation. Whenever selection for the post of OS Gr.II is held, the applicant's right shall remain superior to the respondents No.5 & 6 for being considered for such selection.

9. The application has been filed beyond the period of limitation prescribed under Section 21 of the Administrative Tribunals Act even considering the dates of the representation made by the applicants. In the application for condonation of delay no satisfactory explanation has been provided to cover the delay. Legal remedy has to be availed within the time prescribed and making repeated representations or taking up of the cause through the Staff Unions of the Organisation cannot ever come disability caused by delay in filing of application. We do not find the arguments advanced for condonation of delay as convincing. Prayer made in the MA for condonation of delay is therefore rejected. MA stands disposed of accordingly.

10. Even on merits, as we have discussed above, the applicants have failed to make out any case whatsoever in their favour and the OA is liable to be dismissed.

11. We, therefore, dismiss both the OA & MA. No order as to costs.

  
(A.P. Nagrath)  
Adm. Member

  
28/6/2001  
(A.K. Misra)  
Judi. Member

p/d.

Part II and III destroyed  
in my presence on 2-4-07  
under the supervision of  
section officer [signature] as per  
order dated 7-5-22-07

Section officer (Record)

For

12/2

Read any  
no  
5/27/07