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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

Date of Decision: 22-5-2002

OA 98/2001

Irfan Ahmed Khan, Commercial Inspector, Suratgarh, Northern Railway.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, N/Rly, Bikaner Dn, Bikaner.
3. Divisional Rly Manager, N/Rly, Bikaner Dn, Bikaner.
4. Shri Hans Raj, Commercial Inspector, Sirsa Railway Station (Haryana), Northern Railway.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.J.K.Mishra with ^{Mr.} B.Khan

For Respondents No.1 to 3

... Mr.Manoj Bhandari

For Respondent No.4

... Mr.S.K.Malik



O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant was initially appointed to the post of Booking Clerk and over a period of time came to be promoted to the post of Commercial Inspector (CMI, for short) grade Rs.5000-8000. He was further promoted to the next higher grade of CMI i.e. Rs.5500-9000, which is a non-selection post. He received a show-cause notice dated 28.11.2000 (Ann.A/4), which stated inter-alia that Shri Hans Raj, respondent No.4 in this OA, being senior to the applicant and belonging to the category of CMIs only was being regularised in the category of CMIs by giving him all benefits of seniority as well as promotion. Regularisation of respondent No.4 would result into reversion of the applicant to the grade of Rs.5000-8000 and he was thus asked to submit his representation against the show-cause notice giving his remarks as to why respondent No.4 may not be brought back to his original cadre. The applicant represented that Shri Hans Raj had been absorbed as a Booking Supervisor in the year 1996 and the said Shri Hans Raj had accepted the offer of alternate appointment. After considering his representation against the show-cause notice, the respondents came to issue a letter dated 16.4.2001 (Ann.A/1) reverting the applicant from the grade of Rs.5500-9000 to the grade of Rs.5000-

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8000. While reverting him, he was retained at Suratgarh where he was already holding the post in higher grade. Respondent No.4 was ordered to be placed in the grade of Rs.5500-9000 as CMI. It is against this order the applicant has filed this OA challenging absorption of respondent No.4 in the category of CMI and consequently his own reversion from the grade of Rs.5500-9000 to Rs.5000-8000.

2. Heard the learned counsel for the parties and have gone through the entire records of the case.

3. It is not in dispute that respondent No.4, who was initially recruited as a Commercial Apprentice, was appointed to the post of CMI in grade Rs.5500-9000. He was sent for special medical examination. The medical board declared him fit in his original medical category i.e. C-1 but recommended at the same time that he should avoid heavy physical exertion. He was called before the screening committee who found him fit for alternate absorption on the post of Booking Supervisor grade Rs.5500-9000 as at the relevant point of time he was already working as CMI in the same grade i.e. Rs.5500-9000. It is also not in dispute that the said alternate post was accepted by him. Later, he represented that he should be regularised in his original cadre of CMI as he had been medically fit for that category. He was only medically advised to avoid heavy physical exercise which did not render him unfit to function as CMI. This request has been accepted by the respondents and respondent No.4 has been posted back as CMI, which has obviously affected the applicant who has been reverted to the lower grade.

4. The learned counsel for the applicant drew our attention to Anns.A/8 and A/9, annexed to the rejoinder filed by the applicant, to establish that the alternate deployment as a Booking Supervisor was categorically accepted by respondent No.4. Having done so, the learned counsel contended, that he had become a part of the cadre of Booking Supervisor and cannot be sent back to the cadre of CMIs, from where his lien had snapped. On the other hand, the learned counsel for the respondents vehemently argued that the very act of redeployment of respondent No.4 to another cadre was erroneous for the reason that he was never medically decategorised. While alluding to the rules for redeployment of medically decategorised employees, the learned counsel for the respondents submitted that essential condition for such redeployment is that the government servant has been medically decategorised i.e. in other words, he is no more fit in the medical category of the cadre in which he was initially appointed. In

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the instant case, the medical advice itself suggested that respondent No.4 was medically fit in his original category of C-1 and he was only advised to avoid physical exertion. While admitting that respondent No.4 did accept to be posted as Booking Supervisor but in reality he never held that post as all along his services were utilised only as CMI. The learned counsel drew our attention to the letter dated 8.2.96 (Ann.R/3) and further letter dated 23.12.97 (Ann.R/4) to stress that respondent No.4 had only been working as CMI and not as a Booking Supervisor. The main thrust of his argument was that respondent No.4 belong to the cadre of CMI; he was never medically declared unfit for that cadre; he was utilised only as CMI and he had represented to be regularised in his own cadre. His request was examined and was found to be in order. Consequently, he was posted as CMI in his original grade of Rs.5500-9000 and for this reason the applicant had to be reverted. The learned counsel emphasised that action of the respondents cannot be faulted with as the impugned order only gives to respondents No.4 what is legally due to him.

We have considered the rival contentions and the documents brought on record.

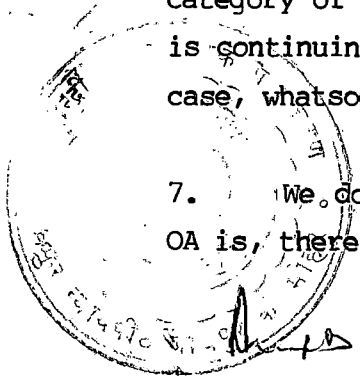
The facts clearly bring out that it is not a case of medical decategorisation. Para 1302 of IREM, Vol.I, has classified the railway servants declared medically unfit in two categories, these are;

- "(i) Those completely disabled for further service in any post in the railway, i.e. those who cannot be declared fit even in the 'C' medical category, and
- (ii) Those disabled/incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category."

A reading of the above makes it clear that the railway servants acquiring disability fall in the above two categories and for those falling in (ii) above, they have to be declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category (emphasis supplied). Case of the private respondent No.4 does not fall in these categories. He was never declared unfit for his own medical category i.e. C-1. Obviously, this is not a case of medical decategorisation which would

necessitate absorption in alternate employment. The fact that respondent No.4 himself accepted such alternate deployment cannot strengthen the case of the applicant as the very alternate deployment was ordered against the rules. Then again respondent No.4 was continued to be utilised only as a CMI. He represented to be regularised in his own cadre and this request has been acceded to by the respondents. We do not find any infirmity in the order of the respondents in having accepted the request of respondent No.4. He has only come back to his original cadre and has been assigned the seniority which he already had in the same cadre. It is not a case where an outsider from another cadre has been brought in to the category of CMIs. Respondent No.4 was originally appointed as CMI and is continuing as CMI. The applicant has not been able to make out any case, whatsoever, in his favour.

7. We do not find any merit in the case of the applicant and this OA is, therefore, dismissed but with no order as to costs.



(A.P.NAGRATH)
MEMBER (A)

(JUSTICE O.P.GARG)
VICE CHAIRMAN

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S. K. Hall
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