

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 228/2004

Date of decision: 28/7/2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

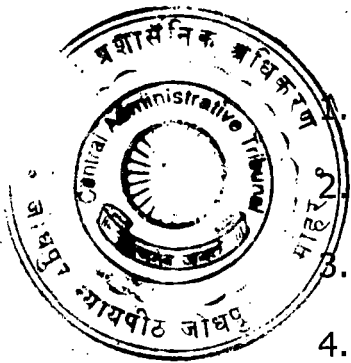
Hon'ble Mr. V. K.Kapoor, Administrative Member.

Anil Kumar Sharma, s/o Sri Anand Prakash Sharma, aged 42 years clerk N.W.R., Bikaner, r/o Rani Bazar, C/o shri Vallabh Sharma, Near Sardar Chakki, Rani Bazar, Bikaner 334 001.

: Applicant.

rep. By Mr. Nitin Trivedi : Counsel for the applicant.

Versus



1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.
3. Divisional Personnel officer, North Western Railway, Bikaner Division, Bikaner.
4. Divisional Commercial Manager, North Western Railway, Bikaner Division, Bikaner.

: Respondents.

Rep. By Mr. Manoj Bhandari : Counsel for the respondents.

ORDER

Per Mr. Justice S.M. M. Alam, Judicial Member.

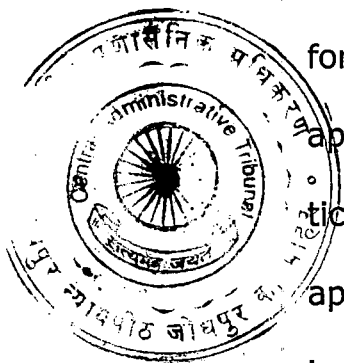
The applicant, Shri Anil Kumar Sharma, who is presently posted as Clerk in North Western Railway, Bikaner has filed this amended O.A. seeking following reliefs:

"Interim order granted earlier vide order dated 17.09.2004 making the selection/promotion made in pursuance of annex. B letter dated 25.07.2004, which was earlier made provisional subject to the decision of this Original Application may kindly be ordered to be continued in the interest of justice."

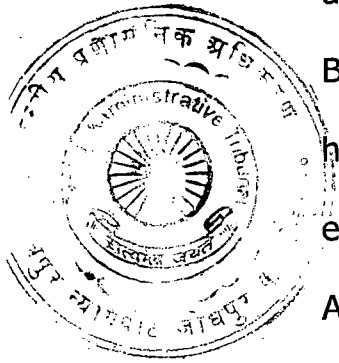
2. The brief facts of the case are as follows:

- 2 -

The applicant was appointed as clerk on 22.08.1988 at Dhahod, Western Railway under DCOS. He was transferred to Bikaner on the basis of mutual transfer and was posted there as clerk since 22.09.1994 in Bill section of Personnel Branch. According to the applicant the work assigned to him was of strenuous nature which affected his health and he developed back ache for which he remained under treatment under medical authorities. His disease was diagnosed as 'Osteo Arthritis' and the railway medical authorities issued certificate in this regard (ann. A/2 and A/3). It is further stated that the medical authorities had advised him to lie on flat hard bed and avoid constant sitting work for a long time. On the advise of the medical authorities the applicant applied for change of category i.e. from Clerk category to ticket collector category. A statement has been made in the application that " the nature of work of the post of ticket collector is in consonance with the advise of medical authority". On the basis of his request, respondent no. 3 issued a letter dated 04.06.96 (Annex. A/4) informing the applicant that his name had been registered at Sl. No.174 in the appropriate register meant for change of category for the post of ticket collector. Thereafter, respondent no. 3 by letter dated 02.09.98 (annex. A/5) directed the applicant to report himself before respondent No. 4 for judging his suitability for the post of ticket collector. The said letter was issued in view of the instructions contained in letter No.522-E/15.8.88/change of catg/TC/L/EIC dated 20.11.1996 (Annex. A/6). It is stated that the applicant had fulfilled all the conditions



laid down in Annex. A/6 for ⁻³⁻change of category. The applicant again filed representation claiming that he fulfils all the conditions for change of category. It is further stated that although, after suitability test, the name of the applicant was at the top of the priority list for change of category, even then no order was passed, although there were number of vacancies available in the category of ticket collector. It is further stated that the respondents ignoring the claim of the applicant invited applications for the post of ticket collectors under the promotion quota and did not pass any order on the representation of the applicant and hence the applicant has preferred the present O.A. No. 228/2004 before this Bench. On 17.09.2004, the O.A came up for admission. After hearing the applicant's counsel an interim order was passed to the effect that any selection or any promotion made in pursuance of Annex. A/1 shall be provisional and subject to the result of the O.A. The respondents in their reply brought out a letter dated 20.10.99 on record, issued by the General Manager (P) Northern Railway Hqrs. New Delhi, whereby the prayer of the applicant for change of category was refused. It has been stated by the applicant that the said letter was never served upon the applicant. The said un-amended O.A came up for final hearing on 23.10.2009 and on that day the Tribunal directed the applicant to file amended O.A challenging Ann. R/4 whereby his prayer for change of category was rejected and thereafter the applicant filed the amended O.A. A typed copy of Annex.R.4 has been annexed as Annex. A/1 to the amended O.A.



Amended

-4-

3. The respondents have appeared through lawyer and filed reply to the amended O.A on 15.04.2010. As per the reply the case of the respondents is that the selection for the post of Ticket Collector Grade Rs.3050-4590 against promotee quota vacancies was initiated and applications were invited from eligible non-technical group 'D' staff of commercial and not from Group C class vide office letter dated 25.07.2004. Hence the interim order passed by the Tribunal on 17.09.2004 in favour of the applicant cannot be allowed to continue. It has further been stated that the O.A filed by the applicant is time barred and suffers from laches.



The fact is that the case of the applicant for change of category was considered in the year 1999, 2000 respectively and the same was rejected and so as per Sec. 21 of the Administrative Tribunals Act, 1985, filing of the O.A in the year 2004 is hopelessly time barred. The respondents have taken the plea that the change of category is permissible only against the direct recruitment quota and not against promotee quota and the competent authority for change of category on request for group 'C' employees is the Head of Department and hence the request of the applicant for change of category was referred to the G.M. (P) Northern Railway, New Delhi. But the competent authority i.e. the General Manager (P) Northern Railway, New Delhi vide letter dated 20.10.99 (Annex. R/4) rejected the prayer of the applicant for change of category on the ground that no solid reason has been assigned by the applicant for change of category. It has further been stated that the applicant

Signature

had also raised the issue of ⁻⁵⁻change of category, through recognized union in the year 2000 through an agenda item No. 68/2000 of General Manager/PNM Meeting. But again the prayer was rejected in the meeting held on 7/8.09.2000 vide annex. R/5. On the above grounds the respondents have prayed for dismissal of the O.A.

4. We have heard the arguments of learned advocates of both sides at length. During the course of the arguments, the learned advocate of the respondents drew our attention with regard to the relief claimed by the applicant in the amended O.A. He submitted that para 8 of the application in which the applicant has claimed the grant of relief, does not indicate that the applicant has made any prayer for quashing/setting aside of the order dated 20.10.99 passed by the General Manager (P) Northern Railway New Delhi Annex. R.4 of the reply/Annex. A/1 of the application, as well as the order passed in the PNM meeting held on 7/8.09.2000, whereby again the prayer of the applicant for change of category was rejected. He submitted that the applicant has intentionally not prayed for quashing of the above mentioned orders because of the fact that since the date of passing of the order the application was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

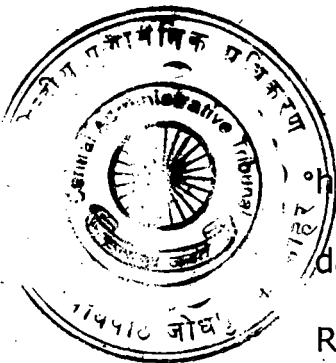
5. In reply to this argument, the learned advocate of the applicant has simply argued that the above mentioned two letters



had never been served upon the ⁻⁶⁻applicant and as such it cannot be held that the O.A has been filed beyond the time limit prescribed under Administrative Tribunals Act. 1985.

6. We have perused para 8 of the application in which the applicant has sought for the relief. We would like to reproduce the relief claim by the applicant which is hereunder:

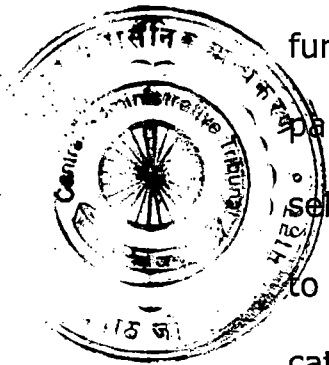
" Interim order granted earlier vide order dated 17.09.2004, making the selection/promotion made in pursuance of Annex. B letter dated 25.07.2004, which was earlier made provisional and subject to the decision of this original application may kindly ordered to be continued in the interest of justice."



A perusal of the relief portion clearly shows that the applicant has not made any prayer for quashing/setting aside the order dated 20.10.1999 passed by the General Manager (P) Northern Railway, New Delhi, and the order dated 7/8.09.2000 passed in the PNM meeting. In both the orders, the prayer of the applicant for change of category was rejected. We are of the view that unless the said orders are quashed and set aside, no consequential relief can be granted to the applicant. We are also of the view that the applicant has intentionally avoided to claim relief for setting aside both the orders because of the fact that if such reliefs were prayed, then the O.A would have become time barred. Thus we hold that the O.A is time barred and no relief can be granted to the applicant in absence of any relief claiming to set aside the order dated 20.10.1999 (Annex. R/4) i.e. Annex. A/1 of the application.

7. From a perusal of Ann. A/1⁻⁷⁻ (R/4 of reply) we find that the prayer of the applicant for change of category had been rejected on the ground that the authorities were of the opinion that no sufficient ground has been made out in the application for grant of change of category. We are of the view that Annexures A/4, A/5, A/6 and A/7 do not confer any actionable right to the applicant as the same are simply inter-departmental correspondence and not the circular or policy decision of the department governing the rules for change of category and so these letters do not create any right in favour of the applicant for change of category. We are further of the view that the decision of the employer to assign a particular job to a particular employee for which he has been selected is unquestionable and the employees have no legal right to claim a particular post specially when he does not belong to that category. If every employee is allowed to come to court for change of category then it will be very difficult for the authorities to run the administration.

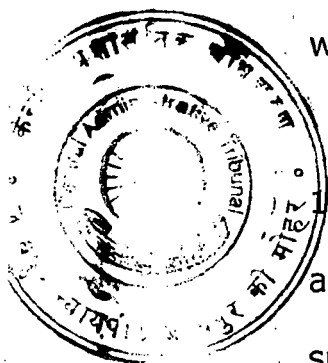
8. As regards Ann.a/8 we are of the view that this annexure supports the case of the respondents that the advertisement for filling up vacancy of Ticket Collector was issued for filling up 33 1/3% quota from Group D category whereas applicant belongs to Group 'C' category and thus the applicant was not entitled to be promoted to the said post or for change of his category.



Signature

-8-

9. As regards the grounds for change of category from clerk to ticket collector, it appears that the applicant has filed two medical certificates, which are Annex. A/2 and Annex. A/3 of the O.A. Annex. A/2 reveals that the applicant's disease has been diagnosed as 'Osteo Arthirities Lumber Spine" and he was advised to lie on flat hard bed as pain may increase in sitting posture. Likewise, annex. A/3 also says that the Doctor has advised the applicant to avoid constant sitting for a long time. There is nothing in the reports to show that the present posting of the applicant is not suitable for him and if his category is changed to ticket collector it will be more suitable for him.




10. Thus we are of the view that the medical advise given to the applicant is not very alarming and it is by way of simple suggestion. Therefore, we are agreeing with the view of the respondents that the applicant has not been able to show sufficient ground for change of category.


11. As regards the argument of the leaned advocate of the applicant that some persons have been allowed change of category and refusal of the authorities to grant him change of category is discriminatory, we are of the view that no employee including the applicant had any legal right for change of category and therefore, the action of the respondents cannot be termed as discriminatory

12. Lastly, the respondents ⁻⁹⁻counsel has also brought to our notice a letter dated 23.10.2007, issued by the Director, Estt (N) Railway Board, New Delhi (annex. R/6) whereby it has been decided that requests should not be entertained for change of category to Commercial and other non-technical popular categories like Clerk, Accounts Clerk, Ticket Collector, Commercial Clerk, Sr. Clerk, Jr. Accounts Assistant, Commercial Apprentice, Traffic Apprentice, ECRC etc. Thus in view of Annex. R.6 the prayer of the applicant for change of category from Clerk to Ticket Collector cannot be allowed.

13. Although it has been argued that the said letter will not be applicable in the case of the applicant since this letter was issued during the pendency of the O.A, we are of the view that the arguments of the learned advocate of the applicant cannot be accepted.

14. In the result, we find no merit in this application and as such the same is hereby dismissed and the interim order dated 17.09.2004, stands vacated. No order as to costs.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member.

jsv

दिनांक 17/12/15 के आदेशानुसार
वैरी उपस्थिति में दिनांक 11/1/16
को भाग-II के भाग-III में दिए गए।

अनुमान अतिरिक्त
केन्द्रीय प्रशासनिक अधिकरण
खोद्यपुर न्यायपीठ, जोधपुर