

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 10/97

6-8-2001

Present : Hon'ble Mr.D. Purkayastha, Member (J)
Hon'ble Mr.V.K.Majotra, Member(A)

Sudhir Kumar Das

-Vs-

Metro Railway

For the applicant	:	Mr.A.K.Majumdar
For the respondent	:	Mr.S.K.Sengupta (Metro Rly)
		Mr.M.K.Bandyopadhyay, -do-
		Mr.P.K.Arora, E.Rly

ORDER

Mr.V.K.Majotra, Member(A) :

The applicant, a Scheduled Caste, worked as Constable in the Railway Protection Force in the Metro Railways ~~from~~ dated 16-12-74. He was confirmed as such. The post of Constable was upgraded in Group 'C' service from 30-6-87 vide Railway Board's Circular dated 30-10-87 as per recommendation of 4th Central Pay Commission. He was declared medically unfit from 21-3-91 ~~downgraded~~ from B-I category to B-II Category (Annexure-A). The applicant claims that as per Rule 1309 of Indian Railways Establishment Manual Vol.I (Revised Edition 1989) he is entitled to be appointed in the alternative post of Group 'C' category having been declared medically unfit as a Constable. The respondents were bound to offer him the best available post for which he was suitable in Group 'C' Service. According to applicant, one post of Clerk Grade-II in Scheduled Caste Reserved quota in the scale of Rs950-1500/- (a Group C post) was available on the date of absorption of the applicant ~~of the~~ applicant, however, the respondent offered him a Group 'D' post of Despatcher in the scale of Rs800-1150/- in the office of Respondent No.3 and he was absorbed as Despatcher, a Group 'D' post (Annexure 'B'). The applicant made representation for absorption in Group 'C'

post on 4-6-92 (Annexure 'C'). However, he has not been absorbed as such. He has further stated that Respondent No.3 had recommended vide proposal dated 29-3-93 (Annexure E) that the applicant should be absorbed in Group 'C' vacancy but the respondents did not absorb him as such. The applicant has also submitted that although he was eligible for appearing in the selection process for promotion to Group 'C' service, but the respondents vide their order dated 12-4-93 (Annexure I) did not allow him to appear in the selection examination on the ground that the applicant had not completed 3 years service. He has alleged that later on in similar selection another person who had not completed 3 years had been allowed to participate in the selection. Ultimately, the applicant has been temporarily promoted to the rank of Junior Clerk in the scale of Rs3050-4590/- with pay at the stage of Rs3725/- on the basis of temporary local adhoc measure w.e.f. 23.7.1998.

2. In their reply, the respondents have stated that the applicant could not be absorbed in Group 'C' Clerk-II post as no such post earmarked for SC in the Construction wing of Metro Rlys was available at the relevant time. Thus, he was absorbed in the scale of Rs800-1150/- as Despatcher.

3. We have heard the learned counsel of all sides and also perused the materials on record. It is noted that the Respondent No.2, i.e. the Chief Security Commissioner (RPF) Eastern Railway has not filed any reply to the OA.

4. The learned counsel of the applicant referring to Annexures 'D' and 'E' dated 5-1-93 and 29-3-93 stated that Assistant Security Commissioner of Metro Railway had recommended to the Chief Security Commissioner, RPF, Eastern Railway that on the date of absorption against a post in Group 'D' service, the applicant was permanently holding a post of Constable in the scale of Rs825-1200/- in Group 'C' Service from 30-6-87. Further, a post

of Clerk Grade II in the scale of Rs950-1500/- earmarked for reserved community as per 40 point roster was lying vacant on the date of his absorption as Despatcher in Group 'D' Service. Prior to his absorption in Ministerial cadre, the applicant had been duly tested for his aptitude in Clerical Cadre by a Committee of 3 Gazetted Officers appointed by the COM/Metro Rly Calcutta and applicant had been successful in the same. The ASE had also recommended on 29-3-93 that COM should accord approval to decategorised applicant for promotion to Clerk Grade-II in the scale of Rs950-1500/- against a vacant post. However, applicant's promotion made on 22-7-93 pending approval of COM was later on cancelled vide Annexure 'H' on 10-9-93 on the ground that the applicant had not completed 3 years service in the existing post in the Ministerial cadre. The learned counsel has also stated that the applicant was not allowed to appear in the selection for Group 'C' Clerical cadre on 4-1-95 and 10-1-96.

5. Mr. Bondyopadhyay and Mr. Arora, the learned counsel for Respondents 1 and 2 stated that as per rules 1309 IREM relating to alternative employment to decategorised staff the alternative post to be offered to such an official should be the best available for which he is suited and he should accept the offer or reject it. The applicant had accepted an alternative employment and now cannot turn around and ask for different position in the Clerical cadre. They further stated that no juniors of the applicant have been absorbed as decategorised staff on a Group 'C' Ministerial post. As to promotion from Group 'D' Ministerial post which the applicant is holding, to a Group 'C' Ministerial post, the learned counsel referring to Rule 188 stated that the selection has to be on the basis of seniority cum suitability subject to a written and/or practical test. The learned counsel stated that the applicant vide letter dated 27-3-98 of Metro Railways was asked to appear in Selection for Class III Clerk II in the scale of Rs950-1500/- against 33 $\frac{1}{2}$ quota. However, vide his letter dated 3-3-98, which he filed at the time of hearing that "After the

expiry of long periods now I have been requested to appear before the selection test which is going to be held very shortly. But it is quite impossible for me to sit for the said selection test after the expiry of such a long periods and at the time when my aforesaid matter is pending for decision before the aforesaid Administrative Tribunal and I can not appear in the said Selection Test until and unless the aforesaid application is decided finally by the Hon'ble Administrative Tribunal." The learned counsel further stated that whereas the applicant had accepted the alternative appointment as Despatcher Group 'D', he has declined to appear in the selection test as Group III Ministerial post. Unless the applicant passes such a test, he cannot be promoted from Group 'D' officer to Group 'C' Ministerial cadre post. The learned counsel also referred to Annexure 'R' stating that the applicant's lien was kept in the Eastern Railway.

6. Vide Annexures 'D' and 'E' of Metro Rlys it is clear that at the time of absorption of the applicant he was permanently holding a post of Constable in Group 'C' Service from 30-6-87 and that a post of Clerk Grade-II in the scale of Rs950-1500/- in the reserved quota as per 40 point roster was lying vacant in the office of Assistant Security Officer at the time of applicant's absorption as Despatcher. The applicant had been tested for his aptitude by a committee of 3 Gazetted Officers appointed by COM Metro Railway on the basis of which selection he had been recommended. The only question in the present case in the matter of applicant's absorption in Clerk Grade-II in the scale of Rs950-1500/- as decategorised staff is whether a vacancy of Clerk Grade II in the scale of Rs950-1500/- in the reserved quota was available with Metro Railway at the time of applicant's absorption or not. By Respondent 1 letter referred to above the answer to the above query is certainly in the affirmative particularly when the respondents have not specifically contradicted the claims made by the applicant

in this behalf or recorded by the respondents themselves in Annexure 'D' and 'E' dated 5-1-93 and 29-3-93 respectively nor any record has been shown to us in contradiction of the fact reported/recommendations made in Annexures 'D' and 'E' referred to above. Having regard to the discussions made above, after recommendations made in Annexures 'D' and 'E', the conclusion by the Chief Security Commissioner (RPF) Eastern Railways ordinarily should have been to absorb the applicant in Group 'C' service (in the scale of Rs950-1500/-). Why the respondents instead of approving the recommendations stated above decided to absorb the applicant as Despatcher has not been satisfactorily explained by way of any records/correspondance relating to Annexures 'D' and 'E'. Thus we find that in view of the fact that Group 'C' Clerk Grade-II in the scale of Rs950-1500/- was available in the reserved quota at the time of applicant's absorption on decategorisation he is entitled to be considered for absorption as such in stead of in the post of Despatcher. Accordingly, the OA succeeds. The respondents are directed to absorb the applicant in the Clerk Grade II in the scale of Rs950-1500/- in Group 'c' service on the basis of respondent No.3's recommendations dated 23-7-93 and 30-7-93 with effect from the date he was absorbed as Despatcher. He shall also be entitled to arrears of pay and allowances consequent upon absorption in Group 'C' as Clerk Grade-II. The above direction should be implemented within 3 months from the date of communication of the order. No costs.

V.K.Majotra
(V.K.Majotra) 6.8.2001
Member(A)

D.Purkayastha
(D.Purkayastha)
Member(J)