

(9)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO: 292/87

199

T.A. NO:

DATE OF DECISION

3-7-92

SHRI M.L.CHATURVEDI

Petitioner

G.S.WALIA

Advocate for the Petitioners

Versus

UNION OF INDIA

Respondent

A.L.KASTURE

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. USHA SAVARA, MEMBER (A)

The Hon'ble Mr. J.P.SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ys*
2. To be referred to the Reporter or not ? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Ys*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Ys*

J.P.SHARMA
(J.P.SHARMA)
MEMBER(J)

3-7-92

mbm*

(50)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.292/87

SHRI M.L.CHATURVEDI
Working as Senior Luggage Clerk,
in the office of Station Supdt.
Bharatpur, Rajasthan.

....applicant

V/s

1. The Union of India
through General Manager, Western
Railway, Churchgate,
Bombay-400020.

2. The General Manager,
Western Railway, Churchgate,
Bombay-400020

3. Divisional Railway Manager,
Kota division, Kota.

....Respondents.

CORAM : HON'BLE MEMBER USHA SAVARA, MEMBER(A)

HON'BLE MEMBER SHRI J.P.SHARMA, MEMBER (J)

Appearance:

Shri G.S.Walia, Adv.
for the applicant

Mr.A.L.Kasture, Adv.
for the respondents.

JUDGEMENT

(PER: J.P.SHARMA, M/A)

DATED: 3.7.92

The applicant is working as Senior Luggage Clerk at Bharatpur Station of Kota Division of Western Railway in the pay scale of Rs. 330-530(R). The grievance of the applicant is that, after medically decategorisation from the post of Asstt. Station Master (130-240(A), he was wrongly absorbed to the post of Asstt. Commercial Clerk in the scale of Rs.110-200(A). He has claimed the reliefs, i.e. the letter dated 23.4.1986 be quashed and set aside and it be declared that the applicant is entitled to be absorbed as a Senior Luggage Clerk/Senior Commercial Clerk in the pay scale of Rs.330-560(R) with effect from 26.6.1973 and is entitled to all consequential benefits of back wages increments, promotion and seniority.

2. The brief facts are, that the applicant joined ^{S.M.} Railways as Traffic Signaller cum Asstt./in the pay scale of Rs.110-240 on 28.11.1964. However, he could not pass vision test and medically failed and was found unfit to carryout the duties and responsibilities of Asstt. Station Master in February 1973. Under 2609 of IREM, the applicant was absorbed as Asstt. Commercial Clerk in the pay scale of Rs.110-200 with effect from 26.6.1973 as the scale of Rs.130-240 was not available in the category of Commercial clerks. The recommendations of 3rd Pay Commission were applied to the Railway employees with effect from 1.1.1973 and the scale of 130-240 (A) and 150-240 (A) were merged together and were equated to revised pay scale of Rs.330-560 (R). The case of the applicant therefore is that in view of the said recommendation of the 3rd Pay Commission, the respondents had to absorb the applicant in the equivalent Gr. of Rs.330-560 on his being declassified. The applicant made a representation on 26.12.1976 in Annex. 'B'. In this representation the applicant represented that he is entitled to be fixed in the Grade of Rs.330-560 (R) instead of Rs.260-430 as he was working in the higher grade, which was merged in the revised Grade Rs.330-560 before declassification and so in view of 3rd Pay Commission's recommendations his pay and Grade of pay was to be fixed in the pay scale of Rs. 330-560 and not in the scale of Rs.260-430. After 1976 the applicant made another representation in October 1983. The applicant was informed on 6.12.1983 that the applicant was considered for the post of Asstt. Commercial Clerk in the Scale of Rs.260-430 which he has accepted and joined on 27.6.1973 and his seniority has been fixed on the basis of length of Grade in which he was observed as per existence rules. The applicant appears to be again represented on 11.8.1984 and again through the Union. It appears that,

APD(C)CCG's passed an order on 5.3.1986 and DRM (E)/KTT informing the Divisional Secretary WREU-KTT, that such as alleged by Union absorption of Shri M.L.Chaturvedi Ex.ASM in the category of ACC with effect from 27.6.1973 is incorrect. As represented by the Divisional Secretary, WREU-KTT letter dated 31.10.85, it was further directed to convinence the Union.

3. The respondents contested the application and stated that his application is barred by time, that the applicant have to challenge the legality of his absorption into alternative post, consequent upon decategorisation on medical ground in the year 1973 by order dated 26.6.1973. It is stated that the application therefore hit by Section (1) (a) 21 of the Administrative Tribunals Act 1985. The applicant made a grievance in his representation dated 21.9.1976, the applicant was given final reply on 1st July 1977 and so the applicant should have pursued his remedy in the appropriate court, within the limitation prescribed under the law. The reply dated 17.1977 is annexed with reply as R-III. The applicant was decategorised in the month of February 1973 and he was in the pay scale of Rs.130-240 (A) and under the relevant rules the applicant was absorbed in the alternative post of ACC scale Rs.110-200(A), at that time the applicant was subject to screening by the board, comprising of three officers viz DSO, DCS and DPO, who considered him for the post of ACC and he was given the appointment by the letter dated 21.3.1973 which was accepted by the applicant, vide acceptance dated 16.6.1973 (Annexures IV and V). At that time the applicant was given alternative post. The scale of post Sr. ACC, was 150-240 (A)

and that was not equivalent to the Grade, the applicant was holding the pay scale of Rs.130-240 (A). The Railway Board in their letter dated 6.2.1982 has clarified the above fact. (Annex. R-VI). It is further stated, that the merger of the lowest grade of ASM scale of Rs.130-240 with the next higher grade of Rs.150-240, as a result of implementation of third pay commission's report retrospectively would not entitle the applicant for absorption on the post of Sr.ACC scale Rs.150-240(A), which was necessarily higher than the scale of Rs.130-240(A), attached to the post of ASM. Regarding the discrimination Shri N.K.Katara and N.K.Gupta were decategorised in the month of May 1983 and June 1983 respectively and not from 1.1.1973 as stated by the applicant

4. We have heard learned counsel for the parties at length. The preliminary objection raised by the respondents has force. The applicant wants to unsettled the settled matter. The applicant was decategorised medically in Feb. 1973 as per rule 2609 of IREM quoted below; the applicant was to be given alternative employment.

"2609. Alternative employment to be suitable

- 1.) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he could accept the offer or reject it.

ii) It would not, however, be appropriate to offer a Class IV post to a Railway servant in the Class III service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who had risen to be a Shunter could be offered the post of a cleaning Jamadar if no better post were available.

iii) For the purposes of this paragraph, an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments in his substantive appointment, ~~form of officiating appointment~~ from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus 40 per cent of such pay. The figure of 25 per cent is in the nature of a guide and not a rigid underlying subject is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of conform. A Railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.

NOTE : Care should be taken by Railway Administration to see that the interests of the staff in service are not affected adversely as far as possible and alternative appointment should be offered only in post which the staff can adequately fill. Their suitability for the alternative posts be judged by holding suitability test/interview as prescribed under the extant instructions.

While going through this rule, it is specifically stated that the suitability for the alternative post be judged by holding suitability test/interview as prescribed in the extant instructions. The applicant was informed about this alternative job in March 1973. The applicant accepted this offer by written consent. A copy of which is attached to the reply as Annexure R-V.

5. The applicant represented in 1976 March 2, and the reply to the representation was given by letter dated 1.7.1977, Annexure R-3 reproduced below:

ANNEX- R-III to the reply

"Consequent upon decategorisation you were offered the post of A.O.C. scale Rs.260-430 which you have accepted as per your acceptance note dated 11.6.1973 and hence you were not eligible for scale Rs.330-560. Your fixation has correctly been done in scale Rs.260-430."

Before the applicant/given his consent he was informed by the letter dated 21.3.1973 that the committee Officer's after interviewing him offered alternative post of AGC and in the scale of Rs.110-200 but he refused to accept and expressed the desire to be absorbed as ~~AGC~~ T.C. or A.C.C, the said letter is reproduced below:

"On 13.3.1973 the committee of officers interviewed you and offered the alternative posts of AGC and Tele Signallor in scale Rs.110-200(A) but you refused to accept and expressed the desire to be absorbed as TC or ACC. You are hereby advised that there exist no vacancies in TC or ACCs cadre at present. You may therefore, consider and advise whether you are willing to accept the alternative job either of a AGC or Tele Signallor in scale of Rs.110-200 (A)".

6. The question is not of giving an particular scale to the applicant but it is to quash the order dated 26.6.1973. By this letter the applicant was given an alternative job in the post AGC, at that time and he has also requested for the same. He has also accepted this appointment without any protest. The representations made by the applicant were replied firstly, on 1.7.1977 (Annex-R-III) and again on 6.12.1983 (Annex.R-VIII) to the reply filed by the Respondents. The applicant in order to come within limitation has challenged the order dated 5.3.1986 (Annexure 'F') only referred to Divisional Secretary, WREU-KTT letter dated 31.10.1985, that the Union has raised point that absorption of Shri Chaturvedi as Ex.A.S.M. in the category of ACC with effect from 27.6.1973 is incorrect. It is only stated in the letter that the ^{satisfied &} Union should be ^{settled} regarding this position. This is no order in the ^{eye of} F.F. law. It is only inter-departmental communication. By quashing this order the applicant cannot get the order of June 1973 ^{ed neither} quash ^{nor} the order of first July 1977 and ^{nor} neither the order dated 6.12.1983.

The applicant has not also assailed any of these order and rightly so because this application would have been hit by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985.

7. The learned counsel for the applicant has referred to the case of Noni Gopal Mitra V. Union of India and ors reported in 1992 (1) ATJ pg.147 of CAT, CALCUTTA BENCH; that case is on the point of recovery of personal pay earlier paid to the applicant and also on the point that junior to the petitioner of that case were also decategorised and absorbed in higher pay scale.

In that case, the applicant was medically decategorised on 15.10.1985, and the facts of that case are totally different, and the matter was adjudicated within limitation. The learned counsel for the applicant also referred to the case of S. Narayana and another V/s Union of India and ors reported in 1989 (4) CAT, SLJ page, Hyderabad Bench pg. 555. In that case also, the applicant was medically decategorised on 10.9.1973 on 14.11.1973, he was given alternate employment of Ticket Collector. At that time, the applicant ^{was} already working in the pay scale of Rs.330-560. The Railway issued certain orders on 11.1.1979 and 7.11.1984 while Board permitted review ^{of cases} though appointed upto 11.4.1975 to give equivalent post if become available in three years of absorption. In 1984 a policy clarification was given by the Board. These letters were not applied to the applicant. In the present case, the applicant ^{has} not claimed the non application of these Board's letter in his case. Further, in this reported case the respondents by order dated 30.11.1988 also reviewed an earlier order dated 24.8.1987 and the seniority of the applicant was proposed to be revised. Even thereafter

this order dated 30.11.1988 was suo-moto cancelled and fresh impugned order dated 26.12.1988/3.1.1989 to the same effect was communicated. These two applications were filed before the Tribunal ^{was} within the period of limitation.

8. The learned counsel for the applicant has also referred to judgement in O.A.No. 408/89 J.C.D'Lima V/s Union of India decided by Bombay Bench on 17.4.1992. Here the applicant was medically decategorised on 10.3.1988, when he was holding post in the grade of Rs.425-640(RS) thus, this application was ^{also} filed within limitation. The learned counsel for the applicant has also referred to a judgement of JODHPUR BENCH, CAT in T.A. No.605/86, wherein the earlier order dated March 21, 1984 was challenged in the Writ Petition filed in the High Court of Rajasthan SPCW 543/84, which was transferred to CAT Jodhpur, thus, this application was ^{also} filed within limitation.

9. The fact remains that the provisions of limitation are statutory and have to be observed by the parties while assailing their grievances in application under Section 19 of the Administrative Tribunals Act, 1985. The another hurdle in this case is that the cause of action has ^{arisen} ~~arised~~ to the applicant prior to November 1982. The cases prior to 1.11.1982 cannot be admitted by the Tribunal as specifically laid down under Section 21(2) of Administrative Tribunals Act, 1985. There are number of decisions of the Tribunals

to this effect under Section 21 (2) of the Administrative Tribunals Act, 1985. It is laid down that any matters wherein grievances arose by reason of any order made at any time before the period of 3 years immediately preceding the date on which Tribunal was set up the Tribunal has no power to give any relief beyond the period specified therein has been made to be Barred leaving no discretion to the Tribunal. In some other cases, the Tribunal has been given some discretion to entertain the application but in such cases exercise of any such discretion has been taken away from by the jurisdiction of the Tribunal. In the cases of Sukumar Day V Union of India and others reported in 1987(4) SLJ 727 CAT, Calcutta Bench; V.K.Mehra V Secretary Ministry of Information and Broadcasting (ATR) 1986, CAT, pg.203; ^{and in} S.Sangeetha Rao V Union of India (1989) 11 ATC. 516, ~~which has been held in para~~ it has been clearly held so.

10. The case of the applicant is that he has made representation in the year ^{1976 and} 1983 and onwards, but repeated representation ^{do} not give any new cause of action as held by Hon'ble Supreme Court in the case of Dr.S.S. Rathore V/s State of M.P. reported in AIR 1990 SC pg 10.

11. In view of the above ~~the~~ discussion we held, that there is no substance in the application, which is barred by limitation and dismissed leaving the parties to bear their own costs.

J.P.Sharma
(J.P.SHARMA) 3.7.72

U.Sha Savara
(USHA SAVARA) MEMBER(A)