

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 22/88.

~~Transfer Application No:~~

DATE OF DECISION 30.3.93

Shri Bhagwan Himmat Jadhav Petitioner

Shri D.V. Gangal Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri P.R. Pai Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble Shri V.D. Deshmukh, Member (J)

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

*[Signature]*  
(M.Y.Priolkar)  
Member (A)

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(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 22/88

Shri Bhagwan Himmat Jadhav  
V/s

... Applicant.

Union of India through  
the Secretary,  
Ministry of Railways  
New Delhi.

Union of India through  
the Railway Board  
New Delhi

The Chief Personnel Officer(Engg)  
Central Railway  
Bombay V.T.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar, Member (A)  
Hon'ble Shri V.D.Deshmukh, Member (J)

Appearance:

Shri D.V.Gangal, counsel  
for the applicant.

Shri P.R. Pai, Counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 30.3.93

¶ Per Shri M.Y.Priolkar, Member (A) ¶

The applicant who is a Railway employee was originally appointed as skilled fitter in the scale of Rs. 260 - 400, on 13.2.74. He was promoted on adhoc basis as highly skilled fitter on 23.7.80 in the scale of Rs. 330 - 480. The applicant was declared unfit medically and decategorised and was absorbed as Tracer from 9.12.82, in the scale of Rs. 260 - 430. The grievance of the applicant is that he has not been given seniority in the category of Tracer from 13.2.74, which is the date of his initial appointment as skilled fitter.

2. The learned counsel for the applicant argued that from a harmonious construction of rules 2604, 2605, 2609 and 2614 of the Indian Railways Establishment Manual, the applicant should be entitled to count his seniority in the post of Tracer in which he was absorbed after decategorisation, from the date of his original appointment as skilled fitter although this scale was marginally

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lower at Rs. 260 - 400 as against the Tracer's scale of Rs. 260 - 430. According to the learned counsel for the applicant, for the purpose of reckoning the seniority, the earlier pay scale need not be exactly identical or equivalent but only be a corresponding scale and even a marginally lower scale should be corresponding scale for this purpose.

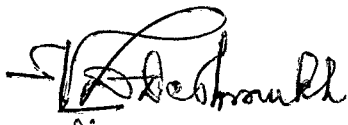
3. According to the respondents, the applicant has been given seniority in the category of Tracer from 23.7.80 i.e. from the date he was promoted in the post of highly skilled fitter. Respondents also state that the applicant is not eligible for seniority from 13.2.74 i.e. from the date of his appointment to the post of fitter, since the grade of Tracer which is Rs. 260 - 430 is higher than the grade of the skilled fitter which is Rs. 260 - 400.

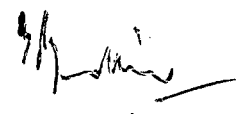
4. We have gone through the rules cited by the counsel for the applicant. Rule 2604 is not relevant to this case, as it relates only to provision of alternative employment for incapacitated Railway servants. Rule 2605 provides that medically decategorised staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised. This rule does not also have any relevance to the question of seniority which is in dispute in the application. Rule 2609 lays down that the alternative post offered to a Railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is the minimum. This rule goes on to give certain guidelines on the basis of which alternative appointment can be treated as a suitable post based on the level of the respective emoluments. In the case of category of employees like the applicant, the guideline is that the alternative

appointment is to be considered as suitable if the emoluments of the same are not more than about 25% below his previous emoluments in his substantive or officiating appointment from which he was unlikely to revert. The alternative employment offered in this case appears to be on the basis of the higher post of highly skilled fitter which the applicant was holding on adhoc basis for more than two years. The relevant rule regarding seniority is rule 2614 which states that medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of the rate of pay fixed in the grade of absorption. The rule, however, provides that in the case of staff who are in a grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher grades is to be taken into account.

5. The only question for our determination is, therefore, whether the applicant's service in the post of skilled fitter in the scale of Rs. 260 - 400 from 13.2.74 to 23.7.80 can be considered to be service in an equivalent grade for the purpose of seniority in the post of Tracer which is in the scale of Rs. 260 - 430. We find nothing in the rules cited above which were relied upon by the counsel for the applicant to justify that a scale like Rs. 260 - 400 which is clearly lower than the scale of Rs. 260 - 430 can be treated as equivalent or corresponding scale for the purpose of counting for seniority in the higher post. The Railway Board circular dated 25/26.8.84 annexed to the application also states that for the purpose of seniority in the grade of absorption, only the service in equivalent or corresponding scales should be counted. We see no

indication in the rules cited as well as the Railway Board's circular, that a pay scale with a lower maximum could be treated as equivalent or corresponding scale to a pay scale which has a higher maximum. No case law or decision of the Railway Board have been brought to our notice which permits the counting of any pay scale with a lower maximum as corresponding or equivalent to a pay scale with a higher maximum. In view of the above, we do not think that this is a fit case for interference by this Tribunal. The application is accordingly dismissed with no order as to costs.

  
(V.D. DESHMUKH)  
MEMBER (J)

  
(M.Y. PRIOLKAR)  
MEMBER (A)

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