

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

(8)

O.A. NO: 408/89

199

T.A. NO: ----

DATE OF DECISION 7-4-1992

J.C.D'lima

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr.J.G.Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

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

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

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mbm*

MD

(U.C.SRIVASTAVA)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.408/89

J.C.D'Lima,
C/o.G.S.Walia,
Advocate High Court,
89/10, Western Railway
Employees' Colony,
Matunga Road,
Bombay - 400 019.

.. Applicant

vs.

1. Union of India
through
General Manager,
Central Railway,
Bombay V.T.
Bombay - 400 001.

2. Divisional Railway
Manager,
Bombay Divn.,
Bombay V.T.,
Bombay - 400 001.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

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

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.

2. Mr.J.G.Sawant
Advocate for the
Respondents.

ORAL JUDGMENT:

¶Per U.C.Srivastava, Vice-Chairman ¶

Date: 7-4-1992

The applicant was appointed in the year 1953 as Trade Apprentice and later on rose to the status of skilled fitter in the year 1962. He was subsequently selected for the post of Pro.Guard on 19-4-62 and was while working at that time medically decategorised on 10.3.88. At that time he was holding the post in the grade of Rs.425-640(RS) Rs.130-2200(RPS) and was drawing declared basic salary of Rs.2050/- He was/medically unfit in Class A-1, 2 & 3 and fit in B-1 as per the certificate issued by CMO BY. Accordingly he was considered for an alternative employment as per the extant rules. A committee of 3 officers assessed

his suitability and found him suitable for the post of Section Controller Grade Rs.1400-2660(RPS). So the applicant had requested for appointment to the following posts in Commercial department as per the application dtd.26.4.88:-

- (i) Train Supdt.. Gr.Rs.2000-3200(RPS)
- (ii) CTI Gr.Rs.2000-3200(RPS)
- (iii) ConductorGuardGr.Rs.1600-2660(RPS)
- (iv) TTI - do -

The post of Section Controller in the grade of Rs.1400-2600(RPS) was offered to him and fixed him at Rs.2600/- i.e. maximum by adding 30% mileage. The alternative job offered in non running category was considered suitable in which emolument do not fall more than 25% below the emolument in the former post.

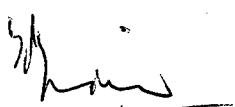
2. The applicant has challenged the said appointment and according to the applicant full justice has not been done to him as he has been appointed as a Section Controller at the lower post and his absorption was done without taking into consideration the element of 30% running allowance and he was forced to accept this position and a person who was similarly medically declassified and was junior to him was given a higher grade and later on further promoted but the applicant was given a lower grade. In this connection a reference has been made to Rule 1309-2(a) of the Indian Railway Establishment Manual which reads as follows:

"2(a). In the matter of absorption of medically declassified staff case has to be exercised to ensure that when more than one medically declassified staff from the same cadre are absorbed in alternative employment in the same seniority

unit or cadre, as far as possible, the case of any senior who of necessity was absorbed in a lower post should be reviewed and efforts made to adjust the senior against the higher post and the junior takes only lower down either in the same grade or lower grade."

on behalf of
The plea of the applicant is that no effort whatsoever was made to consider the case of the applicant in terms of para 1309-2(a) as extracted above.

3. The contention has got to be accepted as the same rule also finds place in Establishment Serial No.120/75 of SE Railway's Establishment Serial Circulars, 1975. Accordingly the respondents are directed to consider the case of the applicant and efforts be made to adjust him against the higher post in terms of para 1309-2(a) extracted above taking into consideration the scale of the applicant ~~the~~ and the scale in which junior has been placed. Let this consideration be done within three months from the date of communication of this order. No order as to costs.


(M.Y. PRIOLKAR)
Member (A)


(U.C. SRIVASTAVA)
Vice-Chairman

MD