

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.840 of 1996

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.Kuldeep Singh- Member (A)

Dated this the 10th day of September, 2001

Dadasaheb Bhimrao Nikam,
working as Junior Clerk,
Personnel Branch, D.R.M.'s Branch,
Solapur.
(By Advocate Shri U.N.Joshi)

VERSUS

1. Union of India
through the General Manager,
Central Railway, Mumbai, C.S.T.
2. The Divisional Railway Manager,
Central Railway, Solapur.

ORAL ORDER

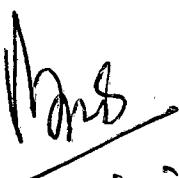
Per:Hon'ble Mr.B.N.Bahadur - Member (A) -

1. The applicant in this case comes up to the Tribunal seeking a direction to respondents to consider and appoint him as Senior Clerk on the basis of his seniority as claimed in the OA.

2. We have seen the papers in the case and have heard the learned counsel for the applicant Shri U.N.Joshi.

There was no appearance on behalf of the respondents and we have therefore proceeded to examine the case with reference to their written pleadings and other papers on record etc.

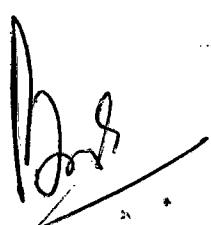
3. The facts of the case, as brought out in the OA, and through submissions made by the learned counsel for the applicant are simple, in that the applicant joined the Central Railway as Diesel Cleaner on 5.8.1985, was made Motor Driver Grade I in the scale of Rs.950-1500/- on 2.7.1986 and further promoted as Motor Driver Grade II in the grade of Rs.1200-1800/- on 10.3.1992. The



applicant did not possess the requirement of SSC qualification when he joined Motor Driver Grade I but came to acquire in the year 1987.

4. The further facts are that the applicant had asked for change to the ministerial cadre even when he was working in the lower grade of Rs.950-1500/- and before he came to acquire the SSC qualifications. A proposal was made in this regard and sanctioned vide order dated 28.8.1993 (a copy of which is available at page 30).

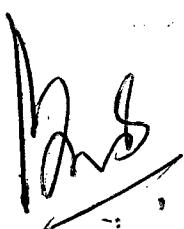
5. The grievance of the applicant is that he was made to go to a lower scale of pay. The learned counsel Shri U.N.Joshi, who argued the case at some length, made the point that when the change of cadre came to be ordered in 1993, the applicant was working in a higher grade of rs.1200-1800 vis-a-vis the scale of the post of Junior Clerk which operated in the scale of Rs.950-1500/. His contention is that he should have been provided a posting in the higher grade of Senior Clerk. This argument that was put forth by the learned counsel even on the ground of qualification in 1993. He did see the interpretation of "deemed qualification" of Army service as brought out by the respondent in his written statement.



6. The respondents have in their statement provided facts and made the point that the applicant was only 9th Class pass when he joined. The defence taken by the respondents is that the applicant had himself requested for a change in the cadre vide his letters dated 30.1.1990 (Annexure-A-10). He had been considered for such change in the category from Motor Vehicle Driver to Junior Clerk on the basis of his accepting bottom seniority. The point stressed is that he had made a voluntary request for change in the cadre and posting to Junior Clerk. The written statement further provides information on the points raised in the OA, parawise.

7. The first thing that is noticed is that the applicant had himself applied for change voluntarily and this point is certainly an important point to be kept in mind for deciding the claims being made. It is true that by the time his request came to be accepted, he had been promoted to the grade of Rs.1200-1800/- . It is also important to note in this connection the factual position to the effect that the scale of Rs. 1200-1800/-, while certainly being higher to the grade of Junior Clerk (Rs.950-1500), is however lower than the grade of Senior Clerk i.e. Rs.950-1500/- . There is no doubt, as stated in the

.....4/-



written statement of respondents, that it is an intermediate grade. Now, once it is seen to be an intermediate grade there can be no automatic right of the applicant for a posting in the higher grade. Certainly it was open to him not to accept the posting in the lower grade.

8. From this point it is relevant to go immediately to the details of the order through which the change in the cadre was provided. We refer to the order dated 28.9.1993, (Annexure/A-19 at page 30 of the OA). Importantly, here, while according sanction for change of department by the applicant, it is stated clearly that the above transfer as Junior Clerk in the grade of Rs.950-1500/- being a transfer on request, the applicant will "pick up his seniority from the date he reports on duty in Engineering Department". It is important also to note that the applicant joined duties the very next day after issue of the orders i.e. on 29.9.1993, clearly without demur. The learned counsel for the applicant argued that protest had been made by the applicant with regard to being provided lower scale but admittedly the first such protest came on 29.1.1994, in the form of a representation. It was importantly not a protest at the time of joining, and it is only through some years later that this OA comes to be filed. Under the circumstances, we find that no case has been made out before us for any right that the applicant deserves to be provided a higher scale. Thus no been made out for our interference in the matter.



9. Before parting with this OA we may mention that the learned counsel for applicant did plead orally that the applicant may be considered for protection of pay at least. No such pleading is made in the OA. In fact in the written statement even this claim is denied. Be that as it may, we cannot adjudicate on this matter. It is upto the applicant to take up the matter with the respondents and for the respondents to consider his request on merits as per rules. However, no directions can be given.

10. In the consequences, this OA is dismissed without any order as to costs.


(Kuldip Singh)

Member (J)


(B.N. Bahadur)

Member (A)

mb/