

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.NO.752/99

Thursday, this the 13th day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V.Sachidanandan, Member (J)

Arun Rangnath Salunke
Senior Clerk
Office of the Works Manager
Central Railway, Kurdwadi
Maharashtra

..Applicant

(By Advocate: Shri B. Ranganathan)

Versus

1. Union of India
through General Manager
Central Railway
CST Mumbai
2. The Chief Personnel Officer
Central Railway
CST Mumbai
3. Chief Works Manager
Central Railway
Parel, Mumbai
4. Works Manager
Central Railway
Kurdwar, Maharashtra

..Respondents

(By Advocate: Shri V.D. Vadhavkar)

O R D E R (ORAL)

Shri Govindan S. Tampi:

The Applicant in this OA is aggrieved with the order of the Respondents dated 23/08/99 repatriating him as C&W Fitter Gr.I.

2. Heard S/Shri B. Ranganathan and V.D.Vadhavkar, learned counsel appearing on behalf of the applicant and the respondents respectively.

3. Shri Arun Ranganath Salunkhe, who joined Railways as Khalasi on 21/12/1981, became a Fitter in 1984, was promoted as Highly Skilled Fitter-II in 1986 and Highly

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Skilled Fitter-I in June 1989. In 1994, the Applicant suffered a heart attack, whereafter he was referred to Kurduwadi Railway Hospital and thereafter to Chief Medical Officer, Solapur. When he was discharged on 21/04/1994, the fitness certificate granted read as under

"...Unfit Cye One (C1) as fitter and fit cye one (C1) and under for sedantary job..."

4. On the basis of above de-categorisation he was screened on 31/03/1995 for an alternate job, following which he was appointed as Senior Clerk in the scale of Rs.1200-2040. He was engaged as Senior Assisstant in Despatch Section on 11/04/1995. In terms of Para 1314(A) of the I.R.E.M. medically de-categorised staff, absorbed in alternative posts were entitled to get full seniority in the previous job. This meant that he was fit for further promotion as Head Clerk, keeping in mind his service before such de-categorisation. As the Applicant was not given the above benefit, the matter was taken up by the National Railway Mazdoor Union (NRMU) on 30/07/1999. However, without granting him promotion the Administration decided to revert him back to the post of Fitter Grade-I, for which he had been declared unfit on medical grounds. This action was illegal and arbitrary. Hence, this O.A.

4. The grounds raised by the Applicant in this O.A. are as below :-

(a). Applicant's repatriation from the post of Senior Clerk to that of a Fitter was contrary to the Medical Opinion.

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(b). The Respondents have not considered the circumstances in which the applicant was forced to take up the alternative post of Senior Clerk, in this post he had worked satisfactorily for more than six years.

(c). The decision for the above repatriation was clearly malafide.

(d). The above decision was violative of the Articles 14 & 16 of the Constitution; and

(e). The Applicant points out that in view of the urgent nature of his grievance, he was approaching the Tribunal without filing any representation with the Respondents.

During the oral submission, Shri B. Ranganathan, Learned Counsel appearing ^{for} for the applicant reiterated the pleadings made in the O.A. and calls for the immediate ^{intervention} ~~intervention~~ of the Tribunal to render him justice.

5. Shri V.A. Vadhavkar, learned counsel for the Respondents, strongly rebuts the pleas raised by the Applicant. He has pointed out that the applicant who joined Railway Service as Khalasi on 23/12/1981, was working as Fitter Grade-I, from 16/06/1989 in the scale of Rs.1320-2040. He was a S.T. candidate. Following his ailment and medical treatment in November/December 1994, he was declared medically fit under C-I category for sedantory job. Accordingly, he was screened and posted as senior clerk on the same rate of pay with effect from 05/04/1995 and his seniority was interpolated from the date of entry in the said grade i.e. 05/04/1995.

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Following some complaints by some affected staff, the matter was referred to the Head Quarters office, when it was decided on 09/03/1999, that in terms of Rule-1314 (a) of I.R.E.M. Volume-I, he was entitled to get full seniority on his medical re-categorisation. This meant the anti-dating of his seniority from 16/06/1989, when he became Fitter Grade-I. Staff Representatives contested the same on the basis of which the matter was re-examined and when it was found that Para 312 of I.R.E.M., which should have been used had not been invoked. This gave unintended benefit to the applicant. To rectify the mistake the applicant was ordered, by the impugned order to be repatriated as Fitter-C&W. According to the Respondents the O.A. was not maintainable as it sought plural remedies and as necessary parties were not impleaded. The applicant in fact had not been medically recategorised, but had only been advised for performing the duties of Fitter in sedantory jobs. Therefore, posting him back to the fitter grade was not against medical opinion, as claimed by the applicant. The initial assignation of his seniority in the new post, keeping in mind Rule 1314 (a) of I.R.E.M., with effect from 16/06/1989 was found to be wrong as the correct provisions to be invoked was Rule 312, the Respondents took the necessary corrective action and decided to repatriate the applicant to his original position as C&W Fitter. There was nothing wrong in it and the same could not be interferred. Shri Vadhavkar pointed out that the applicant cannot have the benefit of absorption in the ministerial grade and also assignation of seniority keeping in mind his service in the earlier post of C&W

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t Fitter. If he wants to have the benefit of his original post he should opt for the same. He was not entitled for anything further, urges the learned counsel.

6. We have carefully considered the matter. The Applicant is aggrieved that he has been repatriated to the post of C&W Fitter after working for six years in the post of Senior Clerk/Senior Asstt. following medical de-categorisation/re-categorisation. On the other hand, the Respondents point out that the applicant is incorrectly and improperly seeking the benefit of his previous as C&W Fitter in the new cadre of Senior Clerk which had prompted the respondent to repatriate him. The respondents had earlier given him the benefit of Para 1314 of I.R.E.M. the relevant portion of which reads as follows :-

"the medically de-categorised 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 rate of pay fixed in grade of absorption. In the case of staff who are in grade higher than the grade of absorption at the time of medical de-categorisation total service of equivalent or higher grade is to be taken into account."

It is keeping the above in mind that the applicant is given seniority by the respondents with effect from 16/06/1989, vide Chief Personnel Officer's letter number HPV/786/1634/Seniority/KWV/Workshop dated 09/03/1999. However, the Respondents had by mistake not considered the not below the said rule, which reads as below :-

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"The staff who get their cases recommended for change in category on medical ground will not get benefit of the above para, but will be treated as staff transferred on their own requests."

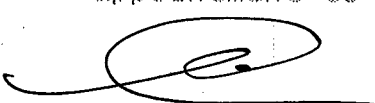
(6)

In such a scenario, Rule 312 of I.R.E.M. comes into play. The said Rule reads as under :-

"The seniority of Railway servants transferred on their own requests, from one railway to another should be allotted below that of the existing confirmed temporary and officiating railway servants in the relevant grade."

That being the case, the applicant was entitled for the benefit of counting service as Senior Clerk only from 09/05/1994, when he was absorbed as a Senior Clerk and not for an earlier period. However, the Respondents action in repatriating him to the earlier post of C&W Fitter was improper as he was a medically de-categorised person and exposing him to the hazard of the Fitter job would have been dangerous in view of his weak heart condition. The said order therefore has to be quashed and set aside and the applicant be permitted to continue as Senior Clerk with the normal seniority in that grade.

7. In view of the above the application succeeds to a substantial extent and is accordingly disposed of. The impugned order No.E4/59-U/Misc./26 dated 23/08/1999, repatriating the applicant to the post of C&W Fitter is quashed and set aside. The Respondents are directed to retain the services of the Applicant as Senior Clerk. He would however be entitled for claiming seniority in the said post of Senior Clerk only from the date of his appointment to that post i.e.05/04/1995. No costs.


(K.V.Sachidanandan)
Member (J)

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(Govindan S. Tampi)
Member (A)