

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 308/92

Transfer Application No.

Date of Decision : 26/6/95

Shri R.N.Jauhari

Petitioner

Shri G.S.Walia

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri M.S.Ramamurthy

Advocate for the
respondents

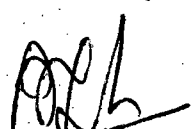
C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 308/92

Shri R.N.Jauhari

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.S.Walia
Advocate
for the Applicant

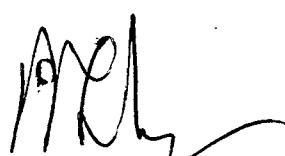
Shri M.S.Ramamurthy
Advocate
for the Respondents

JUDGEMENT

Dated: 26/7/95

(PER: P.P.Srivastava, Member (A))

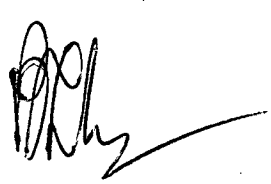
The applicant joined the Railway service as a Group 'C' employee. He was selected for empanelment for Group 'B' post in the year 1984. He was sent for medical examination in terms of Rule 1015 of the Indian Railway Establishment Manual and was declared fit under clause II (b) of the Rules. According to the Rules the medical examination is conducted for the post in two different categories (a) posts connected with the train working or use of trolley on open line and (b) the rest of the posts. The applicant did not pass the test for Category (a), i.e. for the post connected with the train working or use of trolley on open line and therefore he was posted as ACS in special case in terms of Railway Board's instructions on the undertaking that he would have no claim either to continue in Group 'B' or for promotion in senior scale. This promotion of the applicant as ACS was on adhoc basis. The applicant



thereon filed an OA.No. 67/87 which was decided on 18.3.1991. While deciding the case of the applicant, the operative portion of the judgement in Para 8 it was mentioned :-

" In view of statement of the learned counsel it is not the question as to whether certain undertaking was given under compulsion or any other question, but the fact remains that because of the said undertaking the applicant got the promotion, otherwise he may not have got the promotion at that stage. Once the promotion is ordered there appears to be no reason why promotion is not to be maintained. In view of the statement made by the learned advocate of the applicant, respondents should consider the case for regularisation, having worked on adhoc basis for several years more so when applicant will not claim promotion to Class 'A' so long as he is found medically fit for the same on the basis of relaxation. The application is disposed of with the above directions, with no order as to costs. The matter of applicants regularisation may be decided within 3 months from today in the light of observations made above."

Pursuant to the above judgement the applicant was regularised as Assistant Commercial Superintendent by respondents' order dated 17.9.1991. The applicant was duly promoted in senior scale as Divisional Commercial Superintendent by order dated 31.10.1991 and was posted at Jaipur. The applicant represented to the administration after resuming the duties as DCS pointing out that he had been certified fit under medical category II(b) of Para 1015 of I.R.E.M. He also pointed out that on some occasions he might be called upon to attend certain duties in case of Accidents, which might be connected with train working and because of his medical classification he requested that he should be posted in Headquarters office in one of the many posts available there. The respondents thereupon issued a notice dated 27.1.1992 advising the applicant that his promotion to Senior Scale by order



dated 31.10.1991 was wrong due to an inadvertent mistake and it was proposed to revert him to substantive Class II Group 'B' post of Assistant Commercial Superintendent. The applicant represented against the above show cause notice on 31.1.1992. However, the respondents reverted him back to Group 'B' post by order dated 13.2.1992 which is placed at Annexure-I.


2. Counsel for the applicant has argued that there are posts in the Headquarters office which do not carry any responsibilities of train working or use of Trolley on open line and therefore the applicant could have been continued on any one of these posts. The counsel for the applicant has argued that absorption of a medically incapacitated staff in alternative employment is mandatory and the respondents cannot revert the applicant on the ground that he is medically unfit for one category whereas other posts are readily available for fitment and absorption of the applicant. Since the applicant was promoted as Divisional Commercial Superintendent and has a common cadre for seniority and promotion with the posts in the Headquarters, he could have been posted in any one of those posts as they did not involve train working or use of Trolley on open line.

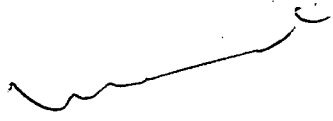
3. Counsel for the respondents has argued that the applicant was promoted to senior scale by mistake and as soon as the mistake was noticed the reversion of applicant was made after following the due procedure according to principle of natural justice, i.e. after considering his representation against the show cause notice. The counsel for the respondents has also argued that cadre of ~~Traffic~~ ^{commercial} officers is one integrated cadre and the medical category for the whole cadre is the one where train working is there and therefore it is not possible to isolate some posts for the purpose of medical

categorisation. The counsel for the respondents has also argued that the applicant has given clear cut undertaking at the time of promotion as ACS on adhoc basis that he will not claim any posting for senior scale or for absorption in Group 'A'. He has also argued that during the finalisation of OA.NO.697/87 the operative portion of the judgement carries similar comments in the judgement.

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4. We ~~are~~ inclined to agree with the argument of the counsel for the respondents. In this connection, we are of the view that it is not possible to bifurcate the posts in one cadre for the purpose of medical classification as any officers coming to that cadre can be any ~~posted on~~ any post and medical classification cannot be different for isolated post. We have also taken note of the judgement in OA.NO. 697/87 and the statement made by the learned counsel for the applicant that the applicant will not claim promotion to Group 'A' so long he is found medically fit for the same on the basis of relaxation. We, therefore, do not find merit in the submission made by the applicant in this OA. The OA. is dismissed with no order as to costs.


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.