

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

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DAY THE NINETH DAY OF JULY
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B.N. JAYA SIMHA: VICE-CHAIRMAN

AND

THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO.

412 of 1987

Between:-

B. Srinivasarayan

.....Applicants.

And

1. Senior Divl. Commercial Superintendant, South Central Railway, Vijayawada.
2. Senior Divl. Personnel officer, South Central Railway, Vijayawada.
3. Divisional Railway Manager, South Central Railway, Vijayawada.
4. Sri A. Saxena, Divisional operating Superintendent, South Central Railway, Vijayawada.
5. Chief Personnel officer, South Central Railway, Secunderabad.

.....Respondents.

Application under Section 19 of the Administrative

Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to issue an order or direction

directing (i) To quash the illegal transfer orders of

Sr. DPO/BZA No. B/P. 676/E Vol. XXIV d L. 25-4-8

and Sr. DCS/BZA letter No. B/C. 52/R P/8-87

DOS/87 d t-27-7-87. (ii) Sr. DPO/BZA letter No. B/P. 676/I/Vol. XXIV dated 16-6-87 rejecting the

representation dated 6-5-87 of the applicant - again the transfer, (iii) to treat the period from 22.4.87 onwards to be

ORDERS OF TRIBUNAL

The applicant herein is working as Retiring Room Clerk at Vijayawada ~~Riz~~ Station. He has filed this application questioning the orders of the Senior Divisional Personnel Officer, Vijayawada dated 25-4-1987 transferring him as Seal Checking Clerk, and the orders of the Senior Divisional Personnel Officer dated 16-6-1987 rejecting his appeal dated 6-5-1987 requesting that he should not be posted as Seal Checking Clerk. It is contended that the applicant who ~~is~~^{was} originally appointed as Loco-Khalasi in the South Central Railway, Vijayawada Division, later promoted as Fitter, ~~was~~ was on long sickness from April 1981 to May 1982. He was medically declared unfit in Category B1 and B2 and ~~made~~^{found} fit in C1 category and below, ^{with a} job not involving any work with engine, Diesel oil or exposure to sunshine. On decategorisation, he was offered the post of Retiring Room Clerk in the scale of pay of Rs.260-400 and received posting orders dated 22-5-1982. This post is that of Non-Commercial Clerk equivalent to the Office Clerk's grade. The applicant when asked to attend a promotion grade of absorption as Commercial Clerk in the scale of pay of Rs.260-430, declined the offer on health grounds. ^{The} Chief Personnel Officer, by an order dated 31-3-1984 had directed that

the applicant should be allowed to continue as Retiring Room Clerk as there is no avenue of promotion available to this post. He states that one Mr. A.K.Saxena^{who} has been transferred to Vijayawada as a Divisional Operating Superintendent acted malafide and influenced the Second Respondent- Senior Divisional Personnel Officer by making a false complaint against the applicant and got him placed under suspension. This order of suspension was revoked and shortly thereafter the applicant was reinstated but posted as Seal Checking Clerk which is in the category of Commercial Clerk. It is this transfer order which is sought to be impugned in this application.

2. It is stated that the applicant was not trained for the post of Seal Checking Clerk^{that}; ~~He~~ is a Retiring Room Clerk which is a general category of Ministerial Clerk ; that he had earlier declined the promotion of Commercial Clerk ; and that the Senior Divisional Commercial Superintendent or Senior Divisional Personnel Officer have no powers to ask the applicant to perform the duty of the Commercial Clerk ^{in the capacity of} ~~which is~~ a Seal Checking Clerk. It is further stated that in view of his decategorisation ^{to} ~~of~~ Group C1 with a direction that he should not work on engine, diesel oil or exposure to sunshine, he should ^{not} be posted as Seal Checking Clerk.

3. On behalf of the Respondents, a Counter has been filed stating that the Railway Administration has decided to abolish the post of Retiring Room Clerk and therefore it was decided to absorb the applicant as Commercial Clerk. Since the applicant is not willing to work as Commercial Clerk, he was being continued as Retiring Room Clerk. But this would not give him any right to continue in the said post and the Railway Administration has powers to create or abolish any post. It is stated that in regard to the complaint that the applicant was found allotting Retiring Rooms to unauthorised persons for illegal purposes, ^{the} Senior Divisional Commercial Superintendent had made discreet enquiries and decided to conduct an enquiry against the applicant. Pending enquiry, the applicant was suspended from duty with effect from 9-3-1987. In view of the seriousness of the allegations, it was not found desirable to keep the applicant in the post of Retiring Room Clerk pending DAR proceedings. The applicant was however reinstated into service revoking the suspension order and since there will be some delay in the process of enquiry and as he could not be retained as Retiring Room Clerk, the Administration took a decision to post him to an alternative post. It is stated that the job of Seal Checking Clerk to which the applicant was posted does not require any special pre-training and that the post of Commercial Clerk come under C1 medical category to which category

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the applicant was decategorised and as such he could be posted as Seal Checking Clerk which is one of the categories of Commercial Clerk. It is further stated that his posting as Seal Checking Clerk is ~~as~~ a temporary measure in the interest of the administration and that the applicant would continue to keep his lien in the post of Retiring Room Clerk.

4. We have heard the learned Counsel for the applicant Shri G.V.Subba Rao and Standing Counsel for Railways Mr.N.R.Devraj.

The allegations against the applicant ^{Viz} ~~in regard to the~~ illegal allotment of Retiring Rooms ^{are that it is for questionable purposes} ~~is a serious one and during the~~ ^{of a serious nature. During the} pendency of ^{an} enquiry he could not be allowed to continue in that post. The applicant was ^{Suspension of} ~~said to be~~ ^{stated to have been} revoked because of the representation made by the applicant ~~as~~ himself. The question for consideration is ~~that~~ whether, having regard on the medical certificate, the applicant could be asked to work as Seal Checking Clerk. The Medical certificate reads as follows:-

"The above employee who was placed on sick list with effect from 11-6-1981 has been declared unfit B One, B-Two but passed fit in C-1 and under with glasses for a job not involving any work with the Engine, Diesel oil or exposure to Sun shine such as clerk vide Certificate No.R-65 (06635) dt. 1.3.82 which is enclosed herewith.

He does not propose to appeal against my decision and his declaration to that effect is enclosed. The DMG No.762171 is also enclosed."

The duties of Seal Checking Clerk are as follows:-

"1569. Examination of seals, rivets, and check lines, etc., on wagons -

(a) Guards, when taking over trains at starting stations or when attaching wagons at intermediate stations, must, in conjunction with the Trains Clerk and the Seal Checker or the Rakshak on duty, carefully examine the seals and the rivets of each wagon on the train as also the check lines, sheets, ropes etc., on open wagons and locks on the vans. The check must be thoroughly conducted on both sides of the train to ensure that all seals, rivets, check lines, sheets, ropes etc., wherever these must necessarily be used, are intact ; and that ventilators, windows and doors on both sides are properly secured. Wagons carrying live-stock may be permitted to run with the swing doors open but the Guard must make sure that they are swung right back and secured against the wagon sides.

(b) The result of the above examination should be recorded in a seal examination register which should be countersigned by the Guard, Trains Clerk and the Rakshak/SealChecker on duty. The number of ropes and sheets as also their condition together with the painted numbers of the wagons on which these are used should also be shown in the seal examination register. At seal checking stations, these registers will be maintained by the Seal Checker and at other stations these will be kept with the Station Master on duty. A specimen of the seal examination register appears at Appendix XV/F.

1570. Action to be taken if seals are intact but rivets are missing :- If it is found that rivets are missing although the seals of a wagon are intact, action must be taken to have fresh rivets put on the wagon. The fact that rivets were missing and fresh rivets were put on, should be endorsed in the seal examination register/ Rakshak's book together with the painted number of the wagon over the signature of the Guard.

1571. Action to be taken when seals of a wagon are found deficient or defective at the starting station :-
If any seal of a covered wagon is found deficient or defective, the Guard will make a written request to the

Station Master or any other responsible official on duty for getting contents of the wagon checked and the wagon resealed. Arrangements should then be made to detach the wagon to get its contents checked in the presence of the Railway Protection Force staff and Government Railway Police (if available). This should be done irrespective of whether the rivets are intact or not. A suitable remark should be passed in the Guard's rough journal and in the seal examination register/Rakshak's book over the signature of the Guard.

1572. Action to be taken at engine-changing stations and marshalling yards :-

The Railway Protection Force staff are responsible for checking loaded wagons at engine-changing stations and marshalling yards to verify that all passing covered wagons are duly riveted and sealed and that the check lines, sheets, ropes, etc., on open wagons are intact. They will bring the discrepancies, if any, to the notice of the proper traffic staff by a written memo, for which an acknowledgement should be obtained. It will then be responsibility of the traffic staff to remove these defects to the extent possible. Wagons should on no account be allowed to move onwards without being properly sealed and riveted.

1573. Action to be taken at intermediate stations:-

At stations where a goods train is timed to stop half an hour or more, or where a goods train is likely to be detained for that time, the Guard of the train along with the Trains Clerk and Seal Checker/Rakshak on duty, if provided, must examine all seals, rivets, ventilators, windows, roofs and doors of covered wagons and the check lines, sheets, etc., on open wagons. The result of this examination must be recorded in the seal examination register/Rakshak's book.

1574. (a) If at an intermediate station a covered wagon is found with a defective or deficient seal, the Guard should give a memo to the Station Master on duty, who should get the wagon re-sealed immediately. The fresh seal label should be signed jointly by the Station Master and the Guard. The Station Master should keep a record of such wagons in his daily diary, the memo received from the Guard being pasted against the entry.

(b) Before the train leaves the station, a detailed report of the Guard should be obtained by the Station Master in the pro forma appearing at Appendix XV/G

in quadruplicate, which should be disposed of as under-

- i) One copy to the Sub-Inspector, Govt. Railway Police ;
- ii) One copy to the Sub-Inspector in charge, Railway Protection Force ;
- iii) One copy to the Claims Prevention Officer; and
- iv) One copy for Station record.

1575. (a) When in the case of a covered wagon, the seals are deficient or defective, every effort must be made to have the contents checked at the intermediate station itself, provided it will not unduly delay the train. If such a check is not possible on the train itself, the wagon should be detached for checking the contents.

(b) If, however, the facilities for checking do not exist at the station, or the destination station or the train terminal station is close by, or the contents are liable to be damaged due to delay, the wagon should not be detained for checking but allowed to go by the same train after re-sealing. The next station, where checking can be done or the destination station, as the case may be, should be telegraphed to arrange for such checking. The telegram should be copied to the Sub-Inspector incharge, Railway Protection Force and the Claims Prevention Officer. A copy of the telegram should also be handed over to the Guard of the train.

(c) The check must be done in the presence of the Guard, and a representative of the Railway Protection Force, where they are available.

1576. Action to be taken at terminals or stations at the end of ~~the~~ Guard's run :-

(a) Guards of trains, on reaching terminals or stations at the end of their run, must remain with the train until the seals, rivets, check lines, etc., have been examined in conjunction with the Trains Clerk and the Seal Checker or Rakshak on duty. The result of this examination must be recorded in the seal examination register, which should be signed by the Guard, the Trains Clerk and the Seal Checker or ~~R~~ Rakshak on duty.

(b) If any defect or deficiency is notice, the Guard must have the wagon re-sealed or contents re-lined in his presence, the fresh seal label being signed by him and the Seal Checker or Rakshak on duty. When all is correct and there is nothing to report as to the x seals, rivets etc., the fact should be noted in the register.

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(c) If an open wagon is found without labels, the Trains Clerk must pick up the necessary particulars from the vehicle summary and make out labels with available particulars endorsing the label over his signature to the effect that the wagon arrived without labels. If the details are not available on the vehicle summary, he must detain the wagon, put 'Not to go' labels and report the matter to the Station Master, who will at once arrange to issue a wire to the last junction or engine-changing station to get the particulars of the wagon, taking assistance from the Control, if necessary. Simultaneously, efforts should be made to find out clues from the contents of the wagon, and if any positive evidence is available indicating the correct destination, the wagon may be connected and despatched accordingly, advising the stations concerned by wire.

1577. If a wagon, that has been received correctly sealed, is found to have had its seals tampered within the station yard, the Station master must have its contents examined in the presence of the Railway Protection Force and if any packages are found missing, action should be taken as laid down in para 1730 for reporting deficiencies.

1578. General Instructions:-

(a) If a wagon is received with seals intact but the label is missing, the seal should be considered as deficient and action taken accordingly.

(b) Whenever fresh seals are put on a wagon, found with defective or deficient seals, the fresh seal labels should be countersigned and dated by the Guard of the train and/or the staff of the Railway Protection Force, before resealing. Wagon number and other particulars usually shown on labels must be entered on the fresh seal labels. In no case, should the fresh seal be put on a blank label.

(c) Checking of contents of wagons found with defective or deficient seals, or with seals missing must be made in the presence of the Government Railway Police, the staff of the Railway Protection Force and the Station Master or such other responsible member of the staff as may be specially deputed by the Station Master.

(d) While checking contents of wagons loaded with explosives and other dangerous goods found with defective or deficient seals, the conditions laid down in the I.R.C.A. Red Tariff for the handling of such goods must be carefully observed.

(e) Checking of wagons with defective or missing seals must be done without delay. If for any particular reason, the checking of contents of a wagon is delayed by over 24 hours, a special report of the circumstances leading to such a delay must be made immediately to the Divisional Office and to the Claims Prevention Officer.

(f) If the train arrives in the night, due to which the contents cannot be checked immediately, the wagon must be padlocked and sealed by the Station Master on duty and checked next morning in the presence of the representative of the Railway Protection Force etc.

(g) Whenever the contents of a wagon are checked the following details of the check must be recorded in a manuscript register specially maintained for the purpose:-

- i) Wagon number with owning railway and the time, date and train by which it arrived ;
- ii) condition of the rivets, private seals and locks, if any, of the covered wagons or check lines, & sheets or ropes on open wagons ;
- iii) whether a memo from the Guard for the missing seals or broken check lines, etc., was obtained;
- iv) name and headquarters of the Guard, who brought the wagon with a deficient seal ;
- v) time and date wagon was re-sealed and in whose presence this was done ;
- vi) position of the wagon in yard at the time of re-sealing ; and
- vii) time and date of unloading of the wagon, the result of the check and time and date of the issue of D.D. message, if any."

It is clear from the duties narrated above, ~~that~~ the applicant has to perform his duties ^{in the exposed} ~~open~~ to the sun light. This is not in accordance with the medical certificate granted to the

applicant. We, therefore, direct that the applicant should be provided with any job other than that of Seal Checking Clerk

keeping in view the limitations ^{imposed} ~~contained~~ in the medical certificate. Pending ^{an alternate posting as being given herein and his p} ~~reinstatement~~, the applicant shall be ^{then}

paid Subsistence Allowance due to him in accordance with the rules. This order is passed without prejudice to the enquiry which is going on against the applicant. With these directions the application is disposed of. There will be no order as to costs.

BN Jayasimha
(B.N. JAYASIMHA)
Vice Chairman

D. Surya Rao
(D. SURYA RAO)
Member (J)

Dated: July 9, 1987.