

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1186/99

Date: 11.4.2001

Between:

S.R. Narsing Rao

.. Applicant

A N D

1. The Divisional Railway Manager,
Broad Gauge, Secunderabad Division,
South Central Railway,
Secunderabad.
2. The Senior Divisional Personnel Officer,
Broad Gauge, Secunderabad Division,
South Central Railway,
Secunderabad.
3. S.S. Sundaram,
Head Clerk
O/o. PCOR/SC, South Central Railway,
Secunderabad. .. Respondents

Counsel for the applicant : Mr. S. Lakshma Reddy,

Counsel for respondents No.1&2: Mr. P.P. Vittal

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)

Hon. Shri M.V. Natarajan, Member (A)

-: O R D E R :-

(Per Hon. Shri B.S. Jai Parameshwar, Member (J)

Heard Mr. S. Lakshma Reddy, learned
counsel for the applicant and Mr. P.P. Vittal,
learned standing counsel for respondents No.1 & 2.
Notice to respondent No.3 served, called absent.

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2. Facts of this case are in brief as follows:

(a) The Applicant herein was recruited as Apprentice Fireman-A grade in the scale of Rs.950-1500 on 23-4-87.

He joined regular post of Fireman-A w.e.f. 23-4-89 on completion of two years training.

(b) The applicant was medically de-categorised on 16-6-92 and he was offered the alternative post of Junior Clerk in the same scale of pay by proceedings dt. 28-8-92. The applicant accepted the alternative post offered to him. Salary and seniority of the applicant was absorbed protected in the post of Junior Clerk. The applicant progressed in the cadre of Junior Clerk and was promoted to the post of Senior Clerk w.e.f. 6-8-96.

(c) The Respondent No.3 was recruited as Apprentice Fireman-A on 8-5-89 and joined the post of Fireman-A on completion of apprenticeship of 18 months on 7-11-90. From the service particulars of the applicant and respondent No.3 the applicant is senior in all respects to respondent No.3 in the cadre of Fireman-A in the scale of Rs.950-1500.

(d) The respondent No.3 was medically de-categorised on 10-6-96. The respondent No.3 was absorbed in the alternative post of Senior Clerk protecting his pay and seniority and he was fitted in the grade of Senior Clerk w.e.f. 7-11-90.

(e) Thus the respondent No.3 happened to be senior to the applicant in the cadre of senior clerk and was even promoted to the post of Head Clerk by

proceedings dt. 1-4-99 (Annexure-1 page 10).

(f) The applicant feeling aggrieved submitted representations dt. 27-2-97 and 24-11-98 to give him the benefit of absorption in the alternative post of Senior Clerk and consider his case for promotion to the post of Head Clerk above the respondent No.3.

(g) There was no response to his representations.

3. The applicant has filed this application for the following reliefs :

"To declare the action of the respondents in treating the third respondent as senior to the applicant herein in the cadre of senior clerk by ignoring the lower grade seniority of Fireman-A/Diesel Assistant and further promoting the third respondent as Head Clerk through the impugned proceedings dt. 1-4-99 and not promoting the applicant herein as Head Clerk as totally illegal, without jurisdiction and consequently direct the respondents to treat the applicant as senior to the third respondent in the grade of senior clerk on the basis of the lower grade seniority as well as on the date of appointment with all consequential benefits of promotion to the post of Head Clerk. "

4. The main contention of the applicant is that the respondents acted in a discriminatory manner when they offered the post of Junior Clerk to him on his medical deategorisation and when they offered the post of Senior Clerk to respondent No.3 who happened to be junior in the cadre of Fireman-A and that in the cadre of Senior Clerk when he was promoted to the said post w.e.f. 6-8-96 and when the respondent No.3 was offered



the post of Senior Clerk w.e.f. 30-9-96 then in all probability and fairness the respondents should have placed the respondent no.3 atleast below him in the cadre of Senior Clerk. Further his grievance is that not only the respondent No.3 was offered an alternative post of senior clerk on his medical decategorisation in a higher grade but was also considered for promotion to the post of Head Clerk ignoring his claims. He submits that had the respondents offered him the alternative post of Senior Clerk when he was medically decategorised by proceedings dt. 28-8-92 he could have become Senior Clerk much earlier to the respondent no.3. Thus he submits that the action of the respondents is discriminatory and violative of articles 14 and 16 of the Constitution of India.

5. The respondents have filed the reply dt.28-1-2000 and also reply to the rejoinder dt. 8-2-2001.

6. The applicant has filed rejoinder on 1-2-2001.

7. The respondents submit that the application is barred by limitation. That the applicant accepted the post of Junior Clerk without any protest. His seniority in the cadre of Junior clerk on his medical decategorisation was fixed in accordance with the rules and instructions of the Railway Board. The claim of the applicant for reviewing his case in comparison with his erstwhile junior i.e. the respondent no.3 is also untenable in view of the three year period imposed for such review in accordance with the instructions of the Railway Board No.E(NG)1-78 SR 6/6 dt. 11-01-1979. They submit that the medically

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declassified staff are absorbed in alternative posts either in an equivalent grade or in a lower grade depending on the availability of the post and suitability of the railway employee. However, the pay of the railway employee ~~and seniority~~ in the grade of absorption is determined reckoning the total service spent by the employee in the ~~and~~ equivalent and higher grades. In so far as running staff are concerned the equivalent grade in the non-running staff ~~and~~ cadre is arrived at by minimum or maximum of the pay in the adding 30% of pay to the ~~and~~ running grade. Thus the running grade in 950-1500/RSRP is equivalent to Rs.1200-2040/RSRP in non-running grade. The relevant rules for absorption and fixation of seniority of medically declassified staff are contained in paras 313 and 1314 of Indian Railway Establishment Manual Vol. I (Annexure R-1). They submit that at the time of medical declassification both the applicant and the respondent no.3 were in the grade of Rs.950-1500 as Diesel Assistants in the running cadre. The applicant was absorbed in the post of Junior clerk in the grade of Rs.950-1500 on 28-8-1992 after being duly considered by the screening committee constituted for the purpose at the relevant time. His seniority in the grade of absorption i.e. ~~as~~ as Junior Clerk was assigned w.e.f. 23-4-1989. The pay of the applicant ~~was~~ drawn as Diesel Assistant was protected and ~~his pay was~~ fixed ~~at~~ Rs.1375/- in the cadre of Junior Clerk.

8. The Respondent No.3 was medically declassified

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while working as Diesel Assistant in the grade of Rs.950-1500 and was absorbed in the post of Senior Clerk w.e.f. 30-9-96 after being duly considered by the screening committee constituted for the purpose at the relevant time. His seniority in the grade of absorption i.e. in Grade Rs.1200-2040(RSRP) was assigned w.e.f. 7-11-90. They submit that based on the seniority list published on 1-2-1998 the respondent no.3 was promoted as Head Clerk on 1-4-1999 as per his turn.

9. The applicant was medically de-categorised on 16-6-1992 and was absorbed as a Junior Clerk. The contention of the applicant that there were vacancies of Senior Clerk in the year 1992 is an after thought. It is not verifiable at this distant date. The applicant had not made any representation for claiming absorption in the grade of Senior Clerk. In view of the Railway Board's instructions the case of the applicant cannot be reviewed after lapse of three years. The contention of the applicant that he was absorbed in the lower post and he was drawing less emoluments at the time of his medical decategorisation is not correct. It is only his apprehension.

10. Thus they pray for the dismissal of the OA.

11. The applicant has filed his rejoinder. He has contended that the contention of the respondents that equivalent grade of Diesel Assistant in the scale of Rs.950-1500 is Rs.1200-2040 in

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non-running grade is not correct. It would not have been the intention of the Railway Board to grant seniority to the medically de-categorised running staff in other cadre or categories by over-riding the vested rights of the individuals in respect of cadre by granting seniority in the higher grade by tagging on the lower grade seniority while absorbing them. He submits that the scale of pay of Rs.1200-2040 (non-running grade) is not an equivalent grade or post to the scale of pay of Rs.950-1500 in the running grade. He disputes the contention of the respondents that even by adding 30% of the minimum of the pay in the scale of pay of Rs.950-1500 cannot be considered as equivalent to the scale of pay of Rs.1200-2040. The contention of the respondents that there is a period of limitation for reviewing the case of the applicant in comparison with the respondent no.3 as per the instructions issued by the Railway Board is not correct. That period indicated by the Railway Board is not mandatory and is only a guiding factor. Thus the plea of limitation cannot be accepted. Hence he prays for the reliefs claimed in the OA.

12. The respondents have filed reply to the rejoinder saying that version of the applicant that the scale of pay in the lower grade of Rs.950-1500 cannot be equated with the scale of pay of Rs.1200-2040 by adding 30% to the minimum and maximum is not correct. The Railway Board introduced the policy of giving equivalent grade in the cases of medically incapacitated running staff by adding 30% to the minimum and maximum through letter dt. 2-9-77.

These instructions have been incorporated at sub para (iv) Para 1309 of Chapter XIII of the Indian Railway Establishment Manual Vol.I - 1989 Edition. Similar instructions are also to be found at sub-para(a)(iii)para 313 of Chapter III of the IREM Vol.I. They have extracted the relevant portion of the instructions of the Railway Board. They submit that the alternative post of Rs.950-1500 at the time of medical decategorisation of the applicant in the running grade is equivalent to Rs.1200-2040 in the non running grade. The applicant's seniority in the grade of Senior Clerk was correctly maintained from the date of his promotion from Junior Clerk to Senior Clerk. They have relied upon the instructions contained in the Railway Board letter dt. 2-9-1977 and para 1309 of the IREM Vol.I

13. After hearing the learned counsel we have to consider whether the action of the respondents can be regarded as an ~~act~~ of discrimination when they offered the post of Junior Clerk to the applicant on his medical decategorisation and when they offered the post of Senior Clerk to the respondent No.3 (who happened to be junior in the cadre of Fireman-A in the scale of pay of Rs.950-1500)

14. There may be certain instances where senior employees might have got medically decategorised earlier but had to be absorbed in lower grades while junior employees who get medically decategorised later when vacancies are available in equivalent grades get the benefit of higher grades.

For this reason the Railway Board considered facts in detail

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and issued instructions dt. w 11.1.79. Copy of letter is at Annexure-II which reads as follows:

"(1) Quite often it happens that due to vacancies not being available in equivalent grades a medically declassified employee has to be offered absorption in a lower grade. In some cases such employees refuse the lower grades in the hope of vacancies in higher grades materialising. It should be open in such cases for an employee to accept a lower grade with a request that if a vacancy in a grade equivalent to what he held before declassification occurs in the same cadre he should be considered eligible for the same in preference to a junior medically declassified employee. While the employee can be expected to put in an application when this contingency happens, it is also necessary for the administration suo moto, when considering a subsequently declassified employee for absorption in a cadre, to look into cases where senior declassified employees may have been absorbed in lower grades in the same cadre during previous three years and initiate a review. In this connection, attention is invited to Board's letter No. E(NG)11-73RE3/16 dt. 11-4-1975 desiring such a review cases decided before the date of that letter i.e. 11-4-1975 need not be reopened unless there are very exceptional circumstances.

(2) It is also not the intention that even after review the junior employee already absorbed and working in a higher grade should be displaced to make room for the senior. The senior may be promoted against the next vacancy arising in the grade and relative seniority in that grade refixed taking into account the position before medical declassification.

(3) Where a junior has already been absorbed in an equivalent grade but a senior gets medically declassified during the next three years period and has necessarily to be considered for absorption in the same cadre but no vacancy in a similar grade is available, he may be provisionally absorbed in a lower grade with the understanding that the next vacancy occurring in the higher grade would be given to him. On such vacancy occurring and his being posted therein seniority should be recast as per (2) above.

(4) There will be cases where a senior employee was absorbed in a grade taking into account his position before declassification and a junior subsequently got promoted to a higher grade but ultimately gets medically declassified and becomes eligible for alternative employment in a higher grade. It is not the intention that such cases which happened because of the efflux of time should be reviewed. "

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15. Discrimination in the act of the respondents can only be inferred when the applicant satisfies all or any of the following circumstances :

- (a) At the time of his medical decategorisation there were posts in the grade of senior clerk;
- (b) that he accepted the post of Junior clerk under protest; and
- (c) between 28-8-92 and 5-8-96 there were vacant post in the cadre of Senior clerk and in fact he did lay a claim for the same;

16. It is the contention of the respondents that the applicant accepted the post of Junior clerk without any protest and progressed well and got promotion w.e.f. 6-8-96 to the cadre of Senior Clerk. His first representation dt. 27-2-1997 long after the respondent no.3 was offered the post of senior clerk on his medical decategorisation. The contention of the applicant that when he was promoted to the post of Senior Clerk w.e.f. 6-8-96 when the respondent no.3 on medical decategorisation was offered the post of senior clerk, the respondent no.3 should have been considered junior to him for all purposes in the cadre of senior clerk. This cannot be accepted because a medically decategorised railway employee is eligible for protection of pay and seniority in the absorbed post. In the case of the applicant, also when he was offered the post of junior clerk from 28-8-92 he was fitted in the grade w.e.f. 23-4-89 the date on which he was appointed to the post of Fireman-A. Likewise when the respondent No.3 was medically

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declassified w.e.f. 10-6-96 he was given protection of his pay and seniority w.e.f. 7-11-90 the date on which he joined the post of Fireman A. Therefore the contention of the applicant that atleast when the respondent no.3 was absorbed in the alternative post in the cadre of Senior Clerk he should have been considered junior to the applicant cannot be accepted. The instructions of the Railway Board are clear in this regard. A medically declassified employee is eligible for protection of pay and seniority in the absorbed post.

17. Both the applicant and respondent no.3 were given the said benefits. It is on account of the said instructions the respondent no.3 became senior to the applicant in the grade of senior clerk and got promotion to the post of Head clerk w.e.f. 1-4-99.

18. Between 28-8-92 and 27-2-97 the applicant had not made any grievance.

19. From the material available on record it is not possible to accept the contention of the applicant that the respondents had acted in a discriminatory manner.

20. However the instructions contained in the Railway Board's letter dt. 11-1-79 quoted above may come to the rescue of the applicant to a certain extent. We have no objection to extend the said benefit to him if he is eligible. In case the applicant is promoted to the post of Head clerk in the next vacancy arising then the relative seniority of the applicant and the respondent no.3 in the

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cadre of head clerk shall be fixed taking into account their positions in the basic grade of Fireman A/Diesel Assistant before their medical deategorisation. We can help the applicant only to this extent.

21. We are not in a position to accede to any of the prayers made by the applicant in this OA.

22. Hence the OA has no merit.

23. However the respondent authorities may consider in case the applicant is promoted to the post of Head Clerk in the next available vacancy then they may examine the relative seniority of the applicant and respondent no.3 and refix the same taking into account their position in the basic grade before their medical deategorisation.

24. With the above observation the OA is disposed of. No order as to costs.

M. V. Natarajan
(M. V. NATARAJAN)
Member (A)

MD

B. S. Jai Parameshwar
(B. S. JAI PARAMESHWAR)
Member (J)

11.4.01

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11.4.2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

COPY TO:

1. HVR GRJ
2. HBSJP : MEMBER : (JUDL)
3. HMVN : MEMBER (ADMN)
4. HMSKA : MEMBER (ADMN)
5. D.R. (ADMN)
6. SPARE
7. ADVOCATE
6. STANDING COUNSEL

1ST AND II ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

~~THE HON'BLE MR. JUSTICE V. RAJA GOPALA~~
~~SEDDY - VICE CHAIRMAN~~

THE HON'BLE MR. BS. JAI PARAMESHWAR
MEMBER : (JUDL)

THE HON'BLE MR. NATARAJAN: MEMBER (ADMN)

~~THE HON'BLE MR. SK. AGRAWAL: MEMBER (ADMN)~~

DATE OF ORDER 11-4-2001

~~DA/RA/SP/NO.~~

DA. NO: 1186/99

~~ADMITTED AND INTERIM DIRECTIONS ISSUED~~

~~ALLUED~~

~~C.P. CLOSED~~

~~I.A. CLOSED~~

(7 copy)

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDER/REJECTED~~

~~NO ORDER AS TO COSTS~~

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
शेषण / DESPATCH

19 APR 2001

हैदराबाद न्यायपीठ
HYDERABAD BENCH