

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 454/93
T.A. No.

199

DATE OF DECISION 16. 02. 2001

Ramesh Chandra

Petitioner

Mr. Virendra Lodha

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. S.S. Hasan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(N.P. NAWANI)
Adm. Member


(B.S.RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 16.02.2001

OA No.454/1993

Ramesh Chandra s/o Shri Hari Ballabh Sharma r/o 25, Halwai Bazar, Phulera, Distt. Jaipur presently posted as TCM Grade-II in the office of Tele Communication Maintainer-I, Western Railway, Phulera, Distt. Jaipur

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai
2. Divisional Railway Manager, Western Railway, Jaipur

.. Respondents

Mr. Virendra Iodha, counsel for the applicant

Mr. S.S.Hasan, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

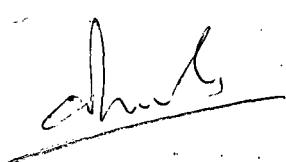
Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs :-

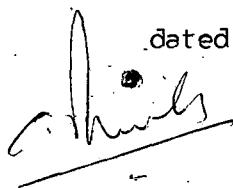
- "i) That the order Annexure-1, dated 3.6.1993 may be set aside and quashed.
- ii) That the respondents may be directed that in case petitioner is absorbed in the category of clerk, he shall be absorbed on the post of senior clerk or any higher post which is higher to the clerk.



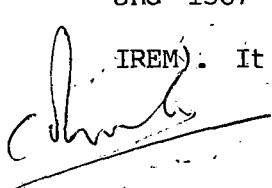
iii) That the respondents may be directed to give benefits of promotion in the cadre of clerks to the petitioner and as long as benefit of promotion is not granted to him his pay can not be reduced to his department.

iv) The respondents may be directed that the petitioner is not now required any qualified test and suitability test/selection test for promotion on the next higher post."

2. The facts of the case, as stated by the applicant, are that he was initially appointed on the post of Telecommunication Maintainer (for short TCM) on 1.1.72 in the pay scale of Rs. 260-400 in Jaipur Division of Western Railway. He had sustained injury and four fingers of his left hand had to be amputated. The Medical Board recommended his absorption ^{an} in alternative job where he was not required to use his left hand. The Screening Committee thereafter on 12.3.79 offered the post of Clerk to the applicant but the applicant, being more interested in performing technical job, submitted before the Screening Committee that he may be retained on the post of TCM and his request was accepted as indicated in Ann.A3 and A4. He was posted at Headquarters on the post of TCM where he was not required to use his left hand. He qualified the trade test for promotion to the post of TCM Gr.II on 31.3.80 and was promoted to the post of TCM Gr.II in the pay scale of Rs. 330-480 vide order dated 31.3.1980 (Ann.A5). However, vide order dated 13/16th June, 1980, he was reverted from the post of TCM and placed on leave. Aggrieved by this order of reversion to the category of TCM Gr.III, the applicant preferred a Writ Petition before Hon'ble the High Court, which was subsequently transferred to this Tribunal and on being registered as TA No. 263/92, was disposed of vide order dated 15.12.1992 (Ann.A6), quashing the order dated 13/16th June, 1980 but giving liberty to respondents to

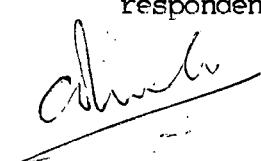


appoint him as Clerk (Goods/Luggage/Booking) w.e.f. 2.3.1979 and also stipulated that in such an eventuality, the applicant will be entitled to all promotions and other benefits to which he may be entitled had he been appointed on the post of Clerk on 2.3.1979. It was further stipulated that in case no such order (for appointing him as Clerk) is passed within a period of two months, the applicant shall continue to work as TCM Gr.II with further benefits regarding promotion etc. as may be fall due to him, and he may be given another opportunity to appear in the trade test for the post of TCM Gr.I within a period of 3 months from the date on which it is decided to continue him as TCM and if he qualifies in the test, he shall be promoted from the date his junior is promoted. The respondents thereafter issued the impugned order dated 3.6.93 (Ann.A1) by which the applicant was posted as Clerk w.e.f. 2.3.79. It has further been contended by the applicant that although he was posted as Clerk, but his seniority from 2.3.79 in pursuance of the order dated 15.12.1992 of this Tribunal, was not fixed and the respondents had not acted on rest of the directions and the benefit of promotion was denied to him and his pay was fixed in the scale of Rs. 260-400 w.e.f. 2.3.79, even though after passing the trade test for TCM Gr. II he was promoted as TCM Gr.II in the scale of Rs. 330-480 vide order dated 31.3.1980, (Ann.A5). He further contended that after his absorption in the category of Clerk, the necessary subsequent order of giving him promotion on the post of Senior Clerk ought to have been issued simultaneously for the reason that if subsequent order is not issued the pay of the petitioner stands reduced and even though he was working in the pay scale of Rs. 1200-1800, by the impugned order Ann.A1, he has been placed in the scale of Rs. 950-1500 ignoring the fact that the applicant was given higher pay scale of Rs. 330-480 w.e.f. 1.8.78. This action of the respondents was in violation of Rules 1304, 1305 and 1307 of the Indian Railway Establishment Manual (for short IREM). It has also been alleged by the applicant that IREM is



violative of Articles 14 and 21 of the Constitution of India in so far as it provides that a railway servant after being declared medically decategorised can be fixed in the lower pay scale. The applicant has consequently come before this Tribunal for grant of reliefs as already mentioned earlier.

3. By filing a reply, the respondents have denied the case of the applicant. It is contended on behalf of the respondents that once the applicant was declared medically unfit by the Medical Board, it was beyond the powers of the Screening Committee to continue keeping him as TCM and, therefore, it was not lawful for the Screening Committee to have found him fit for the post of TCM as indicated in Ann.A4. This being so, Ann.A4 did not create any right in favour of the applicant and the Tribunal was pleased, inter alia, to order on 15.12.1992 in TA No.263/92 that Department would be entitled to appoint him as Clerk w.e.f. 2.3.79. It is further denied that simply because ~~of the fact that~~ the applicant was wrongly continued on the post of TCM and had also been given a higher pay scale of Rs. 1200-1800, a right had accrued in his favour for claiming promotion to the post of Senior Clerk in the pay scale of Rs. 1200-2040 without passing the prescribed suitability test offered to him on 10.10.93. It has also been stated that an employee can get promotion in his line only as per the provisions of the service rules and no one can seek promotions against the prescribed rules and while the disability of the applicant can be a subject matter of sympathy, as far as the promotion in the clerical line is concerned, he is required to be treated at par with others and an unauthorised higher scale of Rs. 1200-1800 given to him ^{wrongly} ~~cannot~~ entitle him to by-pass the prescribed suitability test for the post of Senior Clerk in the pay scale of Rs. 1200-2040. It has also been contended on behalf of the respondents that applicant was correctly placed in the clerical

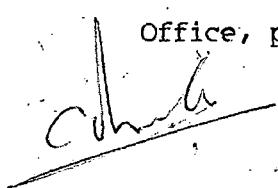


cadre after his medical decategorisation as per rules 2602 and 2604 of the IREM and was rightly placed in the pay scale of Rs. 950-1500 which was equivalent to his pay scale of Rs. 260-400 and was not entitled to be absorbed in the pay scale of Rs. 330-480 and consequently in the pay scale of Rs. 1200-1800 as claimed by him.

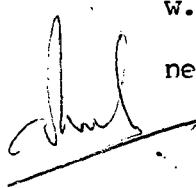
4. We have heard the learned counsel for the parties and have perused all the material on record, including the additional affidavit filed on behalf of the applicant.

5. On consideration of the rival contentions, we feel that the main issue that is to be decided in this OA is whether the applicant's continuation on the post of TCM and further promotion on the post of TCM Gr.II could be considered valid on the face of his decategorisation as recommended by a competent Medical Board, even though such continuation was on the recommendation of the Screening Committee. While examining this issue, we are also required to see whether the respondents have not implemented in *toto* the directions of this Tribunal rendered on 15.12.1992 in TA No. 263/92.

6. We are of the considered view that recommendations of a Medical Board can be modified only by a Review Medical Board. The Screening Committee cannot go beyond the recommendations of a Medical Board and if the Medical Board had recommended that the applicant was fit for alternative job where he was not required to use his left hand, it did not lie in the province of the Screening Committee to decide, on the basis of submissions made by the applicant, that he was fit to work in the post of TCM. It was also wrong for any authority to continue to engage the applicant on the post of TCM even though he was posted as TCM in the Headquarter Office, perhaps on the presumption that in the Head Office he will

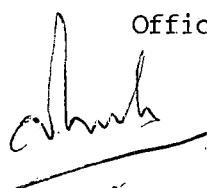


not be required to use his left hand. Such a recommendation of the Screening Committee and such continuous engagement of the applicant on the technical post of TCM cannot, therefore, be termed as valid and no cognisance could be taken of such continued engagement of the applicant on the post of TCM. Consequently, it follows that no exception can be taken when the respondents, on discovering such wrong continued engagement of the applicant, issued the order dated 3.6.1993 (Ann.A1) and absorbed the applicant in the clerical line in the pay scale of Rs. 950-1500. In the same order, it was mentioned by the respondents that the applicant will be entitled to seniority in the post of Clerk w.e.f. 2.3.79 in terms of the order dated 15.12.1992 of this Tribunal in TA No. 263/92. It is thus observed that the seniority of the applicant has been protected and even though orders about his posting as Clerk were issued on 3.6.93, he has been entitled to the seniority w.e.f. 2.3.79. It further follows that the promotions of the applicant in the clerical line i.e. from Clerk to Sr. Clerk etc. will be determined taking into account his seniority from 2.3.79. Further, if any suitability test is prescribed for promotion from Clerk to Senior Clerk, all those Clerks who are in the zone of consideration by virtue of their seniority had to face such suitability test and clear it before they can be promoted. It appears that the applicant was asked to face the suitability test on 10.10.93 but he did not appear in it and instead he was banking on a favourable decision from this Tribunal with regard to his claim of higher pay scale of Rs. 1200-2040 on the basis of his having been given the pay scale of Rs. 1200-1800 while he was wrongly continued on the post of TCM in the technical line against the specific recommendations of the Medical Board. We are afraid, we cannot come to the help of the applicant. Once he has been given clerical cadre because of his medical deategorisation and his seniority has been determined w.e.f. 2.3.79, he has to seek promotion in clerical line itself and necessarily pass the suitability test prescribed for promotion from



Clerk to Sr. Clerk. The applicant also cannot take the help of the order dated 15.12.1992 rendered in TA No. 263/92. It will be useful to extract the relevant portion of the said order "the respondents, will, however, be at liberty to appoint him as Clerk (Goods/Luggage/Booking) w.e.f. 2.3.79, if they so choose. In that case, the applicant will be entitled to all promotions and other benefits to which he may be entitled had he been appointed on the post of Clerk on 2.3.79". From a reading of the above direction, it is clear that what the Tribunal had provided was that if respondents choose to appoint the applicant as Clerk, he will have to be so appointed w.e.f. 2.3.79 and he will be entitled to all promotions and other benefits to which he may be entitled had he been appointed on the post of Clerk from 2.3.79. The first condition stipulated by the Tribunal was incorporated by the respondents in the impugned order Ann.A1 itself when they inserted the line that the applicant will be entitled to seniority in the post of Clerk from 2.3.79. As regards the promotion in the clerical line from Clerk to Senior Clerk, directions of this Tribunal cannot be read as the applicant being required to be promoted to the post of Senior Clerk de-hors the rules i.e. without passing the required suitability test. In order to be promoted to the post of Senior Clerk, the applicant had to be senior enough to be included in the list of eligible candidates and thereafter has to pass the suitability test. We are, therefore, not able to accept the contention of the applicant that he should be given the higher pay scale of the Senior Clerk without passing the prescribed suitability test.

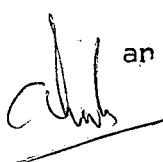
7. In his additional affidavit, the applicant has mentioned the case of one Smt. Geeta Rhatia whose date of initial appointment is 1.11.73 (Ann.A8 refers). She has been promoted on the post of Office Superintendent Grade-I (for short OS Gr.I) while the



applicant is still continuing on the post of OS Gr.II and, therefore, the applicant alleges that the judgment of this Tribunal dated 15.12.92 has not been complied with in "true and latter spirit". It is further stated that name of Smt. Geeta Bhatia appears at Sl.No. 8 with date of initial appointment as 1.11.73 while the applicant's name appears at Sl.No.12 with date of initial appointment as 1.1.72 and, therefore, the applicant contends that for all practical purposes he was senior to Smt. Geeta Bhatia. This is a new plea taken by the applicant and he has also not impleaded Smt. Geeta Bhatia and, therefore, we are not really required to adjudicate on this issue and this issue of his junior having been promoted at the level of OS Gr.I could be straighaway rejected. However, we have decided to look into the merits of this averment in the interest of total justice. We find that the seniority lists annexed with Ann.A8 are two separate seniority lists. In the seniority list of the Office Superintendents in the pay scale of Rs. 6500-10500 Smt. Geeta Bhatia is shown at SL.No.7 and her date of appointment is shown as 1.11.73. The name of the applicant does not figure in this seniority list. In the next seniority list for the category of "Mukhya Lipik" pay scale Rs. 5500-9000, applicant's name figures at Sl.No.12 and his date of appointment has been shown as 1.1.72 and this seniority list, for obvious reasons, does not contain the name of Smt. Geeta Bhatia. Thus, it is clear that the effort of the applicant in describing that both of them are in the same seniority list with positions at No. 8 (Smt. Geeta Bhati) and No. 12 (applicant) is misconceived as there cannot be any comparison between the seniority of two persons who are in two different grades. The applicant was appointed in the post of TCM and in the seniority list of TCM (III) his date of appointment has been shown as 1.1.72/1.7.72. Smt. Geeta Bhati shown to have been appointed on the post of Clerk w.e.f. 1.11.73. These dates of appointments are for two different posts and as already mentioned, there cannot be

any comparison between two persons occupying positions in different seniority lists. The fact remains that as per the implementation of the order of this Tribunal dated 15.12.92 in TA No.263/92 the seniority of the applicant in the post of Clerk has been fixed w.e.f. 2.3.79. The applicant cannot, therefore, get any benefit from comparison of his date of initial appointment with that of Smt. Geeta Bhatia as pleaded in his additional affidavit.

8. The applicant has also challenged the vires of IREM as violative of Articles 14 and 21 of the Constitution of India in so far as it provides that a railway servant after being medically declassified or incapacitated, can be fixed in the lower pay scale. We see no reason to accept the contention of the applicant in this regard. We have gone through the Chapter XIII of the IREM which deals with absorption of medically incapacitated staff in alternative employment. These provisions are not only not ultra-vires of Articles 14 and 21 of the Constitution of India as alleged but, on the other hand, exhibit a sound policy of the Railway Department in finding alternative employment, except in case of those employees who are completely incapacitated for further service in any post of the railways. In case of those who are declared fit in a lower medical category and eligible for retention in service in posts corresponding to his lower medical category, elaborate provisions have been made in this Chapter to find an alternative employment. As a matter of further help to such medically declassified employees, it has been also provided under para 1309 that an alternative post to be offered to a railway servant should be the post available to which he is suited, to ensure that the loss in emoluments is minimum and that low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available and the railway servant must be given an opportunity to choose himself whether he should accept the offer.



or reject it. A reading of the various provisions incorporated in Chapter XIII of the IREM will indicate that the railway administration, as a model employer, has made detailed provisions for offering alternative employment to a medically declassified employee and, therefore, there is no question of these provisions being violative of Articles 14 and 21 of the Constitution of India as alleged by the applicant. In fact, these provisions have stood the test of time over a long period and a large number of declassified railway employees must have been benefitted from these provisions. We (), therefore, find no justification at all in the vague challenge that has been raised in the pleadings of this OA against the provisions incorporated in Chapter XIII of the IREM.

9. In view of the discussions above, we find no merit in this OA and it is accordingly dismissed with no order as to costs.



(N.P.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman