

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 30/3/2001

OA 505/97

U.M. Mathur son of Shri Bhagwati aged about 55 years resident of House no. 3246, Kalyanji Ka Rasta, 1st Chauraha, Chandpole Bazar, Jaipur and working as Head Clerk, Grievance Cell, Chief Welfare Inspector, Office of the Divisional Railway Manager, Western Railway, Jaipur.

.... Applicant.

VERSUS

1. Union of India through the Secretary to Govt. of India, Department of Railways. Ministry of Railways, New Delhi.
2. General Manager (E), Western Railway, Churchgate, Mumbai.
3. Divisional Railway Manager, Western Railway. Jaipur.

.... Respondents

Mr. K.L. Thawani, Counsel for the applicant.  
Mr. U.D. Sharma, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)  
Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

The applicant has filed this OA under Section 19 of Central Administrative Tribunal's Act 1985 praying for the following reliefs:-

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(i) That the impugned order Annexure A-1 be quashed being illegal, unconstitutional and violative of article 14 and 16 of the Constitution.

(ii) That the respondents be directed by issuance of an appropriate order or direction to restore the seniority already granted vide Annexure A-8 with all consequential benefits.

2. As per the applicant, he was appointed as Assistant Station Master (ASM) in Grade Rs. 330 560 in Central Railway on 2.1.1967 and came on transfer to Western Railway in May, 1977. He was promoted to Grade 425-640 w.e.f. 14.7.1984 and further as ATNL on ad hoc basis in pay scale of Rs. 470-750 (Revised Rs. 1600-2660) from 28.10.1984. He was medically decategorised on 4.8.1992 and was redeployed as Head Clerk which post he occupied on 22.9.1992. This post of Head Clerk is grade Rs. 1400-2300. On his absorption as Head Clerk, he was assigned seniority in that cadre vide letter dated 11.3.1993. This seniority list was revised by the order dated 2.4.1993. On his representation, he submits, his seniority position was corrected placing him at sl. no. 1-A of the seniority list below Shri Ram Singh Meena and above Shri Sohan Lal Meena in the seniority list of 19.7.1994 vide letter dated 30.1.1996. A show cause notice was given to him by DRM, Jaipur vide letter dated 9.1.1997 proposing cancellation of the order dated 30.1.1996 and revising of his seniority to sl. no. 19 of 1-A in the seniority list. Against this proposal he made a representation on 24.1.1997 and he submits his seniority position has been revised by the respondents vide impugned order dated 16.2.1996 and issued on 16.1.1997 and he contends that this revision is not only prior to date of his representation but even the date of show cause notice. The applicant has placed reliance on Rule 1314 of Indian Railway Establishment Manual (IREM) to support his case. The applicant claims that he was entitled to count his full length of service as ASM in grade Rs. 425-640, which is a grade equivalent to that of Head Clerks but the respondents are denying him that benefit and are counting his seniority only from the date which he actually joined as Head-Clerk.

The short controversy involved in the matter is as to how the seniority of a railway servant is to be regulated on

his absorption in an alternative category, consequent to his medical decategorisation.

3. The respondents in their written reply have defended their action on the ground that in this case the medical decategorisation has been done at the instance and request of the applicant himself. It has been stated that in terms of Para 313(e) of IREM, the applicant is entitled to count seniority only from 22.9.1992 when he actually joined on the post of Head Clerk. The respondents have made a distinction between the employees declared medically unfit for their present duties and those who arrange their medical decategorisation at their own request ~~and those who arrange their medical decategorisation at their own request~~ and state that the later cannot claim benefit of their service in the equivalent grade in the cadre from which they have been decategorised. They will get only bottom seniority from the date of their absorption. Respondents contended that impugned order is not the final order and is in fact only a show cause notice indicating the proposed change and on which representations have also been invited in case any affected party so intends. Since no final orders have been passed, the respondents contend that this application is pre-mature and deserves to be dismissed on that account alone, as the applicant's representation dated 24.1.1997 was still under their consideration. Respondents deny having received any representation dated 3.7.1997 from the applicant.

4. The applicant has filed a rejoinder reiterating his stand and has stated that he was assigned correct seniority on the first occasion after he was absorbed as Head Clerk and the proposed change is only an after thought which has no specific rationable. He claims that he is due promotion based on the seniority assigned to him vide letter dated 30.1.1996.

5. We have heard the learned counsel for the parties and perused the written submissions and related provisions of IREM.

6. Learned counsel for the applicant placed reliance on Para 1314 of IREM which provides that the medically decategorised staff absorbed in alternative posts are to be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade. His contention was that the applicant's case is fully covered by this Rule and he is entitled to seniority as Head Clerk w.e.f. 14.7.1984 when he was promoted as ASM in the then grade of R. 425-640 which is equivalent to the grade of Head Clerk.

7. Learned counsel for the respondents opposed the contention of the other side on the ground that this medical decategorisation was at the request of the applicant and in his case provisions of Para 313(e) of IREM will apply and those those of Para 1314. He also challenged the maintainability of the application as in his view the application was pre-mature as the applicant had not exhausted the departmental remedy.

8. First on the ground whether the application is premature we find that the respondents admit having received the representation dated 24.1.1997. This OA has been filed on 19.11.97 and by then no decision had been taken on his representation. It will be useful to recall the provisions of Section 20 of the Administrative Tribunal's Act, 1985.

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with

the grievance; or

(b) where no final order has been made by the Government or other authority or other person competent to pass such order with regard to the appeal preferred or representation made by such person; if a period of six months from the date on which such an appeal was preferred or representation was made has expired.

In the instant case, the appeal against the proposed order was filed on 24.1.1997 and respondents admit that the same has been under their consideration. It is about ten months passed but no decision has been taken. So, the applicant is well within his rights to file this application. Thus we reject the contention of the respondents that this application is premature.

9. The facts in this case are indicative of the confusion in the respondent department itself. At one point of time, the seniority has been granted from 14.7.84 and then it is taken away again. On 30.1.1996, his name is proposed to be included in the seniority list with reference No. 7/84 and once again by the impugned order it is yet again proposed to be from the date he was absorbed as Head-Clerk.

Now let us look at the provisions of Para 313(e) of IREM on which reliance has been placed by the respondents. 313(e)-"In the case of staff who are not required to undergo periodical medical examination but who of their own accord request for change of category on grounds of health, and are recommended change of occupation by the medical authority, their change will be treated as transfer on own request and dealt with as per Para 312."

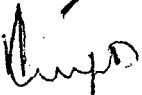
It is not the case of the respondents that the applicant while working as ASM did not require to undergo periodical medical examination. Even though he did request that in view of his health condition, he may be given a lighter job but the fact remains he was medically examined and was not considered fit to continue the cadre of ASM. It is not the respondents case that after having been declared medically decategorised he could have still continued as ASM. He was, infact, presented

before a Screening Committee, who found him fit to be absorbed as a Head Clerk. The entire procedure for absorption of a medically decategorised employee in an alternative category was followed. No such procedure has been envisaged under the rules 313(e) of IREM. The fact of the matter is that the applicant as ASM belonged to a category where periodical medical examination is an essential requirement and in such a case when the employee is declared medically unfit to continue as ASM, the provisions of Para 1314 of IREM shall only apply. provisions of this Para are extracted below:-

"The medically decategorised 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 decategorisation, total service in the equivalent and higher grade is to be taken into account. This is subject to the proviso that if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption."

10. From the facts of this case, it is clear that the applicant is entitled to claim seniority in the cadre of Head-Clerk w.e.f. 14.7.1984 when he was promoted as ASM in the equivalent grade and is entitled to all consequential benefits.

11. We, therefore, allow this OA and quash and set aside the impugned order dated 16.12.97/01.97 (Annexure A-1), we direct the respondents to assign seniority to the applicant in the grade of Head-Clerk w.e.f. 14.7.1984 and grant him all consequential benefits w.r.t. his juniors, subject to suitability/fitness as per rules. In the facts and circumstances of the case, the parties are left to bear their own costs.

  
(A.P. NAGRATH)

MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)