

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 12/4/2002

OA 366/98

Vinod Kumar Gupta, Commercial Inspector, W/Rly, Kota.
... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Kota Jn.
3. Anupam Mishra, Commercial Inspector, W/Rly, Agra Fort, Idgah Rly Colony, Agra.
4. Satyaveer Singh, Commercial Inspector O/o Divisional Rly Manager, W/Rly, Kota Jn.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicant ... Mr.V.P.Mishra
For Respondents No.1&2 ... Mr.U.D.Sharma
For Respondents No.3&4 ... Mr.P.P.Mathur,

brief holder for Mr.R.N.Mathur

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

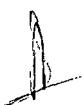
The applicant is a Commercial Inspector who is aggrieved with the seniority assigned to private respondents No.3 and 4, Shri Anupam Mishra and Shri Satyaveer Singh, in the category of Commercial Inspectors on their absorption in this cadre after having been declared medically declassified in their erstwhile category of Goods Guards. The applicant had earlier filed OA 406/96 with a prayer that the respondents be restrained from revising the seniority of the applicant vis-a-vis the private respondents. The said OA came to be disposed of finally by the orders of this Bench dated 9.10.96 directing the respondents to decide the representation of the applicant on merits dealing with all the points raised



by him. In pursuance of these directions, the respondent communicated their decision vide letter dated 28.9.98 (Ann.A/1) and intimated the reasons of placing the private respondents above the applicant in the seniority list. By filing this OA he has challenged this order dated 28.9.98 on various grounds.

2. Some of the facts which are relevant to the grounds taken by the applicant in support of his claim are that he had been officiating on ad hoc basis as a Commercial Inspector in the pay scale of Rs.1400-2300 and that the respondents delayed the regular selection to this post by many years. Then the selection was initiated in the year 1989 for five posts, which were increased to nine in the year 1992. The final panel was prepared only on 12.2.93 and the applicant was regularised on the post w.e.f. 16.2.93. Vide order dated 3.2.95 he was further promoted to the post of CMI grade Rs.1600-2660. By the same order the private respondents were absorbed in the category of CMI grade Rs.1400-2300. Contention of the applicant is that when the order dated 3.2.95 was issued, by which the private respondents were absorbed in the cadre, he had already moved to the next higher grade and there should have been no reason for these private respondents having been placed above him in the seniority. It has been further stated by the applicant that when the private respondents were being considered for absorption as CMIs, they had given an undertaking that they will not claim seniority before they have successfully completed their training. According to the applicant, the private respondents completed their training only in the year 1994. They cannot be given seniority before that date.

3. We have perused the averments in the OA and reply of the respondents and heard the learned counsel for the parties.

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4. First ground raised by the learned counsel for the applicant was that in the earlier OA filed by the applicant the Tribunal had directed vide order dated 9.10.96 to take a decision on the applicant's representation within a period of three months from the date of receipt of copy of the order but the respondents did not act in time to comply with the directions of the Tribunal and took a decision only on 30.7/28.9.98. While referring to the decision of the Tribunal in the case of K.V.Ghanasampandan v. UOI & Ors, 2001 (2) ATJ 64 the learned counsel stated that when the orders of the Tribunal are not complied with in the time specified and no extension has been sought, any order passed thereafter would be null and void. Regarding selection of the applicant, he submitted that for a number of years the selection had not been conducted and suddenly the vacancies were clubbed and the process initiated in 1992. This itself was not sustainable in law in the face of judgement in the case of Ranjeet Singh Gathala v. UOI & Ors., 2000 (2) ATJ 394. He also asserted that since the applicant had been working on ad hoc basis for a number of years and in continuation of which his services were regularised, he is entitled to seniority from the date he started working on ad hoc basis. In support of his contention, he relied upon orders of Hon'ble the Supreme Court in the case of T.Vijayan and Others v. Divisional Railway Manager & Ors., 2000 SCC (L&S) 444.

5. The contentions raised on behalf of the applicant were strongly refuted by the learned counsel for the respondents, first by stating that under the rules, as applicable in the respondent department, there is no provision of not clubbing of vacancies and necessarily holding selections against year wise vacancies. Ad hoc promotion is ordered for short periods and the seniority counts only from the date of regular promotion. While opposing the argument of the opposite side that any order passed in a case where

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Tribunal had directed passing of the orders within a given time frame, the learned counsel referred to Judgement of Chennai Bench of the Central Administrative Tribunal in the case of M.P.Venkataraman v. UOI, 1992 (1) SLJ (CAT) Madras 346, and Gurudayal Singh v. UOI, 1992 (3) SLR 228 and submitted that in the facts of the cases orders passed after the expiry of the time indicated by the Tribunal were not held to be invalid. In respect of counting seniority from the date of regular promotion or ad hoc promotion, the learned counsel cited the case of Swapan Kuma Pal & Ors. v. Samitabhar Chakraborty & Ors., 2001 SCC (L&S) 880. In support of action of the respondents, the learned counsel stated that the seniority of medically declassified employees on their redeployment in other cadres is governed by specific rules and the department has strictly followed the rules while assigning seniority to the private respondents in the cadre of CMIs.

6. We have considered the rival contentions carefully and the judgements cited by the learned counsel on either side.

7. One plea raised by the learned counsel for the applicant was that while absorbing the medically declassified employees into other cadres the rights of the employees working in the cadre in which such absorption is done have to be taken care of. He strongly emphasised that as far as possible the absorption must be done in the category or in the department in which such medically declassified employees originally belong. In a similar case, in OA 222/96, R.S.Agarwal & Ors. v. UOI & Ors., decided on 19.11.2001, we had the occasion to examine the same plea which had been put forth on behalf of the applicant in that case. After going into the rule position and discussing this mechanism of absorption of medically declassified employees, we had rejected the plea as having no merits and the same view we hold

in this case. In so far as assigning the seniority to the applicant in the grade of CMI scale Rs.1400-2300 from the date he was promoted on ad hoc basis, we find that the applicant had filed an MA 56/2001 seeking the same relief and seniority w.e.f. 23.5.85. After considering the arguments, this prayer has already been rejected. We are constrained to observe that this fact was not brought to our notice by the learned counsel for the applicant while making out a case on this point and for strange reasons this was also not so stated by the learned counsel for the respondents.

8. The next contention is that since the private respondents were absorbed in the cadre of CMIs only w.e.f. 13.12.94, as per orders dated 21.6.95, they cannot be granted seniority from an earlier date. More so, when they had themselves given an undertaking that they will not claim seniority before completion of training. We are not impressed with this argument as this has no force. When there are specific rules governing seniority in the case of medically declassified employees, any undertaking given has no relevance. The status gets determined under the provisions of rules and not by mere declarations. The respondents have been assigned seniority w.e.f. the year 1990 by taking into account the fact that they were holding the post in the equivalent grade as Guards from that years. The impugned order has explained the rule position clearly and we do not find any scope of interference. The plea that this impugned order was passed much after the time granted by the Tribunal was over, also does not hold force as it has already been held in the cases of 'M.P.Venkataraman' and 'Gurudayal Singh'. The case of 'K.V.Ghanasampandan' relied upon by the applicant was only in the face of the facts of that case which related to the disciplinary proceedings which are governed by some different set of statutory rules and where the delays in taking action have their own

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consequences. In the instant case, if the applicant felt that Tribunal's order had not been implemented within the time granted, it was open to him to have agitated the matter by filing Contempt Petition, which he has not done. We do not see any infirmity in the orders of the respondents in determining seniority of the private respondents.

9. We, therefore, dismiss this OA having no merits.
No costs.

J.K.Kaushik
(J.K.KAUSHIK)

MEMBER (J)

A.P.Nagrath
(A.P.NAGRATH)

MEMBER (A)