

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May kindly see
Date 20/3/03

O.A. No. 239/2001
T.A. No.

199

H.M.L. J.W.

DATE OF DECISION _____

Harish Kumar

Petitioner

C.B. Sharma

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. S. S. Hassan for respondent No.1 to 4.
None present for respondent No.5.

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. A. P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

(A. P. NAGRATH)
MEMBER(A)

(G. L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 21/12/2003

O.A. No. 239/2001.

Harish Kumar Sharma S/o Shri Sher Singh Sharma aged about 40 years, resident of 37, Ganesh Colony outside Gangapole Gate Jaipur and Presently posted as Commercial Inspector, Western Railway, Phulera (Jaipur).

... APPLICANT.

versus

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur.
3. Senior Divisional Personnel Officer, Western Railway, Jaipur.
4. Senior Divisional Commercial Manager (Establishment), Western Railway, Jaipur.
5. Vivekanand Sharma, Commercial Inspector, Western Railway, Jaipur.

... RESPONDENTS.

Shri C.B. Sharma counsel for the applicant.
Mr. S. S. Hassan counsel for respondent no. 1 to 4.
None present for respondent no.5.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

The applicant had joined commercial department of Western Railway as a Commercial Clerk in the pay scale of Rs.975-1540 on 10.09.1998. He was promoted to the next pay scale of Rs.1200-2040 in the year 1991. By order dated 03.07.1995, he was further promoted to the post of Commercial Inspector in the then scale of pay of Rs.1400-2300 (now revised to Rs.5000-8000). The private respondent No.5, Shri Vivekanand Sharma, was appointed as a Goods Guard w.e.f. 01.04.1992 in the pay scale of Rs.1200-2040. Shri Vivekanand Sharma was medically declassified in the year 1996 and was redeployed to



the post of Commercial Inspector in the scale of Rs.5000-8000 on 19.12.1996. By order dated 20.08.1999 (Annexure A-3), Shri Vivekanand Sharma, was assigned seniority as Commercial Inspector w.e.f. 01.04.1992, thereby he was placed senior to the applicant in the category of Commercial Inspector. The applicant represented against the said order on 13.09.1999. His representation was rejected by order dated 17.02.2000 (Annexure A-1), by which he was informed that seniority assigned to Private respondent No.5 was as per rules and did not warrant any change. It is this order dated 17.02.2000 which has been assailed by the applicant by filing this OA. Prior to this impugned order and even before determining the seniority of the private respondent No.5 in the category of Commercial Inspector, the applicant had been promoted further to the next higher grade of Rs.5500-9000, by order dated 12.05.1999. The applicant seeks directions that the order dated 20.08.1999, by which respondent no.5 was assigned seniority and the order dated 17.02.2000 by which the applicant's representation has been rejected, be quashed and set aside and he be granted all the consequential benefits. His further prayer is that the respondents be directed not to revert him from the pay scale of Rs.5500-9000.

2. The official respondents No.1 to 4 and respondent No.5 have filed their replies to this OA and the applicant has filed the rejoinder.

3. The short controversy which has come up for scrutiny before us is whether the seniority assigned to the respondent No.5 is correct according to rules. We have heard the learned counsel for the parties and perused the rule position.

4. The rules regarding absorption of medically incapacitated staff in alternative employment are contained in Chapter XIII of the Indian Railway Establishment Volume I (I.R.E.M. for short) The latest amendment to these rules was issued vide Advance Correction Slip No.71 under Railway Board's Orders 1999 No.E(NG)I/96/RE3/9(2) dated 29.04.1999. A reference to these rules was made by the learned counsel on the either side in support of their respective contentions. Learned counsel for the applicant Shri C.B. Sharma put forth his interpretation of these rules by stating that respondent No.5 who belonged to the category of running staff i.e. 'Guard'



could not have been absorbed as Commercial Clerk, as it was not an allied category for the running staff which in terms of Para 1304, the respondents are required to ensure. He further contended that in the same Para of IREM, there is also a direction to the Railway Administration that such absorption of medically decategorised staff should not adversely affect the interests of the staff of the category in which the absorption is done. On the question of assigning seniority to respondent No.5 w.e.f. 1.4.1992 learned counsel asserted that he could not have been assigned seniority in the pay scale of Rs.1400-2300 (now revised to Rs.5000-8000) from a date earlier than the date of absorption. His plea was that prior to the date of absorption i.e. 19.12.1996, respondent no.5 was in a lower grade of Rs.1200-2040 as a Goods Guard. The applicant came to hold the post in the scale of Rs.1200-2040 from the year 1991 i.e. earlier than respondent No.5. Since, according to the learned counsel, the applicant was promoted to the pay scale of Rs.1400-2300 in the year 1995 and respondent No.5 came to this category only in December 19th 1996, he could not have been placed above the applicant.

5. Learned counsel for the respondents, Shri S. S. Hassan, defended the action of the respondents and submitted that while deciding the equivalence of pay scales in respect of the running staff, the relevant rules are required to be borne in mind. He stated that while finding alternative post of the running staff, the element of running allowance is required to be reckoned. For this purpose he drew our attention to Para 1307 of IREM Vol.I which provides that in order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing, the same is required to be replaced by the equivalent existing scale of pay. On this matter, he drew our attention to the Railway Board's letter dated 01.10.1999, which has been brought on record as Annexure to the reply filed on behalf of respondent no.5. In this letter, a comparison of grades of running staff with those of stationary staff for the purpose of promotions/selection has been made. According to



Shri Hassan the pay scale of Goods Guard is Rs.1200-2040 which was revised to Rs.4500-7000 and which is now equated to the scale of Rs.5500-9000 in a stationery post. Since respondent no.5 has been continuing to work as Goods Guard w.e.f. 01.04.1992 learned counsel contended that there was no alternative but to grant him the pay scale of Rs.5500-9000 from the date of his absorption as a Commercial Inspector.

6. We have given our anxious considerations to the rival contentions. Having perused the Railway Board's Orders on the subject and the relevant paras in IREM, we find that the argument vigorously advanced by the learned counsel for the applicant, that respondent no.5 could not have been absorbed in the category of Commercial Clerk as he belongs to the category of running staff, has no force. The instructions in this respect are only directory. While deciding alternative absorption of the medically declassified staff, the Railway Administration have been asked to take care that the employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised.(emphasis supplied). It is clear from the wording itself that there is no mandate that the medically declassified staff must only be absorbed in operating department of the respondents as have been emphasised by the learned counsel for the applicant. The necessary steps for the purpose have been enumerated in Para 1306 of IREM and if the department comes to a conclusion that the medically declassified staff can be absorbed in whatever category the screening committee considers fit, no fault can be found with such a decision. Shri C. B. Sharma had also laid emphasis on the issue that alternative absorption should not adversely affect the interest of the staff in the category in which the absorption is done. The 'adverse effect' has been clarified in the relevant Para 1304 of IREM itself, which would mean that no reversion of any officiating railway servant is made to absorb the disabled/medically declassified staff. It is not the case of the applicant that on absorption of Shri Vivekanand Sharma as a Commercial Inspector, the applicant is being reverted from the pay scale of Rs. 1400-2300 i.e. 5000-8000.

7. Adverting to another plea of the applicant that on absorption, the seniority of respondent no.5 should have been



reckoned only from the date of absorption as he was in a lower grade before that date, is beyond our comprehension. Alternate employment by no stretch of imagination can mean any promotion. The redeployed person is absorbed only in the same or equivalent grade. In respect of the running staff, equivalent grade is decided by adding the element in lieu of the running allowance. After adding that the respondents have found that the applicant was to be absorbed in the grade of Rs.1400-2300 as he was holding the post of Goods Guard in the pay scale of Rs. 1200-2040. Obviously this equivalent grade cannot deprive respondent no.5 of the length of service which he put in in the same grade w.e.f. 01.04.1992. In his case it is not a promotion to the next higher grade but absorption in the alternative equivalent grade. The rules specifically provide under Para 1309 and 1310 that a medically decategorised railway servant will have his past service treated as continuous with that in the alternative post and he should be allowed seniority in the grade of absorption with reference to the length of service rendered as on non-fortuitous basis in the equivalent or corresponding grade before he is declared medically unfit. In the face of such categorical provisions in the rule, no fault can be found with the order dated 20.08.1999. (Annexure A-3) assigning seniority to the respondent No. 5 w.e.f. 01.04.1992.

8. Having said that, we find that very pertinent point was missed by the learned counsel of the either side but which in our considered opinion needed to be specifically highlighted by the learned counsel for the respondents. The Railway Board's letter dated 01.10.1999, which makes a comparison of grades of running staff with those of stationary staff for the purpose of promotion/selection clearly provides that the pay scale of Rs. 4500-7000 in which Goods Guard are placed is equivalent to the pay scale of Rs.5500-9000 in stationary posts and not Rs.5000-8000 as has been discussed before us. In fact the impugned order dated 17.02.2000 obviously states erroneously in the very first para that the equivalent grade for Goods Guard Rs.1200-2040/4500-7000. is Rs.1400-2300/5000-8000 and obviously in this respect the contents of the Railway Board's Letter dated 01.10.1999 have been overlooked. The equivalent grade of stationary posts has been indicated as Rs.5500-9000 against the post of Goods Guard and not Rs. 5000-8000. It appears that this anomaly obviously came to the notice of the



concerned officials subsequently and by order dated 14.12.2001 which has been brought on record by respondent no.5 as R-1, this discrepancy has been resolved. Respondent NO.5, Shri Vivekanand Sharma, has been ordered to be absorbed in the pay scale of Rs.5500-9000 w.e.f. 18.12.1996 as the revised equivalent grades have come into force w.e.f. 01.01.1996. Now that respondent no.4 has been absorbed in the grade of Rs.5500-9000 w.e.f. 18.12.1996 the applicant has lost the locus standi to challenge this order as on that date i.e. 18.12.1996, he was only in the grade of Rs.5000-8000. An employee in a lower grade cannot have any right to challenge the seniority position of higher grades specially when he was not even the senior most person in his category and grade on that date.

9. The applicant has sought protection against his reversion which has been proposed vide order dated 07.05.2001 (Annexure A-12). Since we have come to the conclusion that respondent no.5 has been correctly placed in the pay scale of Rs.5500-9000 w.e.f. the date of his absorption as Comercial Inspector we do not find any scope for interfering with the order dated 07.05.2001 and hence cannot grant any relief to the applicant in that regard.

10. The applicant has failed to make out any case in his favour. This application is devoid of merits and is, therefore, dismissed. No costs.

lmpd
(A. P. NAGRATH)
MEMBER (A)

G. L. Gupta
(G. L. GUPTA)
VICE CHAIRMAN