

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 78/2002  
T.A. No.

200

DATE OF DECISION \_\_\_\_\_

Nand Kishore Gupta

Petitioner

Mr. Rakesh Sharma

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. Tej Prakash Sharma

Advocate for the Respondents(s)

CORAM:

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

The Hon'ble Mr. A.P. Nagrath, Member (Admn.)

(A.P. Nagrath)  
Member (A)

(G.L. Gupta)  
Vice Chairman

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 ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

GA 76/2002

DATE OF ORDER: 25.04.2003

Nand Kishore Gupta son of Shri Ghanshyam Dutt Gupta aged about 37 years, resident of 1/756 Malviya Nagar, Jaipur.

.... Applicant:

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Power House Road, Jaipur.
3. Officer on Special Duty, Head Office, North West Railway, Loco Colony, Jaipur.
4. Shri Shashi Bhushan, Head Clerk, C/o Office of Station Manager, Jaipur Junction.
5. Shri Satya Prakash Meena, Sr. Clerk, C/o Loco Forman Office, Bhulera (Raj.).

.... Respondents:

Mr. Rakesh Sharma, Counsel for the applicant.

Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice G.L. Gupta, Mice Chairman

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER MR. A.P. NAGRATH

This application has been filed challenging the absorption of private respondents nos. 4 & 5 into clerical cadres of MOOG Unit. The respondent nos. 4 & 5 were earlier borne on the cadre of running staff and on their medical decategorisation, they have been absorbed in MOOG unit and assigned seniority by giving the benefit of length of service rendered by them in equivalent grades in the erstwhile cadres.



2. The main plea of the applicant is that absorption of these medically decategorised persons from the running categories to the clerical cadres is a violation of the instructions contained in the Master Circular No. 25/91. It is contended that the respondents have issued two orders dated 9.11.2001 and 10.1.2002 whereby respondent no. 4, Shri Shashi Bhushan, has been absorbed on the post of Head Clerk under Station Superintendent and respondent no. 5, Shri Satya Prakash Meena, has been absorbed on the post of Sr. Clerk. The applicant alleges that this absorption is without application of mind and contrary to rules as this will adversely affect the promotional prospects of MCOG Unit. It has been asserted that there is no provision under which non-running staff can be absorbed on alternative job in another category for the reason that in the running categories itself, there are various jobs <sup>2</sup>where medically decategorised could be adjusted.

3. In their reply, the respondents have defended their action of absorbing the medically decategorised staff of MCOG category depending on the availability of vacancies and suitability judged by the Screening Committee. The respondents contended that absorption of medically decategorised persons is strictly in accordance with the rules. The respondents' contention is that it is a policy decision of the Railway that medically decategorised persons are adjusted against suitable posts as per available vacancies as per suitability. Their pay and pay scales are required to be protected. Such absorption can be done in any of the categories and MCOG Unit cannot be an exception.

4. In the rejoinder, filed by the applicant, he has highlighted his grievances by stating that Shri Satya Prakash Meena who was absorbed on the post of Sr. Clerk in the MCOG Unit vide order dated 10.1.2002 has been further promoted to the post of Head Clerk on 6.2.2003 while the applicant who was already Sr. Clerk in the MCOG Unit since 31.7.97 still continues to work on the

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further  
same post. He has also annexed a letter dated 9.12.86 in which it has stated that no further absorption of medically decategorised could be made in MOOG Unit after 1986.

5. Mr. Rakesh Sharma, learned counsel for the applicant, drew our attention specifically to Paras Nos. 6.1 and 6.2 of Master Circular No. 25/91 and has stated that respondents nos. 4 & 5 could only be adjusted against the categories as enumerated in Para 6.2 and their absorption in MOOG Unit was violation of these instructions.

6. On the other hand, Mr. T.F. Sharma, learned counsel for the respondents, submitted that there is no cause of grievance for the applicant as absorption of private respondents nos. 4 & 5 is strictly in conformity with the instructions contained in Master Circular No. 25/91.

7. It is apparent that both the learned counsel are quoting Master Circular No. 25/91 in support of their respective contention. We have carefully gone through the instructions in this Master Circular which deals with absorption of medically decategorised of non-geratted staff. It will be relevant to refer to the specific provisions which are relevant to the controversy before us.

Para 5.3 states as under:-

"The Railway Administration should ensure, while absorbing medically decategories staff in alternative employment, the interest of staff in service in that cadre are not adversely affected as far as possible."

Para 6, on which reliance has been paid by the applicant is stated in the following terms :

"6. Points to be kept in view while absorbing in alternative employment.

6.1 Medically decategorised staff may as far as



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possible be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts can be utilised.

For this purpose, attempt should be made to absorb the disabled railway servants not only within the divisions or the departments but also in another divisions or departments.

6.2 In the case of medically unfitted/decategorised running staff preference for absorption may be given in the following categories.

- (a) Power Controllers (b) Assistant Loco foreman
- (c) Instructors in Zonal Schools (d) Janitors
- (e) Shedman (f) Job reorder (g) Telephone Clerks
- (h) Clerks in Control Office (i) Hostel Warder
- (j) Hospital Superintendent (k) Welfare Inspector
- (l) Wagon Movement Inspector and (m) Trains Clerk.

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Para 8 lays down steps to be taken for finding alternative employment. It provides for setting up a Committee comprising of two or three officers and this Committee is required to examine and determine suitability of the medically decategorised railway servants for certain categories of posts with emoluments as near as possible to his earlier emolument and identify the post required to be offered to him.

Para 8.4 provides as follows :-

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"If there is no immediate prospect of employment in his division, sub division, office and city, the name of the Railway servant with particulars as given in sub paragraph 8.7 below will be circulated to all other offices or establishments where suitable employment is likely to be found."

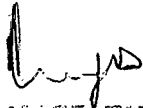
8. A careful reading of these instructions makes it obvious that in so far as the policy is concerned, the same enjoins that medically decategorised railway servants are required to be offered alternative employment in other categories for which they are found suitable; protecting their pay and pay scales. In respect of the running staff, the element of running allowance is required to be borne in mind while determining other equivalence of pay scale. All instructions ~~other~~ are in the form

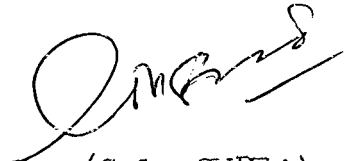


of guideline which are required to be followed to the extent feasible and possible. It is obvious that medically decategorised staff in other than recruitment grades, when absorbed in alternative grades will definitely have some impact on the prospects of those already available in their cadre depending on length of service put in by such re-deployed persons in the equivalent grade in their erstwhile cadres. The Screening Committee is required to make efforts to cause minimal effect while deciding and identifying posts for absorption of such staff in alternative cadres and to ensure that the interest of the staff in that cadre are not adversely affected as far as possible. (emphasis supplied) (Ref. Para 5.8 supra)

9. In fact, Para 6.4 of this circular goes to the extent of providing that if there is no immediate prospect of employment in his own division, the name of the railway servant will be circulated to other establishments where suitable employment is likely to be found. Harmonious construction of these guidelines is that medically decategorised staff can be absorbed in any of the categories/cadres depending on the availability of vacancies and their own suitability. MCOG Unit cannot be any exception to the same. Interestingly categories mentioned in Para 6.2, to which our attention was drawn by the learned counsel for the applicant, do not all belong to running categories. These are only illustrative examples for consideration of the Screening Committee. If the Committee does not find it possible to absorb the decategorised running staff in any of these categories, it would be open to the committee to explore ~~any~~ other avenues for identifying suitable vacancies. We see no infirmity in the action of the respondents in absorbing the respondents no. 4 & 5 in MCOG Unit.

10. We, therefore, dismiss this OA as having no merit but with no order as to costs.

  
(A.P. NAGRATH)  
MEMBER (A)

  
(G.L. GUPTA)  
VICE CHAIRMAN