

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 3-12-04

OA No.191/2002

1. Anoop Kumar Roberts s/o late Shri Arthur Roberts, aged about 48 years r/o Plot No.3, Gurudwara Dispensary Lane, Bhimmandi, Kota, at present posted as Head T.T.E., Western Railway Kota Division, Kota.
2. Bharat Lal Meena s/o Shri Mula Ram Meena, aged about 49 years, r/o Plot No.36, Kailashpuri, Bharatpur, at present posted as Head T.T.E., Western Railway, Kota Division, Gangapurcity.
3. Raghunath Singh Rajawat s/o Shri Bajrang Singh Rajawat, aged about 45 years, H.No.72 r/o Near Dadwara Post Office, Kota, at present posted as Head T.T.E., Western Railway, Kota Division, Kota.
4. Jagdish Prasad Sharma s/o Shri Behari Lal Sharma, aged about 55 years r/o New Basti, Sogaria Distt. Kota, at present posted as Head T.T.E. Western Railway, Kota Division, Kota.
5. Vinod Sharma s/o Shri Ramji Lal Sharma, aged about 47 years r/o 106, Janakpuri Mala Road, Kota Jun. at present posted as Head T.T.E., W.R. Kota Division, Kota.
6. Dominic Francis Romare s/o Sh. T.F.X. Romare, aged 39 years r/o 963-B, New Railway Colony, Kota presently posted as Head TTE, W.R.Kota.

.. Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Shri Ajay Sharma s/o Shri Banwari Lal Sharma r/o Rangpur Road, Bapu Colony, Kota, presently assigned posting under D.C.T.I., Western Railway, Kota.

.. Respondents

Mr. R.N.Mathur, counsel for the applicants

Mr. S.S.Hasan, counsel for respondent 1 & 2

Mr. Manish Bhandari, counsel for respondent No.3

OA No.324/2003

1. Guru Darshan Singh s/o Shri Bachchan Singh, aged

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about 51 years, r/o C-2, Jain Tower, Bal Mandir Road, Kota.

2. B.R.Singh s/o Gordhan Singh, aged about 51 years r/o Railway Quarter No. 53/B, Near Railway Colony, Kota, at present posted as TTI in the Western Central Railway, Kota Division, Kota.

3. Suresh Chand Gupta s/o Shri Ramesh Chand, aged about 56 years r/o Lane No.4, Shavitri Colony, near Railway Station, Kota, at present posted as TTI in the Western Central Railway, Kota Division, Kota.

.. Applicants

Versus

1. Union of India through General Manager, Western Central Railway, Jabalpur.

2. Divisional Railway Manager, Western Central Railway, Kota Division, Kota.

3. Senior Divisional Commercial Manager, Western Central Railway, Kota Division, Kota.

4. Shri Ajay Sharma s/o Shri Banwari Lal Sharma, r/o Rangpur Road, Bapu colony, Kota, presently assigned posting under DCTI, Western Railway, Kota.

.. Respondents

Mr. R.N.Mathur, counsel for the applicants

Mr. S.S.Hasan, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

By this common order, we propose to dispose of the aforesaid OAs as the decision in OA No. 191/2002 will have direct bearing on OA No. 324/2003.

2. The applicants in both the OAs are aggrieved by absorption of private respondent on the post of Travelling Ticket Inspector (TTI) in the pay scale of Rs. 5500-9000. The grievance of the applicants in OA No. 191/2002 is that the private respondent could not have been absorbed on the post of TTI on account of medical deategorisation for varieus reasons

stated in the OA and the applicants have prayed that the impugned order dated 3.4.2002 (Ann. Al) whereby the private respondent has been absorbed in the cadre of TTI pay scale Rs. 5500-9000 against the newly created post be quashed and set-aside and appropriate direction be issued to the respondents to the effect that medical decategorised persons are not entitled to be absorbed in ticket checking branch.

2.1 In OA No. 324/2003, precise grievance of the applicants therein is against inclusion of the name of the aforesaid private respondent in the eligibility list dated 2.6.2003 (Ann. Al) prepared for selection to the post of Chief Ticket Inspector (CTI) pay scale Rs. 6500-10500 whereby name of private respondent find mention at Sl. No. 1 of the impugned list and name of the applicant, Suresh Chand Gupta, find mention at Sl. No. 5 whereas name of remaining two applicants find mention in the reserved list at Sl. No. 1 and 3 which will be operated if the candidates in list 'A' is unwilling to appear in the selection test. In relief clause, the applicants in this OA have prayed for quashing the impugned order dated 2.6.2003 (Ann. Al) with further direction that private respondent shall not be considered for promotion to the post of CTI in pursuance of notification dated 2.6.2003.

3. Now few relevant facts which are common in both these OAs may be noticed.

3.1 The applicants in these OAs were initially appointed as Ticket Collector in the pay scale of Rs. 3050-4590 under direct recruitment quota on different dates as mentioned in the OAs, admittedly, prior to the appointment of private respondent, namely, Ajay Sharma as Goods Guard on 28.6.91 in the pay scale of Rs. 4500-7000 in running category. It may be relevant to mention here that the scale of Rs. 4500-7000 of

Goods Guard which was classified as running category has been treated equivalent to the scale of Rs. 5500-9000 in the non-running category post pursuant to Railway Board letter dated 1.10.99 which makes a comparison of running staff with those of stationary posts. The applicants in OA No. 191/2002 are presently holding the post of Head TTE in the pay scale of Rs. 5000-8000 in Western Railay, Kota Division. Thus, admittedly they were drawing lesser pay scale than the private respondent from very inception when they were appointed as Ticket Collector and further promoted as Head TTE in the year 1993/96 whereas the private respondents was drawing higher pay scale from the very inception, when he was appointed as Goods Guard in the year 1991, which scale of the running category has been equated to the scale of Rs. 5500-9000 in stationary posts, when the private respondent was absorbed on account of medical deategorisation. It may be relevant to mention here that the applicants in OA No. 324/2003 though were initially appointed as Ticket Collector prior to the private respondent in the lower scale of Rs. 3050-4590, however, presently they are occupying the posts of TTI in the scale of Rs. 5500-9000 and they have been assigned seniority vis-a-vis private respondent from the date of drawing the said scale and as such private respondent was placed senior to the applicants of this OA in the impugned eligibility list dated 2.6.2003 (Ann.A1) prepared for promotion to the post of Chief Ticket Inspector pay scale Rs. 6500-10500. The case of the applicants as pleaded in the OA is that private respondent was declared medically unfit to occupy the post of Goods Guard presumably for the reason that he is suffering from serious ailment related to his back-ache. His case was considered by the screening committee for the purpose of absorption in alternative job. The screening committee submitted its recommendation and recommended that

private respondent can be adjusted or adsorbed as medically decategorise employee on the post of ACMI (Assistant Commercial Inspector) as can be seen from order dated 19.9.2001 (Ann.A4). The aforesaid order clearly provide that the screening committee recommended his name for the post of ACMI. After recommendation of the screening committee dated 19.9.2001, the respondent No.2 passed the order for absorbing private respondent on the post of ACMI in the pay scale of Rs. 5500-9000. An order was issued to this effect on 20.9.2001 (Ann.A5). In the aforesaid order, it was also stated that the private respondent has been recommended for appointment in the post of ACMI in the pay scale of Rs. 5500-9000, however, no post was available in this post, hence he was absorbed in the pay scale of Rs. 5000-8000 and he shall be absorbed in the higher pay scale of Rs. 5500-9000 as and when vacancy will become available. In this manner process of absorbing the private respondent being declared medically decategorised was concluded after his appointment on the post of ACMI vide order dated 20.2.2001 (Ann.A5). However, the decision which attained finality was reviewed and the impugned order dated 3.4.2002 (Ann.A3) was passed. The circumstances for reviewing the order dated 20.9.01 have not been revealed in the order dated 3.4.2002. It has been stated that the private respondent was found fit by the screening committee for absorption on the post of TT,I which statement is devoid of truth on the face of order dated 19.9.2001 (Ann.A4). It is further pleaded that medical decategorised can be absorbed in certain specified categories. Certain categories have been specified by the Railway Board in master circular issued on the subject. Copy of the circular dated 24.4.91 has been placed on record. Drawing assistance from this circular, it has been pleaded that as per para 6.1 of the master circular, medical

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decategorised employee should be absorbed in the alternative post which broadly fall in such category where background, experience in the earlier post can be utilised. It is pleaded that nature and duties of ticket checking staff and that of Guard are all together different. The only identical simbolrence between them is that both of them normally perform duties in train. However, duties of ticket checking staff are different. The applicants have also relied on the circular dated 31.1.96 (Ann.A7) which provide that employee should not be absorbed in the category of Ticket Collector even by seeking reversion as well as the so called settlement (Ann.A8) arrived at between the Western Railway Employees Union and the DRM, Kota wherein it was decided that medically decategorised staff shall not be absorbed in the ticket checking branch in future as per the policy. It is further pleaded that the employee who have been declared as medically decategorised and for that reason if his cadre or category is changed, such an employee shall not be entitled to the benefit of amended provisions and shall be treated as an employee who has been transferred 'on request' and thereby shall get bottom seniority. As such, the private respondent could not have been assigned seniority from the date of his appointment as Goods Guard thereby placing senior to the applicants. Based on these facts, it has been pleaded that absorption of the private respondent in the grade of TTI and also placing him at No.1 in the eligibility list prepared for promotion to the post of Chief Ticket Inspector pay scale Rs. 6500-10500 is contrary to the agreement arrived at between the Union and official respondents as well as contrary to the master circular issued by the Railway Board. The screening Committee has specifically recommended the case of the private respondents for his absorption on the post of ACMI, as such it was not permissible

for the respondents to absorb the private respondents in the cadre of TTI. It is further stated that to the knowledge of the applicants, the case of private respondent was alternatively recommended for absorption in the post of ATNL. In case the post of ACMI was not available in Kota Division, efforts should have been made to absorb the private respondent on the post of ACMI in other zonal railways. By not doing this exercise, the official respondents abdicated powers vested in them and private respondent has been absorbed in ticket checking staff only for giving undue benefit to him. These are the grounds which have been broadly taken by the applicants in both these OAs.

4. The official respondents as well as private respondents have filed separate replies, which are almost identical. It is stated in the reply that private respondent was medically decategorised and his case was placed before the screening committee, which has found him suitable for the post of CMI and TTI scale Rs. 5500-9000 and accordingly, he was absorbed as per rules and posted on a newly created post of TTI scale Rs. 5500-9000. It is further stated that private respondent was appointed on the post of Goods Guard, scale Rs. 4500-7000 on 28.6.91. In the seniority list dated 1.4.2000, the name of the private respondent could not figure because he was absorbed in the alternative job being medically decategorised from the post of Goods Guard. However, on absorption, his seniority has been circulated from the date he was working in the equivalent grade and thus, he was placed at Sl.No.1 and in the eligibility list dated 2.6.2003 his name will be included in the new seniority list. It is further stated that since the screening committee has found the private respondent suitable for the post of CMI and TTI, scale

Rs. 5500-9000, but since the vacancies were not available in CMI, therefore, the private respondent was initially absorbed as ACMI scale Rs. 5000-8000 vide letter dated 19.9.2001 (Ann.A4) with clear understanding issued on 20.9.2001 (Ann.A5) that as soon as the vacancy in the scale of Rs. 5500-9000 would be available, the private respondent will be absorbed in that grade and till such time his absorption in the scale of Rs. 5000-8000 was made an alternative arrangement. It is further stated that in the meantime, a post of TTI scale Rs. 5500-9000 was created on 2.4.2002 and private respondents was re-deployed against this newly created post vide order dated 1.4.2002. The allegation of the applicants that the case was reviewed by the screening committee has been denied. It is further stated that the private respondent was absorbed on the post of TTI vide office order dated 3.4.2002 which has approval of the competent authority i.e. the General Manager, Western Railway, Churchgate, Mumbai. The respondents have also placed copy of the recommendations of the screening committee dated 4.9.2001 on record. The respondents have also placed reliance on the latest instructions regarding re-deployment of medically decategorised persons issued by the Railway Board vide advance correction slip No.77 dated 3.6.99 and re-deployment of private respondents with the above advance correction slip. It is further stated that the private respondent was appointed as Goods Guard which was classified as running category and in the running category if an employee is declared as medically decategorised for the original job and considered fit for lower medical category the grade in the alternative post has to be decided in terms of Headquarter office letter dated 26.11.99 wherein the pay scale of Goods Guard i.e. Rs. 4500-7000 is shown equivalent to the scale of Rs. 5500-9000. Therefore, absorption of private respondent in

the category of TTI scale Rs. 5500-9000 is correct and covered in terms of rules and as regards the seniority vis-a-vis the seniority of the applicants, the same has been correctly assigned and the name of the private respondent has been included in the eligibility list as per his seniority calculated in terms of para 1301 to 1313 of IREM.

4.1 The private respondent in his reply has additionally stated that he was appointed as Goods Guard in the scale of Rs. 4500-7000 whereas the applicants were appointed in the ticket checking branch in the lower post of Ticket Collector in the pay scale Rs. 3050-4590 under direct recruitment quota. Thus, the answering respondent was appointed on higher post in higher grade and he was entitled for all the benefits under the running duties. Besides what has been stated by the official respondents, which has been noticed in the earlier part of this order, the private respondent has also stated that in terms of para 1309 of the IREM, the past services of a medically declassified employee who has been absorbed in alternative post shall be treated as regular and continuing for all purposes and such an employee shall be entitled for all the benefits of the alternative post. Thus, according to the private respondent, no infirmity can be found in the impugned orders and he has been correctly assigned seniority and correctly absorbed against the post of TTI scale Rs. 5500-9000 on the recommendations of the screening committee since the vacancy became available by creation of the post.

5. The applicants have filed rejoinder in OA No.191/2002 whereby it is additionally pleaded that the case of the private respondent was considered for the post of ATNL also, which is an alternative job. The private respondent himself

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applied for the aforesaid post in pursuance of a notification issued on 18.2.2001. A list of eligible candidates was declared on 24.7.2001 in which the name of the private respondent find place at Sl.No.9. True copy of the aforesaid list of eligible candidates is placed at Ann.A11. The applicants have reiterated that the private respondent could have been absorbed in the aforesaid post.

6. We have heard the learned counsel for the parties and have gone through the material placed on record.

6.1 During the course of arguments, the learned counsel for the applicants has raised many fold contentions in order to justify the case of the applicants that the absorption of private respondent is not proper and once he was absorbed on the post of ACMI, there was no necessity to again absorb him on the post of TTI at the cost of the applicants and further assigning seniority and thereby including his name in the impugned eligibility list over and above the applicants, who are also holding the post of TTI. In order to substantiate these submissions, the learned counsel for the applicants while drawing our attention to Ann.A7 in OA No.191/2002 which are minutes of the meeting dated 3.4.2002 whereby against item No.6, it has been recorded that "decategorised staff will not be absorbed in ticket checking branch in future as per the policy", argued that in view of the agreement arrived at between the trade union and the official respondents, it was not permissible for the respondents to absorb the private respondent in ticket checking branch. The learned counsel for the applicant argued that the agreement arrived at between the trade union and the employer must be adhered to and given effect in view of the provisions contained as per Section 18 of the Industrial Disputes Act, which stipulates that such

settlement should be respected. For that purpose, the learned counsel for the applicants has also relied upon the judgment of the Apex Court in the case of Dena Bank vs. Kartik Dass Banerjee, JT 2001 (10) SC 140.

6.2 We have considered the submissions made by the learned counsel for the applicants. We do not agree with the submissions so made by the learned counsel for the applicants. As can be seen from Ann.A7, it is not settlement between trade union and the employer as contemplated under the Industrial Disputes Act. These are the minutes of the meeting where the item-wise discussion was held between the employees of the railway department whereby it was incorporated that declassified staff will not be absorbed in the ticket checking branch in future as per the policy. The minutes so recorded by the Divisional Railway Manager cannot bind the railway authorities and in any case it cannot be said to be a policy decision which necessarily emanates from the Railway Board in order to have its binding effect. Thus, the submission made by the learned counsel for the applicants that it is a settlement arrived at between the Western Railway Employees Union and the Divisional authorities and as such is binding settlement and must be adhered to, cannot be accepted. Thus, the decision rendered by the Apex Court in the case of Dena Bank (supra) is of no assistance to the applicants. Rather, there is a master circular issued by the Railway Board which lays down the procedure how the medically declassified employees should be absorbed in the alternative posts. The applicants have himself placed copy of the master circular dated 24.4.91 on record. Para 5.1 of the said circular provides the course of action which is required to be taken the moment an employee is declared medically declassified. Para 6.1 of the said circular provides that medically

~~persons~~
decategorised should be absorbed in such alternative posts which broadly allied in categories where background and experience in the alternative posts can be utilised. Para 8 of the master circular provides that cases of medically decategorised persons shall be considered for screening and for finding alternative employment, the recommendations made by the screening committee are conclusive. In view of the provisions contained in the master circular, the private respondent was found fit for absorption in the category of ACMI scale Rs. 5500-9000 or for the post of TTI scale Rs. 5500-9000 as per the statement showing position of decategorised staff dated 4.9.2001 (Ann.R2). Thus, in view of the provisions contained in master circular which contemplates the procedure that the medically decategorised persons shall be considered for screening for the purpose of finding alternative employment by the screening committee keeping in view the background and experience of a person in earlier posts, it is not legally permissible for the Divisional Railway Manager ~~to~~ suo-motu take decision that decategorised staff will not be absorbed in ticket checking branch in future as per the policy contrary to the instructions issued by the Railway Board. Further, the submission of the learned counsel for the applicants that once the private respondent was absorbed on the post of ACMI, he could not have been absorbed in the post of TTI by creating a post and such action on the part of official respondents ^{amounts to} to give undue advantage to the private respondent can also not be accepted. As can be seen from the pleadings made in the OA, the case of the applicants is that the case of the private respondent for absorption was specifically recommended against the post of ACMI and to the knowledge of the applicants his case was also alternatively recommended for absorption in the ATNL. The screening

committee did not recommend the case in the ticket checking branch being fully conscious of the master circular dated 24.4.91 (Ann.A6). Thus, the respondent No.2 could not have acted contrary to the recommendation of the screening committee. The respondents have placed on record copy of the recommendations made by the screening committee dated 4.9.2001 (Ann.R1) whereby the case of the private respondent was recommended by the screening committee not only for the post of ACMI scale Rs. 5500-9000 but also against the post of TTI scale Rs. 5500-9000. Thus, the contention put forth by the learned counsel for the applicants that the case of private respondents was not recommended by the screening committee for the ticket checking staff and his case was only recommended for the post of ACMI and alternatively for absorption against the post of ATNL cannot be accepted and deserved out right rejection.

6.3. Similarly, the contention raised by the applicants in the rejoinder that the private respondents could have been absorbed against the post of ATNL which post is in equivalent scale to which post the private respondent has also applied being aware of his medical decategorisation, cannot be accepted, inasmuch as, the private respondent applied for the post of ATNL pursuant to notification dated 18.2.2001 whereas the private respondent was medically decategorised and absorbed in alternative post in September, 2001, after that ~~date~~.

As such, the private respondent could not have been adjusted against the post of ATNL especially when the screening committee has found the private respondent suitable for the post of ACMI and TTI and not for the post of ATNL.

6.4. The learned counsel for the applicants further argued that the private respondent could have been absorbed against the post of ACMI. By creating the post in the cadre of TTI and

thus subsequently absorbing the private respondent, as such the action of the respondents is malafide. We have also considered this submission made by the learned counsel for the applicants and we do not agree with the same. The respondents in their reply have stated that vacancy of the ACMI scale Rs. 5500-9000 against which private respondent was to be absorbed was not available. Thus, he was initially absorbed in the scale of Rs. 5000-8000 vide letter dated 19.1.2001 with a clear understanding given by order dated 20.1.2001 that as soon as a vacancy of CMI in the scale of Rs. 5500-9000 would be available the private respondent would be absorbed in that grade and till such time his absorption in the scale of Rs. 5000-8000 was made as an alternative arrangement. It is further stated that the vacancy of CMI scale Rs. 5500-9000 would have been available after November, 2002. However, in the meantime, the post of TTI, scale Rs. 5500-9000 was created vide order dated 2.4.2002 and it was decided to redeploy the private respondent against the newly created post of TTI scale Rs. 5500-9000. Accordingly, private respondent was absorbed on the newly created post of TTI scale Rs. 5500-9000 vide order dated 3.4.2002. We find no infirmity in such action of the respondents. During the course of arguments, the learned counsel for the applicants has brought to our notice notification dated 2.4.2002 whereby as many as 18 posts of different categories and scales were created in the ticket checking branch. Thus, it cannot be said that only one post was created in order to accommodate the private respondent. Thus, the respondents have given reasonable explanation as to how the private respondent was accommodated pursuant to the recommendation made by the screening committee. Thus, we see no infirmity in the action of the respondents.

6.5 Similarly, the contention raised by the learned counsel for the applicants that private respondent could not

have been absorbed against the post of TTI and while absorbing medically decategorised staff in alternative employment they should be absorbed in the categories mentioned in para 6.2 of the master circular dated 24.4.91, can also not be accepted. Para 6.2 no doubt stipulates that in case of medically unfit/decategorised running staff preference for absorption should be given to the categories mentioned therein. In those categories neither the post of TTI nor the post of ACMI in the scale of Rs. 5500-9000 against which category the name of the private respondent was recommended by the screening committee find mention. Similarly, the post of ATNL also does not find mention in the said para. Further, this para is not mandatory in nature. It only stipulates that preference for absorption may be given in the category mentioned therein but when no posts are available in the category mentioned in para 6.2, in that eventuality, respondents are always at liberty to absorb the private respondent against the suitable category as recommended by the screening committee. As such para 6.2 of the master circular has to be read in that context.

6.6 Thus, according to us, the applicants have not made out any case for our interference regarding absorption of private respondent against the category of TTI. Accordingly, the OA No. 191/2002 is bereft of merit and is accordingly dismissed.

6.7 Similarly, in OA No.324/2002, the applicants have not made out any case for our interference. As already stated above, private respondent was appointed as Goods Guard in the pay scale Rs. 4500-7000 in the year 1991 whereas the applicants therein were initially appointed though on earlier date to that of the applicants in the scale Rs. 3050-4950. The private respondent was appointed as Goods Guard from very inception in the scale of Rs. 4500-7000 as running staff which

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scale has been declared equivalent to the pay scale of Rs. 5500-9000 in the stationary post in terms of Railway Board letter dated 1.10.99. Thus, in view of the provisions contained in para 1309 of the IREM Vol.I (1989 Edition) and also in terms of para 9.1 of the master circular dated 24.4.91, the medically decategorised staff absorbed in the alternative post whether in the same or in the other cadre should be allowed seniority in the grade of absorption with reference to length of service rendered in equivalent or corresponding grade irrespective the date of absorption. In terms of the said provisions, we see no infirmity in case the private respondents has been shown senior to the applicants in OA No. 324/03 and in the eligibility list dated 2.6.2003 prepared for promotion to the post of Chief Ticket Inspector pay scale Rs. 6500-10500. Further, the controversy as to how the seniority has to be assigned to such cases has been settled by the decision rendered by this Bench in OA No. 239/2001, Harish Kumar Sharma vs. Union of India and ors. decided on 21.3.2003 whereby the issue was whether the 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 length of service rendered as on non-fortuitous basis in the equivalent or corresponding grade before he is declared medically unfit. This Tribunal in para 8 has made the following observations:-

"8.....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 in 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

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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 specifically when he was not even the senior most person in his category and grade on that date."

6.8 The learned counsel for the applicants has also drawn our attention to the decision rendered by this tribunal in OA No.489/1994, Indian Railway Ticket Checking Staff Association Vs. Union of India and ors. to contend that seniority of the private respondent has to be counted from the date he joined the new unit and his past service in the post of Goods Guard would not be taken into account for assigning seniority in the new cadre. We have considered the submissions made by the learned counsel for the applicants. The ratio laid down by the Jodhpur Bench of the Tribunal in the case of Indian Railway Ticket Checking Association (supra) is not applicable in the instant case. That was a case where due to closure of loco shed the staff was declared surplus. It was in that context, it was

stated that the seniority of redeployed staff would count from the date they join the new unit and their past service in the parent cadre would not be taken into account for assigning seniority in the new cadre. The instant case is not of such nature. It is not a case where the employees have become surplus on account of closer of loco shed. Rather it is a case where the employee has been medically decategorised and has been found suitable for the alternative job in equivalent grade. Thus, this judgment is not applicable in the instant case.

6.9 In view of what has been stated above and decision rendered by the coordinate Bench in Harish Kumar Sharma (supra) relevant portion of which has been extracted hereinabove, we are of the view that the applicants in CA No.324/2003 are also not entitled to any relief. According, the same is dismissed.

7. In view of what has been stated above, both the OAs are dismissed with no order as to costs.

(A.K.BHANDARI)

Member (A)

(M.L.CHAUHAN)

Member (J)