

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 23/3/04

OA 372/2002

Narendra Kumar Sharma, TTE, Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager Railways (W.R.), Railways Building, Churchgate, Mumbai.
3. Divisional Rly Manager, Divisional Office, Near Rly Station, Ratlam (MP).
4. Sr.Divisional Personnel Officer O/o DRM, Near Railway Station, Ratlam.

... Respondents

CORAM:

HON'BLE MR.J.N.KAUSHIK, MEMBER (J)

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

For the Applicant

... Mr.Kunal Rawat

For the Respondents

... Mr.U.D.Sharma

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 to seek the following relief :

- i) By an appropriate order or direction, the respondents be directed to fix the applicant in the pay scale of Rs.1400-2300 from the date of joining on the post of Goods Guard i.e. 12.5.88
- ii) An appropriate order or direction be issued to the respondents to make the correct fixation of the applicant particularly in the light of Para 1308 of IREM (Vol.I) from the date of absorption and the difference of Basic Pay, DA, CCA and HRA, as has been revised from time to time and has become due as arrears be also awarded to the applicant alongwith the interest @ 12% per annum from the date on which the arrear has become due till the date of payment including the difference of Travelling Allowance.
- iii) By an appropriate order the respondents be directed to restore all the ancillary benefits which are admissible to him and were attached with the post of Goods Guard as per Para 1309 of IREM, Vol.I.
- iv) By an appropriate order or direction, the respondents be directed to award the pay scale of Rs.5000-8000 as per the decisions of the Railway Board on dated 1.10.99 in the light of the orders issued.

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- v) By an appropriate order or direction, the respondents be directed not to call the applicant for Screening Test time and again as he has already faced Screening Test and also further cleared the examination on dated 11.1.83 and further the letters issued calling upon the applicant to appear before the Screening Committee be quashed and set aside.
- vi) By an appropriate order or direction, the respondents be directed to assign the correct seniority to the applicant on the basis of length of service as Goods Guard in the category of Sr.TTE as per Para 1310 of IREM, Vol I."

2. In the application, it is stated that the applicant was first appointed as Trains Clerk on 15.6.81 and was promoted to the post of Sr.Trains Clerk in 1985. Consequent to this promotion, his pay was fixed in the pay scale of Rs.1200-2040. In May, 1988, he was further promoted to the post of Goods Guard in the pay scale of Rs.1400-2300. Sometime in 1994, when he was working as Goods Guard, the applicant developed the squint in his left eye and after medical examination he was decategorised and posted as Sr.TTE in August, 1994.

3. It is further stated that on the post of Sr.TTE he was fixed at Rs.1500/- in the pay scale of Rs.1200-2040 which was wrong and that he should have been fixed in the pay scale of Rs.1400-2300 for which he submitted representation. He submitted many other representations also as he was not satisfied by non-placement of his name in the seniority list of Sr.TTE issued on 12.11.97 in which also he requested that his pay should be correctly fixed in the pay scale of Rs.1400-2300 and his name should be included in the seniority list as per the provisions of Para 1310 of IREM. Copy of such representations are annexed to the OA.

4. In the application at Ann.A/4 seniority list of Sr.TTE, pay scale Rs.4000-6000 (RP), of Ratlam Division, prepared by the respondents in compliance to the Hon'ble Supreme Court's decision dated 16.9.90 has been cited. In this the applicant's name appeared at S.No.1. In this connection it is stated that although persons appearing at S.Nos.2,3,4 and onwards are junior ^{to him} are getting pay scale of Rs.5000-8000. Thus, he is aggrieved of this and is claiming pay scale of Rs.5000-8000 as a person senior to them. He submitted representation about this grievance and a copy of the same is annexed at Ann.A/5. At Annex.A/6 & A/8, he has cited the letters of the Chief Ticket Inspector, Ratlam Division, Ajmer, dated 16.4.2002 and dated 5.8.2002 respectively, by which the applicant has been asked to appear in a Screening Test. In this letter (dated 5.8.2002) respondents want in writing whether applicant wants to appear for the Screening Test fixed on 2.8.2002 or not. In this matter,

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applicant has drawn attention to his letter dated 20.4.2000 (Ann.A/7) in which he has clarified that he has already been screened, at the time of his decategorisation and that according to Board's Circular dated 1.10.99, he is not required to appear in the said Screening Test. In this letter, reference has also been made to his repeated request for his correct fixation of pay.

5. The respondents have given elaborate reply which starts with explanation for letters dated 16.4.2002 and 5.9.2002 from the Chief Ticket Inspector, Ratlam Division, Ajmer, reference to which has been made in the OA at para-1. It is stated that these letters were issued by respondent No.3 to certain employees including the applicant who had been medically decategorised and who were to be given alternative appointment for which they were required to be screened on 9.8.2002 and for that purpose, the concerned units were being asked to relieve them. Since the applicant was on medical leave from 2.8.2002 to 10.8.2002, the letter was addressed to his brother, Shri D.K.Sharma, requesting him to inform the applicant so that he does not miss the opportunity. However, it was realised by the department that the applicant had already been screened by the Screening Committee for providing him alternative employment on 5.9.1995 and the Screening Committee had recommended alternative appointment as TC/TTE in the pay scale of Rs.1200-2040 and was fixed at pay of Rs.1500/- vide order dated 17.11.95. On the basis of this position, the name of the applicant was deleted from the said Screening Test. In the reply it is made clear that there was no need of screening the applicant for alternative job. Thus, the applicant perceived grievance as stated by him in para-1 of the OA and prayer No.(v) of the relief clause is removed.

6. The respondents have however raised preliminary objection regarding limitation as prescribed u/s 21 of the Administrative Tribunals Act, 1985. It is stated that one of the reliefs claimed in para-8 of the OA is to fix him in the pay scale of Rs.1400-2300 from the date of joining on the post of Goods Guard i.e. 12.5.88, but this OA has been filed in September, 2000 i.e. after a period of 14 years. Other reliefs also pertain to fixation of pay and other benefits as well as assignment of seniority, all of which are barred by limitation as prescribed u/s 21 of the Administrative Tribunals Act, 1985. The respondents have also raised preliminary objection about the maintainability of the OA on the ground of multiple relief sought in it in violation of Rule-10 of the CAT (Procedure) Rules.

7. The respondents have not disputed anything about the applicant's appointment and progress upto the point when he was medically decategorised after medical examination and screening test as per rules.

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However, they do not agree that he was appointed as Goods Guard on 12.5.1988 in the pay scale of Rs.1400-2300. To prove that on this date, he was in the pay scale of Rs.1200-2040, they have annexed a copy of letter No.EC/839/3/15/Vol.7 dated 12.5.1988 (Annexure R/2) in which applicant's name appears at S.No.4 and pay scale is shown as Rs.1200-2040. It is also contended that as per Para 124(1) of the IREM Vol.I, the pay scale of Goods Guard is Rs.1200-2040 and that the applicant has in various documents including his representation dated 3.9.2001 (Ann.A/5) accepted this position and, therefore, he cannot stake his claim for the pay scale of Rs.1400-2300 on the post of TC/TTE in which he was placed after medical decategorization due to detection of faulty vision. The respondents have drawn attention to applicant's written consent for joining on the post of TTE/Sr.TC in the pay scale of Rs.1200-2040 dated 5.9.1995, copy of which has been ^{as cited} stated as Annexure R/3. The respondents have disputed applicant's contention that the post of Sr.TTE was lower than the post of Goods Guard in any way. For proving this, they have cited letter No.EC.834/4/10 dated 2.6.1988, issued by Headquarter Office, Mumbai, wherein avenue of promotion of the Ticket Checking Staff have been prescribed and in the said avenue of promotion, the post of Sr.TC and Sr.TTE have been clubbed together having common pay scale of Rs.1200-2040. This makes it clear that the applicant was given alternative post, which was equivalent and not inferior to Goods Guard held by him prior to medical decategorisation. The avenue of promotion have been reiterated in Headquarter Office's letter No.EC.834/4/10 Vol.II dated 2.9.1996, copy of which has been annexed as Annexure R/5. It is also made clear that the applicant was subsequently extended the benefit of the Running Allowance. It is also reiterated that the applicant has no claim to pay scale of Rs.1400-2300 from 12.5.1988 or from any other date thereafter.

8. Regarding absence of name of the applicant in the seniority list dated 12.11.1997, it is stated that his name did not figure in it because the list pertains to Head TTE/TTCR/Head TC, pay scale Rs.1400-2300 and not to Sr.TTE, pay scale Rs.1200-2040, to which the applicant belonged. Reference has been made to the replies given to applicant's various applications/representations including one routed through Western Masdoor Sangh. In this also, correct position has been graphically explained (Annexure R/7).

9. Regarding the seniority list prepared in compliance of Hon'ble Supreme Court's orders, cited as Annexure A/4, in which his name appeared at S.No.1, it is explained that the applicant had failed to clear the selection test for the post of Head TTE, pay scale Rs.5000-9000, whereas the juniors have cleared the trade test. It is further explained that the

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first selection test for the post of Head TC/Head TTE was held on 8.11.1997 in which applicant appeared and failed, due to which his name did not appear in the list of successful candidates notified vide letter dated 11.3.1998 (Annexure R/8). Another selection test was held on 22.4.2000 but the applicant failed in this selection also and his name did not appear in the list of successful candidates issued on 2.6.2000 (Annexure R/9). Thereafter the applicant declined to participate in the selection test held on 20.9.2002 vide his application dated 20.9.2002 (Annexure R/10). In these circumstances, he could not be given promotion and posted for pay scale Rs.5000-8000 in 1999 (Ann.A/4) or thereafter and as such, his grievance on this issue is wrong.

10. Regarding repeated reference to Board's letter dated 1.10.1999, it is stated that the Railway Board's Circular issued on 1.10.1999 is not applicable for revising his pay scale but the same provide for the equation of the running post with stationary posts for the purpose of promotion for the stationary categories where both the running and stationary staff are eligible and considered together. Thus, this contention is also wrong and misplaced.

11. In the reply to the grounds taken by the applicant, facts enumerated above are repeated to explain how the contention of the applicant are wrong and misplaced. In the end, the respondents have claimed that on merits also the applicant has no case.

12. The contending parties have submitted rejoinder and reply thereto but nothing new has been stated in them.

13. During arguments, the applicant repeated the pleadings submitted by him in the application and in the rejoinder. The learned counsel for the respondents after making a detail reading of Rule-1309 of the IREM under which alternative employment to the medically decategorised Railwayman are given emphasised that the pay fixation of the applicant was done correctly and that the application deserves to be dismissed on merits.

14. The law with regard to limitation u/s 21 of the Administrative Tribunal's Act, 1985 is very clear and in a catena of judgments including R.C.Sharma v. Udhav Singh Kamal, (1999) 8 SCC 304, it has been decided that an application filed before the Tribunal beyond the period of limitation cannot be entertained by the Tribunal unless it is satisfied that the concerned applicant had sufficient cause for not filing the same within the period of limitation. In this OA, the grievance of the applicant is against alleged wrong fixation in the year 1989. However,

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the OA has been filed in August, 2002 i.e. after a delay of 14 years. We cannot fail to take notice of applicant's declaration in para-3 of the application that the application is within limitation prescribed u/s 11 of the Administrative Tribunals Act, 1985. This is patently wrong declaration by the applicant. However in the pleadings any justifiable reason for this delay has been explained. Repeated representations also do not extent limitation. It is also noted that no application whatsoever has been filed seeking condonation of delay. In these circumstances, we cannot overlook the preliminary objection raised by the respondents. However, on merits also, the applicant has no case because he has started from the wrong premises that as Goods Guard he was drawing his pay in the pay scale of Rs.1400-2300 which the respondents have proved as wrong through a series of documents presented by them while explaining the position in their reply. Since the entire prayer is based on this wrong presumption, none of them can be granted.

15. In view of these, the applicant has no case and deserves to be dismissed. Accordingly, the OA is dismissed with no order as to costs.

(A.K.BHANDARI)
MEMBER (A)

(J.K.KAUSHIK)
MEMBER (J)