

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 440 of 2000

Jabalpur, this the 6th day of August 2003

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

J. Srinivasa Rao, aged about 52 years,
S/o Late Shri J.S.N. Murthy, Senior Goods-
Guard (Medially decategorised) South Eastern
Railway, resident of Railway
Qr. No. 541/4, R.T.S. Colony
Bilaspur (M.P.)

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

Union of India, Through,

1. General Manager,
South Eastern Railway,
Garden - Reach - CALCUTTA- 43
2. Divisional Railway Manager,
South Eastern Railway,
Bilaspur (M.P.)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri J. Srinivasa Rao has filed this original
Application under Section 19 of the Administrative
Tribunals Act and has prayed for the following reliefs ;

"(a) Direct the respondents to offer a suitable
post such as Section Controller, Personnel/Welfare
Inspector, Office Supdt Grade II or in Commercial/
Ticket Cheking Cadre in Grade Rs. 6500-9000 (RSRP)
as per ANNEXURE A-2 read with ANNEXURE A-6.

(b) Direct the respondents to create a special
supernumerary post in the grade in which the
applicant was working on regular basis & make
payment of arrears of pay from the date of medical
decategorisation till proper absorption.

(c) Grant any other relief(s) as may be just &
expedient in the circumstances in the interest of
justice & equity including costs."



2. The brief facts of this case are that the applicant was initially appointed on the post of Junior Goods-Guard on 15.04.1982 at Bilaspur Division. He was further promoted on the post of Senior Goods Guard in the grade of Rs. 5000-8000/- in the month of May 1998. He was subjected to Periodical Medical Examination by the Chief Medical Superintendent, Bilaspur, wherein he was declared as unfit for all classes of A-2, A-3, B-1 and B-2 but fit for medical class C-1 and below with glasses. Consequently he was medically decategorised by certificate dated 18.03.1999 (Annexure A-3) and he was kept under P.M.E. from 19.02.1999 onwards.

3. The further case of the applicant is that he was called to appear before the screening committee on 10.04.1999 for providing alternative suitable post along-with others. He was adjudged suitable only for the post of Senior Clerk Grade Rs. 4500-7000/- in violation of Rules Annexure A-2. He protested against the same vide representation dated 23.04.1999, alleging that his absorption on the post of Senior Clerk was against the existing Rules. He submitted that he was drawing the pay of Rs. 6500/- in the grade of Rs. 5000-8000/- and therefore he must be offered a suitable post in the grade of Rs. 6500-10500/- or atleast in the Grade of Rs. 5500-9000/- and absorbing him in a lower post would cause him heavy financial loss. It is also been submitted that as far as comparison of the grades of Running Staff is concerned the applicant should have been absorbed in the scale of Rs. 6500-9000/-. His representation was turned down and he moved another representation giving reference of the Railway Board's letter (Annexure A-2) and prayed for a supernumerary post

in the present grade and make payment for the waiting period. Thereafter he was informed vide letter dated 15.03.2000 that he was found ^{only} suitable/for the post of Head Clerk and not as Office Superintendent Grade-II. Hence this application.

4. The application has been filed on number of grounds and we are proposed to deal with the grounds which are pressed during the arguments at appropriate place in this order.

5. The respondents have filed only a short reply to the Interim Relief. No detailed reply has been filed. In the short reply it has been submitted that the applicant was decategorised with effect from 18.03.1999 and he was screened by a committee nominated by the competent authority and has found him fit for Senior Clerk and the same was not acceptable to the applicant. The case of the applicant was re-considered for Office Superintendent Grade-II in the scale of Rs. 5500-9000/- in the light of ^{R.B.} Establishment Sr. No. 122/99 (Annexure R-4) and after taking re-screening the committee found him suitable for the post of Head Clerk in the scale of Rs. 5000-8000/- similar to Senior Goods Guard scale of Rs. 5000-8000/-. The applicant has accepted the post of Head Clerk. He was not declared suitable for the post of O.S.-II by the screening committee on the grounds that OS-II post involves complex nature of duties and requires thorough knowledge of rules and regulations of any Department which can only be obtained by having work experience in the lower grades than O.S. Grade-II. This view is corroborated by the fact that O.S. Grade-II does not have any direct

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recruitment element. Therefore the applicant has rightly accepted the post of Head Clerk in the scale of Rs. 5000-8000/- and creation of a special supernumary post is under process as there is no vacancy of Head Clerk available in any Department till date. Therefore the applicant is not entitled for any relief, and the Original Application deserves to be dismissed.

6. Certain additional documents has been brought on record including that some of the similarly situated persons have been appointed to the post of O.S. Grade-II.

7. We have heard the elaborate arguments advanced by the learned counsel for the parties and have very carefully considered the submissions, pleadings and records of this case. A letter dated 17.01.2003 indicating that certain persons who have been absorbed as Head Clerk and re-designated as O.S. Grade-II, has been submitted on behalf of the applicant and there has been no objection from the learned counsel for the respondents for the same. Therefore the same was taken on record for treating as part of the pleadings.

8. The learned counsel for the applicant has reiterated the facts and grounds raised in the Original Application. He has submitted that the applicant was holding the post of Senior Goods Driver in the grade of Rs. 5000-8000/- and his present basic pay as Senior Guard is Rs. 6500/-. Therefore the applicant should have been absorbed in the equivalent post as per the rules in force. It has also been submitted that the applicant ought to have been absorbed on the post of O.S. Grade-II and once

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he has been declared suitable for the post of Head Clerk he should have been also re-designated as O.S. Grade-II as has been done in the case of similarly situated persons which is evident from letter dated 17.01.2003. He has submitted that number of persons mentioned therein have been absorbed on the higher post even though they were found suitable for the post of Head Clerk and no further screening was held for the post of O.S. Grade-II, but the applicant has not been given the similar treatment. It has also been submitted that the policy in vogue, on the date of absorption ought to have been applied to his case. However he has also submitted that even as per the previous policy he ought to have been absorbed on the equivalent post and in case the equivalent post was not available or he was not suitable for the equivalent post he could have been absorbed on a lower post provided that his emoluments were not below 25% of the post on which he was to be absorbed. In the present case at the most the applicant would have been absorbed on the post of O.S. Grade-II in the grade of Rs. 5500-9000/-. It has also been submitted that for the post of O.S. Grade-II number of persons have been absorbed and the respondents are in a very unfair manner have been considering the case of the applicant, first considering in Senior Clerk and then on his representation on Head Clerk and then he files the case and then it becomes O.S. Grade-II and just to deny him of his due right he is said to be not found suitable for O.S. Grade-II for flimsy reasons that he has not worked on the feeder post so he cannot be given this post. He has also submitted that for the waiting period the applicant was not paid his due salary and therefore his case

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should be allowed and he should be absorbed on C.S. Grade-II as per the rules.

9. On the contrary the learned counsel for the respondents has struggled hard and has endeavoured to justify the stand of the respondents. He has categorically submitted that the new policy has no application to this case. He has stressed and reiterated the stand of the respondents taken in the reply. He further submitted that since the screening committee did not found him suitable for the post of C.S. Grade-II, the applicant has not been absorbed in the post of C.S. Grade-II and he could be only absorbed on the post of Head Clerk for which the screening committee has declared him fit. Not only thus the applicant has been absorbed on the post of Head Clerk, he can have no grievance in the matter. He has also submitted that on C.S. Grade-II post the applicant could not have been otherwise also absorbed, since the post involves complex nature of duties and requires thorough knowledge of rules and regulations of any Department and the post also have no direct recruitment element.

10. We have considered the rival contentions and submissions made on behalf of the parties. At the very outset the perusal of the Annexure A/6 reveals that the equivalent post of Senior Goods Guard is in the scale of Rs. 5500-9000/-. As per the old rule if it is reduced by 25% it still remains above Rs. 5000-8000/- and still the equivalent would be Rs. 5500-9000/- and he could not have been absorbed on the lower grade. Thus the equivalent post on which the applicant was eligible for absorption is in the scale of Rs. 5500-9000/- and that is the scale meant

for O.S. Grade-II. Therefore the contention of the learned counsel for the applicant that the applicant ought to have been absorbed in the scale of Rs. 6500-9000/- is not correct and not in consonance with the rules which are placed and relied upon by the applicant himself.

11. The second question arises as regards the suitability of the applicant as to which post he has been found suitable. The stand of the respondents is that first he was found suitable for Senior Clerk, thereafter he was found suitable for Head Clerk and the screening committee did not found him suitable for the post of O.S. Grade-II. From the records of this case we noticed that a detailed order was passed on the interim stage to consider the case of the applicant for grant of absorption on the post of Head Clerk and the same has been done during the pendency of this case, keeping alive this case. Thus the contention of the respondents that the applicant has accepted the absorption on the post of Head Clerk is not sustainable and stands rebetted. Otherwise also there is no estoppel against the statutes or against the fundamental rights.

12. Now we come to the main issue involved in this matter as regards to suitability of the applicant. There is no doubt that the screening committee has found him suitable for the post of Head Clerk as per their averments made in the reply. But subsequent pleading show that no post of Head Clerk was available and in the earlier scheme there is no rule for creating super-numary post. It is very difficult to accept the contention of the learned counsel for the respondents that the applicant

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was examined for the post of O.S. Grade-II and was found suitable for Head Clerk and there was no vacancy for Head Clerk. The perusal of the very rules for absorption indicate that first the vacancies has to be ascertained and then only the screening committee must decide the matter. once there is no post of Head Clerk, how the screening committee have cho-sen to go beyond the jurisdiction. If the case was to be considered for O.S. Grade-II then either the applicant should be declared as unfit for O.S. Grade-II or fit for O.S. Grade-II. Nextlly the learned counsel for the respondents has no answer as to why the persons who were holding the post of Guard were absorbed as Senior Clerk and subsequently was absorbed on the alternative post of O.S. Grade-II without there being any screening. Thus who have been found suitable for Senior Clerk have also been found suitable for O.S. Grade-II, but such action has not been taken in the case of the applicant. Even certain Head Clerk also have been found suitable for the post of O.S. Grade-II without holding the screening. Now looking the matter from another angle the respondents have taken another plea that the applicant could not have been absorbed on the post O.S. Grade-II as it involves complex nature of duties and requires thorough knowledge of rules and regulations of any Department, neither there is any provision for direct recruitment nor one could be appointed to this post without having experience of working in the feeder post. But this statement proves to be volta-face once we comp-are it with Annexure A-10 and also the letter dated 17.01.2003. As far as Annexure A-10 letter dated 18.09.2000 is concerned one Shri^{A.}/Laxman Rao, Goods Guard who was in


the pay scale of Rs. 4500-7000/- has been directly absorbed as Office Superintendent Grade-II. Similar is the position in Memorandum dated 17.01.2003. There are number of persons who have been made as O.S. Grade-II without necessity of working on the feeder post. Thus the contention of the learned counsel for the respondents stands belied and number of times the respondents are taking different stant just to deny the reasonable claim of the applicant. As a matter of fact the applicant's claim is sustainable under the old rules and even as per the new rules. We find that there has been arbitrariness while dealing with the case of the applicant and there has been denial of his dues. We have also failed to understand that as to why the applicant has been singled out and being denied his legitimate dues and the legal right. This is also fortified on the fact that the respondents have not chosen to file a detailed reply, to the original Application.

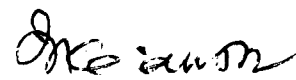
13. A small controversy still remains to be examined, which is in regard to the non-payment of the salary of the applicant of the waiting period for absorption. As we understand that in the earlier rule for a period of 6 months the period was treated as leave due, under leave rule and thereafter it was treated as without pay. The applicant was decategorised on 18.03.99 and the new scheme has come into force from 27/05/1999. As per the new scheme, due payment is to be made to the person during the waiting period till he is absorbed on the alternative post. Since the new policy is the legislation, the applicant cannot be deprived of the

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prospective application of this scheme to his case. Thus the period from 18.03.1999 to 27.05.1999 shall be governed under the old scheme and thereafter it will be governed as per the new scheme i.e. after 27.05.1999 he shall be treated as in duty for all purposes and he will be liable for payment of his all dues till he is ordered to be absorbed.

14. In view of the aforesaid discussion, the Original Application has ample force and the same deserves to be allowed in part. The respondents are directed to offer the post of Office Superintendent Grade-II in the pay scale of Rs. 5500-9000/- from the date when he is absorbed on the post of Head Clerk. The applicant shall also be entitled to all the consequential benefits including seniority, promotion, fixation of pay and also difference of arrears of pay etc. The period from de-categorisation till the appointment on alternative post shall be treated as per our penultimate observation. This order shall be complied within a period of 3 months from the date of receipt of copy of this order. No costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member

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Issued
on 12.8.03
BS

L. S. Raypal - Adl
M. N. Banerji - Adl

12-8-03

for the Registrar