

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
.....

Original Application No. 759/2000

Jabalpur, this the 30th day of April 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Member (Judicial)

O.P. Mishra, aged about 57 years,
S/o Shri Shivrath Prasad Mishra,
R/o Q.No. 42, Keshav Nagar Colony,
Ujjain, Distt. Ujjain (M.P.).
(By Advocate: Shri M.K. Verma)

...Applicant

-versus-

1. Union of India through
Chairman,
Railway Board,
New Delhi.
2. General Manager,
Western Railway,
Church Gate, Mumbai.
3. Divisional Railway Manager,
Western Railways,
Ratlam.

...Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By A.S. Sanghvi, Judicial Member -

The applicant was serving as a Senior Goods Guard under the respondents in the pay scale of Rs. 1350-2200/- and was medically decategorised w.e.f. 16.2.1995. His grievance is that he ought to have been absorbed in the grade of Rs. 1600-2660/- after calculating the running allowance of 30% in the previous grade of Rs. 1350-2200/-. The respondents ignoring the Railway Board's letter dated 3.8.1979 in this regard and ignoring his representations, have absorbed him in the pay scale of Rs. 1400-2300/- vide order dated 21.09.1995. The applicant has termed the act of the respondents in placing him in the pay scale of Rs. 1400-2300/- as arbitrary and discriminatory alleging that his juniors, who were also medically decategorised alongwith him, were placed in the

scale of Rs. 1600-2660/- while differential treatment has been meted out to him. He has claimed that subsequently on his various representations, the respondents had realised their mistake and vide order dated 24.6.1998, they have given him the grade of Rs. 1600-2660/- i.e. Rs. 5500-9000 (RPS). He is, therefore, now entitled to claim the arrears of pay and allowances w.e.f. 21.9.1995 as he ought to have been absorbed in the grade of Rs. 1600-2660/- w.e.f. 21.9.1995. He has prayed for a direction to the respondents to pay him the arrears of pay and allowances w.e.f. 21.9.1995 with interest of 18% p.a. thereon.

2. The respondents in their counter have refuted the claim of the applicant contending inter-alia that on the recommendations of the Screening Committee, after the applicant was declared medically unfit, he was appointed on the post of Head Train_s Clerk in the scale of Rs. 1400-2300/- vide order dated 11.7.1996. They have contended that the applicant had accepted the said post and resumed his duty as Head Trains Clerk at Nagda Station. They have also maintained that these orders were passed in terms of IREM Para No. 1309(iii) as well as Para 1314 c(i). He was posted in the scale of Rs. 1400-2300/- only for one year as recommended by the medical authorities. His pay was fixed at Rs. 2300/- including the percentage of such pay in lieu of running allowance as he cannot get the pay beyond the maximum of the scale. They have denied that absorption of the applicant in the scale of Rs. 1400-2300/- was erroneous and that pursuant to his representations, they had realised their mistake and corrected the same and placed him in the scale of Rs. 1600-2660. According to them, they had reviewed the case of the applicant as provided in IREM para 1314(c) and pursuant to carrying out such review, as he was found fit for the post of Chief Trains Clerk in the scale of Rs. 1600-2660, he was posted as Chief Trains Clerk w.e.f. 24.6.1998. They have also denied that juniors to the applicants were absorbed in the higher scale while applicant was absorbed in the lower scale thereby giving differential

treatment to him. They have stated that the cases of K.C. Pandit, M.S. Tekwani and Ravi Sant cannot be compared with the case of the applicant as they were found suitable by the Screening Committee for the post of Chief Clerks while the applicant was not found suitable for the said post. They have denied that the applicant is entitled to be absorbed in the grade of Rs. 1600-2660/- w.e.f. 11.7.1996 and thereby he is entitled to claim the arrears of pay and allowances.

3. We have heard the learned counsel for both the parties and duly considered the rival contentions.

4. There is no dispute that the applicant was medically decategorised in the year 1995. It is also not in dispute that he was offered a suitable alternative posting in the scale of Rs. 1400-2300 and that he had accepted the same and worked on that post till he was promoted as Chief Trains Clerk in the year 1998. The applicant has submitted that placing him in the scale of Rs. 1400-2300/- was an error on the part of the respondents and on his representations the respondents, having realised their mistake given him posting in the scale of Rs. 1600-2660/-. His contention is that this scale ought to have been given to him from the year 1995 when he was absorbed in the grade of Rs. 1400-2300. His another grievance is that alongwith him some of his juniors were also medically decategorised but they were given alternative posting in the scale of Rs. 1600-2660 thereby showing differential treatment towards him. According to him this amounts to indulging into discrimination by the respondents and as such also he was required to be placed in the scale of Rs. 1600-2660 w.e.f. 21.9.1995. He has also made a grievance that while fixing his pay in the grade in which he was absorbed, the respondents had not taken into consideration the provisions of the Railway Board's Circular dated 23.6.1979.

5. So far the question of his erroneous fixation of pay at the time of his absorption after medical decategorisation

is concerned, the applicant has voiced his grievance for the first time in this O.A. filed in the year 2000 even though his pay was fixed in the year 1996. The Railway Board's Circular dated 23.6.1979 provides ^{for} ~~that~~ the classification of the railway servant declared medically unfit and lays down that they are to be classified in two categories:

- i) Those completely incapacitated for further service in any post on the railway i.e. those who cannot be declared fit even in the 'C' medical category; and
- ii) those incapacitated for further service in the post they are holding but declared fit in lower medical category and eligible for retention in service in posts corresponding to the lower medical category.

It also further provides that in such cases, the employee is to be granted six months leave under ordinary rules and where no sufficient leave is due, extraordinary leave without pay may be granted. In the meantime ~~an~~ alternative job with reasonable emoluments, taking into consideration his previous emoluments, may be made available. While considering the previous emoluments, in case of Running Staff, the element of running allowance granted to him, should be taken into consideration. It further provides that their fixation of pay may be made in such a way that previous emoluments before medical decategorisation is protected and if it exceeds the maximum of absorbing grade, the difference between the pay fixed and previous pay may be treated as Personal Pay.

6. This Circular of the Railway Board relied upon by the applicant clearly negatives his assertions that he was required to be absorbed in the grade of Rs. 1600-2660. As per the provisions of para 1306 of the I.R.E.M., the case of an employee, who is found medically unfit for service by the medical officer, is required to be referred to the Screening Committee and ~~it~~ is for the Screening Committee to determine of an employee the suitability/ for certain categories of posts and accordingly such post is to be offered to him as an alternative employment. The contention of the applicant that he ought to have been offered the post in the same category he was holding

is not well-founded and not supported by the rules. The record reveals that the Screening Committee had found him suitable for the post of Head Trains Clerk in the scale of Rs. 1400-2300 and on offer of the said post he had even accepted the same. The contention of the applicant that he ought to have been absorbed in the post carrying the scale of pay of Rs. 1600-2660 is, therefore, not well founded. Moreover, once having accepted the posting in the lower grade, he cannot now turn back and contend that he was required to be absorbed in the higher grade. The significant aspect of the matter is that the applicant has termed this as a mistake on the part of the respondents and contended that pursuant to his representations, the respondents had realised their mistake and reviewed his case and placed him in the scale of pay of Rs. 1600-2660. It appears that the applicant has tried to twist the facts to get some advantage of back date absorption. It is clear from the provisions of para no. 1313 of the I.R.E.M. that a review of the case of a medically decategorised railway servant, absorbed in a lower post, is required to be undertaken by the authorities and if he is found suitable, he can be given promotion to the higher post even by grant of advance increments. It is quite evident from the case of the applicant that in 1995 he was absorbed in the cadre of Head Trains Clerk in the pay scale of Rs. 1400-2300 and on subsequent review of his case, on being found suitable for promotion, he was promoted as Chief Trains Clerk in the scale of Rs. 1600-2660. This, however, cannot be termed to be rectification of a mistake on the part of the respondents, and cannot entitle the applicant to claim the absorption in the higher scale from back date. There is every possibility that on account of the medical treatment or on account of the passage of time he might have regained his health and physical capacity and thereby had become entitled to a higher classification of medical decategorisation. This, however, does not mean that, on the date on which he was absorbed, he was wrongly

8. For the reasons discussed above, we do not find any merit in this case and are of the considered opinion that the O.A. deserves to be rejected. In the conclusion, the O.A. is therefore, dismissed with no order as to costs.

(M.R. Singh)
Vice Chairman

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सूचना एवं आवश्यक वर्गचिह्न हेतु *Chandras*
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