

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

20.01.2012

OA No. 53/2008 with MA 407/2008

None present for the parties.

Since the advocates are abstaining from work, the case be listed on 01.02.2012.

IR to continue till the next date.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S. Rathore)
Member (J)

ahq

01/02/2012

OA No. 53/2008 with MA No. 407/2008

Mr. Ashok Joshi, Counsel for applicants.
Mr. Anupam Agarwal, Counsel for respondent nos. 1 & 2.
Mr. S. Shrivastava, Counsel for respondent nos. 3 to 5.

Heard.
O.A. and M.A. are disposed of
by a separate order on the separate-
sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of February, 2012

Original Application No.53/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

1. Mahesh Chand Sharma s/o Shri Badri Prasad, r/o 1123, Mahaveer Colony-I, Kartarpura, Jaipur
2. Anwar Hussain s/o Shri Izhar r/o Double Story, Near Bungalo of A.En. Railway Colony, Phulera, Distt. Jaipur
3. Surya Prakash Chauhan s/o Shri Gajraj Singh, r/o 106, Krishna Colony, Naya Kheda, Vidyadhar Nagar, Jaipuyr

Applicant No.1 and 2 are working as LRTC for TTE, Office of CTI, Sleeper, Jaipur whereas applicant No.3 is working as TTE, Office of CTI Sleeper, Jaipur, scale Rs. 4000-6000 under DCTI, Jaipur Division.

.. Applicants

(By Advocate: Shri Ashok Joshi)

Versus

1. The Union of India through
Its General Manager,
North Western Railway,
Headquarter Office,
Opposite Railway Hospital,
Jaipur
2. The Divisional Railway Manager (Estt.),
Jaipur Division,
Power House Road,
Jaipur

3. Shri Ramniwas Rangnath
s/o Shri Raghunathm
Technician, Carriage,
Jaipur
4. Shri Ram Gopal
s/o Laxmi Narain,
Technician, Carriage,
Jaipur.
5. Shri Prem Shanker
s/o Shri Ghasi Ram,
Technician,
Carriage, Jaipur

.. Respondents

(By Advocate: Shri Anupam Agarwal for resp. No. 1 and 2 and Shri S.Srivastava for resp. No.3 to 5)

ORDER (ORAL)

The present OA is directed against the order dated 11.1.2008 (Ann.A/1). The aforesaid order is challenged in so far as it relates to respondent Nos. 3 to 5 only on the ground that as per Master Circular No.25 it is categorically mentioned that in the cases of medically decategorised running staff, preference for absorption may be given in the categories of Power Controllers, Assistant Loco Foreman, Institutes of Zonal Schools, Generator, Sheetmen, Job Recorders, Telephone Clerks, Clerks in Control Office, Hostel Wardens, Hospital Superintendent, Welfare Inspector, Wagon Movement Inspector and Trains Clerks. After referring the Master Circular No.25, the learned counsel appearing for the applicants submits that category of Ticket Checking Branch is not mentioned in this Master Circular. The Screening Committee while absorbing



respondent No. 3 to 5 in the Ticket Checking Branch has not considered the Master Circular No.25. As such, action of the Screening Committee is bad in law being contrary to the Master Circular No.25.

2. Also challenged on the ground that in the Traffic Department, the post of Ticket Collector requires a special training and no one can be appointed without passing out the requisite training. The seniority is determined in the Ticket Checking Branch on the basis of the marks obtained in the training school. Appointing such employees directly without the pre-requisite condition of training to the post of Ticket Collector and interpolating their names in the respective seniority as per the corresponding pay scale, certainly jeopardize interest of the applicants.

3. The learned counsel appearing for the applicants referred the order dated 28.11.2007 (Ann.A/4) and after referring the same submitted that it was incumbent upon the railway administration first to determine the vacancies yearwise and vacancies fallen vacant on account of restructuring of the cadre be filled in, but in the present case, the railway administration in short circuit manner bent upon to fill up the vacancies made available in the link vacancies by other methods and, as such, action of the respondents is contemptuous, which is liable to be declared illegal.



4. Further challenged on the ground that once the medically decategorised staff is allowed to work to another cadre, he cannot be said to be an employee medically decategorised. In the present case, the respondent Nos. 3 to 5 while working as Senior Diesel Assistant were allowed to work as Technician and now they have been ordered to be absorbed in the Ticket Checking Branch which is also bad in the eyes of law.

5. The learned counsel further placed reliance on the document filed by the respondents alongwith reply as Ann.R/1 and more particularly referred to Advance Correction Slip No.77 of Para 1310 of Chapter XIII of Indian Railway Establishment Manual, Vol.I (1989 Edition), which is reproduced as under:-

"1310 Fixation of seniority of disabled/medically decategorised staff absorbed in alternative employment: The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. This is to be subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption."

6. It is also demonstrated by the learned counsel appearing for the applicants that the applicants are senior than respondent Nos. 3

to 5 and after absorbing vide order dated 11.1.2008 (Ann.A/1), all the private respondent Nos. 3 to 5 are placed over and above the applicants.

7. On the contrary, the learned counsel appearing for the respondents submitted that absorption of the medically decategorised employees is based upon the principles laid down and as per the mandate of the Act of 1995 as well as the circulars issued by the Railway Board.

8. It is also stated on behalf of the respondents that the applicants have tried to twist the facts and not placed the correct facts. In the Ticket Checking Branch there is 50% direct recruitment quota which is filled by TC scale Rs. 3050-4590. The medically decategorised staff can be absorbed in the matching pay scale in any grade. Respondent No. 4 and 5 were working in the running staff and after medical decategorisation, they are entitled to be considered after adding 30% running allowance to their salary. Thus, the recommendation for absorption in the higher scale of Rs. 4000-6000 is just and legal. With regard to the objection raised by the applicants about the absorption of respondent Nos. 4 and 5 as contrary to law since they were drawing the scale of Rs. 3050-4590 whereas they have been absorbed in the higher scale of Rs. 4000-6000, it is further stated that the Screening Committee adjudged



the suitability of the medically decategorised employees and then only recommended for absorption.

9. The learned counsel appearing for private respondents adopted the submissions made on behalf of the official respondents and in addition to that, it is submitted that the medically decategorised employees have been absorbed alongwith benefit of seniority and the higher pay scale is granted after adding 30% running allowance to their salary.

10. Having heard the learned counsel appearing for the respective parties and upon perusal of the material available on record as well as the relief claimed by the applicants to quash and set-aside the impugned order dated 11.1.2008 (Ann.A/1) in so far as it relates to respondent Nos. 3 to 5 only, it reveals that vide order dated 11.1.2008 as many as 15 medically decategorised persons have been given alternative post whereas the applicants have only challenged alternative employment provided to respondent Nos. 3 to 5. Name of respondent No.3 Shri Ramniwas-Raghunath find place at Sl.No.11, name of respondent No.4 Shri Ram Gopal-Laxminarain at Sl.No.12 and of respondent No.5 Shri Prem Shankar -Ghasi Ram at Sl.No.13. It appears that the dispute is not with regard to providing alternative employment to the medically decategorised employees but with regard to respondent Nos. 3 to 5 as they are placed over and above the applicants and thus the

main grievance is regarding seniority, which has admittedly neither been challenged by the applicants nor it is prayed that they may be assigned proper seniority.

11. The learned counsel appearing for the applicants referred to Advance Correction Slip No.77 of Para 1310, as reproduced hereinabove. As per Advance Correction Slip No.77 of Para 1310, if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

12. We have also asked the applicants as well respondents whether the applicants are working on the post of TTE in the same grade or not ? In response to the query made by this Tribunal, the learned counsel appearing for the applicants submits that applicant No.1 Mahesh Chand Sharma is working as TTE in the grade of Rs. 4000-6000 at Ajmer w.e.f. 21st July, 2008. Applicant Anwar Hussain is also working on the post of TTE in the same grade w.e.f. 21st July, 2008 and Applicant Surya Prakash is working on the post of TTE in the same grade at Jaipur w.e.f. 28.4.2006. Meaning thereby the applicants as well as private respondent Nos. 3 to 5 are working on the post of TTE in the same grade.

13. After perusing Correction Slip No.77 of Indian Railway Establishment Manual (IREM), we are of the considered view that



ends of justice will be met, if we give liberty to the applicants to redress their grievance taking advantage of Advance Correction Slip No.77 of IREM by representing before the respondents and it is for the respondents to consider the same and shall pass orders in accordance with the provisions of law.

14. With these observations, the OA stands disposed of with no order as to costs.

15. Interim order already issued shall stand vacated and Misc. Application No.407/2008 for vacation of interim order stand disposed of accordingly.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/