

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

OA. No. 060/00802/2014

Reserved on: 07.04.2015
Pronounced on: 10.4.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

Surinder Kumar S/o late Sh. Jaswant Rai, Senior Clerk, O/o
Deputy Chief Material Manager, Northern Railways, Jagadhri
Workshop.

..... Applicant

Versus

1. Union of India through the General Manager, Northern Railways, Baroda House, New Delhi.
2. Deputy Chief Material Manager, Northern Railways, Jagadhri Workshop.
3. Senior Personnel Officer/Stores, Jagadhri Workshop.
- 3-A Divisional Security Commissioner, Railway Protection Force, Northern Railways, Ambala Cantt.
4. Surinder Singh s/o Sh. Santokh Singh
5. Karan Singh s/o Shri Rekha Singh
6. Smt. Geeta Rani w/o Shri Deepak Kumar

Re —

7. Balbir Singh s/o Shri Gabbar Singh
8. Attar Singh s/o Shri Kantu Ram
9. Surinder Kumar s/o Shri Ujjala Ram
10. Krishan Pal Singh s/o Shri Om Parkash
11. Brijendra Rajak s/o Shri Suresh Rajak

All Office Superintendents c/o Deputy Chief Material Manager, Northern Railways, Jagadhri Workshop

..... Respondents

Present: Sh. Namit Kumar, counsel for the applicant.

Sh. Yatin Gupta, proxy counsel for Sh. Lakhinder Bir Singh

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "(a) Quash the order dated 22.8.2014 (Annexure A-1) whereby the applicant has virtually been reverted from the post of Senior Clerk to that of Clerk in a totally illegal and arbitrary manner.
- (b) Quash the order dated 18.3.2013 (Annexure A-1/1) whereby respondents No. 4 to 11, who are junior to the applicant, have been promoted by ignoring the claim of the applicant and issue a direction to the respondents to consider and promote the applicant to the post of Office Superintendent w.e.f. the date respondents No. 4 to 11 have been promoted, with all consequential benefits."

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Interim relief was prayed for that operation of the order dated 22.8.2014 (Annexure A-1) be stayed during the pendency of the OA and when the matter was taken up for hearing on admission on 11.09.2014, the operation of this order was stayed and this position continues till date.

2. It has been contended in the OA that the applicant was initially appointed as Constable in Railway Protection Force (RPF) on 29.7.1978 and was promoted as Head Constable in the year 2005. During the course of service, his lower limb was amputated on 26.5.2009 and the applicant was declared physically handicapped and was categorized for Category B-1 and below and his handicap is 80% and a copy of the disability certificate dated 17.4.2010 is annexed as Annexure A-2 with this OA. During his service, the applicant was granted the benefit of 2nd ACP in Pay Band of Rs. 5200-20200 and Grade Pay of Rs. 2800 and 3rd MACP in the grade of Rs. 5200-34800 with Grade Pay of Rs. 4200 vide order dated 9.11.2010 w.e.f. 1.9.2008 on completion of 30 years of service and a copy of the same is annexed as Annexure A-2/A with this OA. Vide order dated 23.9.2011 (Annexure A-3), he was ordered to be adjusted against the alternative post of Senior Clerk

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in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800 and consequently, he joined as Senior Clerk on 30.9.2011 in the office of Deputy Chief Material Manager, Northern Railways, Jagadhri Workshop and a copy of the posting/transfer order of the applicant dated 7.10.2011 and LPC are annexed as Annexure A-4 and A-5 with this OA. The post of Senior Clerk was in the lower Pay Band and Grade Pay i.e. 5200-20200 with Grade Pay of Rs. 2800 whereas the applicant was placed in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 as Head Constable on grant of 3rd MACP w.e.f. 1.9.2008.

3. It has further been stated that seniority list of DMS (Annexure A-6) and Ministerial Cadre was circulated by the respondents vide their letter dated 16.4.2012 and in the seniority list of Senior Clerks (Annexure A-6), the name of the applicant figures at Sr. No. 1 and that of respondents No. 4 to 11 figures at Sr. Nos. 2, 3, 5, 8, 9, 11, 18 and 19. Further promotion from the post of Senior Clerk is to the post of Office Superintendent in the ministerial side or to the post of DMS in non-ministerial side in the Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 4200 and notice dated 23.12.2011 (Annexure A-7) was issued to the Senior

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Clerks seeking their final option towards ministerial/non-ministerial side. The applicant submitted his option towards ministerial side i.e for the post of Office Superintendent. For filling the post of Office Superintendent, working report of the applicant and private respondents was called vide letter dated 13.3.2013 (Annexure A-8). Surprisingly, vide order dated 18.3.2013 (Annexure A-1/1), respondents No. 4 to 11 who were junior to the applicant were ordered to be promoted to the post of Office Superintendent ignoring the rightful claim of the applicant.

4. The applicant challenged the order dated 18.3.2013 (Annexure A-1/1) by filing OA No. 469-HR-2013. A short reply was filed by the respondents in this OA and Show Cause Notice dated 15.1.2014 was attached as Annexure R-1. The applicant had filed reply dated 7.4.2014 to the Show Cause Notice pointing out that as per Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Para 1304 of Indian Railway Establishment Manual (IREM) Volume I, applicant could not be reduced in rank from the post of Senior Clerk to the post of Clerk. The OA was disposed of by the Tribunal vide order dated 23.4.2014 directing the

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respondents to take early decision on the reply to the Show Cause Notice.

5. Vide order dated 22.8.2014 (Annexure A-1), the applicant was ordered to be virtually reverted from the post of Senior Clerk to that of Clerk. No reasons were assigned in the order dated 22.8.2014 as to how the applicant is to be made Clerk and none of the points raised in the reply to the Show Cause Notice have been considered. The order dated 22.8.2014 is a cryptic and non-speaking order and the same has been passed in violation of the principles of natural justice as no opportunity of personal hearing was ever afforded to the applicant before passing the said order. Hence this OA.

6. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has further been stated that G.M. (Personnel) mistakenly approved the alternative appointment of the applicant as Senior Clerk in the scale of Rs. 5200-20200 with Grade Pay Rs. 2800 as the Committee of three officers determining his suitability could not bring to his notice that the applicant was substantively in the Grade of Rs. 3200-4900 and could only be absorbed in a post

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carrying the revised equivalent substantive grade of Rs. 5200-20200 with Grade Pay of Rs. 2000 of Head Constable. Grade Pay of Rs. 2000 is not available in the clerical cadre. After the Clerk (Rs. 5200-20200 with Grade Pay of Rs. 1900), the next Grade Pay is Rs. 2800 which is higher than the Grade Pay of Rs. 2000, entitlement of the applicant. Thus, the Committee of three officers wrongly recommended the absorption of the applicant as Senior Clerk in the scale of Rs. 5200-20200 with Grade Pay Rs. 2800 against the Rules. The applicant challenged the promotion order Annexure A-1/1 dated 18.3.2013 on the premise that these promotes were junior to the applicant. While examining the claim of the applicant in the said OA, it was detected that the applicant was wrongly absorbed as Senior Clerk in the scale of Rs. 5200-20200 by considering him in scale of Rs. 4000-6000 instead of his substantive scale of Rs. 3200-4900 as Head Constable.

7. It has further been stated that the applicant was only in the substantive grade of Head Constable (Rs. 3200-4900) till his medical declassification and absorption in the alternate post. He was never promoted to the higher grade. The financial upgradations under ACP & MACP do not count for determining the

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scale of the alternate post against which he is to be absorbed. He could not be absorbed in a post with scale higher than Rs. 3200-4900 while protecting his current pay in the alternate post as per Chapter XIII of the IREM (Annexure R-1). The applicant was wrongly absorbed as Senior Clerk and shown in the seniority list of senior clerks. He cannot be considered for promotion as Office Superintendent in view of the impugned order Annexure A-1.

8. Arguments advanced by learned counsel for the applicant were heard. Sh. Namit Kumar, learned counsel narrated the background of the matter and stated that the applicant was granted 3rd ACP of Rs. 9300-34800 with Grade Pay of Rs. 4200 w.e.f. 1.9.2008 vide order dated 9.11.2010 and thereafter, he was declared medically unfit and was adjusted as Senior Clerk in the pay band of Rs. 5200-20200 with Grade Pay of Rs. 2800 vide order dated 23.9.2011 (Annexure A-3). The pay scale of Rs. 3200-4900 has no consequence as the applicant was working in a higher pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 w.e.f. 1.9.2008. He stated that by virtue of the impugned order dated 22.8.2014 (Annexure A-1), the applicant had been designated as Clerk in the pay scale of Rs. 5200-20200 with Grade Pay of Rs.

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1900 and this amounted to reversion. This action was violative of Section 47 of PWD Act.

9. Sh. Yatin Gupta, learned proxy counsel for the respondents referred to the content of the written statement. He admitted that the case of the applicant had not been considered in the light of Section 47 of the PWD Act.

10. We have carefully considered the matter and it is evident from the pleadings as well as the material on record that the reversion of the applicant from the post of Senior Clerk to that of Clerk in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 1900 when he was actually drawing salary in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 4200 w.e.f. 1.9.2008 and he was redeployed on 30.9.2011, was violative of Section 47 of the PWD Act, 1995. As per this provision, the applicant cannot be reduced in rank from the post of Senior Clerk to the post of Clerk as this would have the effect of reducing his pay from the level that he was drawing as Head Constable for which post the Grade Pay is Rs. 2000. When he was medically decategorised, he was in the rank of Head Constable and had got the benefit of 3rd MACP i.e. Grade Pay of Rs. 4200 and hence, there appears to be no

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irregularity in the applicant having been given the appointment as Senior Clerk after decategorization. Hence, this OA is allowed, order dated 22.8.2014 is quashed and the respondents are directed to re-consider the case of the applicant in the light of Section 47 of the PWD Act, 1995. Since the applicant has retired from service meanwhile, all consequential benefits may also be allowed to the applicant. Action in this regard may be completed within two months of a certified copy of this order being served upon the respondents. No costs.

**(RAJWANT SANDHU)
MEMBER(A)**

**(DR. BRAHM A.AGRAWAL)
MEMBER(J)**

Dated: 10.4.2015

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