

(RESERVED ON 03.07.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **05th** day of **JULY 2018**.

ORIGINAL APPLICATION NO. 330/598/2008

HON'BLE MR JUSTICE VISHNU CHANDRA GUPTA, MEMBER (J).
HON'BLE MR GOKUL CHANDRA PATI, MEMBER (A).

1. Vyas Muni aged about 46 years son of late Girja Shanker,
Resident of Village Gram Sarai Khurd, Post Achola, Tehsil
Meja, District Allahabad
.....Applicant

VERSUS

1. Union of India through the General Manager, East Central
Railway, Hajipur, Bihar.
2. The General Manager, East Central Railway, Hajipur, Bihar.
3. The Chief Security Commissioner, East Central Railway,
Hajipur Bihar.
4. The Sr. Divisional Security Commissioner, East Central
Railway, Mughalsarai Division, Mughalsarai.
5. The Divisional Railway Manager, East Central Railway,
Mughalsarai Division, Mughalsarai.
6. The Divisional Personnel Officer, East Central Railway,
Mughalsarai Division, Mughalsarai.
7. Sri Adil Ali son of Shri A.A. Ansari, posted as Senior Clerk in
the office of Sr. Divisional Security Commissioner, East
Central Railway, Mughalsarai Division, Mughalsarai.
.....Respondents

Advocate for the Applicant : Shri S. Dwivedi

Advocate for the Respondents : Ms. Shruti Malviya

ORDER

(Delivered by Hon'ble Mr Gokul Chandra Pati, Member-A)

This Original Application has been filed by the applicant seeking
the following reliefs:-

- "(a) That the order dated 29.02.2008 passed by the Chief
Security Commissioner, East Central Railway, Hajipur
Bihar to declared illegal and same be quashed
(Annexure A-1 to the Compilation I)

- (b) That the respondent no. 1 to 6 be directed to treat the appointment and posting of applicant on the post of Clerk Grade-II in the pay scale of Rs. 3050-4590 w.e.f., 3.10.2001 in place of 10.5.2006 or in the alternative the respondent no. 1 to 6 be directed to treat the appointment and posting of applicant on the post of Clerk Grade-II in the said pay scale w.e.f., the date of appointment and posting of Sri Adil Ali in place of 10.05.2006 and further they be directed to provide all the benefits of the said post with effect from the said date.
- (c) That the respondent no. 1 to 6 be directed to give promotion to applicant to the post of Sr. Clerk in the pay scale of Rs. 4500-7000 and also provide all the benefits attached to the said post to him w.e.f, the date of promotion of Junior person namely Adil Ali (respondent no. 7).
- (d) Any other and further relief which this hon'ble court may deem fit and proper be also awarded to the applicant.
- (e) Cost of proceeding be awarded to the applicant."

2. The brief facts of the case as in the OA are that the applicant, while working as Constable in Railway Protection Force met with an accident on 24.05.1999 in which his right leg below thigh was amputated and his disability was assessed as 70% by the medical authorities. On 03.02.2001, the applicant was declared unfit for the post of Constable and fit for B-1 medical category for sedentary job. Divisional Security Commissioner, Eastern Railway, Mughalsarai sent a letter dated 31.05.2001 (Annexure No. A-3 to the OA) for creation of a supernumerary post for the applicant. Thereafter, the Sr. Divisional Personnel Officer, Mughalsarai by letter dated 25.09.2001 (Annexure No. A-4 to the OA) issued direction for appointment of applicant on the existing vacant post of Clerk in the Office of Sr. Divisional Security Commissioner, Mughalsarai. It is stated that the applicant was posted on the existing vacant post of Clerk in the aforesaid office and he was given the duty of receipt and dispatch clerk. The applicant submitted an application to Chief Security Commissioner, Hajipur through proper channel stating therein the said facts and made request for his appointment in

clerical cadre. Thereafter, the Sr. Divisional Personnel Officer, Mughalsarai issued an order dated 30.04.2004 (Annexure No. A-6 to the OA) for screening test of the medically decategorised staff and the applicant appeared in the said screening test. Vide order dated 27.09.2004 (Annexure No. A-7 to the OA), the Divisional Personnel Officer, Mughalsari declared the result of screening finding applicant suitable for sedentary job in the pay scale of Rs. 3050-4590/- . It is stated that in spite of the aforesaid order, the applicant was not given appointment in clerical cadre by the respondent no. 1 to 6. The applicant submitted representation dated 30.09.2005 (Annexure No. A-8 to the OA) informing his grievances relating to the posting as Clerk, but no action was taken by the respondents on the same. Thereafter, the General Manager (P), Hajipur Bihar vide his letter dated 30.03.2006 (Annexure No. A-9 to the OA) granted approval for change of category of applicant and the Sr. Divisional Personnel issued order dated 05.04.2006 (Annexure A-10 to the OA) posting the applicant against the post of Clerk Grade-II in the Office of Divisional Security Commissioner. The Senior Divisional Security Commissioner vide letter dated 07.04.2006 (Annexure No. A-11 to the OA) informed that the applicant has been absorbed as Clerk Grade-II in the office of Sr. Divisional Security Commissioner in the existing vacancy. Thereafter, vide order dated 10.05.2006 (Annexure No. A-12 to the OA), the Senior Divisional Security Commissioner, Mughalsarai appointed the applicant on the post of Clerk Grade-I in the pay scale of Rs. 3050-4590.

3. It is stated in the OA that the applicant after being medically decategorised w.e.f., 03.10.2001 is performing the duties of Clerk against permanent existing vacancy in the office of Sr. Divisional Security Commissioner but the respondents caused much delay in giving appointment in clerical cadre. It is also stated that one Shri Adil Ali who was also posted as Constable under the Divisional

Security Commissioner, Mughalsarai was declared medically unfit for the post of Constable in the year 2003 and he was given regular appointment on the post of Clerk Grade-II in the pay scale of Rs. 3050-4590/- vide order dated 20.08.2003. The applicant on 26.06.2006 submitted a representation to the Chief Security Commissioner, RPF, Hajipur requesting for giving effect to his posting as Clerk Grade-II w.e.f., 03.10.2001 (instead of from 10.05.2006) and give promotion to the post of Senior Clerk with all the consequential benefits at par with Shri Adil Ali. When even after expiry of sufficient time the respondents did not consider the grievance of the applicant then he filed OA No. 400 of 2007 before this Tribunal and this Tribunal vide order dated 20.04.2007 disposed of the OA with the direction to the respondents to consider and dispose of the representation dated 26.06.2006.

4. The respondents have filed the counter reply stating that after medical de-categorization the applicant was adjusted against a sedentary Job in RPF from 2001 till he was regularly absorbed as Clerk Gr. II by Sr. DPO vide order dated 10.05.2006 (Annexure CA-1 to the counter reply). Regarding the case of Sri Adil Ali (Respondent No. 7), it was stated that he was de-categorized after being appointed as Constable initially and he was absorbed as Clerk Gr. II w.e.f. 19.02.2004 after his medical de-categorization. Hence, it was contended that respondent No. 7 is senior to the applicant in the clerical cadre, for which the applicant cannot claim parity in respect of the promotion and other service benefits with respondent No. 7.

5. The applicant has filed the rejoinder, denying broadly the contentions in the counter reply and reiterating the contentions in the OA. With regard to question of seniority with respondent No. 7, it was stated that on the basis of the date of appointment and the date of de-categorization, Shri Adil Ali (respondent No. 7) being

junior to the applicant, was given regular appointment as Clerk Gr. II prior to the applicant. It was, therefore, stated that it is wrong to say that Sri Ali was senior to the applicant since he was appointed as Clerk Gr. II prior to the applicant. This action of the responding giving regular appointment to the junior employee is stated to be arbitrary and discriminatory in the law. Both the parties have also filed Suppl. Counter reply and Suppl. Rejoinder reply without giving any fresh facts. The respondents have filed another counter reply on 29.04.2013 opposing the amendment application by the applicant, claiming promotion. In this counter reply it was stated that the applicant was absorbed in the post of Clerk Gr. II vide order dated 05.04.2006 and his seniority will have to be determined as per the instructions of the IREM. It is stated that absorption of Shri Adil Ali (respondents No. 7) has been considered as per the fitness certificate issued to him by the medical authority.

6. We have considered the pleadings of both the parties and the submissions of learned counsels for both the parties. Admittedly, the applicant who was working as a Constable under the Railway Protection Force (RPF), was medically decategorized and declared unfit for the post of Constable and fit for B-1 medical category for sedentary jobs on 14.05.2001. Vide the letter dated 25.9.2001 (Annexure A-4 to the OA), Sr. Divisional Personnel Officer, Eastern Railway, Mughalsarai, informed the Divisional Security Commissioner for posting of the applicant as a clerk under RPF. It is the case of the applicant that he was posted against a vacant post of clerk in pursuance to the letter dated 25.9.2001, but was not allowed regular posting as Clerk Gr. II. This contention of the applicant is denied by the respondents vide para 8 and 9 of the Counter Reply, where it is stated that the applicant was adjusted against a supernumerary post till he appeared for the screening test for the post of clerk vide letter dated 30.04.2004 and finally he

was posted as clerk with effect from 10.05.2006 (Annexure CA-1 to the Counter Reply) by the respondents.

7. It is seen from the pleadings of the respondents that there is no mention of any specific posting of the applicant for the period from the date when the applicant was medically de-categorized till regular posting as Clerk w.e.f. 10.05.2006, except that the applicant was working against a supernumerary post as stated in the counter reply. The contentions of the applicant in para 4.8 of the OA that he was given the duty of receipt and dispatch clerk in the Office of Senior Divisional Security Commissioner, RPF, Eastern Railway, Mughalsarai have been denied by the respondents in para 9 of the counter reply, without specifically mentioning as to what duty the applicant was given till his regular posting as Clerk Grade-II on 10.05.2006 (Annexure CA-1). It is also seen from the representation dated 01.07.2003 (Annexure No. A-5 to the OA) submitted by the applicant that he was not getting the pay of Clerk during this period, for which he submitted his request for regular appointment as Clerk. Hence, in absence of any specific pleadings of the respondents and taking into account the letter dated 25.09.2001 of the Senior Divisional Personnel Officer (Annexure No. A-4 to the OA) instructing the respondent No. 4 to post the applicant as Clerk, we are of the view that the applicant was given the duty of Clerk after the issue of letter dated 25.09.2001 as contended by the applicant in para 4.8 of the OA, although he was not getting the regular pay scale applicable to the post of Clerk, nor was he appointed regularly as Clerk, Grade II.

8. Vide letter dated 30.04.2004 (Annexure No. A-6 to the OA), the applicant was directed by the respondents to appear in the screening test held for the medically de-categorized staff to be held on 04.05.2004 at 11.30 hours and the applicant appeared in the said screening test. The applicant cleared the screening test for

being posted against the sedentary job in the pay scale of Rs. 3050-4590 vide order dated 27.09.2004 (Annexure No. A-7 to the OA) passed by the Divisional Personnel Officer. The applicant's grievance is that even after clearing the screening test, he was not given regular appointment in clerical cadre till 10.05.2006 in spite of the representation dated 30.09.2005 (Annexure No. A-8 to the OA) submitted by the applicant. In para 4.7 of the OA, the applicant contended that the delay in giving regular appointment in clerical cadre to him by more than 5 years was due to fault of the respondents for the reasons best known to them. In reply to this, the respondents in para-17 of the counter reply have not admitted to the contentions, but no reason has been furnished for the delay in giving regular posting to the applicant or the reason has been furnished for not posting him in clerical cadre even though he was performing the duty of the Clerk from the year 2001 and he had cleared the screening test vide order dated 27.09.2004 (Annexure No. A-7 to the OA).

9. The applicant has also cited the case of one Shri Adil Ali, who is arrayed as respondent no. 7 in this OA. Shri Adil Ali was posted as Constable in the RPF after the appointment of the applicant and he was medically decategorized in the year 2003. He was given regular appointment of Clerk vide order dated 20.08.2003 (Annexure No. A-13 to the OA) immediately after decategorization. In reply to this contention of the applicant in the OA, the respondents in para 19 of the counter reply have simply stated that Shri Adil Ali was absorbed as Clerk Grade-II after his medical decategorization whereas the applicant was appointed for sedentary job. It is clear that no reason has been furnished by the respondents for giving regular post of Clerk Grade-II to Shri Adil Ali earlier, while denying the same to the applicant.

10. The applicant submitted a representation dated 26.06.2006 (Annexure No. A-15 to the OA) with the prayers as stated under:-

"That sir mention may be made that Const/RPF, Adil Ali has been medically decategorised due to hard hearing after me in the years of 2003 vide no. E/862/2003 dated 20.08.2003 has been given job of clerk grade-II and he is now Sr. Clerk, although he is junior to me.

In view of the above facts and circumstances it is therefore prayed that a sympathetic and impartial consideration be made in my case by way of giving effect of my posting as Clerk Gr.II with effect from 03.10.2001 and accordingly now, I may be treated as Sr. Clerk from the year of 2003 and onward with arrears."

When the aforesaid representation was not considered, the applicant approached this Tribunal in OA No. 400 of 2007, which was disposed of with a direction to the respondents to dispose of the representation dated 20.06.2006 of the applicant. The respondents in compliance of the direction of this Tribunal rejected the said representation and issued the impugned order dated 29.02.2008 (Annexure No. A-1 to the OA), which is challenged in this OA. It was stated in order dated 29.02.2008 that Shri Adil Ali was posted as a Clerk Grade-II vide order dated 20.08.2003 and he assumed the post of Clerk Grade-II on 19.02.2004, whereas the applicant was adjusted against a supernumerary post from 03.10.2001 to 09.05.2006 and he was posted as Clerk Grade-II on 10.05.2006. It is also stated in the impugned order that second upgradation under ACP was not allowed to the applicant since he was to complete 24 years of regular service in the year 2007 in normal course. But before that he was medically decategorized in the year 2001 for which the benefit of second upgradation under ACP was not given to the applicant. Accordingly, the representation dated 20.06.2006 has been rejected.

11. Vide order dated 10.10.2017 in this OA read with the order dated 04.02.2017, the respondents were directed to furnish a comparative chart in respect of respondent no. 7 showing the sequence of events step by step right from the date of appointment

to the post of Constable in RPF till final appointment as Clerk. In compliance of the said order, the respondents filed a supplementary affidavit on 23.11.2017 enclosing the comparative chart of the applicant and Shri Adil Ali (respondent no. 7) which is extracted as under:-

"Office of the Sr. Divisional Security Commissioner,
RPF, East Central Railway, Mughalsarai

No. DSC/M-Court Mughalsarai Date:- 03.11.2017
Case/VM/08

P. N Rai (Advocate)
Standing Counsel Railways
CAT/Allahabad (UP)
Sub:- OA No. 598 of 2008 Vyas Muni Vs. UOI & Others.

Ref:- Your letter dated 14.10.17.

In compliance to Hon'ble CAT's order dated 13.10.17 comparative chart in respect of respondent no. 7 i.e., Adil Ali, showing the sequence of events from the date of appointment to the post of Constable in RPF till final appointment as Clerk is as under:-

Sl No.	Appointment	Sri Vyas Muni	Sri Adil Ali
1	Constable	17.06.1983	14.09.1994
2.	Medically unfit	14.05.2001 fit for Class B1 by visual standard. Unfit for the post of constable in RPF department fit for sedentary job only.	20.06.2003 unfit in B1 & B2 but fit in C1 & below with hearing aid.
3.	Supernumerary Post	30.10.2001 to 09.05.2006	-
4	Clerk Gr. – II	10.05.2006	19.02.2004
5	Sr. Clerk	23.01.2013	20.10.2004
6	Head Clerk	-	19.02.2009
7.	Office Superintendent	10.06.2015	26.10.2010

Submitted please.

Sr. Divisional Security Commissioner, RPF,
East Central Railway, Mughalsarai"

12. From the details of service of the applicant as well as of the respondent no. 7, it is clear that the respondent no. 7 was appointed more than 11 years after appointment of the applicant as RPF Constable for which the applicant is clearly senior to the respondent no. 7. The respondent no. 7 was medically decategorized on 20.06.2003, whereas the applicant was medically decategorized on 14.05.2001. The respondent no. 7 was given regular posting as Clerk Grade-II, earlier than the applicant and was allowed to join as regular Clerk Grade-II on 19.02.2004, whereas as the applicant's case for regular appointment as Clerk Grade II was not done till 10.05.2006 in spite of his repeated representations. Since he was working against a supernumerary post from 2001 to 2006, for which the benefit of seniority and regular post of Clerk was not extended to the applicant. As a result, the second upgradation under the ACP Scheme and subsequent promotions have been denied to the applicant, while the same were allowed to his junior, Shri Adil Ali. It is also seen that although the applicant appeared in the screening test, which was cleared by him vide order dated 27.09.2004, even then he was denied regular posting of Clerk Grade-II till 10.05.2006 and reasons for such delay have not been explained by the respondents in their pleadings. There is nothing on record to show whether the respondent no. 7 had cleared the screening test before being appointed as Clerk Grade II w.e.f. 19.02.2004.

13. From the above facts and circumstances, we are convinced that the applicant has been discriminated vis-à-vis the respondent no. 7 in spite of the fact that he was senior to the respondent no. 7 in the original cadre of Constable in the RPF and although the applicant was medically decategorized in the year 2001 after putting in a service of about 18 years as Constable, whereas the respondent no. 7 had put in about 9 years of service as Constable at the time of his decategorization. As discussed earlier, nothing

has been furnished or mentioned by the respondents in their pleadings to explain the reasons for not posting the applicant as Clerk Grade-II on 19.02.2004, when the respondent no. 7 was allowed to join as Clerk, although the applicant was also working as Clerk on a supernumerary post, waiting for a regular posting against the post of Clerk.

14. We also take note of the following contentions in para-24 of the counter reply filed by the respondents stating that Shri Adil Ali is senior to the applicant in clerical cadre:-

"That the contents of para 4.24 of the Original application, as stated are not admitted. It is further stated that the Sri Adil Ali, de-categorized Constable was absorbed as Clerk Gr.II with effect from 19.02.04 and applicant was absorbed as Clerk Gr. II by Sr. DPO/MGS with effect from 05.04.2006, hence Sri Adil Ali is senior in clerical cadre to the applicant."

In Para 28 of the counter reply, it is also contended that respondent no. 7 was not junior to the applicant, since he joined as Clerk Grade-II prior to the applicant. We are not impressed with these contentions of the respondents, because of the fact that the respondent no. 7 was much junior to the applicant considering the date of their initial appointment as Constable in RPF and the respondent no. 7 was medically decategorized subsequent to the medical decategorization of the applicant. The applicant was made to work against a supernumerary post from 2001 to 2006 and discharged the duty of Clerk without being given regular posting as Clerk till 10.05.06 even though the respondent no. 7, being junior to the applicant in the Constable cadre and being medically decategorized subsequent to the applicant, was given regular post of Clerk on 19.02.2004. We are also not convinced by the averment of the respondents that the respondent No. 7 was given posting earlier taking into account the medical fitness certificate, since from the materials available on record, we did not find anything

special in the medical fitness certificate or service records of the respondent No. 7 and of the applicant to justify the action of the respondents to allow regular posting of Clerk Grade II to the respondent No. 7 on 19.02.2004 and to delay such a benefit to the applicant till 10.05.2006. Since the applicant was senior to the respondent No. 7 in the cadre of RPF Constable, such action of the respondents is clearly discriminatory and hence, it is not sustainable under law.

15. In view of the above discussions, the OA deserves to succeed. Accordingly, the impugned order dated 29.02.2008 (Annexure A-1 to the OA) is set aside and quashed and the respondents are directed to treat the date of regular appointment of the applicant as Clerk Grade II with effect from 19.02.2004, when his junior, i.e. the respondent No. 7 was regularly appointed as Clerk Grade II without any justifications. We also direct that the applicant will be entitled to all consequential service benefits like promotion and fixation of pay etc. at par with the respondent No. 7, subject to the condition that the promotion and fixation of applicant's pay after promotion shall be done notionally for the past period for which no arrear salary will be payable. The applicant shall be posted against a suitable post after his promotion at par with the respondent No. 7 with all consequential benefits. The respondents are directed to comply this order within three months from the date of receipt of a certified copy of this order.

16. The OA is allowed in terms of above. There will be no order as to costs.

(GOKUL CHANDRA PATI) (JUSTICE VISHNU CHANDRA GUPTA)
MEMBER-A MEMBER-J

Arun..