

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1092 of 2003

New Delhi, this the 6th day of February, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.K. NAIK, MEMBER (A)

Parma Nand
S/o Shri Mawasi Ram,
SIT/Ghaziabad, Northern Rly.,
Ghaziabad, Rly Station.

-APPLICANT

(By Advocate: Shri Khairati Lal)

Versus

1. Union of India through
General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Rail Manager,
Northern Railway,
State Entry Road, New Delhi.
3. Divisional Personnel Officer,
Northern Railway, DRM's Office,
New Delhi.

-RESPONDENTS

(By Advocate: MS. Anju Bhushan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 as he has a grievance to the effect that applicant was working as a Skilled Training Lighting Fitter Grade.1 (SKLF) Rs.1320-2040/4000-6000 and while working he suffered a loss of vision and consequently he was medically declassified and as such he was put in a post in the pay scale of Rs.950-1500/Rs.3050-4590 though the rules require that if an employee by virtue of his disability becomes physically incapable of performing the duties of the post which he occupied should not be dispensed with or reduced in rank but should be shifted to some other

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post with the same pay scale and service benefits whereas applicant has been put in a lower grade which is against the rules and instructions issued by the Railways. Thus the applicant prays that the respondents be directed to promote the applicant in the same grade of Rs. 1320-2040/4000-6000 and relative seniority in the grade be refixed taking into account the position before medical deategorisation.

2. It is also submitted that the respondents be directed to restore his First Class Privilege Pass and his pay should be protected which has been reduced from Rs. 4700/- to Rs. 4590/-.

3. The respondents are contesting the OA. The respondents admit that the applicant was working as a highly skilled fitter (Electrical) in the grade of Rs. 1320-2040 with Chief Medical Superintendent, Northern Railway, Hospital w.e.f. 28.6.1996. AS per Memo dated 25.7.1996 issued by CMC/Delhi vide letter dated 17/22.7.1996 he was declared fit in his original medical category from the vision view with the recommendations that he should be given job where forwarded bending is not required on permanent basis, so the suitability of the applicant was adjudged by a committee comprising himself and two other officers who found him fit for the post of Ticket Collector Grade Rs. 950-1500 and the applicant was offered the post of Ticket Collector, which he accepted and was assigned seniority at S.No. 2.

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4. Thereafter he was further promoted to the grade of Sr. Ticket Collector in the grade of Rs. 4000-6000 and now the applicant wants that he should be absorbed in the vacancy of SR. Ticket Collector w.e.f. 15.11.1996 but the same could not be accepted as no vacancy of Sr. Ticket Collector was available as on 15.11.1996.

5. The respondents also pleaded that if the lower post was not acceptable to him he should have refused to accept the same in the hope of getting appointed in the higher post only then he had a claim.

6. We have heard the learned counsel for the parties and gone through the records of the case.

7. The provision regarding providing alternate employment to the medically declassified staff as enshrined in para 1305 which is reproduced hereinbelow:-

"Medically declassified staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised, there should be no difficulty in providing such alternative employment and no reversion of any officiating railway servant for the purpose of absorbing the disabled railway servant should be necessary. For this purpose attempts should be made to absorb the disabled railway servant not only within the District/Division or Department but in another District/Division or Department".

8. The learned counsel appearing for the applicant submitted that as per the provision of Para 1305 medically declassified staff has to be provided an alternate job keeping in view the background and experience of the earlier post and whether an employee can be utilised and since the case of the applicant was

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processed for providing alternate job it was found that applicant could be provided alternate job and that too of Ticket Collector which was available so that was allowed.

9. On the contrary the learned counsel for the respondents submitted that to this para 1305 advance Correction Slip No.77 which has been issued by the Railway Board and has been incorporated in the IREM Vol.1. in para 13.01 which prescribes that "A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits". The learned counsel for the applicant highly emphasised the words that the employee should be shifted to some other post with the same pay scale and service benefits. So the learned counsel for the applicant submitted that he being a Highly Skilled Training Lighting Fitter Grade-I was entitled to the First Class Pass and as his pay has been reduced so he should not have been given a job which was lower in the rank.

10. This correction slip further in para 13.03 mentions that "if such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable

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alternative employment for him with the same pay scale and service benefits, efforts to locate suitable alternative employment starting immediately".

11. Thus it is submitted that the absorption of the applicant in a lower grade is in clear violation of paragraph of 1300-1315 of the IREM Vol. I which is at Annexure A-V1.

12. The applicant had also submitted that as regards pay fixation is concerned paragraph 13.13 of the IREM provides "In case of decategorisation under circumstances arising out of and in the course of employment the pay of a decategorised employees (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be adjusted in future increments increases in pay other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically decategorised employee should be allowed on pay plus personal pay as admissible in the absorbing grades (emphasis supplied)".

13. We have considered the contentions of the respective parties.

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14. As regards the absorbing of the applicant in a lower grade is concerned. we do not find any violation of the rules because if vacancy is not available then the applicant can be appointed in a lower category as per the provisions of the IREM Vol.1.

15. However, with regard to the fixation of pay is concerned, as per para 13.13 quoted above goes to show that in cases of decategorisation under circumstances arising out of and in the course of employment the pay of a decategorised employee drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay, so we find that the pay of the applicant does not appear to have been properly fixed.

16. We accordingly allow the OA to the extent that pay of the applicant has to be protected in terms of para 13.13 of the IREM vol.1 and the applicant is allowed to the fixation of pay. He is also entitled to the benefits of the pay scale which was drawn before being medically decategorised including 1st Class Privilege Passes. This may be done within a period of 2 months from the date of receipt of a copy of this order. No costs.

J. Rakesh
(S.K. NAIK)
MEMBER (A)

/Rakesh

Kuldeep
(KULDIP SINGH)
MEMBER (JML)