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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.118/2003

Thursday, this the 20th day of November, 2003

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Bharat Bhushan, Member (A)

Shri Varinder Kr. Gupta
s/o Sh. Madan Mohan Gupta
Control Office
DRM Office, New Delhi

..Applicant

(By Advocate: Shri S.K.Sawhney)

Versus

1. Union of India through
General Manager,
Northern Railways
2. Divisional Personal Officer,
Northern Railway, New Delhi
3. Asstt. Divisional Personal Officer
Delhi Division, Northern Railway
New Delhi
4. Narinder Singh, Clerk
Electric Branch
Railway Station (TL)
Northern Railway, Delhi Main
New Delhi

..Respondents

(By Advocate: Shri Shailendra Tiwari)

O R D E R (ORAL)

Shri Bharat Bhushan:-

The case of the applicant is that he was appointed on the post of Constable in the pay scale of Rs.825-1200/- by the Railway Protection Force. In the seniority list dated 31.7.1991, he was placed at seniority bearing ^{sl.} No.3181 and the seniority of one Shri Narender Singh, respondent No.5 was ^{at serial} ~~bearing~~ No.3213. The said seniority list was annexed with the petition as Annexure P-2. It is further the case of the applicant that he was medically de-categorised on 10.11.1993 from the post of the Constable after the medical examination conducted by respondent No.1 under para 573 of IREM.



(2)

Similarly, Shri Narender Singh, respondent No.5 was also medically de-categorised on 24.1.1994 under the same provisions.

2. As per the rules, after his medical de-categorisation, the applicant was offered the alternative post of Daftry carrying the pay scale of Rs.775-1025/- on 9.8.1994 with an assurance that as and when a suitable vacancy arises in the higher post, he would be adjusted there in preference to his juniors. The post of Daftry was of a lower rank and carried lower pay than that of the post of Constable, the post which the applicant held before medical de-categorisation.

3. The applicant in November, 2001 came to know that Shri Narender Singh, i.e., respondent No.5, who was quite junior to him in the earlier post of Constable, had actually been absorbed in the post of Clerk on 10.9.1999 and had been further given revision of pay in the pay scale of Rs.4500-7000/- whereas he was allowed to remain as Daftry in the pay scale of Rs.2610-3540/-. This, according to the applicant, was done in flagrant violation of Rule 1309 2A of IREM. Hence his grievance is that he should be placed in the cadre of Clerk as has been done in the case of Shri Narender Singh, respondent No.5. He made a representation dated 11.1.2002 in this respect but the same was rejected by the authorities vide order dated 30.4.2002 (Annexure A-1). Hence the said order has been impugned before us in this petition.

4. In reply, the respondents have alleged that the contention of the applicant was incorrect and not tenable



(3)

And, as regards Shri Narendra Singh is concerned, the stand taken by them is, that, after having been medically de-categorised from Railway Protection Force, his suitability was adjusted by the Suitability Committee nominated for the purposes of absorption of medically de-categorised staff and he was adjudged suitable for the post of Office Clerk, and accordingly he was absorbed as Office Clerk in Electrical Department. Consequently, they have denied the violation of Rule 1309 2A of IREM. The respondents have further stated that the applicant was earlier found suitable for the post of Daftry which he had accepted without any objection. Hence, according to the respondents, no injustice had been done to the applicant and the provisions of IREM had been fully complied with.

5. We have heard the learned counsel for the parties and have perused the records. Learned counsel for applicant during the course of arguments has taken us through Rule 1314 of IREM which deals with the seniority of the persons medically de-categorised and absorbed in alternative posts. The sub-clause (c) (1) of the said rule, which is relevant for our purpose, reads as under:-

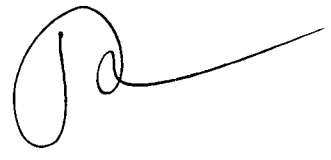
"(c) the following principles should be followed in absorption in alternative categories after medical decategorisation.

- (1) Quite often it happens that due to vacancies not being available in equivalent grades a medically decategorized employee has to be offered absorption in a lower grade. In some cases such employees refuse the lower grades in the hope of vacancies in higher grades materialising. It should

(4)

be open in such cases for an employee to accept a lower grade with a request that if a vacancy in a grade equivalent to what he held before decategorisation occurs in the same cadre he should be considered eligible for the same in preference to a junior medically decategorise employee. While the employee can be expected to put in an application when this contingency happens, it is also necessary for the administration suo moto, when considering a subsequently decategorised employee for absorption in a cadre, to look into cases where senior decategorised employees may have been absorbed in lower grades in the same cadre during previous three years and initiate a review. Cases decided before need not be reopened unless there are very exceptional circumstances."

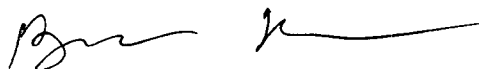
6. This provision deals with the exigencies arising at a time when a proper vacancy is not available in the equivalent grades in respect of a medically de-categorised employee. A close perusal of the aforesaid leaves no room of doubt that if for the reason of non-availability of the equivalent grades an employee accepts a lower grade, then the Administration suo moto or on request of the employee, is required to initiate a review of the case and absorb him in the cadre and he has to be given preference over a junior medically de-categorised employee. Learned counsel for applicant has taken us through at least two such more instances, i.e., one of Constable Shardhanand and another of Constable Dalel Singh both of Railway Protection Force, who too were medically de-categorised but were subsequently appointed to the post of ACM in the grade of Rs.3050-4590/- and Clerk respectively in the same grade. It is alleged that both these employees were earlier



(8)

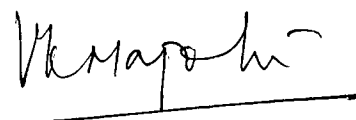
Constables and junior to the applicant and this fact is obviously not refuted by the respondents though the learned counsel for respondents has very vehemently argued that the selection is done by a constituted Committee of three officers and the said Selection Committee had found the applicant not suitable to be posted as Clerk. The further contention of the learned counsel for applicant is that the applicant was a graduate while all other persons mentioned above were only matriculates and thus discrimination was writ large in this case.

7. Having regard to the totality of the circumstances and the provisions as contained in Rule 1314 of IREM requiring the Administration to offer higher grade to the incumbent in preference to a junior medically de-categorised employee, we are of the considered view that by not doing so, the applicant has been discriminated and thus the action of the respondents cannot stand ^{to} scrutiny of law. This being so, the OA is allowed with all the consequential benefits. No order as to costs.



(Bharat Bhushan)
Member (J)

/sunil/



(V. K. Majotra)
Vice Chairman (A)