
(2019) 03 CAT CK 0142

In the Central Administrative Tribunal

Case No : Original Application No. 4167 Of 2015

Narender Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Protection Of Rights And Full Participation) Act, 1995 — Section 47(1)

Citation : (2019) 03 CAT CK 0142

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, Satpal Singh

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 5.10.15 (Annex.A/1) and consequently pass an order directing the respondents to review the case of applicant for his absorption to the post of Sr.TCR in Grade of Rs.4000-6000/- w.e.f. 27.7.95, at the place of TCR in Grade of Rs.3050-4590, in the light of Railway Board circulars dated 29.4.99 as done in the case of junior person namely Sh. Ashok Kumar, with all the consequential benefits including fixation of seniority of the applicant in the grade of Rs.4000-6000 with all the consequential benefits.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to treat the absorption of the applicant to the post of Sr. TCR in Grade of Rs.4000-6000 w.e.f. 27.7.95, as done in the case of junior person namely Sh. Ashok Kumar, with all consequential benefits including fixation of seniority of the applicant in the grade of Rs.4000-6000 with all the consequential benefits.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. The applicant's grievance in this case is against the impugned letter dated 5.10.2015 vide which his request dated 26.8.2015 regarding promotion as CTI at par with Shri Ashok Kumar S/o Sh. Harbans Lal, CTI/NDLS was rejected on the grounds that he has already given his consent for absorption as TCR (in Grade Pay of Rs.1900/- at the time of redeployment after his medical de-categorization, that the said Shri Ashok Kumar got the benefits of redeployment as Sr. TCR in Grade Pay of Rs.2400/- in compliance of Court's order and his case cannot be considered at this stage.

3. Brief facts of the case as stated by the applicant in the OA are that the applicant was initially appointed in the Railway Department to the post of Diesel Khallasi on 7.1.1978 and thereafter he was promoted to the post of Turner Grade w.e.f. 9.4.1982 in the scale of Rs.260-400 and he was further promoted to the post of Turner Grade-II w.e.f. 27.4.1991 in the scale of Rs.1200-2040. However, while working a Turner Grade-II, he was declared medically de-categorized from the post of Diesel Turner Grade-II in scale of Rs.1200-2040 on 6.6.1995.

3.1 According to the applicant, he was required to be absorbed on the equivalent pay scale post but the respondents absorbed him in lower pay scale post of TCR in the scale of Rs.950-1500 vide order dated 27.7.1995. The applicant was subsequently promoted to the post of Sr. TCR in the grade of Rs.1200-2040/4000-6000 w.e.f. 24.5.1996 and further to the post of Head TE in scale of Rs.5000-8000 w.e.f. 1.11.2003.

3.2 The applicant accepted the lower post only for the reason that no equivalent grades alternative post was available at that time but at the same time applicant submitted his representation for equivalent grades post and for protection of his seniority vide his application dated 21.8.1996 praying therein that his seniority be assigned above Shri Daljeet Singh, which was considered by the respondents and passed the order dated 21.8.1996, which reads as under:-

"An appeal from the above named employees for assigning correct seniority as TCR & Sr. TCR, is sent herewith for due consideration and action.

The employee while working as Turner scale Rs.1200-1800, was medically decategorised and absorbed as TCR scale Rs.950-1500 on 27.7.95 and assigned seniority in 950-1500 from 27.4.82, the date of promotion of the employee in this scale as a Turner. Since, the employee was working in scale Rs.1200-1800, his seniority should have been assigned at the tip of TCRs scale Rs.950-1500.

As per instructions of the Rly.Bd., the seniority position of the employee needs revision and he should be ranked senior over Shri Daljeet Singh, who was also medically decategorised from skilled post to TCR and is working as STE, having been absorbed as TCR earlier.

It is, therefore, desired that the seniority be reviewed & correct position of seniority be assigned to above employee placing him senior over Shri Daljeet Singh, STE."

3.3 According to the applicant, one junior person, namely Shri Ashok Kumar, who was also initially appointed as Diesel Khallasi like the applicant and subsequently promoted in Artisan cadre and medically de-categorised and was given alternative appointment in lower post of TCR in grade of Rs.950-1500, like the applicant, filed OA 538/2011 before this Tribunal and this Tribunal vide order dated 31.7.2012 disposed of the same with the direction to the respondents to consider the representation of the applicant therein for appointment as Sr. Ticket Collector in the scale of Rs.4000- 6000 from 1.3.1993 instead of in the grade of Rs.3050-4590 in terms of the provisions of Railway Board contained in RBE 93/2005. In compliance of the aforesaid judgment of this Tribunal, vide order dated 1.10.2013, the said Shri Ashok Kumar was appointed/absorbed in the pay scale of Rs.4000-6000 from the date of medical de-categorisation, i.e., w.e.f. 24.1.1999 and consequential benefits were also granted to the said Shri Ashok Kumar vide orders dated 26.9.2013, 3.10.2013, 28.1.2014 and also vide order dated 27.1.2014, the said Shri Ashok Kumar was promoted as Hd. TTE w.e.f. 12.6.2002 but only on proforma basis and actual basic only w.e.f. 3.8.12.

3.4 Applicant further contended that the said Shri Ashok Kumar is junior to him since his appointment at every stage and once the said Shri Ashok Kumar, his junior, has been given the benefits of Railway Board circular RBE 93/2005, there is no reason and justification to deny the same benefits to the applicant.

3.5 The applicant submitted his detailed representation dated 26.8.2015 but the respondents vide impugned order dated 5.10.2015 rejected the same.

3.6 Being aggrieved by the said order of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant, who is presently working as TTI/NDLS in Grade of Rs.9300-34800 + 4200 Grade Pay, was appointed in the Railway as DSL Khalasi in grade of Rs.196-232 as on 7.1.1978 and was promoted to the post of Turner Grade Rs.260-400 w.e.f. 9.4.1982. He was further promoted to the post of Turner Grade-II in Grade Rs.1200-1800 and resumed duty on 27.4.1991. Thereafter he was declared medically de-categorized from the post of DSL Turner Grade II Rs.1200-2040 on 6.6.1995 and was absorbed as TCR in Grade Rs.950-1500 vide letter dated 27.7.1995. He was further promoted as Sr. TCR grade w.e.f. 24.5.1996 and Hd. TE in Grade Rs.5000-8000 w.e.f. 1.11.2003.

4.1 They further stated that after reviewing his case as well as service records of both the employees, i.e., applicant as well as Shri Ashok Kumar, they have made a comparative statement of both the employees which is as under:-

Service Particulars of Shr. Nrender Singh S/o Sh. Balbir Singh Hd. TTE/NDLS

Service particulars of Shri Ashok Kumar S/o Sh. Harbans Lal, CTI/NDLS

D.O.B.

12.04.1958

10.04.1958

Qualification

At the time of appointment under Matric, later on pass Matric in 1994

Matric

D.O.A.

07.01.1978 Appointed as DSL/Kh in Grade Rs.196-232 (GP 1800/-)

01.07.1976 appointed as DSL/Kh in Grade Rs.196-232 (GP1800/-)

1st Promotion

09.04.82 as Turner-III in grade Rs.260-400 (i.e. GP 1900)

01.12.1988 as Instrument Mec-III in grade Rs.950- 1500 (GP 1900)

2nd Promotion

27.04.1991 as Turner-II in grade Rs.1200-1800 (i.e. GP-2400)

01.03.1993 as Turner-II in Grade Rs.1200-1800 (i.e. GP 2400/-)

Medically decategorised

06.06.1995 from the post of Turner-II Gr.1200-1800

02.03.1998 from the post of TurnerII GP 2400/-)

Redeployed as

27.07.95 as TCR in Gr. Rs.950-1500 (i.e., GP 1900/0) (After availing willingness from the employees on 26.07.1995 at S.No.10).

24.02.1999 as TCR in Gr. Rs.3050- 4590 (GP 1900/-)

3rd Promotion

24.05.1996 as Sr. TCR in Gr. (2400/-)

05.01 as Sr. TCR in Gr. (2400/-) *whereas on later stage Shri Ahok Kumar had filed a court case in which it was decided that he should be redeployed to his substantive category grade as Instrument Mechanic Grade-II RP 2400/- at the time of his medical de-categorisation, instead of TCR i.e. GP Rs.1900/- thus he was benefit of Sr. TCR given w.e.f. 01.03.1993 in compliance of Court's order

MACP

Nil

w.e.f. 01.09.2008 in GP 2800/-

5th Promotion

01.11.2003 TTI in Gr. 5000-8000 (RSRP 4200/- GP)

28.07.2012 as TTI in Gr. 5000-8000 (RSRP 4200/- GP) earlier. Later on in continuation to the Court's order he was given the benefit of Gr.5000- 8000 at par with his junior w.e.f. 13.06.2002.

6th Promotion

Nil

21.08.2015 Promoted as CTI in GP 4600

4.2 They further stated that the aforesaid benefit was extended to Shri Ashok Kumar in compliance of the aforesaid directions of this Tribunal.

4.3 They also stated that Shri Ashok Kumar was appointed as DSL/Kh w.e.f. 1.12.1976 whereas the applicant was appointed as DSL/Kh. w.e.f. 7.1.1978. However, the said Shri Ashok Kumar was medically de-categorised from the post of Turner-II GP Rs.2400/- w.e.f. 24.2.1999 and redeployed as TCR in GP Rs.1900/- and later on as per the Order of this Tribunal, it was decided that the said Shri Ashok Kumar be re-deployed to his substantive category grade as Instrument Mechanic Grade-II Rs.2400/- as the time of his medical de-categorisation, instead of TCR GP Rs.1900/- Thus, he was granted the benefit of Sr. TCR w.e.f. 1.3.1993.

4.4 They also stated that the action of the respondents is just and proper and as per rules, as the applicant was absorbed as TCR in Grade Rs.3050-4590 at his own request as already explained above.

5. Applicant has also filed this rejoinder in which while reiterating the contents of the OA and denying the averments of the counter reply, the applicant contended that he was required to be absorbed on the equivalent pay scale post but the respondents absorbed him in lower scale post of TCR in scale of Rs.950-1500 vide order dated 27.7.1995.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. Counsel for the applicant submitted that as per Para 1314 of the IREM, medical decategorised staff should be absorbed in alternative posts in the equivalent or corresponding grade and, therefore, the applicant should also be absorbed in alternative post in equivalent grade, i.e., Rs.4000-6000 and fixing the applicant's pay in the grade of Rs.3050-4590 is totally illegal and arbitrary action of the respondents.

7.1 Counsel for the applicant by referring to The Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995 submitted that certain safeguards have been incorporated, which includes pay-protection and non-reduction in rank, in case of employees who had acquired disabilities

during service and the relevant provision of the said Act reads as under:-

"47. Non-discrimination in Government employments.-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

7.2 Counsel for the applicant further submitted that the applicant's case is fully covered by the judgment of this Tribunal dated 31.7.2012 in OA No.838/2011 and once the junior has been granted some benefit, the senior cannot be denied the same benefit.

8. On the other hand, learned counsel for the respondents reiterated the averments made in the counter affidavit and also submitted that the case of the applicant is not similar to that of Shri Ashok Kumar, who had filed OA No.838/2011.

9. After having regard to the aforesaid submissions of learned counsel for the parties and also having regard to the pleadings available on record, this Court is of the view that the issue involved in this case is confined to the applicability of RBE No.93/2005 in the case of applicant, as on the basis of the said RBE, this Tribunal disposed of the said OA No.838/2011 vide order dated 31.7.2012. To see whether the case of the applicant is also covered by the said RBE 93/2005 or not, it is relevant to refer the same, which reads as under:-

"R.B.E. No. 93/2005

Subject :- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Absorption of disabled medically decategorised Staff in alternative employment - Date of effect of the revised scheme - Question regarding.

Chapter XII of Indian Railway Establishment Manual, Vol. I, 1989 incorporating the scheme for absorption in alternative employment of medically de-categorised staff has been amended pursuant to Section 47(1) of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, vide ACS No.77 issued under this Ministry's letter number E(NG)I-96/RE3/9 (2) dated 29.4.99 (Bahri's 89/1999,p 88) read with ACS Nos. 122 and 148 issued under their letters No. E(NG)I/2000/RE-3/5, dated 31.7.2001 and E(NG)I/2001/RE-3/8 dated 1.7.2003, respectively.

2. The scheme so revised is being implemented in the Railways from the date of

issue of the relevant instructions viz 29.4.99. Representations have been received to the effect that since the Act came into force with effect from the date on which it was notified in the Government of India Gazette, viz, 7.2.1996, the benefit of revised scheme should be made available from 7. 2.1996. The matter has been considered carefully by this Ministry. It has now been decided that the scheme contained in this Ministry's letter of 29.4.1999 as modified may be made effective from 7.2.1996. Accordingly in respect of cases in which the disabled/ medically decategorised employees on or after 7. 2.1996 and upto 28.4.1999 were absorbed in alternative employment in accordance with the earlier scheme in grade(s) lower than the grade(s) held by them on regular basis at the time of disablement/medical decategorisation may be reviewed on representations received in this regard and decided at the level of the General Manager as per the revised scheme. In other type of cases wherein disabled/ medically decategorised employees had opted to retire asking for appointment of eligible ward on compassionate ground, the question of review does not arise.

3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

10. From the aforesaid RBE, it is clear that only those cases in respect of which the disabled/medically decategorised employees on or after 7.2.1996 and upto 28.4.1999 were absorbed in alternative employment in accordance with the earlier scheme in grade(s) lower than the grade(s) held by them on regular basis at the time of disablement/medical decategorisation may be reviewed on representations received in this regard and decided at the level of the General Manager as per the revised scheme. It is admitted fact that applicant was medically de-categorised in 1995, i.e., much prior to 7.2.1996 and as such the applicant's case was not required to be reviewed in terms of the aforesaid provisions of RBE No.93/2005. Counsel for the applicant himself placed reliance on the Railway Board's circular dated 29.4.1999 amended the IREC Vol-I in respect of Rule 304(1) which reads as under:-

"A Railway servant who fails in a revision test or otherwise by virtue of disability acquired during service and 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 of service benefits."

And also stated in the OA that Railway Board vide circular dated 31.5.2005 clarified that above noted circular dated 29.4.1999 and amendment in the IREC as modified may be made effective from 7.2.1996 and it is also directed that cases after 7.2.1996 and upto 28.4.1999 were absorbed in alternative employment in accordance with the earlier scheme in grade(s) lower than the grade(s) held by them on regular basis at the time of disablement/medical decategorised may be reviewed on representation received in this regard and decided at the level of GM as per the revised scheme.

11. Further in the case of Ashok Kumar vs. Union of India and another in OA No.538/2011, this Tribunal in Order dated 31.7.2012 noted that the said Shri Ashok Kumar was medically de-categorised in 1998 and gave the following directions:-

"10. From the record of this case also, we see that the applicant has never given his consent to be posted as TCR in the scale of Rs.3050-4590 as stated by the respondents in their reply. We have also seen that the General Manager, Northern Railway who is the competent authority to consider the case of the applicant in terms of the provisions of Act of 1995, has not considered the case of the applicant at all. In the above facts and circumstances of the case, we find that the objection raised by the respondents regarding limitation is not tenable. Consequently, we dispose of this case with the direction to the General Manager, Northern Railway to consider the representation of the applicant for appointment as Sr. Ticket Collector in the scale of Rs.4000-6000 from 01.03.1993 instead of in the grade of 3050-4590 in terms of the Railway Board contained in RBE 93/2005 (supra). The aforesaid authority shall take appropriate decision in the matter uninfluenced by the reply statement filed by the Division Personnel Manager of the Respondents in this case and the same shall be communicated to the applicant within a period of two months from the date of receipt of a copy of this order under intimation to the applicant. There shall be no order as to costs."

However, the applicant in this case was medically decategorised in 1995 and as such his case is completely distinguishable on facts with the case of said Shri Ashok Kumar. As such his case is not covered by the said decision of this Tribunal in the case of Ashok Kumar (supra). Further the applicant in this case was medically de-categorized in 1995 and now filed application no. NIL dated NIL, which has been received in the office of respondents on 26.8.2015 wherein he has made a request for promotion as CTI at par with Shri Ashok Kumar. The redeployment of the applicant was done after obtaining his consent on 27.7.1995. The relevant provision of the IREC Vol. I quoted by the applicant himself is as follows:-

"1. Quite often it happens that due to vacancies not being available in equivalent grades a medically decategorised 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 would 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 decategorised 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 the

date of that letter i.e. 11.4.1975 need not be reopened unless there are very exceptional circumstances."

12. Quite clearly, there is a provision for considering the case of the senior de-categorised employee who may have been absorbed in a lower grade in the same category during previous three years and there is a provision to initiate a review in such cases. However, the applicant in the present case was de-categorised with his consent placing him in the lower scale on 27.7.1995. Therefore, quite clearly, he does not come within the ambit of that rule as his request for grade post and for fixation of his pay scale is being made after a lapse of about 20 years in 2015. Quite clearly his case does not come within the relevant provisions in para 1314 of IREC Vol. I. Hence, the case of the applicant is distinguishable on facts with the case of Shri Ashok Kumar (supra).

13. Hon'ble High Court of Delhi in Writ Petition (Civil) No. 10489/2015 on 18.05.2016, titled Hariom, Head Constable Vs. The Commissioner of Police and Ors, wherein the Hon'ble High Court held that the applicant in that case was a fence-sitter and had approached the Court after a long delay and hence he is not entitled to any relief. Relevant para 11 of the said judgment of the Hon'ble High Court is extracted below:-

"11. The petitioner relies on State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors. (2015) 1 SCC 347. Having examined the factual matrix, we observe that the petitioner had failed to act at the relevant time and had woken up after a long delay, whereas his two counterparts in the Delhi Police had approached the Court at an earlier point of time and after a long battle had succeeded in August, 2013. The petitioner should not be given the benefit of the judgment as he was a fence sitter. In the meantime, in 2012, another examination was held, and vacancies were filled. We have already observed that the petitioner cannot claim any right on the vacancies or new posts of Sub Inspectors (Exe.) created post the vacancies, included in the Phase II, 2009 examination. There are other pertinent reasons as to why the bar of limitation would be attracted. As per the list available at page No.138 of the paper book, there were at least fifteen other departmental candidates, who had secured marks between 155 and 163 i.e., marks of the last open category general candidate and the last selected candidate under 10% departmental quota. Two unsuccessful candidates had approached the Tribunal in 2010 and order dated 22nd August, 2013 has been passed in their favour. Thirteen others including the petitioner would be entitled to a similar benefit in case the present writ petition is allowed. The respondents would have to redo and rework the entire exercise of finding out who would or would not have qualified from the open category. Law of limitation, sometimes perceived as technical and iniquitous, serves an important public purpose. It ensures certainty and negates ill effect when settled positions are sought to be altered. At the distinct point of time in 2014, about four years after the results of the 2009 examination were declared, the said exercise would create unforeseen complications and possibly litigation on issues

like seniority. The open category candidates selected in the 2009 Examination have already joined. They are not impleaded. Question of seniority etc. with those selected in 2009 and 2012 would be an issue. This is not the case of an illiterate or denied person not aware of his rights, who for economic and social reasons possibly had limited resources or had hesitated in approaching courts/tribunals/authorities."

14. In view of the above facts and circumstances of the case and for the foregoing reasons, we do not find any merit in the claim of the applicant and as such the present OA is dismissed. There shall be no order as to costs.