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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 7624/2002**

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Date of Judgment: 18th November, 2016

RAMBIR SINGH

..... Petitioner

Through: Mr.G.D. Bhandari, Adv. with
Mr.Sanjeev Bhandari, Adv.

Versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr.Jitendra Singh, Adv. Standing
Counsel along with Madhulika
Agarwal, Adv. for Railway.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Rule DB.
2. With the consent of the parties the present writ petition is set down for final hearing and disposal.
3. Present writ petition has been filed by the petitioner against the order dated 13.11.2002 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in OA No.2946/2002, whereby the Tribunal dismissed the OA filed by the petitioner.

FACTS AND SUBMISSION OF THE PETITIONER

4. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that the petitioner was appointed as a Constable in the Railway Protection Force (hereinafter referred to as 'RPF') on 27.04.1976 after completion of his Matriculation and after following due process of recruitment. The petitioner underwent a periodical medical examination as prescribed in the Rules. During the examination, the Medical authorities observed that the petitioner did not have requisite class of vision and declared him unfit in Medical Category i.e. B-I and B-II, however, he was declared fit in a lower Medical Category i.e. C-I and below vide Medical Certificate bearing No.834642 dated 6.12.1996.
5. Mr.Bhandari, learned counsel for the petitioner, submits that the Indian Railway Establishment Manual contains the detailed procedure in Chapter XIII, which stipulates that in case of medical decategorisation a Medical Board has to be constituted for assessing the suitability of a medical decategorised employee for an alternative job. Counsel further submits that on the recommendation of the Medical Board and upon considering the case of the petitioner, he was re-deployed and posted in a Group D post of a Luggage Porter in the Grade of Rs.750-940 although he was initially appointed as a RPF Constable in the Grade of Rs.825-1200/Rs.2750-4400 and was entitled to a Group C post, whereas higher replacement scale of Rs.3050-4590 was being given to the category of RPF Constable vide letter No.PC-V/97/G/4 dated 30.06.2000 with retrospective effect from 10.10.1997.

It is contended that the petitioner was finally relieved from RPF department on 6.11.1997.

6. Learned counsel for the petitioner submits that Railway Rules as contained in the IREM, Vol. I, Chapter XIII, para 1301, provides that an alternative employment must be given of a suitable nature and on reasonable emoluments, having regard to the emoluments previously drawn by the railway servant. Counsel further submits that Para 1305 of the said Volume and Chapter further provides that medical decategorised staff may, as far as possible, be absorbed in such alternative job which should broadly be in allied category and where their background and their experience in previous post could be utilised. It is also submitted that Para 1309 of the said Volume and Chapter further provides that the alternative post to be offered to a railway servant should be the best available for which he is suited so as to ensure that the loss in emoluments is the minimum. It is next contended by the counsel that it is upon the Railway Administration to see that the interest of the staff is not adversely affected as far as possible.
7. Mr.Bhandari has also relied upon Para 1313 of the said Volume and Chapter, which lays down that the pay of the railway decategorised staff will be fixed at a stage corresponding to the pay previously drawn in the post held by him before the decategorisation, and if there is no such stage in the post held by him before the decategorisation and if there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him.

8. Mr.Bhandari further submits that the Railway Board, vide orders No.PC-V/97/G/4 dated 4.12.1997, rationalised/revised the scales of pay of RPF Staff (Combatised), whereby the then existing scale of Rs.2750-4400 was replaced with the scale of Rs.3050-4590, which was effective from the date of issue, however, vide Railway Board's order of even number dated 30.06.2000, the earlier order dated 4.12.1997 was partially modified, and it was clarified that the revised scale would be effective from 10.10.1997. The said order was implemented by the RPF Department *in toto*, the petitioner's pay was accordingly revised, the petitioner was given the grade of Rs.3050-4590, retrospectively, and his basic pay was fixed at Rs.3,800/- as on 10.10.1997.
9. It is further contended by Mr.Bhandari, counsel for the petitioner, that the petitioner was an RPF Constable till 6.11.1997 (AN), when he was relieved to join his re-deployed post of Luggage Porter and, thus, the RPF department correctly fixed his pay in the pay scale of Rs.3050-4590 at basic pay of Rs.3,800/- with effect from 10.10.1997. It is further contended that since the petitioner was relieved from RPF Department on 6.11.1997, he ought to have been re-deployed in an equivalent scale of post, however, the respondents had fixed him in a Class IV post, which is four grades below. In support of this contention, counsel has drawn the attention of the Court to the pay structure, which reads as under:-

Rs.3050-4590
Rs.2750-4400
Rs.2650-4000
Rs.2610-3540

Rs.2550-3200

10. Learned counsel for the petitioner submits that the petitioner has been absorbed in the Grade of Rs.2550-3200, which is a grave violation of the Rules and policy orders of the Railway Board.
11. Learned counsel for the petitioner submits that being aggrieved by the action of the respondent, the petitioner made a representation to the Northern Railways on 9.4.2002 thereby requesting them to review his case and grant of Grade of Rs.3050-4590 in Class III from 10.10.1997 instead of the Grade of Rs.2550-3200, which is applicable in the case of Class IV employees. The petitioner also stated in the representation that on account of incorrect fixation a huge financial loss is being caused to him.
12. It is further contended by Mr.Bhandari that a similarly situated RPF Constable, Sh.Sharda Nand, was medically decategorised in the same manner as the petitioner herein. The said Constable was subjected to assessment by a Medical Board and he was posted in the post of Khallasi, which is a Class-IV post, in the Grade of Rs.750-940 vide DPO/New Delhi order dated 29.12.1997, while the petitioner herein was posted as Luggage Porter. Counsel contends that since Constable Sharda Nand was working with the Divisional Personnel Officer, on the representation of Constable Sharda Nand, his case was reviewed and he was posted in a Group C post in the pay scale of Rs.3050-4590, which is the equivalent pay scale of the RPF Constable. Counsel further contends that the petitioner has been discriminated and, thus, he ought to have been given the same benefits as was given to

Constable Sharda Nand and since he was medically decategorised earlier than Constable Sharda Nand, he has a preferential right to be given a Group C post.

13. Elaborating his arguments further Mr.Bhandari contends that a discriminatory treatment has been given to the petitioner. Counsel contends that while the case of Constable Sharda Nand has been reviewed and considered faovurably, the respondents have rejected the case of the petitioner solely on the ground that the petitioner was given an alternative job of Luggage Porter on 22.10.1997 and he was actually relieved on 6.11.1997(AN). Thus, the respondents have acted in a malafide and malicious manner.
14. It is contended that the representation of the petitioner was rejected by the respondents vide communication dated 13.08.2002. Counsel further contends that another representation made by the petitioner on 21.10.2002, underlining the gross discrimination being meted out to him, was also rejected. Aggrieved by the same, the petitioner approached the Tribunal by filing OA 2946/2002, however, the Tribunal dismissed the OA solely on the ground that the petition was barred by limitation. Aggrieved by the rejection of the OA, the petitioner has filed the present writ petition seeking to set aside the impugned order dated 13.11.2002 passed by the Tribunal and the order dated 8.10.2002 issued by the respondent. The petitioner also seeks a direction to the respondents to review his case for grant of similar relief as was granted to similarly situated RPF Constables vide order dated 6.3.2002.

15. At this stage, Mr.Bhandari, learned counsel for the petitioner, on instructions from the petitioner, submits that the petitioner does not claim back-wages and he only prays that his pension should be fixed as per Group C post. It is also pointed out that after being deployed at a Group C post, the petitioner earned promotion in the year 2005 and retired in the year 2016. Mr.Bhandari submits that the petitioner would not claim back-wages but his pension may be fixed based on the notional promotion from the date his juniors were promoted.

SUBMISSION OF THE RESPONDENT

16. Per contra, present writ petition has been vehemently opposed by Mr.Jitendra Singh, counsel appearing on behalf of the respondents. Mr.Singh submits that the petitioner has not been able to show any cogent ground, which would require interference by this Court in the proceedings under Article 226 of the Constitution of India. Mr.Singh further submits that the petitioner accepted the Group C post voluntarily and without raising any objection. Counsel further submits that no benefit can accrue in favour of the petitioner as the instances relied upon by him are factually different and, thus, the present petition should be dismissed.
17. We have heard the learned counsel for the parties, considered their rival submissions and also examined the pleadings placed on record.
18. It may be noticed that the Tribunal dismissed the OA filed by the petitioner on the ground of being barred by limitation. As far as the plea of limitation is concerned, we are of the view that since Mr.Bhandari has made a statement that petitioner would not claim any back-wages and only claims notional promotion for the purpose of

computing his pension, the present petition should be examined on merits.

19. The basic facts of the case are not in dispute that the petitioner was appointed as a Constable in the RPF. The petitioner underwent a periodical medical examination. The Medical authorities declared him unfit in Medical Category i.e. B-I and B-II as he did not have requisite class of vision, however, he was declared fit in a lower Medical Category i.e. C-I and below.
20. It is not in dispute that after the petitioner was declared medically unfit, the petitioner was downgraded. The petitioner was decategorised to category C-I. However, since a post in category C-I was not available, the petitioner was re-deployed in a Group D post of Luggage Porter. The petitioner was promoted in the year 2005 to a Group C post.
21. Two broad arguments have been raised by Mr.Bhandari. First contention of Mr.Bhandari is that the respondents have failed to follow the procedure prescribed in the Railway Rules as contained in IREM, Vol. I, Chapter XIII. The second submission of Mr.Bhandari is that similarly situated persons were granted benefit while the petitioner was discriminated. Mr.Bhandari has extensively relied upon the relevant rules which we have noticed in paragraphs foregoing. Thus, we find force in the submission made by Mr.Bhandari.
22. In a somewhat similar matter, titled as ***Union of India v. Varendar Kumar Gupta and Anr.***, a batch of four writ petitions, was decided by a Division Bench of this Court on 30th October, 2007. The Division Bench dismissed the writ petitions filed by the Union of India and

upheld the order passed by the Tribunal. In the aforesaid matters, the respondents were working as Constables in the RPF. They were medically decategorised and thereafter they were offered the job of daftry/luggage porter/goods marker which was accepted by them which is a lesser pay scale and lower in hierarchy than the post of Constable. The aforesaid applicants complained that they should have been given the post of clerk which is equivalent in nature with that of a Constable and which was done in some other cases. Original Applications were filed before the Tribunal, which were allowed by the Tribunal, which led to the filing of the aforesaid four writ petitions. While dismissing the said writ petition, the Division Bench observed as under:

“....A perusal of the judgment of the learned Tribunal would show that the Tribunal has been influenced primarily by the following two reasons in granting relief to the respondent No. 1 and directing his absorption as clerk, namely;

(i) Rule 1314 of IREM, inter alia, stipulates that if equivalent post is not available the concerned employee may accept the job in a lower grade, however, as and when equivalent post is available he shall be considered and given the said post. This Rule even mandates the administration to act suo motu while considering a subsequently decategorised employee for absorption in a cadre. Relevant portion of this Rule is extracted below:

“1314.(a) Seniority. – The medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in grade of absorption. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation total service in the equivalent and higher

grade is to be taken into account. This is subject to the proviso that if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.

(b) Medically unfitted direct recruits offered alternative employment should be placed at the bottom of the existing panel of the new category but should take precedence over candidates who are offered appointment in that category from subsequent panels.

(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 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 should 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 *sou 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 a 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.*

(2) It is also not the intention that even after review the junior employee already absorbed and working in a higher grade should be displaced to make room for the senior. The senior may be promoted against the next vacancy arising in the grade and relative seniority in that grade refixed taking into account the position before medical decategorisation.

(3) Where a junior has already been absorbed in an equivalent grade but a senior gets medically decategorised during the next three year period and has necessarily to be considered for absorption in the same cadre but no vacancy in a similar grade is available, he may be provisionally absorbed in a lower grade with the understanding that the next vacancy occurring in the higher grade would be given to him. On such vacancy occurring and his being posted therein, seniority should be recast as per (2) above.

(4) There will be cases where a senior employee was absorbed in a grade taking into account his position before decategorisation and a junior subsequently got promoted to a higher grade but ultimately gets medically decategorised and becomes eligible for alternative employment in a higher grade. It is not the intention that such cases which happened because of the efflux of time should be reviewed.

The staff who get their cases recommended for a change of category on medical grounds will not get benefit of above para, but will be treated as staff transferred on their own request.”

(iii) Three other persons who were similarly situated were given the job of Assistant Canteen Manager or clerk which are in the same grade or even higher than the grade of constable and these persons were junior to the respondent herein.

3. Assailing the aforesaid judgment, learned counsel for the petitioner argues that when the post of daftary was offered to the respondent he accepted the same unequivocally and unconditionally and, therefore, he could not have made a hue and cry subsequently by demanding the post of clerk. This argument is stated to be rejected in view of clear mandate provided under Rule 13.14 of IREM as discussed above. In fact, it is the petitioner's case that when respondent was offered the post of daftary, no other post was available. Therefore, having regard to the aforesaid Rule 13.14 respondent accepted the lower post, but the spirit of that Rule itself suggests that the respondent would not have foregone his right to be considered against the equivalent post as and when the same would fall vacant. In this very case, when Shri Narinder

Singh, Junior to the respondent who was similarly medically decategorised and was to be given the alternate job, post of clerk became available and, that is why he was given that post. Under these circumstances, it was incumbent upon the petitioner to suo motu look into the case of the senior decategorised employee, that is, respondent No. 1 and the petitioner should have offered him the post of clerk before offering the same to Shri Narender Singh. Not only this, learned counsel for the petitioner also could not dispute that other two juniors, namely constable Shradhanand and constable Dalel Singh both of whom were constables in the RPF and were similarly medically decategorised were subsequently appointed to the post of Assistant Canteen Manager and clerk respectively..

4. In WP (C) 4539-40/2005 counter affidavit has been filed by the respondent therein Mahavir Singh. Along with the counter affidavit, copy of the notice/order dated 21.6.2005 passed by the Northern Railways, i.e., the petitioner herein is placed on record as per which the directions given to the petitioner in the cases of one Kewal Krishan, Dal Chand and Shri Ram Kanwar in WP (C) No. 2270/1998, to give them the post of clerk-cum-typist in Engineering-Ministerial cadre, who were earlier posted as chowkidar has been implemented and the directions are duly complied with.” (underlines added)

23. In our view, the judgment rendered by the Division Bench in the case of ***Union of India*** (supra), would apply to the facts of the present writ petition.
24. The submission made by Mr.Singh, learned counsel for the respondents, that since the petitioner accepted the Group C post voluntarily, he cannot complain at a later stage, is not acceptable in view of Rule 1314 of IREM which reads as under:

“1314.(a) Seniority. –

(b)

(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 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 should 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 a 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.

(2)

(3)

25. Even otherwise, in our view, having regard to the status of the petitioner, it was incumbent upon the respondent to act fairly and in a just manner. The onus was on the State to ensure that after the petitioner was found unfit by the Medical Board and decategorised, he should have been offered an equivalent post and in case an equivalent post was not available, the petitioner should have been placed at a lower post till such time an equivalent post was not available as per Rule 1314 of IRED. It cannot be accepted that a person working as a Luggage Porter would be aware of the Rules and having regard to the

status of the petitioner he cannot be penalised for the inaction of the Government. The respondent, being an instrumentality of the State, is duty bound to act in a fair and just manner and protect the right of each citizen.

26. Resultantly, we partly allow the writ petition. We are informed that the petitioner has since retired. The petitioner would be entitled to notional fixation of pay from the date when the similarly situated juniors were given this benefit. The petitioner would, however, not be entitled to any back-wages but the benefit of this order will accrue in favour of the petitioner for the purposes of fixing his pension. No other benefit would accrue to the petitioner as agreed by the counsel for the petitioner. The order shall be complied with within three months from the date of receipt of this order.
27. The petition is disposed of accordingly.

G. S. SISTANI, J.

VINOD GOEL, J.

NOVEMBER 18, 2016

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