

**HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No. 5717/2000**

Judgment reserved on: 5<sup>th</sup> October, 2009  
% Judgment delivered on: 12<sup>th</sup> October, 2009

R.S. DUBEY

..... Petitioner

Through: Mr. G.D. Gupta, Sr. Adv. with Mr.  
Piyush Sharma, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Pathak, Adv.

**Coram:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE MR. JUSTICE A.K. PATHAK**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not?  | Not necessary |
| 3. Whether the judgment should be reported in the Digest?                    | Not necessary |

**A.K. PATHAK, J.**

1. Petitioner was appointed as Assistant Station Master (for short hereinafter referred to as "ASM") in the grade/pay scale of 330-550 on 9<sup>th</sup> October, 1980. Later on, this pay scale was revised to Rs.1200-2040 with effect from 1<sup>st</sup> January, 1986

pursuant to the recommendation of 4<sup>th</sup> Pay Commission. Later on, Petitioner was promoted as ASM on regular basis in the next higher grade of Rs.1400-2300 (revised pay scale) vide office order dated 14<sup>th</sup> August, 1986. Petitioner was transferred as Assistant Yard Master (for short hereinafter referred to as “AYM”) purely on ad hoc basis, subject to passing of P-16 course. Vide letter dated 16<sup>th</sup> March, 1993 the Competent Authority accorded approval for change of category of the Petitioner from ASM to AYM on administrative grounds as one time exception as a special case subject to adjudging his suitability and medical classification, pursuant to the request made on 17<sup>th</sup> November, 1992 by the Senior Divisional Operating Manager.

2. Post of AYM in the grade of Rs.1400-2300 was a promotional post and was to be filled from the following categories:

Sl. No.	Category	Grade	Perc enta ge
1.	Guard	Rs.1200-2040 (RPS)	15%
2.	Asstt. Station Master	Rs.1200-2040 (RPS)	15%
3.	Sr. Train Clerk	Rs.1200-2040 (RPS)	20%
4.	Wagon Movement Inspector	Rs.1400-2300 (RPS)	5%
5.	Shunting Master	Rs.1400-2300 (RPS) Rs.1320-2040 (RPS)	35%

6.	Switchman	Rs.1200-2040 (RPS)	10%
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3. Respondent Nos. 3 and 4 were appointed as Guards on 6<sup>th</sup> May, 1979 and 12<sup>th</sup> September, 1979 respectively in the grade of Rs.330-530 (revised scale Rs.1200-2040). Later on, they were promoted as AYMs, on ad hoc basis vide office order dated 7<sup>th</sup> August, 1985, pending finalization for panel of promotion by the Head Quarter. Subsequently, Respondent Nos. 3 and 4 were selected for the post of AYM and put on panel vide office order dated 27<sup>th</sup> February, 1989. Respondent Nos. 3 and 4 passed the P-16 test on 2<sup>nd</sup> April, 1990 and their ad hoc promotion as AYM was regularized vide office order dated 13<sup>th</sup> June, 1991.

4. The category of Petitioner was changed from ASM to AYM on the basis of one time exception as a special case. Thereafter, he made a representation for fixing his seniority in the cadre of AYM from the date he was holding the grade of Rs.1400-2300 as ASM. This representation was duly accepted by the Respondent vide order dated 19<sup>th</sup> June, 1996. Petitioner was accorded seniority in the cadre of AYM with effect from the date on which he was promoted as ASM in the grade of Rs.1400-2300.

5. Aggrieved by the aforesaid order Respondent Nos. 3 and 4 filed O.A. No.1418/1996 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "Tribunal") praying therein that the order dated 19<sup>th</sup> June, 1996 of the Respondent, whereby Petitioner was assigned seniority as Yard Master in the grade of Rs.1400-2300 on the basis of his length of service in that grade, be quashed. The grievance of Respondent Nos. 3 and 4 was that, they were senior to the Petitioner having been appointed as Guards in the grade of Rs.330-530 (pre-revised) before the Petitioner. Even their ad hoc promotion to the post of AYM was prior to the Petitioner. Their regularization on the post of AYM was effective the date they were promoted on ad hoc basis which was also prior to the Petitioner's regularization as AYM Petitioner had not passed the selection test which was held for the post of AYM therefore, his appointment was irregular. Petitioner was posted as AYM purely on a temporary arrangement to cope-up with the acute shortage of AYMs in the yard. Since Petitioner was holding the post of ASM in the grade of Rs.1400-2300 he was not eligible for promotion to the post of AYM in the grade of Rs.1400-2300, in accordance with the channel of promotion. In a nutshell, it was

contended that the Petitioner could not have been accorded seniority over and above Respondent Nos. 3 and 4.

6. Vide order dated 11<sup>th</sup> April, 2000, Tribunal allowed the Original Application of Respondent Nos. 3 and 4. Tribunal held that the Petitioner had not cleared selection process for the post of AYM. Petitioner was temporarily holding the post of AYM pending passing of selection process, subject to adjudging his suitability and medical classification. The Tribunal observed that the seniority of Respondent Nos. 3 and 4 as AYM was to be considered they were appointed as AYM on ad hoc basis. Thus, Petitioner could not have been treated as senior to Respondent Nos. 3 and 4 in the grade of Rs.1600-2660, as such he had not cleared the selection process. With the above observations order dated 19<sup>th</sup> June, 1996 whereby Petitioner was assigned seniority with effect from the date he was holding the post of ASM in the grade of Rs.1400-2300 was quashed.

7. Aggrieved by this order, Petitioner has approached this Court by filing present writ petition under Articles 226 and 227 of the Constitution of India praying therein that the impugned order dated 11<sup>th</sup> April, 2000 of the Tribunal be set aside and O.A. No. 1418/1996 of Respondent Nos. 3 and 4 be dismissed.

8. We have heard learned counsel for the parties and have perused the relevant material available on record. We are of the view that Tribunal has taken an erroneous view by quashing the order dated 19<sup>th</sup> June, 1996 of the Respondent.

9. Facts narrated above disclose that the category of Petitioner was changed due to administrative reason. He was not working on the post, which was feeder cadre for the selection to the post of AYM. Petitioner was holding post of ASM in the grade of Rs.1400-2300 with effect from 14<sup>th</sup> August, 1986. This post was not in the channel of promotion /selection to the post of AYM. On account of acute shortage of AYMs in the yard, Petitioner along with some other ASMs was posted as AYM on ad hoc basis vide office order dated 16<sup>th</sup> August, 1989. Thereafter, he continued to work on the said post till his category was changed by the Competent Authority sometime in the month of March, 1993.

10. Background for change of category is that on 17<sup>th</sup> November, 1992 Senior Divisional Operating Manager, New Delhi, of the Respondent, wrote a letter to Chief Operating Manager, Head Quarter, New Delhi stating therein that vacancy of AYM in the grade of Rs.1400-2300 were lying vacant and could not be filled due to unwillingness of the staff from eligible categories.

Forty vacancies were there for the post of Yard Master and efforts were made to fill up these vacancies in the year 1989 from the staff of eligible categories but not with much success. Accordingly, five ASMs in the grade of Rs.1400-2300 were posted as AYMs on ad hoc basis, which included the Petitioner, and since then they were continuously working on the said post, which was a big help in the yard. On this basis, it was requested that as one time exception their appointment as AYM be regularized. Pursuant to this letter, General Manager (Personnel) intimated the Divisional Railway Manager vide letter dated 16<sup>th</sup> March, 1993 that the Competent Authority had accorded his approval for the change of category of working ASMs, which included the Petitioner, to the post of Yard Master in the grade of Rs.1400-2300 on administrative ground as one time exception as a special case, subject to adjudgement of their suitability and medical classification. It was also mentioned in that letter that efforts be made to fill up existing vacancies in the category of Yard Master by giving wide publicity amongst the eligible staff. Thus, it is apparent that the Petitioner was regularized on the post of AYM by changing his category to tide over the shortage of AYMs for smooth functioning of yard.

11. It is apparent from the above that the category of Petitioner was changed from ASM to AYM by the Competent Authority and his appointment on the post of AYM was by way of transfer and not by selection. In view of this, Petitioner was not required to undergo the regular selection process to be undertaken by the officials from the eligible category.

12. In the counter affidavit Respondent Nos. 1 and 2 have categorically mentioned that the Competent Authority had considered the case of the Petitioner and other similarly situated persons, and held that, since medical classification of A-2 was higher than A-3, hence, this staff was medically fit for working as AYM.

13. Para 311 of the Indian Railway Establishment Manual, Volume -1 (Revised Edition-1989) reads as under:-

“311. Transfer in the interest of administration. Seniority of railway servants on transfer from one cadre to another in the interests of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be.”

14. Since the Petitioner was transferred from ASM to AYM in the interest of administration, his seniority is to be governed by Para 311 of IREM. As per this para, Petitioner was entitled to the

seniority from the date he was holding the grade of Rs.1400-2300. Accordingly, we are of the view that Petitioner was rightly assigned seniority from the date when he was holding the post of ASM before his transfer as AYM by the Respondent Nos. 1 and 2 vide order dated 19<sup>th</sup> June, 1996.

15. We are of the view that in the light of above factual matrix and the law applicable thereto, Tribunal has taken an erroneous view by holding that Petitioner was to be treated holding the post of AYM on temporary and ad hoc basis pending passing the selection test and adjudging his suitability and medical classification. Petitioner's category was changed by the Respondent from ASM to AYM on administrative grounds for the reasons as explained in the preceding paras hereinabove, therefore, Para 311 of IREM is attracted in the case of the Petitioner. Consequently, he was rightly assigned the seniority from the date he was holding the post in the grade of Rs.1400-2300.

16. In view of above discussions, we allow this writ petition and set aside the impugned order dated 11<sup>th</sup> April, 2000 passed by the

Tribunal and uphold the order dated 19<sup>th</sup> June, 1996.

**A.K. PATHAK, J**

**MADAN B. LOKUR, J**

**OCTOBER 12, 2009**

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