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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1585/2002

This the 2nd day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V. Srikantan, Member (A)

Shri S.M. Sharma
S/o late Shri Rewti Prasad Gautam
R/o D-207, Ganga Vihar,
Delhi-110 094.Applicant
(None for the applicant even on the second call)

Versus

Union of India, through
1. The Secretary,
Govt. of India
Ministry of Railways,
New Delhi.
2. Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
3. General Manager,
Northern Railway,
(President I.R.C.A.),
Baroda House,
New Delhi.
4. General Secretary (IRCA)
Indian Railway Conference Association,
Chelmsford Road,
New Delhi-110 055.Respondents
(By Advocate : Shri Rajender Khatter)

ORDER (ORAL)

Shri Justice V.S. Aggarwal, Chairman :

By virtue of the present application, Shri S.M. Sharma seeks that he should be given the benefit of the post of Office Superintendent Grade I (in short 'OS-I') w.e.f. 1.2.2001 in the grade of Rs.6500-10500 and in this process be treated to have retired from the post of OS-I in the above grade.

2. Some of the relevant facts pleaded are that the applicant had joined the Indian Railways on 4.1.1965 as a Lower Division Clerk. He retired on



30.6.2001 and at the time of his retirement, he was holding the post of OS-II in the grade of Rs.5500-9000.

3. The grievance of the applicant is that during the month of January 2001, the strength of the ministerial cadre was 793 and at that time, there were four OS-I working according to the prescribed strength. One Shri T.P.S. Yadav, who was working as OS-I, had retired on 31.1.2001. After retirement of Shri T.P.S. Yadav, the applicant being the senior-most OS-II was eligible to be promoted to OS-I in the grade of Rs.6500-10500 w.e.f. 1.2.2001. The said benefits had not been given to the applicant and hence, the present application.

4. In the counter reply filed by the respondents, it has been pointed that the Railway Board superseded the earlier letter reducing the sanctioned strength from 776 to 528 and declared the staff on roll over number 528 as surplus supernumerary posts. Out of them, 45 posts were marked for ministerial cadre. 6% of the posts was marked for OS-I i.e. three posts and 12% of the posts were marked for OS-II. At the relevant time, all the three incumbents OS-I were on roll. The post that was vacated by Shri T.P.S. Yadav being surplus/supernumerary post, therefore, the applicant cannot be promoted to the said post.

5. The matter had been listed today but there was no appearance on behalf of the applicant. In the

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circumstances, we did not have the advantage of hearing the arguments of the learned counsel or the applicant.

6. Facts asserted by the respondents referred to above are not being controverted. What has transpired as it appears from the reply is that the sanctioned strength was reduced to 528. The excess staff was declared surplus/supernumerary. This resulted in corresponding reduction in the posts. As a result thereof 45 posts were marked for ministerial cadre and out of 45 posts, 6% of the posts meant for OS-I would come to three posts. It is asserted that there were three incumbents holding that post on 31.1.2001. Shri Yadav had retired on 31.1.2001 but was holding the surplus/supernumerary post. Once it was so, the post would get automatically abolished. The applicant cannot take advantage of the same in this regard.

7. We take advantage in referring to the Indian Railway Establishment Code Vol.I Rule 122 pertaining to supernumerary posts reads as under:-

"122. Supernumerary posts. - Supernumerary posts are permanent posts created under special circumstances for operation for a limited period as such at the discretion of the competent authority to create the posts in the administrative convenience.

Government of India's Orders

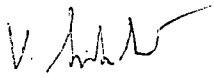
While it is obviously not possible to give an exhaustive list of the circumstances in which supernumerary posts may be created, the following broad principles governing the creation of such posts may be indicated.-

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- (i) A supernumerary post is normally created to accommodate the lien of an officer, who, in the opinion of the authority competent to create such a post, is entitled to hold a lien against a regular permanent post but who, due to non-availability of a regular permanent post, cannot have his lien against such post.
- (ii) It is shadow post i.e., no duties are attached to such posts. The officer, whose lien is maintainable against such a post, generally performs duties in some other vacant temporary or permanent posts.
- (iii) It can be created only if another vacant permanent or temporary post is available to provide work for the person, whose lien is retained by the creation of the supernumerary post. In other words, it should not be created in circumstances which, at the time of creation of the post or thereafter, would lead to an excess of the working strength.
- (iv) It is always a permanent post. Since, however, it is a post created for accommodating a permanent officer till he is absorbed in a regular permanent post, it should not be created for an indefinite period as other permanent posts, are, but should normally be created for a definite and fixed period sufficient for the purpose in view."

8. Once such is the situation and on the retirement of Shri Yadav, necessarily, the post would cease to exist. The applicant cannot claim right to be promoted to the said post at the relevant time.

9. Resultantly, OA must be held without merit. It must fail and is accordingly dismissed. No costs.


(V. Srikantan)
Member (A)


(V.S. Aggarwal)
Chairman

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