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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2254/2001

New Delhi, this the 30th day of July, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Surinder Nath Mishra,
S/o Shri D.N. Mishra,
Manager, Staff Canteen
Northern Railway,
Railway Station, Delhi

.... Applicant

(By Advocate : Shri S.K. Sawhney)

versus

1. Union of India through
General Manager,
Northern Railway
Baroda House,
New Delhi
2. Senior Divisional Personnel Officer,
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi

.... Respondents

(By Advocate : Shri Rajeev Bansal)

O R D E R

By S.A.T. Rizvi, Member (A) :

To implement restructuring of the canteen staff in the wake of the recommendations of the Fifth Central Pay Commission, the Ministry of Railways (Railway Board) issued letter dated 10.5.1998 (R-VIII) with an enclosure indicating that while retaining the overall strength of 42 at various levels, the respondents have, at the same time, created new posts of Senior Manager and Head Manager in the Fifth CPC pay scale of Rs.5000-8000 and 5500-9000. By the aforesaid letter, four posts of Senior Manager and two posts of Head Manager have been created within the overall sanctioned strength of 42. These posts were not in existence as on 9.5.1998. As on that date, namely, on

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9.5.1998 only six posts existed which included the posts of Manager-II and Manager-I. This number has gone up to 11 by virtue of the aforesaid restructuring as shown in the enclosure to the aforesaid letter of 10.5.1998.

2. The applicant in the present OA, who is a Manager in the pay scale of Rs.4000-6000, is an aspirant for the post of Sr. Manager in the pay scale of Rs.5000-8000. The denial of promotion led to the filing of OA No.1352/2001 which was disposed of with a direction to the respondents to consider the applicant's representation and to pass a speaking order thereon. By the letter dated 6.7.2001 (A-1), the respondents have rejected the applicant's claim after considering his representation in pursuance of the directions of this Tribunal. The aforesaid rejection letter (A-1) is under challenge in the present OA.

3. The learned counsel appearing on behalf of the applicant has relied on the judgement of the Hon'ble Supreme Court dated 31.1.2001 in Contempt (CIVIL) 304/1999 in Civil Appeal No. 1481/1996, a copy of which was supplied to us at the time of hearing. The same has been relied upon by the Railway Board also in its detailed instructions issued on 5.3.2001 (A-4).

4. The applicant's case is that the respondents have wrongly kept one post of Sr. Manager reserved for a SC candidate and to this extent the impugned letter dated 6.7.2001 (A-1) is bad and stands vitiated in view of the aforesaid judgement of the Hon'ble Supreme Court. The applicant, who is a general category candidate, would have

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been promoted as Sr. Manager if the respondents had not kept the aforesaid post reserved. According to the learned counsel appearing on his behalf, since no additional posts have been created as a result of restructuring/readjustment of posts in departmental canteens, the present case is that of upgradation of posts and, therefore, the principle of reservation should not have been applied. In support of his contention, the learned counsel has drawn our attention to the following portion of the judgement of the Hon'ble Supreme Court dated 31.1.2001:-

"xxxxx The effect of this is that where the total number of posts remained unaltered though in different scales of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the scale of pay of Rs. 550-750 will go into this higher scales, it would be case of upgradation of posts and not a case of additional vacancy of post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply xxxxx"

5. The learned counsel appearing on behalf of the respondents, on the other hand, insists that even though the total number of posts in the departmental canteens has not been changed, it will be incorrect to state that the posts of Sr. Manager and Head Manager have been created by way of upgradation of the existing six posts of Manager-II and Manager-I. By way of restructuring, according to him, the number of posts of Manager-II and Manager-I taken together has, in fact, gone up from 6 to 11 and on this basis it cannot be successfully argued that the six posts of Sr. Manager (four) and Head Manager (two) have been created by upgrading the existing six posts of Manager-II

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and Manager-I taken together. In this view of the matter, according to him, the instructions contained in Railway Board's letter dated 5.3.2001 will not apply in the present situation. On the other hand, according to him, the instructions dated 10.5.1998 (R-VIII) will apply and, therefore, as provided in the said letter (R-VIII) the instructions with regard to reservation of posts for SC/ST will find application when it comes to filling up the new posts of Sr. Manager and Head Manager.


6. Recapitulating the factual position, the learned counsel appearing on behalf of the respondents has submitted that the two posts of Head Manager newly created by the aforesaid letter of 10.5.1998 were temporarily down graded to that of Sr. Manager thereby creating six new posts of Sr. Manager for the time being. Against these six posts of Sr. Manager, five persons senior to the applicant have been promoted with the sixth vacancy being kept reserved for a SC candidate in accordance with the policy of reservation. Subsequently the aforesaid two new posts of Head Manager were re-created by reducing the newly created posts of Sr. Manager correspondingly. While doing so, two senior-most Managers have been promoted to the post of Head Manager, thus leaving only three incumbents holding the posts of Sr. Manager, with the fourth being kept reserved for a SC candidate (R-V and R-VII).

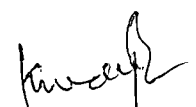
7. We have carefully considered the submissions made by the learned counsel on either side and are convinced that having regard to the contents of the Railway Board's letter dated 10.5.1998 (R-VIII) together with its enclosure

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it is not possible to hold that the six new posts of Sr. Manager and Head Manager taken together have been created by way of upgradation of the six posts of Manager-II and Manager-I taken together. The posts of Sr. Manager and Head Manager are clearly newly created posts even though these are within the overall limit of 42. Moreover, what is more important is that the Railway Board's letter dated 10.5.1998 simply conveys the decision of the Government on the recommendations of the Fifth CPC in respect of the canteen staff and it does not, by any means, indicate that it conveys the sanction of the President in respect of restructuring/review ^{leading} ~~leading~~ to upgradation of posts. The pay structure indicated in the annexure to the aforesaid letter reflects the decision of the Government in regard to revised pay scales as well as in relation to creation of new posts of Sr. Manager and Head Manager. That being so, the policy of reservation has been correctly applied in terms of the provisions made to that effect in the aforesaid letter (R-VIII). We do not, in the circumstances, find any basis for quashing and setting aside the respondents' letter dated 6.7.2001.

8. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit and is dismissed. There shall be no order as to costs.


(S.A.T. RIZVI)
Member (A)


(KULDIP SINGH)
Member (J)

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