

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.1030/96

NEW DELHI, THIS THE 15TH DAY OF FEBRUARY, 2000.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, V.C. (J)  
HON'BLE MR. M.P.SINGH, MEMBER (A)

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Sh. Bani Singh, S/O Sh. Lekh Raj Singh,  
working as Head Clerk (Refund) in the  
office of Chief Commercial Manager  
(Refund), Railway Station Building,  
Second Floor, New Delhi.

Resident of: 514, New Extension Colony  
(Behind Nishan Public School), Rasul Pur  
Road, Palwal, Distt. Faridabad (Haryana)

.....Applicant.

(By Advocate: Mr. P.M.Ahlawat)

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Union of India - through

The General Manager, Northern Railway,  
Baroda House, New Delhi - 110 001.

...Respondent.

(By Advocate: Mr. R.L.Dhawan)

O R D E R (ORAL)

By Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J):-

The applicant was working as Head Clerk in the Refund Branch of Commercial Department of Northern Railway Headquarters Office. It is the case of the applicant that the posts of Office Supdt. Grade-II (Rs.2000-3200), Office Supdt. Grade-I (Assistant Supdt. Grade Rs.1600-2660) were increased from 8 to 13 and 16 to 19 respectively after the restructuring of the cadre w.e.f. 1.3.93. The existing vacancies as well as the resultant vacancies as a result of restructuring of cadre for the post, were to be filled by promotion on the basis of 'modified procedure' of selection in the cadre of Asstt/Office Supdt. Grade-II. The notice has been issued on 26.7.93 for selection for the post of Office Supdt. Grade-II on the basis of modified procedure.

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Though 19 vacancies were available, only 18 Head Clerks were promoted to the post of Office Supdt. Grade-II by proceedings dated 15.10.93 (Annexure A-3). Thereupon the applicant filed OA 2585/93 seeking promotion as Office Supdt. Grade-II with all consequential benefits. Accordingly, the Tribunal vide its judgement dated 14.11.94 allowed the OA directing the respondents to consider the case of the applicant for promotion to the post of Office Supdt. Grade-II from the date when the 3rd respondent therein was promoted in the said OA. In the impugned proceedings dated 21.6.95, the applicant has been considered for promotion in accordance with the judgement of the Tribunal. But it was found that he was not entitled to consider for promotion in 18 vacancies. He was entitled to consider for promotion only in the 19th vacancy as per the normal selection process. Aggrieved by these proceedings, the applicant filed the present OA.

2. It is contended by the learned counsel for the applicant that there are in fact 19 vacancies available for promotion as per modified procedure i.e. by way of seniority-cum-merit and hence, the applicant is entitled for consideration in 19th vacancy. He contends that the stand taken by the respondents that there only 18 vacancies were found available as a result of restructuring of the cadre, is contrary to the record. Learned counsel for the respondents, however, submits that only 18 vacancies arose on 1.3.93 as a result of restructuring of cadre and one more vacancy arose in August, 1993 and that 18 Head Clerks in Refund Branch,

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were given promotion as Office Supdt. Grade-II through modified selection and 19th vacancy could be considered only as per the normal selection process i.e. by way of Written Test and viva-voce.

3. We have given careful consideration to the arguments advanced by the learned counsel on either side.

4. It is clearly stated in the reply affidavit that the applicant was considered because he was initially at Sl.No.20 in the seniority list issued in 1991 but after the revision of the seniority, he gained one position and was placed at Sl.No.19. It is an admitted fact that if there are 19 vacancies available, the applicant is entitled for consideration for promotion to the post of Office Supdt. Grade-II as per the modified procedure of selection. It is the firm case of the applicant that in fact there were 19 vacancies available as on 1.3.93 due to restructuring of the cadre (viz. 11 existing + 8 resultant) whereas the case of the respondents is that there were only 18 vacancies and that the applicant is not entitled for consideration for promotion as per modified procedure. It, therefore, appears as a question of fact which cannot be resolved in these proceedings. the impugned order itself makes it abundantly clear that 19 vacancies were available for promotion as per the modified procedure of selection as on 1.3.93. In paragraph 3 of the impugned proceedings dated 21.6.95 (Annexure A-1), the position was sought to be clarified by the respondents as shown in the following table:-

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Category	Sanctioned strength as on 28.2.93	On Roll.	Existing vacancies as on 28.2.93	Vacancies under restruct-uring.	
O.S.-I	08	07	01	05	w.e.f. 1.3.93
O.S.-II	16	06	10	03	- do -


5. Thus, in column 4, it was stated that the existing vacancies of OS-I and OS-II are 11 as on 28.2.93. The vacancies after restructuring i.e. resultant vacancies, were shown as 8. The total vacancies, therefore, are 19 as on 1.3.93. In the impugned order, it is sought to be stated that 6 posts of OS-II are filled up by promotion, i.e. 5 posts w.e.f. 1.3.93 and the 6th post w.e.f. 1.8.93. Basing upon this later date, the learned counsel for the respondents submits that 6 vacancies arose on 1.8.93 and not on 1.3.93. The statement in our view is contrary and opposed to the figures shown in the above table itself because the one vacancy of OS-I was shown as existing on 28.2.93 which goes to show that all 6 vacancies in fact available on 1.3.93, the date of restructuring. It is not in dispute that if the 6 posts were also available as on 1.3.93, it was to be filled up by modified selection. Hence we are of the view, that as on 1.3.93 there were 19 vacancies available for promotion of Head Clerks of Refund branch and as 18 persons have been promoted, the applicant being 19th in the revised selection list, is entitled to have been considered for promotion on the basis of the modified procedure of selection. The impugned proceedings holding that there were 18 vacancies for modified selection is contrary to the record. It is true as contended by the learned counsel for the

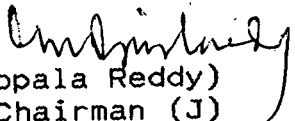
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applicant that the Court will not normally interfere in disputed questions of fact but we do not find any difficulty in resolving the dispute that there are 19 posts, as it is evident from the statement made by the respondents in the impugned order itself.

6. Since, the applicant has already been promoted to the post of OS Grade-II and he is now sought to be reverted in the impugned proceedings, the applicant should be considered for promotion w.e.f. 24.4.95, as per the modified procedure.

7. OA is accordingly allowed. No order as to costs.

  
(M.P. Singh)  
Member (A)

  
(V. Rajagopala Reddy)  
Vice Chairman (J)

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