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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

1) O.A.No.1632 of 1989

New Delhi this 3rd May, 1994.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. S.R. Adige, Member(A)

Shri Som Dutt Sharma,
aged 56 years,
s/o Pt. Gurdas Ram,
r/o 170/11 Railway Colony,
Kishan Ganj, Delhi,
working as Head Train Examiner,
Northern Railway, DelhiApplicant.

2. O.A.No.1656/89

Shri Raj Kumar Vashisht, aged 48 years,
s/o Shri Nand Lal,
r/o 8/3, Railway Colony,
Kishanganj,
Delhi,
working as Head Train Examiner,
New DelhiApplicant.

By Advocate Shri S.K. Sawhney

Versus

Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi

By Shri Shyam MoorjaniRespondent.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member(A)

As common points of fact and law arise in these two O.As, they are being disposed of by a common order. In these two applications, Sarv Shri Som Dutt Sharma and R.K. Vashisht, Head Train Examiners, Northern Railway, have prayed for promotion in the scale Rs.550-750/-(RS) against the resultant vacancies of cadre review effective from 1.9.81 vide Railway Board's letter dated 21.8.81 (Annexure-A2) and thereafter in the scale Rs.700-900/-(RS) w.e.f. 1.1.84, as a result of restructuring vide Railway Board's letter dated 1.5.84 (Annexure-A6) without

subjecting them to any written or viva-voce test.

2. Shri Som Dutt Sharma started work as C & W Khalasi while Shri R.K. Vashisht was appointed as a skilled carpenter on 27.11.61. They were appointed as Head Train Examiners (HTE) in the scale 550-750/- (RS) on 23.9.87 retrospectively w.e.f. 1.1.84 vide order of even date (Annexure-A7). They state that as a result of cadre review of Group C and D posts in the Railway, ordered by the Railway Board vide their letter dated 21.8.81 (Annexure-A2), the General Manager, Northern Railway issued orders on 7.12.81 (Annexure-A3), whereby the cadre position of the Train Examiners was revised, and the number of the posts of Train Examiners in the scale of Rs. 700-900 (RS) increased from 25 to 46 as shown in Column 2 of the cadre position of Delhi Division (Annexure-A4). Consequently, 21 persons were to be promoted from the scale of Rs. 550-750 (RS) to the scale of Rs. 700-900 (RS) w.e.f. 1.9.81 and similar number was to be promoted from the scale of Rs. 425-700/- to Rs. 550-750/- which is a non-selection post. The applicants state that they ^{were} sufficiently senior to be promoted to the scale of Rs. 550-750 (RS) against two of these resultant vacancies w.e.f. 1.9.81. However, these orders of cadre review from 1.9.81 could not be implemented in view of the stay orders granted by the Hon'ble Supreme Court in CWP No. 9222-9226/81. Meanwhile further restructuring of the cadre of the applicants were also ordered by the Railway Board vide their letter dated 1.5.84 (Annexure-A6) w.e.f. 1.1.84 but the same could also not be implemented owing to the aforementioned stay granted by the Hon'ble Supreme Court. However, CWP No. 9222-9226/81 was finally disposed on 18.8.87 and the stay consequently being vacated, the respondents implemented the orders of the cadre review/restructuring from 1.9.81 and 1.1.84 simultaneously by clubbing together the vacancies created as a result thereof. The applicants claim

that they represented on 4.4.88 (Annexure-A8) for promotion to the scale of Rs.550-750/- (RS) w.e.f. 1.9.81 against the resultant vacancies of upgrading in the scale of Rs.700-900/- (RS), and for promotion in the scale of Rs.700-900 (RS) w.e.f. 1.1.84 under the provisions of Para 4.1 of the Railway Board's letter dated 1.5.84 (Annexure-A6), but the same was rejected and ^{they} were ordered to appear in the written test for the selection to grade Rs.700-900/- on 7.5.88 in breach of the provisions of Para 4.1 of the Railway Board's letter dated 1.5.84, and they were declared unsuccessful in the said test. They contend that the respondents thereupon again issued orders vide letter dated 21.7.89 (Annexure-A1) for holding a test for the post of Chief Train Examiner scale Rs.700-900 (RS) which was scheduled on 14.8.89 in which the applicants were subjected to appear. They allege that the respondents are illegally withholding promotion of the applicant in the scale Rs.700-900 (RS) and subjecting him to appear in the written test, and hence this O.A.

3. The respondents have challenged the contents of the O.As in their counter affidavit. They have pointed out that the applicants by accepting the order dated 21.10.89 and undergoing the selection, have rendered this application infructuous, and have also urged that the cause of action relating to the year pre-1981 is barred by limitation. On merits, it has been stated that the cadre of Train Examiners was restructured w.e.f. 1.9.81 and this resultant in an enhancement of 21 posts of Chief Train Examiners in grade Rs.700-900/- and 23 posts of Head Train Examiners in grade Rs.550-750/- w.e.f. 1.9.81. Consequently 21 persons were to be promoted from Rs.550-750/- to Rs.700-900/- w.e.f. 1.9.81. It is denied that a similar number were to be promoted from Rs.425-700/-

to Rs.550-750/- scale i.e. equal to the number of posts upgraded to Rs.550-750/-. As the applicants were very junior, the persons senior to him were promoted exhausting all the 23 posts. It has been denied that the orders of implementation of restructuring w.e.f. 1.9.81 and 1.1.84 have been clubbed together or that the applicant has been promoted to the next grade of Rs.550-750/- and Rs.700-900/- as a result of restructuring. It has been contended that the applicants were promoted to the grade of Rs.550-750/- on regular basis on 1.1.84 and were being considered to the grade of Rs.700-900/- against an existing vacancy. They had since passed the selection and were being considered for appointment as Chief Train Examiner in the scale of Rs.700-900/-! It has further been stated that the applicants were not entitled to be promoted to the scale Rs.550-750/- w.e.f. 1.9.81 as no promotions were to be made against the resultant vacancies upgrading in the scale of Rs.700-900/-. It is also denied that the applicants were due to be promoted to the grade of Rs.700-900/- w.e.f. 1.1.84. It has, therefore, been urged that these applications were fit to be dismissed.

4. We have heard Shri S.K.Sawhney, learned counsel for the applicant and Shri Shyam Moorjani, learned counsel for the respondents.

5. From the statement showing the cadre position in Delhi Division of C.Ws/Chief Train Examiners/Head Train Examiners/Train Examiners, annexed to the O.A. (Annexure-A4), the contents of which have not been denied by the respondents, the number of posts on different dates was:-

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Date.	C.Ws 840-1040/-	CTE 700-900/-	HTE 550-750/-	T.E. 425-700/-	TOTAL
31.8.81	2	25	82	244	353
1.9.81 (date of cadre review)	5	46	105	197	353
1.1.84 (date of restructur- ing)	33	96	106	118	353

6. Thus, consequent to restructuring on 1.9.81, the number of posts in Rs.840-1040/- grade increased by 3; in Rs.700-900/- by 21; in Rs.550-750/- by 23; while in Rs.425-700/- it decreased by $3+21+23=47$. Thus, consequent to the increase in Rs.840-1040/- posts by 3, which had to be filled by promoting those in Rs.700-900/-, three consequential vacancies arose in Rs.700-900/-, in addition to the upgrading of 21 posts in that grade. In other words, $3+21=24$ persons could be promoted from Rs.550-750/- grade. This in turn would create 24 consequential vacancies in Rs.550-750/- grade, while the number of posts upgraded in that grade itself was 23. Thus $24+23=47$ persons could be promoted from Rs.425-700/- grade to Rs.550-750/- grade w.e.f. 1.9.81 if all the upgraded posts as well as the consequential vacancies were filled. If the wastage on account of death, retirement were taken into account, the number of promotion could possibly be ^{more} ~~low~~. In this connection, the respondents have conceded in their reply to paragraph 4.2 of the O.A. that the consequential vacancies were to be filled up w.e.f. 1.9.81, attention to which has been drawn to the applicant's rejoinder.

7. Similarly, w.e.f. 1.1.84, the number of posts in Rs.840-1040/- increased by 28, those in Rs.700-900/-

increased by 50, and those in Rs.550-750/- by 1, while those in Rs.425-700/- decreased by 79. Based on ~~the~~^{an} similar analysis, $28+50=78$ persons could be promoted from Rs.550-750/- to Rs.700-900/- grade w.e.f. 1.1.84 and if the wastages were taken into account, the number of promotion would possibly be higher.

8. No doubt, it is open to the respondents not to fill up any upgraded post or consequential vacancy, if they so decide, but that decision should be founded on good and sufficient reasons. In this case, no reasons have been indicated as to why the respondents chose not to fill all the consequential vacancies w.e.f. 1.9.81 and again w.e.f. 1.1.84. From their averments, it appears that while calculating the number to be promoted, they have confined themselves only to the number of posts actually upgraded and have not reckoned the consequential vacancies^{which} arose.

9. In this background, the respondents should recalculate the number of promotions that are required to be made from Rs.425-700/- to Rs.550-750/- grade w.e.f. 1.9.81, consequent to the cadre review, after taking into account the consequential vacancies, the wastage on account of death, retirement^{etc.} as well as the reservation instructions of Govt., and thereafter, having regard to the applicants' position in the seniority list, consider their case for promotion from Rs.425-700/- grade to Rs.550-750/- grade w.e.f. 1.9.81 by means of speaking order. The respondents should similarly recalculate the number of promotions that are required to be made from 550-750/- to Rs.700-900/- grade w.e.f. 1.1.84 consequent to the restructuring after taking into account the consequential vacancies, the wastage and the reservation instructions of Govt.,

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and thereafter, having regard to the applicants' position in the seniority list, consider their case for promotion to Rs.700-900/- grade w.e.f. 1.1.84 by means of an another speaking order. While doing so, the respondents will also consider the applicability of the modified selection procedure under Paragraph 4.1 of the Railway Board's letter dated 1.5.84(Annexure-A6). These instructions should be implemented within three months from the date of receipt of a copy of this order.

10. In the result, both these O.As are, therefore, partly allowed in terms of the directions given in paragraph 9 above. No costs.

S.R. Adize
(S.R. ADIZE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

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