

Open Court

(51)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Allahabad, this the 6th day of January, 2004

Original Application No. 754 of 1997
with

Original Application No. 755 of 1997
with

Original Application No. 804 of 1997
with

Original Application No. 971 of 1997

Hon'ble Mr. Justice S.R. Singh, Vice Chairman
Hon'ble Mr. D. R. Tiwari - Member (A)

1. Sudhir Kumar Singh,
Son of Late Shri C.B. Singh,
Resident of 6-B Railway, Ramgarh,
Tal Coloney, Gorakhpur, Working
as Senior Commercial Inspector,
Grade -II, N.E. Railway, Gorakhpur.
2. Ganesh Kumar Bhagat,
Son of Late Shri P.C. Bhagat,
R/O Muhalla Kashi Pur, Samastipur,
Working as Senior Commercial Inspector,
Grade-II, N.E. Railway, Gorakhpur.
3. Rajveer Singh, Son of Shri S.B. Singh,
Resident of 566-B Kawwa Bagh Railway
Coloney, Working as Commercial Inspector
Grade-III, N.E. Railway, Gorakhpur.

Applicants in OA No. 754 of 1997

Versus

1. Union of India, through General Manager,
N.E. Railway, Gorakhpur.
2. Chief Personnel Officer,
N.E. Railway, Gorakhpur.
3. Chief Commercial Manager (General)
N.E. Railway, Gorakhpur.
4. Prem Prakash Sahi,
aged about 33 years,
S/o Sri Bhagwati Sahi,
presently posted as S.W. Clerk
in the office of CCM North
Eastern Railway, Gorakhpur.

(P&C)

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5. Sanjeev Kumar Chaturvedi, aged about 30 years, s/o Shri B.N. Chaturvedi, posted as Sr. Complaint Inspector, in the office of G.M. N.E. Railway, Gorakhpur.
6. R.K. Sinha, aged about 35 years, S/o Brijesh Kumar Sinha, posted as Sr. Clerk, in the office of CCM N.E. Rly, Gorakhpur.

Respondents in OA No.754 of 1997.

Chandrika Prasad, son of Shri Hira Lal Das, resident of 719-H, Railway Colony, Krishna Nagar, Gorakhpur, working as Commercial Inspector, N.E. Railway, Gorakhpur.

Applicant in OA No.755 of 1997

versus

1. The Union of India, through General Manager, N.E. Railway, Gorakhpur.
2. Chief Personnal Officer, N.E. Railway, Gorakhpur.
3. Chief Commercial Manager (General) N.E. Railway, Gorakhpur.

Respondents in OA No.755 of 1997.

1. B.P.Shukla, S/o Sri S.P.Shukla.
2. Subedar Lal Srivastava, S/o Late R.P.Srivastava.
3. Ram Byas Upadhyay, S/o Sri Baleshwar Upadhyay.
4. Shashi Bhusan Sinha, s/o Sri B.C. Sinha.
5. Babban Prasad Singh, s/o Sri Deo Nath Singh.
6. Amod Kumar Sinha, s/o Sri Girija Nandan Prasad.
7. Manoj Kumar, s/o Sri Harihar Prasad.

All Commercial Inspector Grade II working at Chief Commercial Manager Office, North Eastern Railway, Gorakhpur.

Applicants in O.A. No.804 of 1997.

(P.K)

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Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Commercial Manager or the General Manager (Commercial) North Eastern Railway, Gorakhpur.
3. The Chief Commercial Manager (C) N.E. Railway, Gorakhpur.
4. The Chief Personnel Officer, N.E. Railway, Gorakhpur.
5. Prem Prakash Sahi, a/a 32 years, S/o Sri Bhagwati Sahi, presently posted as Senior Clerk, In the office of Chief Commercial Manager, North Eastern Railway, Gorakhpur.
6. Sanjeev Kumar Chaturvedi, a/a 30 years, S/o Sri B.N. Chaturvedi, presently posted as Senior Complaint Inspector, In the office of the General Manager, North Eastern Railway, Gorakhpur.
7. Rajesh Kumar Sinha, a/a 35 years, S/o Sri Brijesh Kumar Sinha, presently posted as Senior Clerk in the office of the Chief Commercial Manager, North Eastern Railway, Gorakhpur.

Respondents in O.A. No.804 of 1997.

1. Prem Prakash Sahi, a/a 33 years, S/o Sri Bhagwati Sahi, presently posted as Senior Clerk, In the office of Chief Commercial Manager, Northern Eastern Railway, Gorakhpur.
2. Sanjeev Kumar Chaturvedi, a/a 30 years, S/o Sri B.N. Chaturvedi, presently posted as Senior Complaint Inspector, In the office of General Manager, Northern Eastern Railway, Gorakhpur.

3. Rajesh Kumar Sinha,
a/a 35 years,
S/o Sri Brijesh Kumar Sinha,
presently posted as Senior Clerk
in the office of Chief Commercial
Manager (Confidential Section)
Northern Eastern Railway, Gorakhpur.

Applicants in O.A. No.971 of 1997.

Versus

1. Union of India,
through the Secretary,
Ministry of Railways, New Delhi.
2. The General Manager,
North Eastern Railway,
Gorakhpur.
3. The Chief Personnel Officer,
Northern Eastern Railway,
Gorakhpur.
4. The Chief Commercial Manager,
North Eastern Railway, Gorakhpur.
5. Sri Sudhir Kumar Singh.
6. Sri Ganesh Kumar Bhagat.
7. Sri Amod Kumar Sinha.

Respondents No.5 to 7 are posted as
commercial Inspectors Grade-II
(Rs.1600-2660/-), N.E. Railway, Gorakhpur.

8. Sri Om Prakash.
9. Sri Rajveer Singh.

Respondent No.8 and 9 are posted
as Commercial Inspector Grade-III
(Rs.1400-2300/-), N.E. Railway,
Gorakhpur.

Respondents in O.A. No.971 of 1997

Present for applicants : Shri S.C.Budhwar, Senior Advocate
Shri V. Budhwar, Shri S.K. Om,
Shri Sudhir Agarwal.

Present for respondents : Shri Lalji Sinha.

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O R D E R

By Hon'ble Mr. Justice S.R. Singh, V.C.

O.As 754/97, 755/97 and 804/97 are directed against order dated 18.07.1997 whereby the applicants therein, who had been earlier promoted to the post of Commercial Inspector Grade II (Rs. 1600-2660), have been reverted and posted on adhoc basis as Commercial Inspector Grade III (Rs. 1400-2300). While in O.A No. 971/97 an order dated 05.09.1997 rejecting representation filed on behalf of the applicants therein for redressal of their grievances regarding promotion to the post of Commercial Inspector Grade III was rejected and the orders dated 09.12.2004 (in so far as it pertains to respondents 5,7 and 8), 10.04.1996 (pertaining to respondent No. 6) and 23.10.1996 (pertaining to respondent 9) are under challenge besides the relief of mandamus directing the respondents to promote the applicants w.e.f 01.03.1993. Since common questions of facts and law are involved in all the cases, it would be convenient to dispose them of by a common order and the learned counsel for the parties too have agreed for disposal by means of common order.

2. We have heard Sri S.C. Budhawar, Learned Senior Advocate assisted by Sri Vikash Budhawar appearing for the applicants in O.A No. 804/97, Sri S.K. Om, learned counsel appearing for the applicants in O.A No. 754/97 and 755/97 and Sri Sudhir Agarwal, learned counsel for the applicants in O.A No. 971/97 and Sri Lalji Sinha, learned counsel representing the Railway Administration and perused the pleadings.

3. The post of Commercial Inspector Grade III (Rs. 1400-2300) is a selection post which is required to be filled from three different sources in a given ratio as indicated below :-

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(1) Claim Tracers (Rs. 1200-2040) 30%
 (2) Senior Clerks (Rs. 1200-2040) 20%
 (3) Commercial Clerks (Rs.1200-2040) 50%

According to revised AVC (Avenue of Promotion) of Commercial Inspector, a copy of which has been annexed as Annexure- 5 to the O.A No. 971/97, if the staff of a particular group is not available, the unfilled quota should be equitably distributed to other groups. It appears that the Railway Board issued circular R.B.E No. 19/93 dated 27.01.1993 on the subject of restructuring certain group 'C' and 'D' cadres including the cadre of Commercial Inspector. Paragraphs 4, 4.1, 4.2, 4.3 and 4.4 of the said circular being relevant to the issues involved in the present case are quoted below :-

"4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and or viva voce test. Similarly for posts classified as non-selection at that time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation as 'Out standing' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation in view of expediting the implementation of these orders.

4.1. Vacancies existing on 01.03.1993 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence :
 i) from panels approved on or before 01.03.1993

and current on that date; (ii) and the balance in the manner indicated in para 4 above.

4.2. Such selections which have not been finalised by 01.03.1993 should be cancelled/abandoned.

4.3. All vacancies arising from 02.03.1993 will be filled by normal selection procedure.

4.4. Extant instructions for D & A/Vigilance clearance will be applicable for effecting promotions under the orders with the critical date being 01.03.1993."

4. The question that requires ^{consideration} in the present set of O.As is as to whether the vacancies in the post of Commercial Inspector Grade III including chain/resultant vacancies arising as a result of restructuring should be filled by selection or in the manner indicated in para- 4 of the circular extracted above. It is not disputed that four vacancies in the post of Commercial Inspector Grade III were existing as on 01.03.1993 and 13 vacancies became available on that date as a result of chain/resultant promotions to the post of Commercial Inspector Grade II. These 17 posts are required to be filled, according to the learned counsel appearing for the applicants, on the basis of scrutiny of service records and confidential reports without holding any written and viva-voce test, while, according to Sri Lalji Sinha, they ought to be filled in by normal method of selection. Para 4.1 extracted above provides that the vacancies existing on 01.03.1993 'except direct recruitment quota' and those arising on that date from the cadre restructuring including chain/resultant vacancies should be filled (i) from panels approved on or before 01.03.1993 and current on that date; (ii) and the balance in the manner indicated in para 4 i.e. by scrutiny of service records and confidential reports without holding any written and viva voce test. Concededly none of the 17

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posts was in the direct recruitment quota and, therefore, according to the learned counsel for the applicants, all the 17 posts ought to be filled only on scrutiny of service records and confidential reports without holding any written and viva-voce test. On the other hand Sri Lalji ^{has submitted,} Sinha, relying on para-II of the clarificatory circular R.B.E No. 49/93 dated 12.03.1997 a copy of which has been annexed as Annexure- I to the CA in O.A No. 754/97 that these posts ought to be filled by normal procedure of selection.

5. Having given out thoughtful consideration to the submissions made across the Bar, we veer around the view that all the 17 posts ought to be filled only be scrutiny of service records and confidential reports without holding any written test and viva-voce and not by the normal procedure of selection. This is clear by ^a _{conjoint} reading of paras 4 and 4.1 of the Railway Board's Circular dated 27.01.1993 extracted herein above. Para-II of the R.B.E No. 49/93 relied on by Sri Lalji Sinha, in our opinion, has no application for that is attracted to a case where ^{is clear} restructured posts in a cadre are not available as _{from} the heading of clause II of circular No. 49/93 which reads as under :-

“जहाँ पुर्णसंरचित पद उपलब्ध न हों वहाँ रिस्ट्रिक्शन को भरना”

As indicated herein above 4 posts of Commercial Inspector Grade III were existing as on 01.03.1993 and 13 others ² became available on chain/resultant promotions as a result of cadre restructuring. The case, in our opinion, was covered by clause 4.1 of the circular R.B.E No. 19/93 dated 27-01-1993.

6. Sri Lalji Sinha has then urged that although no post of Commercial Clerks (one of the feeder cadres) was available at the Headquarter, option should be asked from other divisions. The submission, in our opinion, has not cutting edge.

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There is no integrated cadre, on all India basis, of the feeder cadre employees posted on the various units of the division. Consequently if any vacancy becomes available at the Headquarter, it ought to be filled from amongst those available in the feeder cadre at the Headquarters. It may be pointed out that there was no post of Commercial Clerk at the Headquarter and, therefore, quota allotted for Commercial Clerks ought to be 'equitably distributed' among the Claim Tracers and Senior Clerks. The expression 'equitably distributed', in our opinion, implies fair distribution. The terms equitable does not at all comprehend that entire quota of Commercial Clerk should be given to only Claim Tracers which is only one of the 3 feeder cadres. Allotment of entire quota Commercial Clerks to Claim Tracers was not at all sustainable being contrary to the circular which provides for equitable distribution.

7. Sri S.K. Om at this stage submitted that in the event of equitable distribution one of the Claim Tracers promoted as Commercial Inspector Grade III will have to be reverted and since he has given promotion about 7 years back, it would be just and proper to direct the respondents to create a supernumerary post in order to adjust him. We do not find it feasible to issue any mandamus in this regard except to observe that the competent authority may consider the feasibility of creating supernumerary post in order to adjust any such person who is likely to be reverted as a result of equitably distribution among the Claim Tracers and Senior Clerks.

8. In view of the above discussion and conclusions, the O.As succeed and are allowed. The impugned orders dated 18.07.1997 and 05.09.1997 are quashed in entirety

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and rest of the impugned orders to the extent indicated above. The respondents are directed to give consequential benefits to the applicants in accordance with law and in the light of observations made in this judgment. No costs.

John ^

Member - A.

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vice-Chairman.

/Anand/