

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABD.

Allahabad this the 17th day of November 2000.

Coram :- Hon'ble Mr. Rafiq Uddin, Member- J.
Hon'ble Mr. S. Biswas, Member- A.

Orginal Application No. 639 of 1998.

Ghayasuddin S/o Sri Nizamuddin,
Divisional Commercial Inspector, Northern Eastern
Railway, Gorakhpur.

..... Applicant

Counsel for the applicant:- Sri S.K. Om

V E R S U S

1. The Union of India, through Chairman, Railway Board, Rail Bhawan , New Delhi.
2. The General Manager, Northern Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, Northern Eastern Railway, U.P, Lucknow.
4. The Senior Divisional Personal Officer/ Divisional Railway Manager (personal), Northern Eastern Railway, U.P, Lucknow.
5. The Senior Divisional Commercial Manager }
Divisional Railway Manager (Commercial), Northern Eastern Railway, U.P, Lucknow.

..... Respondents.

Counsel for the respondents:- Sri P. Mathur.

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O R D E R (Or 1

(By Hon'ble Mr. S. Biswas, A.M.)

This application has been filed under section 19 of Administrative Tribunal's Act, 1985. The applicant has impugned the order dt. 10.06.98 (annexure- I) and has asked the same to be set-aside and has further sought direction to the respondents for not changing his category from Commercial Inspector to Commercial Supervisor

2. The applicant was appointed on 31.03.83 as a Commercial apprentice for training and after training they were to be posted as Commercial Supervisor, Commercial Inspector, Coach Inspector (Chief Parcel Clerk ^{or} and ^{SB} other types of Inspectors, all for out door duties in the commercial department. After the training of 2 years, up to 28.03.85 he was allotted Lucknow Division and posted as Chief Parcel Clerk vide order dt. 16.05.85. However, he had accepted that under protest and asked for a change to Commercial Inspector vide his protest letter dt. 16.05.85 (annexure- IV to th O.A). This protest and request for change was made on the ⁵ grounds that he was the topper in the selection test for Commercial Apprentices held by Railway Service Commission and a ^{was} national scholarship holder all through. That posting is made by selection cum option and the applicant was topper.

3. The applicant was later transferred on 20.03.90 to N.E. Rly. On being asked he gave his option for posting to Commercial Inspector against the vacant posts (option statedly not annexed). Vide order dt. 11/12.04.90 the applicant was posted as Commercial Inspector in the scale of Rs. 1400-2300/- by change from Commercial Supervisor (annexure- 6 to the O.A) without any pre-condition.

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4. Meanwhile vide order dt. 03.05.96, the respondents promoted Sri V.P. Updhyaya who was three years his junior in the grade of Rs. 1600-2600/- for which the applicant filed another O.A No. 607 of 96. In this O.A of 96, the court passed certain interim order dt. 19.09.97 staying the declaration of the selection of Commercial Inspector Gr. I . This was further modified on 26.11.97 to the extent that ~~as~~ any promotion to the Grade of Rs. 2000-3200/- would also be subject to the outcome of the said O.A No. 607/96. A further reiteration as needed due to insistence by the applicant when his category and seniority was apprehended to be tampered by the respondents by publishing the seniority in 1993, was made on 14.05.98. On the heels of the order dt. 14.05.98, the respondents issued the impugned order dt.10.06.98 (annexure 1 to the O.A) changing the category of the applicant from Commercial Inspector to Commercial Supervisor abruptly, without any prior option or notice whereas the applicant worked in that category in the same scale for last 8 years. The applicant's allotment to Commercial Inspector Category was after option on the basis of his rank in the Railway Service Commission's result in which the applicant was topper and he was given the category of Commercial Inspector in 1992 order(ibid) without any precondition. No seniority list as referred in the impugned order dt. 10.06.98 was communicated to the applicant, ^{he is} nor ^{he is} aware of any other order dt. ^{Category 99} ^{superior} 11.11.90. Nor ^{fixation} of category requires any approval, as it is now being made out to be after 8 years of the order of fixation. The abrupt change is, therefore, indicated as violation of the principals of natural justice and hence liable to be quashed as the procedure for selection in the stream of Commercial Supervisors is also different. As against the promotion in the stream of Commercial Inspector, which is on the basis of

seniority, the promotion in the stream of Commercial Supervisor is made on the basis of selection.

5. We have heard the learned counsels for both the sides on law and facts and observe that pending a decision in O.A No. 607 of 96, the applicant has filed the present O.A No. 639/98 on a limited point. The respondents vide the impugned order dt. 10.06.98, has changed the stream of the applicant from Commercial Inspector in which category he was placed since 1990 (dt. 20.03.90) on the basis of option. However, there is no apparent basis in the argument or in the apprehension that any separate seniority for Commercial Inspector and Commercial Supervisor exist or in the process of preparation which may ~~indicate~~ ^{prajdeca} the seniority of the applicant though he has alleged that one Sri Upadhyaya who is three years his junior ^{was} promoted in the scale of Rs. 1600-2600/- superseding the applicant. The issue therefore is under active consideration in O.A 607/96. The same is not within the scope of the present petition. The applicant has not filed any seniority for consideration in the present case, though the respondents have indicated about seniority of Commercial Supervisors. The applicant has contested mainly the change of the stream as malafide and illegal as his case for promotion in the stream of Commercial Supervisor is pending in O.A 607/96 and change of stream at this stage is illegal. Therefore, the issue is also rightly within the scope of the O.A 607/96.

6. Having gone through the submissions made in the counter, we find that the applicant was transferred to N.E. Railway on his option and he was placed at the bottom on 20.03.90 when he reported for duty initially as Parcel Clerk and designated as Commercial Inspector

vide order dt. 26.03.90. After considering his representation, the respondents at the Head Quarters level decided to fix~~s~~ his seniority in Commercial Supervisor Gr. Rs. 1400-2300/- (RPS). It has been admitted that further promotion in this grade is on the basis of selection test.

7. The respondents have further contended that allocation of category depends on the competent authority and not on representation or option. However, the applicant's protest(16.05.85) against wrong and in appropriate allocation has been acknowledged, ^{as} he was not ^{so} considered and no option was asked from him.

8. It is only later on a representation dt. 6.4.90 for posting as Commercial Inspector was received from the applicant, The D.R.M, N.E.R, Lucknow permitted him to work ~~him~~ as Commercial Inspector since 1990 (April) and he was posted at Gorakhpur. The paper was sent to G.M, N.E.R, Gorakhpur who is statedly the competent authority. The order dt. 11/12.04.90 posting him as Commercial Inspector was wrongly passed by an incompetent authority. The same was sent for approval to the competent authority namely the General Manager who passed his order of dis-approval on 27.04.98, following which the impugned order of change of allocation from Commercial Inspector to Supervisor was issued on 10.06.98.

9. We are not able to accept this ground as legal and proper, ~~the~~ the applicant's allocation was changed from Chief Parcel Clerk to Commercial Supervisor. There is nothing on record to suggest that D.R.M's order underwent any such ^{by} ~~ex post facto~~ approval ~~of~~ G.M so soon or ever. In the instant case, the order of posting of the applicant

is dt. 12.04.90, the disapprovel to this posting come clean after 8 years though it was only sent for approval and not for disapproval. Not a word has been spelt in the order of change, why the applicant's case could not be considered ~~favorably~~ when he had topped the merit list in the Railway Services Selection Exam. He had ~~not~~ asked apparently for seniority, but change. He was ~~not~~ permitted to work as a Commercial Inspector all the same for 8 years. Hence, Commercial Inspectors job was there at Gorakhpur. In our view the argument that the applicant misrepresented a simple order of asking him to look after the work with the scale of Rs. 1400-2300/- is not tenable. In that case, it was necessary to refer the case for approval by G.M. We have scrutinised the order of change the dt. of 12.04.90. This order is clearly a change of ~~post~~ ^{no1} (post) which is ~~their~~ own aversion, it needed approval.

10. The respondents have clearly changed the allocation after 8 years without giving the applicant any show cause notice as per principle ^{the} of natural justice. The delay has generated civil consequences which will go against the applicant both by way of his acquired competence in the present ~~post~~ ^{Stream} going as waste ^{so} ~~stream~~ and also in promotion in other stream by selection. The order dt. 10.06.98 based on G.M's order dt. 27.04.98 is ^{be allowed to} quashed. The applicant would ^{continue} in the category or stream of Commercial Inspector.

11. There will be no order as to costs.

S. Bais
Member - A.

R. Anand
Member - J.

/Anand/