

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1000 of 2004

Allahabad this the, 26th day of Feb., 2014

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. B. Bhamathi, Member (A)**

1. Anant Sharan Srivastava, aged about 47 years, son of Late Sh. I.S. Meht, working as TTE-A/N.E. Railway, Varanasi Division, Hd. Quarter, Varanasi r/o C-27/74, Jagatganj, Varanasi.
2. Ravindra Sharma, aged about 42 years son of Shri Kapil Deo Sharma, working as TTE-A/Gorakhpur (East), N.E. Railway, Varanasi Division, Gorakhpur r/o Jangal Matadin, near Gordhoyyapul, Padri Bazar, Gorakhpur.

Applicants

By Advocate: Sri S.K. Om

Versus

1. Union of India through General Manager, North Eastern Railway, Headquarters Office, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Sr. Divisional Personnel Officer, North Eastern Railway, Varanasi.

Respondents

By Advocate: Sri K.P. Singh

Reserved on 28th January, 2014

ORDER

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicants have prayed for the following relief(s):

“(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned notification dated 13.8.2004 issued by the Respondent No. 2 (Annexure A-1) and direct the respondents to



assign the correct seniority positions of the applicants in TTE-A/Hd.TC/Conductor Grade Rs.1400-2300/5000-8000 and DTTI/DIT Grade Rs.5500-9000 before holding the selection for the posts of CTTI/CIT Grade Rs.500-10500.

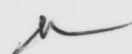
(ii) The Hon'ble Tribunal may further be pleased to direct the respondents to give seniority to the applicants in grade Rs.5000-8000 with effect from the date they have been promoted as Head Clerk Grade Rs.5000-8000 in stead of 1.3.1993 and revise their seniority positions accordingly to promote as DTTI/DIT Grade Rs.5000-9000 against the upgraded posts on account of re-structuring of the cadre and give all consequential benefits including seniority and monetary benefits as per rules as given to their junior persons..

(iii) Any other writ or order or direction which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.

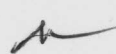
(iv) Cost of the Application may also be awarded."

2. The facts of the O.A., in brief, are as follows: -

That the applicant No. 1 – Anant Sharan Srivastava was initially selected as Junior Clerk in the pay scale of Rs.260-400/- by the Railway Recruitment Board and posted in the office of CCM/N.E. Railway, Varanasi on 25.07.1976 and later on promoted as Senior Clerk on 24.02.1986. He was declared surplus and absorbed in the same grade and post as TTE/Grade Rs.1200-2040/- on 29.01.1990. The applicant No. 2 – Ravindra Sharma was initially selected as Senior Clerk in the pay scale of Rs.330-560/- by the Railway Recruitment Board and



posted in the office of CCM/N.E. Railway, Varanasi on 01.08.1985. After being declared surplus, he was absorbed in the same grade as TTE in the pay scale of Rs.1200-2040/- on 25.01.1990. While working as TTE-A in the pay scale of Rs.1200-2040/-, the applicants were promoted as Head Clerk in the pay scale of Rs.1400-2300/- in the parent cadre vide GM(P)/NER/Gpur's Office Order No. E/210/5/Bhag 4/6 dated 07.06.1991 and the respondent No. 2 also issued office order on 01.08.1992 promoting the applicants in terms of office order dated 07.06.1991 and pay of the applicants was also fixed vide office orders No. E/210/05/Bhag 6/6 dated 04.08.1992 and 18.08.1992 with the condition that they would be deemed to be absorbed in this grade as TTE-A/Hd. TC pay scale of Rs.1400-2300/5000-8000/- after passing the selection for the said post. The respondents conducted the selection for the post of TTE-A/Hd. TC/Conductor grade in the pay scale of Rs.1400-2300/5000-8000/- but the respondents did not call them to appear in the test for the reasons not known to them and the junior persons were promoted on account of this selection. The respondent No. 2 issued the seniority list for the post of TTE-A/Conductor/Head T.C. in the pay scale of Rs.5000-8000/- as on 01.04.1999 vide notice dated 21.09.1999. But, the names of applicants were not shown in the said

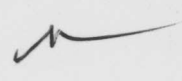


seniority list despite the fact that the applicants were working in this grade since 1991. After 21.09.1999, the respondent Nos. 2 and 3 did not issue seniority list for the above said post in order to ascertain the correct seniority position of the applicants. The respondent No. 2 issued Office Order No. 65/2000 dated 10.05.2000 through which the applicants were given the benefit of up-graded posts against restructuring of the cadre as per policy of the Railway Board circulated vide letter dated 27.01.1993 and the applicants were given the benefit of promotion with retrospective effect from 01.03.1993 against the said selection post of TTE-A in the pay scale of ₹5000-8000/- under the modified procedure of selection. Vide letter dated 26.06.2003, the General Manager (P), N.E. Railway, Gorakhpur issued an instruction that all the clerical staff working as TTE-A if passed the selection of the grade of ₹1400-2300/5000-8000/-, they would be given promotion in this grade from the date of their promotion as Head Clerk. Since the applicants had already been declared selected in the TTE-A/Hd. TC/Conductor in the pay scale of ₹5000-8000/- by modified procedure of selection vide letter dated 10.05.2000 and their names were placed in the grade and pay fixation was also done accordingly, only placement of their names is left in this grade w.e.f. 07.06.1991 and 04.08.1992 respectively from the date of



their promotion. It is worth to mention that on 21.09.1999, the respondents Nos. 2 and 3 did not issue the revised seniority list of TTE-A/Hd. TC/Conductor in the pay scale of ₹5000-8000/- after issuing the aforesaid order dated 10.05.2000 interpolating their names in the revised seniority list of the said grade and giving promotion and consequential benefits due in DTTI/CIT grade ₹5000-8000/- in respect of their juniors. The applicants made a representation on 18.05.2004 and 14.06.2004 respectively to the Divisional Railway Manager, N.E. Railway, Gorakhpur that their names are not in the seniority lists of ₹5000-8000/- and ₹5500-9000/- and on the basis of their seniority position, they are entitled for their promotions against the cadre restructuring w.e.f. 01.11.2003. The respondents issued the promotion order on 24.05.2004 for DTTI/DIT ₹5500-9000 ignoring the applicants.

3. The D.R.M. (P), N.E. Railway, Varanasi vide his letter dated 09/13.08.2004 issued a notification for holding selection for the post of CTTI/CIT grade ₹6500-10500/- without issuing the latest seniority list of Grade of ₹5000-8000/- and of grade ₹5500-9000/-. As the names of applicants were not included in the eligibility list attached with the above notification whereas names of junior

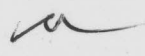


persons had been included in the said list. The applicants again submitted representation on 16/17-08-2004 to the Additional Divisional Railway Manager, N.E. Railway, Varanasi against the proposed selection for the post of CTTI/CIT in the grade of ₹6500-10500/- by respondent Nos. 2 and 3 is arbitrary, wrong, illegal, contrary to the rules and against the principle of natural justice as the applicants would be deprived of their legitimate rights to promotion if they are not allowed to appear in the aforesaid selection which was scheduled to be held on 04.09.2004. This O.A. has been filed by the applicants mainly on the grounds that the respondents have violated the provisions of articles 14 and 16 of the Constitution of India. They have also violated the statutory provisions contained in the Indian Railway Establishment Manual, Volume I, 1989 in conducting the selection without settling the seniority position of applicants in TTE-A/Hd. TC/Conductor grade ₹5000-8000 as well as in DIT/DTTI grade ₹5500-9000/- in respect of their junior persons. The applicants are also eligible to appear in the said selection as junior persons have been allowed to appear in the said selection. The respondents have not published the latest seniority list after 1999 of DTTI/DIT grade ₹5500-9000 before holding the aforesaid selection for the




posts of CTTI/CIT grade ₹6500-10500/- which is a procedural irregularity.

4. The respondents have filed the Counter denying the allegations made in the O.A. of the applicants mainly alleging that both the applicants were attached in Varanasi division only to work as TTE in the pay scale of ₹1200-2040/- in TTE cadre as per their own request after being declared surplus in the Office of CCM, N.E. Railway, Gorakhpur. Their post and seniority remained at Headquarter in the office of C.C.M., as before, as per office order No. E/210/15/VA/IV/II/GKP dated 04.09.1990 issued by the General Manager (P), N.E. Railway, Gorakhpur. They were promoted as Head Clerk vide letter dated 07.06.1991 and 01.08.1992. According to their own statement, the applicants were absorbed as TTE in the pay scale of ₹1200-2040/- on 29.01.1990 and 25.01.1990. If they were absorbed in TTE in the pay scale of ₹1200-2040/-, they cannot be promoted in ministerial cadre as Head Clerk. As per the office order, they would only work as Head TTE in the pay scale of ₹1400-2300/- and would be regularised only after they passed the selection test for the post of Head TTE in the pay scale of ₹1400-2300/- as per rules. The notional promotion of Head Clerk dated 07.06.1991/01.08.1992 was cancelled by the General



Manager (P), Gorakhpur and accordingly action was taken by the Divisional Railway Manager (P), N.E. Railway, Varanasi dated 21.04.1995 against which the applicants and others filed O.A. No. 461 of 1995 before this Tribunal which was dismissed in default on 14.03.2002. This fact has not been disclosed by the applicants in the present O.A. with malafide intention. The names of applicants were published in the seniority list dated 21.09.1999 of TTE in the pay scale of ₹4000-6000/- w.e.f. 01.04.1999 at serial Nos. 8 and 9. This was again confirmed by the Divisional Railway Manager (P) letter dated 31.01.2000. The applicants did not file any representation or objection against the aforesaid seniority list. It is further alleged by the respondents that Order No. 65/2000 dated 10.05.2000 was issued erroneously and the applicants have not been given its benefit as per para-5 of the Railway Board circular No. E (NG) II-84/RE-1/10 dated 21.04.1989, which clearly demonstrates that surplus staff can only be absorbed in other cadre in the grade in which element of direct recruitment grade is involved. In ticket checking cadre recruitment grade is ₹950-1500/3050-4590/- and there is no direct recruitment element in the pay scale of ₹1200-2040/4000 -6000/- so they were only absorbed in the pay scale of ₹950-1500/-. In the meeting of P.R.E.M. dated 13.12.1994, in which the General




Manager, N.E. Railway, Gorakhpur also participated, it was informed that the Chairman, Railway Board and Member Staff had made a policy that surplus staff would not be interpolated in working cadre. Though order No. 65/2000 dated 10.05.2000 was issued but it was issued erroneously as no junior to the applicants was given promotion according to it. Apparently, the applicants and some others who came from CCM Office, N.E. Railway, Gorakhpur had been rendered surplus staff, and after acceptance of bottom seniority, their names were kept in separate block by creating supernumerary posts. Hence, they can only be absorbed in the pay scale of ₹950-1500/3050-4590/- being recruitment grade in the cadre of Ticket checking. In the light of these facts, the order dated 10.05.2000 was abinitio in-effective and the applicants cannot get any benefit of the same. The very basis of claim of the applicants is the order dated 10.05.2000, which itself is erroneous so, the applicants are not entitled for any relief, claimed by them. The applicants are eligible as per letter dated 26.06.2003 to appear in the examination of TTE in the pay scale of ₹5000-8000/- and before their selection they cannot get its benefit. The applicants have got no case and the O.A. deserves to be dismissed.



5. The applicants have also filed the Rejoinder Affidavit mainly reiterating the stands taken in the O.A. and also emphasizing that as per the order dated 10.05.2000, they were already promoted and their names should have been shown in the seniority list and by not doing so, the respondents have acted arbitrarily.

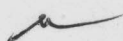
6. In addition to pleadings, parties have also placed reliance on documentary evidence. The applicants have placed reliance on documents which are annexure A-1 to annexure A-12 on record. On the other hand, the respondents have placed reliance on documentary evidence, which is annexure-1 to annexure-9. The applicants have further placed reliance on documentary evidence which is filed as annexure SA-1 along with Civil Misc. Stay Application.

7. A perusal of order sheets shows that on several dates, learned counsel for the parties were cautioned that as the case relates to the year '2004', no adjournment will be granted to either party and arguments will be heard on the next date. Even on 19.03.2013, such caution was given but despite this fact, learned counsel for the applicant did not appear on 28.01.2014-the last date fixed for arguments. Only the respondents' counsel was present. Hence, we decided to hear the arguments of the



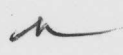
case and we heard the learned counsel for the respondents and again an opportunity was given to learned counsel for the applicant to file Written Submission, if any, within a week but no Written Submission has been filed on record.

8. The main controversy in this case is as to whether by virtue of office order No. 65/2000 dated 10.05.2000 issued by respondent No. 2, the applicants can get the benefit of upgraded posts against restructuring of the cadre as per policy of the Railway Board with retrospective effect from 01.03.1993 against the said selection post of TTE-A in the pay scale of ₹5000-8000/- by adopting modified procedure of selection. According to the applicants, they have got the benefit of the aforesaid order dated 10.05.2000 and they should be deemed to have been promoted in the pay scale of ₹5000-8000/- by adopting modified procedure of selection. It is also averred by the applicants that their further promotion in the higher grade i.e. Senior TTE/CTI in the pay scale of ₹5500-9000/- against the post of restructuring should be given in respect of their juniors who were promoted earlier since they have already been declared selected as TTE-A/Hd.TC/Conductor in the pay scale of ₹5000-8000/-, whereas according to the respondents on scrutiny it was




found that the order dated 10.05.2000 was erroneously issued and it was never given effect to. Hence, the contention of applicants that they should be deemed to have been promoted under the modified procedure of selection is incorrect. The applicants being declared surplus had joined the cadre of TTE as per their own request and thereafter they were allowed the pay scale of ₹1200-2040/- but they were never promoted as TTE-A as it was a condition precedent that in order to obtain this post/grade, they have to pass a selection test. Admittedly, the applicants have not passed the selection test required for the said post.

9. As regards the contention of applicants that their juniors were promoted hence they were also promoted in the aforesaid grade by order dated 10.05.2000, this contention is not supported by any documentary evidence as no juniors to the applicants were ever promoted. Our attention has been drawn by learned counsel for the respondents towards annexure-1 filed by the respondents, which is dated 26.06.2003. This is an order issued by the Office of General Manager (P), Gorakhpur in compliance of the direction given by this Tribunal in O.A. No. 1535 of 1999 Prakash Chand Sharma Vs. Union of India and others dated 22.11.2002 in which it has been mentioned



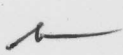
that all the senior clerks will be given bottom seniority of TTE in the pay scale of ₹1200-2040/- from the date of their joining and in order to get the grade of TTE-A in the pay scale of ₹1400-2300/-, they have to pass the selection test and they were given option to give application within a period of 15 days. In response to it, one Shri P.C. Sharma and Shri K.P. Singh had given their application on which after consideration it was decided that all such employees (senior clerk) who were given the benefit of working in TTE-A grade, would be given an opportunity once again to appear in the selection test and if they succeed in the selection test then, they will be given seniority in the grade of ₹1400-2300/5000-8000/- from the date of their proforma promotion and if they failed to succeed in first chance then they will be returned to their original clerical grade. Information was given to the applicants also along with 08 other employees to apply for the examination. There is nothing on record that the applicants in pursuance of this letter applied for that examination.

10. Our attention has also been drawn by the respondents' counsel towards the provisions made in the I.R.E.M. Volume I, 1989 relating to surplus staff in which in chapter-111, Para-313A has been added which specifically deals with assignment of seniority to



redeployed staff. It is specifically mentioned in this paragraph that the surplus employees are not entitled for benefit of the past services rendered in the previous unit/ department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority/ promotion etc. This is circulated by the Railway Board letter No. E (NG)/1-2000/SR-6/23 dated 25.05.2004. Through this paragraph, provision contained in the Rule dated 21.04.1989 as regards 1(i) was modified to the extent mentioned above.

11. Admittedly, the applicants joined as TTE after being declared surplus though they were given the grade pay of ₹1200-2040 but a condition was attached that they will be given the designation of TTE-A only after passing the required selection test. It is an admitted fact that no such selection test was passed by the applicants. The applicants claimed promotion in the grade of ₹5000-8000/- on the basis of Order No. 65/2000 dated 10.05.2000 but the same order is said to have been erroneously issued by the respondents as it was discovered on scrutiny later on. According to the respondents, this order has never been given effect to and the applicants did not get any benefit of this order. It is



worth to mention here that the applicants are not able to produce any documentary evidence that in compliance of this order, they had been re-designated as TTE-A. On the other hand, the seniority list published by the respondents does not disclose names of these applicants in the pay scale of ₹5000-8000/-. The applicants have also not filed any circular/letter of the Railway Board to demonstrate that para-313 A, newly added in IREM Volume I has been modified or repealed.

12. In view of the above facts and circumstances, we are of the view that the applicants could not make out a case in their favour. O.A. is devoid of merits. Accordingly, it is dismissed. No order as to costs.

B. Bhamathi
(Ms. B. Bhamathi)
Member - A

S.S. Tiwari
{Justice S.S. Tiwari}
Member - J

/M.M/