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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO. ¹¹²~~707~~ OF 2005 ¹²

ALLAHABAD THIS THE ^{8th} DAY OF April, 2005

Hon'ble Mr. S.P. Arya, A.M.
Hon'ble Mr. K.B.S. Rajan, J.M.

1. Jagjit Singh son of Jogendra Singh.
2. S.S. Upadhya s/o R.P Upadhya,
All employed as Enquiry cum Reservation Clerk
U/CRS/ECR/Mughalsarai District Chandauli.

.....Applicant

(By Advocates: Sri Manphool Singh/ Sri S. K. Dey/ Sri S.K. Mishra Pandey)

Versus

1. Union of India,
through The General Manager
E.C. Railway, Hajipur Bihar.
2. The Chief Personnel Officer E.C. Railway,
Hajipur Bihar.
3. The Sr. Divisional Commercial Manager,
E.C. Railway, Mughalsarai District Chandauli.
4. The Chief Reservation Supervisor E.C. Railway,
Mughalsarai, District Chandauli.
5. The D.P.O. E.C. Railway, Mughalsarai.

(A.K. Gaur for Respondents)

O R D E R

By Hon'ble Mr. S.P. Arya, A.M.

The applicants entered the Railway service as Commercial Clerk (CC) on 03.11.1981 and 10.09.1982 respectively. They were deployed as Enquiry-cum-Reservation Clerk (ECRC) with effect from 10.11.1982 and 16.11.1983. The applicants have been working as ECRC since then. Recommendation^d by Senior Divisional Commercial Manager (Senior DCM) EC Railway was made for their regularization as 152 such Commercial Clerks were regularized on the post of ECRC in 1986. A representation for regularization was made and by

order dated 30.12.2004 in O.A. No.1611/2004, the representation dated 29.11.2004 was directed to be disposed of by a speaking and reasoned order. One of the respondents has decided the representation by order dated 14.02.2005 rejecting the representation. The applicants by this O.A. seek for quashing the order dated 14.02.2005 rejecting the representation and also for quashing the order dated 26.01.2005 sparing them from the post of ECRC to join the original cadre of commercial branch on the grounds that other similarly placed commercial clerks were absorbed as ECRC on 23.05.1980 and 10.06.1986; they were continuously on the post and there was no reason to deny the regularization.

2. Respondent in their counter reply have stated that the applicants belong to Commercial Cadre and they were promoted as Head CC in the scale of Rs.5000-8000/- against the existing vacancy in the cadre. The cadre of ECRC is a separate cadre in which 75% of the posts are filled in by departmental promotion by calling option from CCs (Rs.3200-4900 and 4000-6000); ticket collectors (Rs.3050-4590 and 4000-6000) through positive act of selection and 25% posts from open market by RRB. The departmental test has been conducted to fill up the vacancies of ECRC Grade I (Rs.5000-8000) by calling eligible persons from amongst ECRC working in the scale of 4500-7000 under their own channel of promotion. The applicants are working as Head CC and not as ECRC and therefore are not eligible to be regularized as ECRC Grade I. The applicants will be promoted ~~on~~^{as} Commercial

Superintendent and Chief Commercial Superintendent ²
~~Posts~~ in the respective scales of Rs.5500-900 and Rs.6500-10500 in their own cadre as and when vacancies arise. They have been spared from reservation side to ticket booking office in exigency of work.

3. We have heard learned counsel for both the parties and perused the pleadings. The short question involved in the controversy is as to whether the applicants are entitled to regularization as ECRC Grade I even if they belonged to the cadre other than that of ECRC.

4. Admittedly the applicants were working as ECRC since 10.11.1982 and 16.11.1983 respectively holding their designation of Head CC. There is nothing on record to show that the applicants in their original cadre were declared surplus except a casual mention of surplus 14 ²PDCs (Parcel Delivery Clerks) in a letter of 26.06.1985 (Annexure-3). However, this does not establish that 14 incumbents of the CC cadre were declared surplus or for that matter the applicants were included in the list of those 14 persons. It is evident from the letter of Chief Reservation Supervisor E. Rly (Annexure-7) that the services of the applicants were being utilized on reservation counter against increased load of work due to enhancement of quota and windows with allied works. A reading of Annexure-4 which is a letter dated 18.02.1991 makes clear that perhaps the proposal was to surrender some vacant posts of PDCs for creating the posts of Reservation Clerks. This shows that once a

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posts were vacant in the commercial side applicants ^vwould not have been declared surplus. Accordingly, we find that the post of CCs ^ewould not be said to have been declared as surplus. The question of their deployment in other cadres and regularization thereon could not arise in the circumstances.

5. It is trite law that the members of service would get the promotion only in their own channel. Change of cadre can be made only by the President, in the present case, the General Manager of the Railway who has been delegated with such powers only on grounds of administrative exigency or the request of the incumbent. No such cadre change has been ordered by the General Manager i.e. the competent authority. The applicants continue to be in the Commercial Cadre and getting the scale of pay admissible to ECRC Grade I as Head CC in the parent cadre. The applicants did not have any right to the post of ECRC I as this would certainly mar the promotion prospects of the others cadre officials eligible for promotion to the post.

6. It was contended by counsel for the applicant that Shri K. K. Ojha, Senior Booking Clerk and Shri T. K. Bhattacharya, Senior Commercial Clerk have been asked by orders of 15.09.2004 and 23.11.2004 to work with the reservation office and on this basis it can be concluded that there is requirement of ECRCs. However, it is not for the courts to decide as to which official would be doing what work and where, but it is for the authorities to decide how the work of the department/office can be performed better and in

time by what arrangements. Sparing one from Commercial department ^{by} ~~applicant~~ ^{my applicant} does not give a right to continue in the reservation office.


7. From the pleadings it is not clear whether the said 152 CCs were in the scale of ECRC Grade II or ECRC Grade I. Regularization on a post in a cadre could be made only under a scheme of regularization or by appointment or provisions under the recruitment rules. No scheme for regularization of provision in RRs have been shown to US. Cadre of the applicants has not been changed. We find ourselves constrained in not accepting the contention of applicants for their regularization on the post of ECRC Grade I although they have been working on the post of ECRC Grade I or Grade II w.e.f. 10.11.1982 and 16.11.1983 respectively.

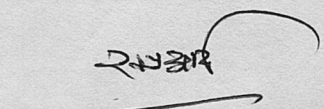
8. The counsel for the applicant is relied on the judgment of the Apex Court in case of Registrar University of Hyderabad and Anr. Vs. M. V. Santa Kumari reported in 2000 (87) FLR 797 where the services of the applicant was sought to be terminated and finding that she was working for five years it was ordered by the Apex Court that she should be allowed to continue on the post. Since the facts and circumstances completely differ in the present case, the applicants cannot get the benefit of this Judgment. Counsel for the respondents has further relied on the judgment and order dated 08.08.2002 in O.A. No.731/1995 where this Bench has held that the difference of salary of what was paid and what was

admissible on the post should be paid and those who have worked continuously for more than three years on 26.07.1995 should be considered for regularisation. On going through the judgment we find that the fact of non-existence of a scheme for regularization, absence of order of change of cadre of the competent authority and the adverse effect on the incumbents of the cadre on their promotion was not considered in the judgment. It, therefore, cannot have the binding effect. The applicants cannot claim their continuance on the strength thereof.

9. In view of the above facts, circumstances and legal position, we hold that official of ~~different~~^a cadre cannot be regularized ^{in a different cadre} unless there is such a scheme, rule, instruction having the force of law or rule. The applicants have no vested right to hold the post of ECRC Grade I. It is specifically stated in the counter reply of the respondents that the applicants have been spared from the post of ECRC. The applicants have no right to continue on the post of ECRC Grade I.

10. In conspectus of above discussion and facts and circumstances, we find the O.A. bereft of merit. Accordingly, it is dismissed with no order as to costs.


Member-J


Member-A