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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.1464 OF 2005

ALLAHABAD THIS THE 4th DAY OF DECEMBER 2006

**HON'BLE MR. K. ELANGO, MEMBER-J
HON'BLE MR. M. JAYARAMAN, MEMBER-A**

1. Mr. Krishna Kumar Pandey, Aged about 53 years, S/o late Sri Ram Pandey, R/o 534-A, Ghanshyam Nagar Railway Colony, Chaufatka, Allahabad.
2. Mr. Shiv Kumar Srivastava, aged about 49 years, S/o late Kanahya Lal Srivastava, R/o 1040 Old Katra, Allahabad.

.....Applicants

(By Advocate Shri A.K. Srivastava)

V E R S U S

1. Union of India, through the General Manager, N.C.R. Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Sr. Divisional Personnel Officer, N.C.R., Allahabad.
4. Sr. Divisional Commercial Manager, N.C.R., Allahabad.

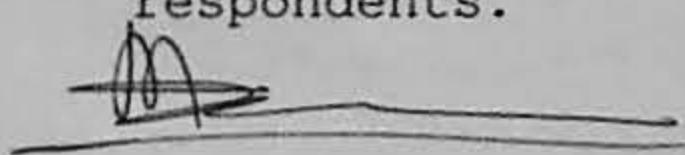
.....Respondents

(By Advocate: Sri Anil Kumar)

O R D E R

BY M. JAYARAMAN, MEMBER-A

We have heard Sri A.K. Srivastava, learned counsel for the applicant and Sri Anil Kumar for the respondents.



2. The short issue that arises for consideration in this O.A., filed by two applicants, is that in terms of the impugned order, the applicants are being sent for absorption in coaching cadre of the Commercial department instead of accommodating them with seniority, status, grade and pay protection etc. The applicants have challenged the impugned order dated 12.1.2005.

3. The brief facts herein are the applicants are working as Senior Commercial (Goods) Clerk in the Grade of Rs. 4000-6000/- since 1997. After cadre restructuring, the Railway Board issued letter dated 9.10.2003 for revising the existing grade w.e.f. 1.11.2003 with the pay scale of Rs. 6500-10500/-. The applicants' plea is that even though more than 58 vacancies for revising the existing grade w.e.f. 1.11.2003 with the pay scale of Rs. 6500-10500/-, the respondents have not accommodated them either as Head Goods Clerk in the pay scale of Rs. 5000-8000/- or in the higher grade of Rs. 5500-9000/- in chain.

4. Advancing the case of the applicants, counsel for the applicant namely Sri A.K. Srivastava submitted that there was O.A. no. 160 of 2005 filed by 12 persons of the same grade who were also similarly affected by the same impugned order dated 12.1.2005. In that case, an interim order had been



given to maintain status quo and accordingly similar order had been passed in the present case also on 21.12.2005. He submitted that this Tribunal has since decided the said O.A. vide order dated 5.9.2006 and he gave a copy of the same and prayed that similar order may be passed in the present case also.

5. We have heard the pleadings of both the counsel and also perused the record. We find from the order dated 5.9.2006 passed by this Tribunal in O.A. no. 160 of 2005 that the applicants, therein, had sought quashing and setting aside of the order dated 12.1.2005 whereby applicants, therein, were transferred to Coaching Centre. The applicants had also sought for a direction to the respondents to consider the case of the applicants for their due promotion in the Grade of Rs. 5000-8000/- w.e.f. 1.11.2003 together with arrears of pay and allowances as admissible in accordance with the Railway Board's circulars dated 9.10.2003, 6.1.2004 and 23/26.7.2004. We find a similar prayer has been made by the two applicants in the present case also wherein similar order dated 12.1.2005 is being assailed. After due consideration, the Tribunal had observed as follows in the said decision dated 5.9.2006:

"10. Cadre restructuring is a periodical phenomenon in the Railways and obviously it has specific purpose behind it. It is meant for rescheduling the percentage of strength in various grades in the cadre with a view to cope up with the functional necessities that have



(10)

changed from the one in the past to that as at present. The posts are only upgraded or re-distributed and these cannot be termed as promotion as held in the case of Union of India Vs. V.K. Sirothia (1999) SCC (L&S) 938. The employer Railways have the power and authority to redistribute the posts, separation of cadre (Dharam Pal Vs. Food Corporation of India, 1999 (1) SCC 368) or that matter merger of two cadres (Reserve Bank of India Vs. N.C. Paliwal) (1976 4 SCC 838). The applicants cannot have any grudge against the scheme of restructuring and indeed they do not have such grudge. Their grievance is that the restructuring uniformly being effected w.e.f. 1.11.2003, the clock has to be set back first and the restructuring effected and thereafter only it should be seen whether there is any surplus. In the instant case, the total strength of 230 is being reduced to 146. There is sharp variation from the figures cited by the respondents are correct. Then again, putting the clock back, the restructuring should have been first implemented and it is thereafter that the stock of the situation as to whether there is any surplus and if so, in which grade has to be worked out. Infact, that there is no proposal to render any one surplus prior to 2004 is evident from the fact that selection process for promotion had already taken place and had reached the penultimate stage upto declaration of result, but the declaration has been withheld and the entire process dropped not on account of proposal to reduce the strength and transfer those rendered surplus to the Coaching Cadre, but on account of restructuring. As such, the respondents cannot justify their action. The applicants are deprived of their upgradation benefits. In fact, there is a fallacy in the procedure adopted by the respondents. If according to them, the post of G.C. is a dying cadre, there should be no apportionment to that post under the cadre restructuring. The percentage ought to have been worked out in respect of the rest of the four grades from Sr. Goods Clerk onwards up C.G.S.

11. In view of the above, the O.A. succeeds. The order dated 12.1.2005 is quashed and set-aside. It is declared that the applicants are entitled to be considered for upgradation to the grade of Rs.5000-8000/- subject to their being found fit in accordance with the modified selection procedure and if so, they are entitled to the grant of arrears of pay and allowances w.e.f. 1.11.2003. In case, after being so upgraded, there occurs the situation of surplus, the respondents are at liberty to follow the procedure for transferring such surpluses to



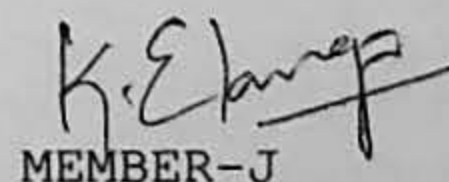
(11)

other categories. But such a transfer can be only after implementing the cadre restructuring is effect. This drill of upgradation as ordered above, shall be completed within a period of four months from the date of communication of this order."

6. We find that the above decision squarely applies to the case of the applicants in the present case as well. Respectfully following the ratio of the decision in the above cited case, we order that the impugned order dated 12.1.2005 is quashed and set-aside so far as the present applicants are concerned. It is also ordered that applicants are entitled to be considered for upgradation o the grade of Rs.5000-8000/- subject to their being found fit in accordance with the modified selection procedure and if so, they are entitled to the grant of arrears of pay and allowances w.e.f. 1.11.2003. In case, after being so upgraded, there occurs the situation of surplus, the respondents are at liberty to follow the procedure for transferring such surpluses to other categories. But such a transfer can be only after implementing the cadre restructuring is effected. This drill of upgradation as ordered above, shall be completed within a period of four months from the date of communication of this order. No costs.



MEMBER-A



MEMBER-J

GIRISH/-