

14

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 14TH day of DECEMBER, 2007.

**HON'BLE MR. G. GEORGE PARACKEN, MEMBER- J.
HON'BLE MR. K. S. MENON, MEMBER- A.**

ORIGINAL APPLICATION NO. 159 OF 2005

1. Syed Anish Ahmad Kazmi, S/o Late Abdul Samad,
as Sr. Goods Clerk/ Panki Siding, Kanpur presently working
in CCNL, N.C. Rly., Hd. Qrs. Office, Allahabad.
2. Vinod Kumar Tripathi, S/o Late K.K. Tripathi, as Goods Clerk
in CCNL, N.C. Railway, Kanpur.
3. Sarju Prasad, S/o Sri Mahadeo, working as Sr. Commercial
(Goods) Clerk, N.C. Railway under C.O.D., Kanpur.
4. Bechu Ram, S/o Late Deoraj, working as Sr. Commercial (Goods)
Clerk, N.C.R., Jhansi.
5. Triloki Nath, S/o Late Tribhuvan Nath, working as Sr. Commercial
(Goods) Clerk, N.C.R., CGDX, Kanpur.
6. Shri Prakash Singh, S/o Sri Kamla Singh working as Sr. Goods
Clerk, N.C.R., CPC, Kanpur.
7. Banwari Lal, S/o Sri Ram Briksh, working as Sr. Commercial
(Goods) Clerk, N.C.R., CGDX, Kanpur.
8. Om Shankar Shukla, S/o Sri R.N. Shukla, Sr. Commercial (Goods)
Clerk, N.C.R., CPC, Kanpur.



9. Krishna Kant Dubey, S/o Late M.P. Dubey, Sr. Commercial (Goods) Clerk, N.C.R., CRS, Kanpur.
10. Bhanu Prakash, S/o Sri Rudra Prasad, working as Sr. Commercial (Goods) Clerk, N.C.R., CPC, Kanpur.
11. Dinesh Kumar, S/o Sri Ram Charan, working as Sr. Commercial (Goods) Clerk, N.C.R., CPC, Kanpur.
12. Mohd. Ashlam, S/o Sri A.S. Ansari, working as Sr. Commercial (Goods) Clerk, N.C.R., CPC, Kanpur.
13. Sheikh Mohd. Afjal, S/o Sri A.A.S Ansari, working as Sr. Commercial (Goods) Clerk, N.C.R., CPC, Kanpur.
14. G.C. Agarwal, S/o Sri B.C. Agarwal, working as Sr. Commercial (Goods) Clerk, N.C.R., N.K. Siding, Kanpur.
15. A.P. Bajpai, S/o Sri R.S. Bajpai, working as Sr. Commercial (Goods) Clerk, N.C.R., N.K. Siding, Kanpur.
16. Santosh Kumar Srivastava, S/o Sri Adinath Srivastava, working as Sr. Commercial (Goods) Clerk, N.C.R., CPC, Kanpur.
17. Gopal Swaroop, S/o Pyare Lal, working as Sr. Commercial (Goods) Clerk, N.C.R., CCNL, Tundla.
18. Lal Singh, S/o Sri Babu Ram, working as Sr. Commercial (Goods) Clerk, N.C.R., CCNL, Tundla.
19. Anil Kumar Sharma, S/o Sri Basant Lal, working as Sr. Commercial (Goods) Clerk, N.C.R., CCNL, Tundla.
20. Rameshwar, S/o Sri Mahabir Prasad, working as Sr. Commercial (Goods) Clerk, N.C.R., CCNL, Tundla.

.....Applicants.

✓
V E R S U S

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

.....Respondents

Present for the Applicants: Sri Sudama Ram
Present for the Respondents : Sri A.C. Mishra

ORDER

BY HON'BLE MR. G. GEORGE PARACKEN, J.M.

The applicants in this case are aggrieved by Annexure A-1 Letter No. 940 E/EC-7/Surplus Ma-li/05 dated 12.01.2005 issued by respondent No. 2 by which they were sent for training to pre-compulsory course CP-II before posting in new seniority unit of Coaching Cadre on being declared surplus from the post of Senior Commercial / Goods Clerks and also being spared for their absorption in the same grade but without giving their due promotion as Head Commercial/Goods Clerk in grade of Rs. 5000-8000 against chain/resultant vacancies, which accrued on 01.11.2003 against the upgraded post under cadre restructuring in terms of Railway Board's Policy regarding restructuring of certain Group 'C' and 'D' cadre issued vide letter No. RBE No. 177/03 dated 09.10..2003 and RBE No. 05/04 dated 06.01.2004.

2. The applicants were initially appointed as Commercial (Goods) Clerks in grade of Rs. 3200-4900 and they were promoted as Senior Commercial Goods Clerks in pay scale Rs. 4000-6000 on different dates during the period from 1993 to 1997. According to the applicant, after

the restructuring of the Commercial Goods Clerk cadre w.e.f. 01.11.2003 in terms of the aforesaid Annexure A- 2 and A- 3 of the Railway Board's letter, 58 chain/resultant vacancies in pay scale of Rs. 5000-8000/5500-9000/6500-10,500/- have arisen in the following manner: -

Grade	Sanctioned strength before 1.11.03	Sanctioned strength after 1.11.03	On roll	Existing vacancies	Vacancies arisen under restructuring	Total vacancies as on 1.11.03
6500-10500	30	44	22	8	14	22
5500-9000	44	65	29	14	22	36
5000-8000	92	92	Not Known	Not Known	-	Chain/resultant vacancies= 58
4000-6000	129	103	Not Known	Not Known	Not Known	-
3200-4000	74	65	-	-	-	-

The applicants have submitted that they were working in the pay scale of Rs. 4000-6000 as on 01.11.2003 and, therefore, they were entitled to be upgraded in pay scale of Rs. 5000-8000 from the said date, but, the respondents have denied them the said up-gradation. They have submitted that the respondents were arbitrarily surrendering the post in Commercial Goods Clerk cadre in Allahabad vide their order dated 12.01.2005 and for sending the applicants for their absorption in Coaching cadre of the Commercial department, without granting them their legitimate claim of up-gradation as Head Commercial Goods Clerk in pay scale Rs. 5000-8000 w.e.f. 01.11.2003. The applicant have further submitted that the respondents have not adopted the policy of the Railway Board in the

(18)

matter of surrendering of the post of Commercial Goods Clerks and violated the existing instruction regarding up-gradation of post on restructuring. They have alleged that the respondents have kept them in darkness about due promotion w.e.f. 01.11.2003. Counsel for the applicants has also submitted that the present case is covered by the order of co-ordinate bench of this Tribunal dated 05.09.2006 in O.A No. 160/2005.

4. The respondents on the other hand have denied the contention of the applicants. They have submitted that prior to the restructuring, the sanctioned strength in the category of Goods cadre was as under :-

Sl. No.	Category	Grade	Sanctioned strength
1.	CGS	6500-10500(RSRP)	36
2.	GS	5500-9000 (RSRP)	43
3.	HGC	5000-9000 (RSRP)	82
4.	Sr. G.C.	4000-6000 (RSRP)	75
5.	G.C.	3200-4900 (RSRP)	Nil
			Total = 230

After restructuring w.e.f. 01.11.2003, the position has changed as under :-

Sl. No.	Category	Grade	Revised %age	Sanctioned strength
1.	CGS	6500-10500(RSRP)	12%	28
2.	GS	5500-9000 (RSRP)	18%	41
3.	HGC	5000-9000 (RSRP)	25%	58
4.	Sr. G.C.	4000-6000 (RSRP)	28%	64
5.	G.C.	3200-4900 (RSRP)	17%	39
				Total = 230

The respondents have, therefore, stated that the cadre of G.C grade Rs. 3200-4900 (RSRP) was diminishing category and no recruitment was

being done in that category. They have, therefore, submitted that no post in the cadre of CGS was up-graded to Senior G.C and as such on the existing vacancies in the cadre of C.G.S grade in pay scale of Rs. 6500-10500 and G.S. Grade in pay scale of Rs. 5500-9000, a modified selection was held and eligible candidates, who were placed on the said post have been promoted w.e.f. 01.11.2003. They have denied that the applicants were entitled for promotion against the said 58 vacancies of Head Goods Clerk and for fixation of pay and arrears w.e.f. 01.11.2003. They have further submitted that as per the revised sanctioned strength, the number of Goods Clerks in pay scale of Rs. 5000-8000 is also 58, as it was before the restructuring and in order to implement the restructuring in Commercial department, 45 posts of Sr. G.C Gr. Rs. 4000-6000 (RSRP) and 39 posts of G.C Gr. Rs. 3200-4900 (RSRP) are surrendered to implement the restructuring for entire Commercial Department. The revised sanctioned strength as on 01.11.2003 duly vetted by Account is as under: -

CGS-28	GS-41	HGS-58	Sr. GC- 19	Total- 146
6500-10500	5500-9000	5000-8000	4000-6000	146
RSRP	RSRP	RSRP	RSRP	

Due to surrender of posts in the category of Senior Goods Clerk and Goods Clerk, the surplus staff has been sent for CP-2 Training Course for their absorption in the Coaching Centre to avoid their hardship.

5. We have heard the learned counsel for the parties and perused the pleadings available on record.

6. As submitted by the learned counsel for the applicants, issue involved in this case has already been decided by a co-ordinate bench of

20

this Tribunal in O.A No. 160/2005 vide judgment dated 15.09.2006, the applicants in that case were also rendered surplus in Goods Clerk cadre and were accommodated in Coaching Cadre without giving them the benefit of promotion under restructuring scheme in the Goods Clerk Cadre. The Tribunal after hearing counsel for parties has passed the following order: -

"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 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 Railway have the power and authority to redistribute the posts, separation of cadre (Dharam Pal Vs. Food Corporation of India, 1999 (1) SCC 368) or for 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. 01.11.2003, 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 applicants and

2

respondents and it is presumed that 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. In fact, 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 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 dying grade, there should be no appointment 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 Senior Goods Clerk onwards upto C.G.S.

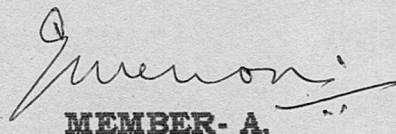
11. In view of the above, the O.A succeeds. The order dated 12.01.2005 is quashed and set aside. It is declared that the applicants are entitled to be considered for upgradation to the grade of 5000-8000/- subject to their being found fit in accordance with the modified selection procedure and if so, they are entitled to the grant of arrears of pay and

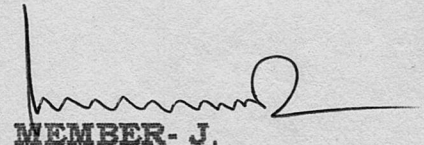


(20)

allowances with effect from 01.11.2003. In case, after being so up-graded, there occurs the situation of surplus, the respondents are at liberty to follow the procedure for transferring such surplus to other categories . But such a transfer can be only after implementing the cadre restructuring is effects. This drill of up-gradation as orders above, shall be completed within a period of four months from the date of communication of this order."

12. In our considered opinion, the aforesaid order of this Tribunal squarely covers the present O.A also. Accordingly the present O.A is allowed. It is declared that the applicants herein are entitled to be considered for up-gradation in pay scale of Rs. 5000-8000 and they are also entitled for grant of arrears of pay and allowances w.e.f. 01.11.2003 subject to their being found fit in accordance with modified selection procedure. In case, after being so up-graded, there occurs the situation of surplus, the respondents are at liberty to follow the procedure for transferring such surplus to other categories . But such a transfer can be only after implementing the cadre restructuring is effected. This drill of up-gradation as ordered above, shall be completed within a period of four months from the date of communication of this order and the applicants shall ^{be} informed. No costs.


MEMBER- A.


MEMBER- J.

/Anand/