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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 160 of 2005

....., this the 5th day of September 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER

1. Waheed Ullah,
S/o. Shri Said Ullah
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under CCNL, Allahabad,
R/o. 298-A, Akbarpur, Allahabad.
2. Krishna Chandra,
S/o. Shri Bhola Nath,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under CCNL, Allahabad.
3. Akbar Ali,
S/o. Shri Jauhar Ali,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, COD/Chheoki, Naini, Allahabad.
4. Om Prakash Mishra,
S/o. Shri Ram Suchit Misra,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, COD/Chheoki, Naini, Allahabad.
5. Suresh Chandra Saxena,
S/o. Shyam Bahadur Saxena,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under CCNL, Allahabad.
6. Syed Saifuddin Ahmad,
S/o. Shri Syed Khairuddin Ahmad,
Working as Sr. Goods Clerk, PG Cell,
N.C. Railway, Allahabad.
7. Vinod Kumar,
S/o. Shri Anandi Prasad,

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Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under CCNL, Allahabad.

8. K.L. Srivastava,
S/o. Adinath Srivastava,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, COD/COI Military Siding,
Naini, Allahabad.
9. Ashishdhar,
S/o. Late Kunj Behari Dhar,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, TSL Siding,
Naini, Allahabad.
10. Prahlad Das Agrawal,
S/o. Shri Laxman Prasad,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under S.S., Allahabad.
11. M.S. Siddiqui,
S/o. Abdul Jabbar,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, under S.S., Allahabad.
12. Om Prakash Pal,
S/o. Late Lala Ram,
Working as Sr. Commercial (Goods) Clerk,
N.C. Railway, Headquarters Office, CCNL,
Allahabad.

... Applicants.

(By Advocate Shri Sudama Ram)

versus

1. Union of India through
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.

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4. Sr. Divisional Commercial Manager,
North Central Railway, Allahabad.

... Respondents.

(By Advocate Shri S.N. Gaur)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The claim of the applicants in this case is that when they are rendered surplus in the Goods clerks cadre and are being accommodated in coaching cadre, the authorities ought to have given the benefit of promotion under the restructuring scheme in the Goods Clerks Cadre first and then only, ~~if~~ ^{it} ~~necessary~~ arises, to send them to the Coaching Clerk Cadre.

2. Brief Facts: The applicants are working as Senior Commercial (Goods) Clerks in the grade of Rs 4,000 - 6,000/-. During the cadre restructuring scheme, 58 upgraded posts including chain and resultant vacancies of higher posts arose w.e.f. 01-11-2003 in accordance with the Railway Board circulars dated 09-10-2003, 06-01-2004 and 23/26-07-2004. If the restructuring takes place and the applicants are promoted to the higher grade, there would arise no situation of any one of them being rendered surplus.

3. As per the Railway Board circular dated 09-10-2003, the revised structure in respect of commercial clerk grade is as under:-



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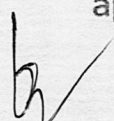
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Grade	Existing %	Revised % as on 01-11-03
6500 - 10500	8	12
5500 - 9000	12	18
5000 - 8000	25	25
4000 - 6000	35	28
3200 - 4900	20	17

4. Even prior to the revision, vacancies were existing in the higher grades of the Commercial (Goods) Clerks Cadre and action initiated to fill up the same. The selection procedure, which reached up to the stage of results being prepared, was dropped without declaration of results in view of the promulgation of the restructuring scheme. The sanctioned strength in the grades of 4,000 - 6,000 and 5,000 - 8,000 prior to and posterior to the restructuring scheme is as under:-

Grade	Prior to restructuring	Posterior to restructuring	Remarks
5,000 - 8,000	92*	92	* 82as per Resp.
4,000 - 6,000	129*	103	*75 as per Resp.

5. With the above restructuring, vacancies in the grade of 5,000 - 8,000 came to 58. Upgradation should take place by adopting modified procedure in contradistinction to the normal procedure and was to be effected with retrospective effect from 01-11-2003. However, instead of promoting the applicants to the grade of 5,000-8,000/- the respondents transferred the



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applicants to Coaching cadre, vide order dated 12-01-2005.

6. The applicants have, therefore, sought the following relief(s):-

(a) Quashing and setting aside of the ^{order}~~order~~ dated 12-01-2005 whereby the applicants in their present grade of Rs 4,000 - 6,000 ^{were} transferred to the Coaching Cadre.

(b) Directing the respondents to consider the applicants for their due promotion in the grade of Rs 5,000-8,000 w.e.f. 01-11-2003 along with arrears of pay and allowances in terms of the Railway Board Circulars cited above.

7. Respondents have resisted the O.A. According to them, the Goods Clerks Category (Rs, 3200 - 4900) is a diminishing category and no recruitment is being done in this category and hence no post was upgraded in the category of goods clerk in the higher echelons of Rs 6500 - 10500 grade and 5500 - 9000 grade. As such there is no chain vacancy. The fact that certain selection process was undertaken for promotion to the higher posts is admitted but the results were not announced due to the restructuring scheme being brought in. However, with a view to ensuring matching savings, 45 posts of Sr. Goods Clerks (4,000 - 6,000) and 39 posts of Goods Clerk (3,200 - 4,900) were surrendered and the total strength reduced as under:-



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6,500 - 10,500	28
5,500 - 9,000	41
5,000 - 8,000	58
4,000 - 6,000	10

Total No. of Post in the Commercial Goods Cadre: 146

8. The applicants filed rejoinder wherein their stand in the OA has been reiterated. Again, certain inconsistencies in the reply given by the respondents (e.g., as between para 4 and 7) have also been pointed out.

9. Arguments were heard and the written submissions made on behalf of applicants and other documents perused.

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} 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 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

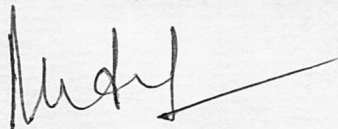
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indeed they do not have such grudge. Their grievance is that the restructuring uniformly being effected w.e.f. 01-11-2003, the clock has to be set back first and the restructuring effected and thereafter only it should be seen whether there is any 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 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 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 grade, 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 upto C.G.S.

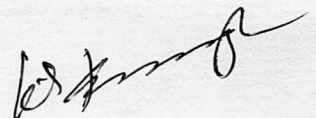
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11. In view of the above, the OA succeeds. The order dated 12-01-2005 is quashed and set aside. It is declared that the applicants are entitled to be considered for upgradation to the grade of 5,000 – 8,000/- subject to their being found fit in accordance with the modified selection procedure and if so, they are entitled to the grant of arrears of pay and allowances with effect from 01-11-2003. 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.

12. Under the circumstances, there shall be no orders as to costs.



A.K. SINGH
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER