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**RESERVED****CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH : ALLAHABAD**

Original Application No.705 of 2005.

Allahabad, this the 16<sup>th</sup> day of November, 2007.**Hon'ble Dr. K.B.S. Rajan, Member-J****Hon'ble Mr. K.S. Menon, Member-A**

1. Anil Kumar Pandey, Son of Late Shri U.S. Pandey, R/o 15-A, Guru Nanak Nagar, Naini, Allahabad.
2. Iftikhar Ahmad Khan, Son of Late Sher Ahmad, Resident of 13-D/23/A, Karamat Ki Chauki, Azad Nagar, Kareli, Allahabad.
3. Chandra Skekhar Kumar, Son of Mahesh Singh, Resident of House No.50, Shyam Vihar Yojna, Jayantipur, Allahabad.
4. Bhanu Pratap Singh Lonia, S/o Late Luxmi Narain Lonia, R/o 188 M/1, Jayantipur, Sulemsarai, Allahabad.
5. Ashish Kumar S/o Late M.C. Srivastava, R/o 189/1, Rajrooppur, Allahabad.

.....Applicants.

(By Advocate : Shri S.K. Om)

**Versus**

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Chief Personnel Officer, North Central Railway, Allahabad.
4. Senior Personnel Officer, North Central Railway, Allahabad.

....Respondents.

(By Advocate : Shri A. Tripathi)

**ORDER****By Dr. K.B.S. Rajan, Member-J :**

The short question involved in this case is whether the respondents were right in not considering the case of the applicants for switching over from the line of promotion of Sr. Clerk-Head Clerk- Office Superintendent etc., to that of Sr. Clerk - Personnel Inspector III, PI II, PI I etc., recently introduced.

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2. The facts: The applicants are the senior most amongst the senior clerks. Vide Annexure A-2 order dated 09-10-2003, as a part of restructuring scheme, the Personnel, Welfare and HOER Inspectors should be merged and a unified cadre of Personnel Inspectors introduced. After merger, 50% of the posts in the entry grade of the combined cadre viz Rs 5000 - 8000 should be filled from amongst the optee Sr. Clerks of Personnel Department in grade of Rs 4,500 - 7000 with three years of service in the grade and the remaining 50% of the posts should be filled as per the instructions contained in the Board's letter No. E(NG)-1/2002/PM4/1 dated 12-07-2002. (Para 10.2). The restructuring had to be effective from 01-11-2003.

3. The applicants had, by Annexure A-3 representation dated 01-07-2004 exercised their option for being considered for the post of Personnel Inspector. While no communication was received from the respondents on the above representation, the applicants were enlisted in the list of promotions to the post of Head Clerks vide Annexure A-4 order dated 02-09-2004. The applicant, on the same day, referring to their earlier representation dated 01-07-2004 again requested the respondents for consideration to the post of Personnel Inspector, vide Annexure A-5. Again, there was no communication from the respondents. Meanwhile, in respect of Statistical Inspector, the date for exercise for options had been extended vide order dated 19-11-2004 at Annexure 6 and the applicants, referring to the same requested the respondents to act upon their options exercised on 01-07-2004, vide Annexure A-7. Vide Annexure A-8, letter dated 01-12-2004, the Headquarters Office, North Central Railways, Allahabad had addressed the Secretary Establishment New Delhi, inter alia stating as under:-

*"Unless the restructuring of the PI cadre is done, we cannot hold selection to the post of PI Grade 5000 - 8000. First of all, we have to complete the restructuring of this cadre by promoting the staff in the higher grade against additional higher grade posts arising out of restructuring w.e.f. 1-11-2003 and against existing resultant/chain vacancies as on 1-11-03 from prospective effect."*



Only after the promotions are made against the vacancies arising out of restructuring and existing as on 1-11-03, we can hold the selection for the post of PI Grade 5000 - 8000.

After implementation of cadre restructuring over NCR/HQ in ministerial cadre, all the On Roll Sr. Clerks (4500 - 7000) of Personnel Department have been extended benefit of restructuring as Hd. Clerks (5000 - 8000), thus leaving no eligible candidates for consideration of WLI/PI (Grade 5000 - 8000) against promotee quota.

The nascent Railway is facing the shortage of WLIs/Pis and is unable to fill up the existing vacancies in absence of eligible staff in feeding cadre.

**Therefore, it is requested that as one time exemption, Hd. Clerks of personnel Department may be permitted to appear in selection of PI/WLI in case they opt for appearing in such selection."**

4. The Railway Board, in reply to the above, stated that the proposal for considering Head Clerks of Personnel Department working in the pay scale of Rs 5000 - 8000 for appearing in the selection for promotion to the post of Personnel Inspector Gr. III in the scale Rs 5000 - 8000 has not been found feasible of acceptance. The Railway should therefore, initiate selection to fill up the posts of PI/WLI Gr. III against the other 50% quota i.e. from staff of all departments fulfilling the eligibility conditions and wait for Sr. Clerks of Personnel Department to complete three years service as such before they are considered against the other 50% quota. Annexure A-9 refers.

5. The decision was communicated to the applicants, vide order dated 31-05-2005, at Annexure A-1.

6. The post of P.I. III has not so far been filled up and the Board was requested to convey the decision, vide NCR HQ letter dated 01-04-2005 at Annexure A11.

7. The applicants have challenged the decision of the Railway Board and Annexure A-1 communication.

8. The applicants have supplemented their OA through another affidavit dated 05-07-2005 with MA No. 2073/05. It has been

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stated that there are 13 posts of P.I. that are vacant of which 7 posts are earmarked for senior clerks of Personnel Department and 6 for other departments. They have annexed a copy of the notification dated 03-06-2005 (Annexure SA-1) whereby options have been called for from senior Clerks of other departments for filling up the posts of P.I. to the extent the same are earmarked for that category. This MA was disposed with a direction that any selection on the basis of the above notification would abide by the result of this OA, vide order dated 07-07-2005.

9. Respondents have contested the OA. They have contended that the applicants ought to have refused their promotion to the post of HC which they did not do. They have also contended that the letter dated 02-09-2004 is backdated documents, and the same was not given to the respondents. According to the respondents the document was fabricated and action would be initiated against the erring individuals. Rejoinder and additional reply had also been exchanged between the parties, reiterating their respective stands.

10. Counsel for the applicants argued that a legal obligation is cast upon the respondents to call for options which they miserably failed, while, the applicants of their own, exercised their options vide representation dated 01-07-2004. Even this was not considered. It was under this circumstance that the applicants were promoted as Head Clerk and even at that time they had filed their representation, inviting the attention of the respondents to their earlier communication dated 01-07-2004. The rule is that 50% of the posts of PI had been earmarked exclusively for senior clerks of Personnel Department, while the rest 50 % is for Sr. Clerks of all other departments put together. This channel of promotion is a vital provision for Sr. Clerks of Personnel Department and the restriction being that those who have become HC are not entitled to be considered, has now unduly affected the applicants of availing the other promotion channel. And this is purely on account of the delay in considering the case of the applicants for promotion to the post of P.I. before their promotion as HC. As regards non refusal to the promotion, counsel for the applicants submitted that had they refused the same, they would



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be covered under Rule 224 of IREM and would not be eligible for being considered for promotion for a certain period as prescribed therein. Counsel also referred to the decision reported in 1992 Vol 2 ATC 327 which squarely covers the case of the applicants.

11. Counsel for the respondents submitted that the applicants should have refused their promotion to the post of HC and now that they have become HCs, as per the Railway Board clarification and decision HCs are not entitled to be considered for promotion to the post of PI III.

12. Arguments were heard and documents perused. Unified cadre of Personnel Inspector is one of the Restructuring schemes. Reshuffling percentage of various grades (in the instant case Sr. Clerks, HCs, O.S. etc) is also one of the restructuring schemes. The contention of the respondents *only after the promotions are made against the vacancies arising out of restructuring and existing as on 1-11-03, we can hold the selection for the post of PI Grade 5000 – 8000* as contained in Annexure A8 is thoroughly incorrect. The error committed by the respondents is in not calling for options and not considering the case of the applicants, when they themselves volunteered. It is this omission that has resulted in the applicants not being considered. Had the options been considered in time, it would not have posed any difficulties. For, the complement of PI Cadre does not depend upon the restructuring of the cadre. It is independent. All the posts of Personnel, Welfare and HOER inspectors should be merged to form unified cadre of Personnel Inspector.

13. Prescription of 50% of posts of P.Is to be filled up from amongst Sr. Clerks of Personnel Department has full reason and purpose to serve. Personnel Inspectors are expected to have full knowledge of Personnel Department which, Sr. Clerks of Personnel department would be possessing. As such, ignoring the same and calling for options from other departments albeit it is for filling up the allotted vacancies for such persons, is irregular. The personnel inspector selected from the senior clerks of other departments if left alone, without any one from personnel department as their colleague Personnel Inspectors, would result in their not having

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the benefit of such inspector even for consultation in personnel matter. The Headquarters are right in stating that the nascent Railway would suffer in the absence of P.Is. (See Annexure A-8).

14. The contention of the respondents that the applicants ought not to have accepted the promotion is illogical. If according to the respondents, promotion to the post of P.I. is under normal selection method and not one of modified procedure, and if the applicants do not qualify, then they would stand to lose both the promotions, which no sensible individual would risk. As such, non refusal for promotion as HC cannot be improving the case of the respondents. Rather, the Railways ought to have cautioned the applicants before promoting them as HCs that in case they accept the same, they would be ineligible for being considered for the post of PIs. This was not done.

15. Thus, the contention of the applicants has full force. And in contrast, the contention of the respondents lacks force.

16. In view of the above, **the OA succeeds.** Orders at Annexure A-1 and A-9 are quashed and set aside. Respondents shall consider the case of the applicants and other eligible Sr. Clerks who fulfilled the condition of 3 years service as on 01-11-2003 in the personnel department and those who are selected should be provided with the promotion as P.I. Likewise, they shall consider selection from amongst other Departments too who had applied in response to notification dated 03-06-2005 and for maintaining uniformity, those who have completed 3 years as on 01-11-2003 would be considered first and the selected would be clubbed with those selected from the sr. clerks of personnel department which would form the first batch. The pay scale would be notional, but in so working the pay of the individuals, the pay drawn by the applicants shall be protected, as they had been promoted in September, 2004 as HCs. As the orders provide for 50% from the sr. clerks of personnel department, and 50% from other departments, seniority could well be in the ratio of 1:1, i.e. rotation basis. To the extent promotion from amongst the present HCS, the vacancy caused by them in the grade of H.C. would be filled up as per the existing Rules of promotion under the Re-structuring

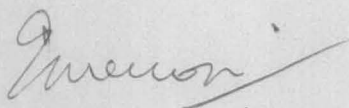


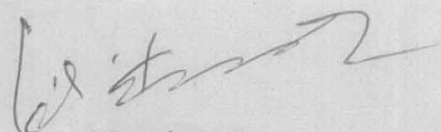
procedure. This would amount to both promotions as P.I. and as HC having taken place w.e.f. 01-11-2003.

17. The above order is passed invoking the provisions of Rule 24 of the CAT (Procedure) Rules, as otherwise, giving directions only to the extent of considering the case of the applicants for promotion as PIs would lead to avoidable litigations from other similarly situated individuals as also Sr. clerks of other departments.

18. This order shall be complied with, within a period of four months from the date of receipt of copy of this order.

No cost.

  
Member-A

  
Member-J

RKM/