

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

THIS THE 4TH DAY OF November 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)

ORIGINAL APPLICATION NO. 994 OF 2005
(U/S 19, Administrative Tribunal Act, 1985)

Anandi Prasad Yadav aged about 54 years son of Late Ajab Lal Yadav working as Goods Supervisor in the Office of Chief Goods Superintendent, N. C. Railway, Kanpur Goods Shed, Kanpur.

.....Applicant

V E R S U S

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, N. C. Railway, Allahabad.

.....Respondents

Present for the Applicant: Sri Sudama Ram.

Present for the Respondents: Sri Prashant Mathur.

O R D E R

Instant O.A. has been instituted for the following relief/s:-

"(i). The Hon'ble Tribunal may graciously be pleased to quash the impugned notification dated 7.6.2005 (Annexure A-1) and 24.6.2005 (Annexure a-2) and direct the respondents to promote the applicant with retrospective dated i.e. 1.11.2003 against 22 Vacancies of Chief Goods Superintendents grade Rs. 6500-10500 which were created due up-gradation of posts as on 1.11.2003 due to restructuring of cadre and those

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vacancies arisen as on 1.11.2003 were to be filled up only by adopting modified procedure of selection as per policy of the Railway Board dated 9.10.2003 and 6.1.2004.

(ii). The Hon'ble Tribunal may further be pleased to direct the respondents to declare the withheld result of the selection proceedings held for the post of Chief Goods Superintendents Grade Rs.6500-10500 which were initiated for 8 vacancies prior to 1.11.2003 in terms of notification dated 12.11.2002 (Annexure A-6) and its selection proceedings was got completed but its result/panel was withheld so far.

(iii). The Hon'ble Tribunal may further be pleased to direct the respondents to fix the pay with retrospective effect from 1.11.2003 and pay also the arrears of difference of pay with interest which are admissible under the rules.

(iv). Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be issued in the interest of justice.

(v). Cost of the Application may also be awarded."

2. The pleadings of the parties may be summarized as follows:-

It has been alleged by the applicant that he was appointed as Commercial (Goods) Clerk Gr.3,200-4,900 (RSRP) on 17th May, 1977 and was given further

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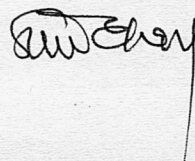
promotions as Sr. Goods Clerk and Head Goods Clerk in due course of time. Applicant was promoted as Goods Supervisor on 01st April, 1997 in grade Rs.5,500-9,000/- in Northern Railway, Allahabad Division. Vide letter dated 09th October, 2003 issued by the respondents, a decision was taken for cadre structuring and revised the existing percentage of grades w.e.f. 01st November, 2003 in the Commercial (Goods) Clerks cadre vide Annexure-C. Annexure-A-3 is the copy of the Railway Board's letter dated 09th October, 2003. It has further decided by the Railway Board vide letter dated 06th January, 2004 that the vacancies which would be caused by up-gradation of posts under the cadre restructuring after revised percentage and the staff who are promoted in the higher grades and vacancies arisen on account of their promotions would also be filled up in the same manner by the simplified /modified procedure of selection and that benefits of promotions and arrears would be allowed taking into account instructions in the letter dated 01st November, 2003, annexure-A-4 is the copy of this letter in this connection. It was provided in the Railway Board's letter dated 06th January, 2004 that the benefit of promotion for vacancies arising out of restructuring would include chain/resultant

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vacancies as well. And it was decided that the benefits of promotion against chain/resultant vacancies should also be given w.e.f. 01st November, 2003, if the same would arise purely on restructuring. In the cadre of Commercial (Goods) Clerks vacancies were already existing in the higher grade of Chief Goods Superintendent Grade Rs.6,500-10,500/- for which selection was also held before issue of the above said policy of the Railway dated 09th October, 2003. A selection process in order to fill up the 08 posts of Goods Supervisors were initiated for which candidates were called to appear in the written test and that the applicant also appeared in the aforesaid examination, but the result of said examination was not declared and the same was withheld on the plea that the existing vacancies prior to 01st November, 2003 would also be included as per the above revised policy of the Railway Board dated 09th October, 2003 and 06th January, 2004, and these posts are to be filled up by modified procedure of selection on the basis of service record only. Under these circumstances vacancies were to be recalculated as per revised percentage including already existing in each grade in the category of Chief Goods Superintendent in grade Rs.6,500-10,500/- and as per the respondents

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the sanctioned strength prior to 01st November, 2003 were 30 posts. As per revised percentage of the sanctioned cadre i.e. from 8% to 12% in the category of Chief Goods Superintendent Rs.6,500-10,500/-the revised sanctioned strength of this category arose from 30 to 44 posts. And in this manner on dated 01st November, 2003 the posts were 22 and these 22 posts were created in the Category of Chief Goods Superintendent for the promotion in higher grade was by simplified/modified procedure of selection on the basis of seniority. Care will be taken in conducting the selection that senior person should not be ignored. A seniority list of Goods Superintendent was notified on 04th April, 2003 showing sanctioned strength i.e. 30 of Goods Superintendents is shown in the notice dated 23rd May, 2005. A detail has also been given in the O.A. showing the position of the vacancies on dated 01st November, 2003. There was no reasonable ground available to the respondents to deny the promotion of the applicant in grade Rs.6,500-10,500/- as on 01st November, 2003 against 22 vacancies which legally accrued as on 01st November, 2003 by adopting modified procedure of selection under the aforesaid policy of the Railway Board, but the respondents are not issuing the promotion to the employees of the



Commercial division and the respondents issued notification dated 07th/24th June, 2005 without giving effect to the due promotions of the applicants to hold selection for 12 vacancies of Chief Goods Superintendents for which written test was fixed on 06th August, 2008 and 13th August, 2008 ~~instead of holding~~ instead of holding modified procedure on the basis of entries in the service record. The applicants had already appeared in the selection held on 14th December, 2002 against 08 vacancies of Chief Goods Superintendent as is evident from Annexure-A-6. On the one hand respondents have not declared the result on 08 posts for which notification was issued on 12th November, 2002 and at the same time implemented the policy of the Railway Board to promote the senior persons against upgraded posts created under the cadre restructuring with retrospective effect from 01st November, 2003, but even then respondents are going to fill up 12 vacancies of Chief Goods Superintendent by holding fresh selection on the above mentioned date and in the interest of justice it not justified. Representations were moved to the respondents against it, but even then respondents are continuing with the process of holding regular selection

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instead of adopting modified procedure of selection as per policy, hence the O.A..

3. Respondents contested the case and filed Counter Reply and denied from the allegations made in the O.A.. It has further been alleged that the notification dated 07th June, 2005 issued by the respondents is self-explanatory on the subject, as the post of Chief Goods Superintendent are to be filled up by positive act of selection and the name of the applicant also appeared in the list of eligible candidate for appearing in the selection. The benefits are available to the applicants of restructuring in view of the instructions of the Railway Board, under these circumstances the claim of the applicant is devoid of merits. That the applicant had misconstrued the instruction issued by the Railway Board. As per record prior restructuring, the sanctioned strength in the category of Goods cadre on 31st October, 2003 is as under:-

SN.	Category	Grade	Sancd. Strength
1	C.G.S.	6500-10500/-	30
2	G.S.	5500-9000/-	43
3.	Hd. GC	5000-8000/-	82
4.	Sr. GC	4000-6000/-	75
5.	G.C	3200-4900	Nil

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<u>TOTAL</u>	<u>230</u>
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On receipt of cadre restructuring on 01st November, 2003 in the Commercial Department, the sanctioned strength in the category of Goods as per percentage laid down in the Railway Board's letter dated 09th October, 2003 were revised and it is as under:-

SN.	Category	Grade	Rev. %	Sanctioned Strength
1	C.G.S.	6500-10500/-	12%	28
2	G.S.	5500-9000/-	18%	41
3.	Hd. GC	5000-8000/-	25%	58
4.	Sr. GC	4000-6000/-	28%	64
5.	G.C	3200-4900	17%	39
<u>TOTAL</u>				<u>230</u>

That no post was upgraded in the category of Chief Goods Superintendent in grade Rs.6,500-10,500 and Goods Superintendent in grade Rs.5,500-9000/-. Modified selections were held and the eligible staff who were placed in the same post have been promoted ~~with~~ ^R ~~with~~ ^R immediate effect. The promotions have been made in the category of Goods has been done by the Railway administration as per the instruction and policy laid down in the Railway and it is evident from the perusal of the instructions that no

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posts have been upgraded in the category of Goods w.e.f. 01st November, 2003. The question of extending the benefits of promotion against chain/resultant vacancy does not arise. That prior to restructuring in order to fill up the 08 vacancy in the Chief Goods Superintendent the written test was held on 14th/21st December, 2002. The eligible staff who were within the zone of consideration had appeared in the written test, but the result of the said examination was not declared as sanctioned strength of the post of Chief Goods Superintendent was revised allotting more post in the higher grade duly vetted by the Associate Accounts to extend the benefit to the staff in the higher grade and above sanctioned strength. From perusal of all the facts it is evident that the applicant was not due for promotion in that grade under cadre restructuring as sanctioned strength was not revised. That notification was issued for conducting the examination to fulfill the 12 vacancies in the category of Chief Goods Superintendent, 32 candidates who were within the zone of consideration, were called to appear in the written examination on 06th/13th August, 2005, but an Interim stay has granted by this Tribunal hence further process could not be completed. The applicant has



no right to challenge the notification to conduct the examination as he had already appeared. The respondents are conducting the examination as per instructions of the Railway Board, hence, O.A. lacks merits and liable to be dismissed.

4. In response to the Counter Affidavit filed on behalf of the respondents, applicant filed the Rejoinder Affidavit and disputed what has been alleged in the Counter by the Rejoinder. Moreover, on behalf of the respondents one Supplementary Affidavit has also been filed on dated 02nd July, 2007.

4. We have heard Sri Sudama Ram, Advocate for the applicant and Sri Prashant Mathur, Advocate for the respondents and perused the entire facts of the case.

5. From perusal of the relief clause of the O.A. it is evident that the prayer has been made by the applicant in order to quash the notification dated 07th June, 2005 (Annexure-A-1) and 24th June, 2005 (Annexure-A-2) and further to direct the respondents to promote the applicant with retrospective effect i.e. 01st November, 2003 against

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22 vacancies of Chief Goods Superintendent in grade Rs.6,500-10,500/- which were created due to ² restructuring of the cadre and those vacancies arisen as on 01st November, 2003 were to be filled up only ^{by 2} adopting modified procedure. Second Relief has ^h also been claimed for giving a direction to the respondents to declare the withheld result of the selection procedure held for the post of Chief Goods Superintendent in grade Rs.6,500-10,500/- which were initiated for 8 vacancies prior to 01st November, 2003 in terms of notification dated 12th November, 2002. The respondents regarding relief No.2 has ^{in 2} alleged Counter Reply in para 8 ".....However, in ^h view of the standing instruction of the Railway Board, it is clear that prior to restructuring to fill up the 8 vacancies in the category of Chief Goods Superintendent, the written test was held on 12th December, 2002 and 21st December, 2002, in which the eligible staff, who were within the zone of consideration, had appeared in the written test scheduled to be held on dates referred for 8 general, S.C.-Nil and S.T.-Nil vacancies. At this juncture, it will not be out of place to mention that the result of the said examination was not declared as the sanctioned strength of the post of Chief Goods Superintendent was revised allotting

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more post in the higher grade duly vetted by the Associate Accounts to extend the benefit to the staff in the higher grade and above the strength....."

6. From perusal of the pleadings of the parties it is an admitted fact that a notification was issued on 12th November, 2002 prior to 01st November, 2003 in order to fill up 08 vacancies of the Chief Goods Superintendent. The reasons has been given by the respondents that as to why and how the result could not be declared of the written test held on 14th December, 2002 and 21st December, 2002 and process of selection initiated in terms of notification dated 12th November, 2002 could be completed prior to issue of notice of Railway Board dated 09th October, 2003 regarding restructuring and the Respondents' counsel argued that as w.e.f. 01st November, 2003 cadre was restructured, earlier notification was issued for conducting selection in order to fill up 8 vacancies, but as consequence of restructuring post^{was} raised, hence the result was not declared so as to conduct the examination against all the vacancies. We have also perused the notification of the Railway Board annexure-A-3 of dated 19th October, 2003 along-with notification dated 06th January, 2004 annexure-

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A-4, this notification was issued by the Railway Board in connection of restructuring and it has been provided in this notification as under:-

"4.1 Normal vacancies existing on 1.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

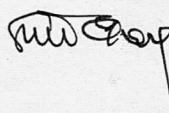
(i). From panels approved on or before 1.11.2003 and current on that date;

(ii). and balance in the manner indicated in para 4 above.

4.2 Such selection which have not been finalised by 1.11.2003 should be cancelled/abandoned.

4.3 All vacancies arising from 2.11.2003 will be filled by normal selection procedure.

4.4 All vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f 1.11.2003 whereas for the normal vacancies existing on 1.11.2003 junior employees should be posted by modified selection procedure, but they will get promotion and higher pay from the date of taking over the post as per normal rules. Thus the special benefit of the promotion w.e.f.1.11.2003 is available only for



vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply."

7. Hence from perusal of this notification dated 06th January, 2004 it is evident that normal vacancies existing on 01st November, 2003 except direct recruitment quota and those vacancies arising on that date from this cadre restructuring including chain/resultant vacancies should be filled up by modified procedure. It has also been provided in para 4.4 that all the vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 01st November, 2003. Hence in view of changed circumstances there appears no justification for giving direction to the respondents to declare the withheld result of the selection held for the post of Chief Goods Superintendent for 08 vacancies prior to 01st November, 2003 in terms of notification dated 12th November, 2002. Learned counsel for the applicant also agreed that Railway Board issued notification on dated 09th October, 2003 and 06th January, 2004 for the existing post prior to 01st November, 2003 and created as a consequence of the restructuring shall

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be filled up by modified procedure. Learned counsel for the applicant agreed that in view of the change circumstances this relief no.2 has rendered infructuous, and now the selection is to be conducted according to modified procedure as provided in the notification dated 09th October, 2003 and 06th January, 2004 Respondents' Advocate also accepted this contention.

8. We will like to consider the position regarding relief no.1. A prayer was made by the applicant in order to quash the notification dated 07th/24th June, 2005 (Annexure-A-1 and Annexure-A-2). These notifications were issued in order to conduct a selection process in order to fill up 8 vacancies in the cadre of Chief Goods Superintendent the applicant also appeared in the examination conducted by the respondents in pursuance of this notification. During the pendency of this O.A. on behalf of the respondents a Supplementary Affidavit has also been filed which is also relevant to be considered. This Supplementary Affidavit has been filed on 02nd July, 2007 para 4 of the Supplementary Affidavit is as under:-

"4. That during the pendency of the present O.A., while processing for declaration of the result so

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initiated by the respondents, due to unavoidable circumstances, the selection could not be finalized and as such there was no other option but to cancel the Main as well as Suppl. Written Examination so held in pursuance of the Notification dated 07.06.2005 and 24.06.2005 for the post of Chief Goods Supervisor and accordingly an office order No.561-E/EC-Goods/Restructuring/OIII dated 15.02.2007 was issued from the office of the deponent by informing the concerned staff about the decision. For convenience of the Hon'ble Tribunal, a photocopy of Letter dated 15.02.2007 is enclosed herewith and marked as Annexure-1"

9. From the perusal of the above it is evident that whatever, relief was claimed by the applicant in relief clause no.1 that had already stands granted by the respondents themselves. From perusal of para 4 of the Suppl. Affidavit of the respondents it is evident that when the process for declaration of result so initiated by the respondents, due to unavoidable circumstances selection could not be finalised, under these circumstances there was no option available to the respondents except to cancel the written examination held in pursuance of the notification dated 06th June, 2005 and 24th June, 2005 and in this connection

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a notification was issued on dated 25th February, 2007 by the respondents which is Annexure-SCA-I. It has been provided in this notification that "Due to some unavoidable circumstances, the written examination of the above selection which was held on 06-08-2005 (Main) and 13-8-2005 (Supplementary) and above selection is hereby canceled." Under these circumstances the notification issued by the respondents on 07th/24th June, 2005 stands cancelled by the respondents themselves, under these circumstances relief No.1 is also rendered infructuous.

10. Fully aware about subsequent development the learned counsel for the applicant argued that inspite of the fact that the notification dated 07th/24th June, 2005 have been cancelled by the respondents vide notification dated 15th February, 2007, but even then the relief survives for directing respondents to promote the applicant with retrospective ^{effect} on dated 01st November, 2003, but we disagree with the arguments of the learned counsel for the applicant when the entire selection process was cancelled initiated by the respondents vide notification dated 07th/24th June, 2005 even then this relief does not survive, no separate relief has

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been claimed to this effect, but it is in continuation of the relief for quashing the notification in relief No.1. The later part of relief No.1 cannot be read in isolation, the relief No.1 shall be read as a whole and it cannot be separated, the later part provides that respondents be directed, and direction can be given to this effect. It is for the respondents to initiate the process for filling up the vacancy and which is the discrimination of the respondents to create post. It will be appropriate in these circumstances that applicant may made a representation before the respondents to initiate process of selection in the change circumstances or to promote him accordingly by modified² procedure as provided by the Railway Board.

11. For the reasons mentioned above we are of the opinion that there had been certain changes in the circumstances after filing of the O.A. and considering the changed circumstances the relief claimed by the applicant² Nos. 01 & 02 does not survive and it will be justified to give direction to the applicant to file fresh representation before the respondents so that he may get the promotion for which he is entitled in view of the circular letters


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of the Railway Board. We have stated above regarding grant of relief No.2 that in view of the restructuring, the existing vacancy on 01st November, 2003 shall also be fill up by modified scheme and that notification was issued on 07th/24th June, 2005 and which respondents cancelled although written examination was conducted in pursuance of the notification. Under these circumstances no relief can be granted to the applicant and O.A. is liable to be disposed of accordingly.

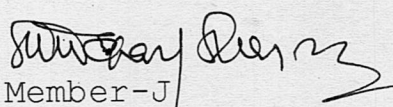
12. O.A. is disposed of as the circumstances had drastically changed and no relief is claimed in the O.A. which can be granted in these changed circumstances, however, applicant is at liberty to move a representation before the respondents within a period of 15 days from ^{the date of} this order either to initiate the process of conducting selection or to promote the applicant in view of the notification of the Railway Board regarding restructuring on dated 09th October, 2003 and 06th January, 2004, and on receipt of the representation of the applicant the respondents shall decide the representation of the applicant within a period of three months from the date when the representation of the applicant along-with copy of this order is received by them. The

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applicant shall also comply with² the time allowed
above. No order as to costs.


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Member-J