

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/623/2015
with
MISC. APPLICATION NO. 291/397/2015

Order reserved on 06.09.2021

DATE OF ORDER: 10.09.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Laxmi Dhabai wife of Shri Mohar Singh Dhabai, aged about 42 years, resident of B-201/III, New Railway Colony, Jagatpura Railway Station, Jagatpura, Jaipur and presently working as Senior Clerk, Office of the Chief Mechanical Engineer (Mechanical Section), North Western Railway, Head Quartered, Jawahar Circle, Jagatpura, Jaipur.

....Applicant

Shri C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Head Quartered, Jawahar Circle, Jagatpura, Jaipur-302016.
2. Chief Personnel Officer, North Western Zone, North Western Railway, Head Quartered, Jawahar Circle, Jagatpura, Jaipur-302016.
3. Chief Mechanical Engineer, North Western Railway, Head Quartered, Jawahar Circle, Jagatpura, Jaipur-302016.

.... Respondents

Shri Anupam Agarwal, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i). That the respondents be directed to allow promotion to the applicant in the pay band Rs. 9300-34800 with grade pay Rs. 4200 from the date of vacancy by quashing any order passed by respondents which never served upon the applicant with all consequential benefits.
- (ii) That the respondents be further directed to fill up vacancies available after 02/11/2013 as per normal selection procedure taking into consideration of Railway Board Order dated 08/10/2013 (Annexure-A/2) and 26/04/2015 (Annexure-A/13) and applicant be promoted in pay band Rs. 9300-34800 with grade pay Rs. 4200 from the date of vacancy with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded.”

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Group 'D' on 04.12.1998 and promoted as Junior Clerk on 31.12.2007 and as Senior Clerk on 09.04.2010 and

was allowed pay band Rs. 5200-20200 with Grade Pay Rs. 2800. Railway Board issued order dated 08.10.2013 (RBE No. 102/2013) for restructuring of certain Group 'C' as on 01.11.2013. Accordingly, promotions were carried on as per orders dated 27.02.2014 and 27.05.2014 in personnel as well as mechanical department. Promotion was given to one Shri Nand Kishore Meena working in construction department which instead has to be given to Shri Vishram Meena and against vacant post, the same has to be given instead to the present applicant in Grade Pay Rs. 4200. Respondent No. 1 vide letter dated 13.06.2014 stated that promotion to Shri Vishram Meena as well as the present applicant is not possible in spite of fact that in seniority list dated 20.07.2014 relating to mechanical department, Shri Vishram Meena is senior-most in Grade Pay Rs. 4200 and applicant in Grade Pay Rs. 2800. As per cadre strength and roster maintained by respondents, three posts are vacant. Railway Board further issued order dated 17.08.2014 with regard to calculation of vacancies. The applicant further states that though respondents have time to time allowed promotions in store as well as mechanical department but against

posts of Grade Pay Rs. 4200, none has been promoted till date for which claim of the applicant is fully justified being senior most. Thus, applicant represented on 14.07.2015 stating that he is senior most in Grade Pay Rs. 4200 and as there three posts are available after 01.11.2013, so applicant deserves to be promoted in Grade Pay Rs. 4200 being fully eligible as per seniority and service record. Therefore, applicant has approached this Tribunal against the arbitrary action of respondents in not allowing promotion to the applicant in Grade Pay Rs. 4200 in spite of vacant posts.

3. The respondents vide their reply stated that one has a right for consideration of promotion, however, he has no right of promotion. In pursuance to Railway Board order dated 08.10.2013 (RBE No. 102/2013), the Head Quarter office vide its letter dated 24/25.02.2014 had issued revised cadre of ministerial staff for mechanical department of Head Quarter Office. Accordingly, re-restructuring was implemented w.e.f 01.11.2013. After cadre restructuring, Shri Nand Kishore Sharma working as Office Superintendent, Grade Pay Rs. 4200, had retired on 31.12.2013 while Vishram Meena was promoted as Chief Office

Superintendent, Grade Pay Rs. 4600/- resulting into availability of two vacancies. As per Railway Board letter 08.10.2013 only normal vacancies (except the vacancies of direct recruitment quota) as on 02.11.2013 were to be filled through 20% LDCE quota since there was doubt with regard to instructions referred in para 4.1 of RBE No. 102/2013, therefore, the matter was referred to Railway Board to seek its instructions. The Railway Board vide its letter dated 07.08.2014 (RBE No. 87/2014) clarified the matter instructing that while calculating the quota of direct recruitment, limited departmental competitive examination the total number of merged grades should be kept in mind. Thus, in the revised cadre as on 01.11.2013, the assessment of post of Office Superintendent Grade Pay Rs. 4200 were 13 wherein 80% promotion quota was 10 and 20% LDCE quota was 03. After implementation of cadre restructuring of Office Superintendent Grade Pay Rs. 4200/-, 11 employees were working against 10 posts while there were no employees working against 3 posts of LDCE quota. As the notification for filling up of 3 vacancies under LDCE for Office Superintendent Grade Pay Rs. 4200 has already been notified at Head Quarter level,

therefore, it is not possible to promote anyone against the vacancy caused due to retirement of Shri Keshav in mechanical department. Thus, non consideration for promotion to the applicant cannot be faulted and the applicant, therefore, cannot compare her claim with store department but can claim promotion only in her department as per law. Even the claim of the applicant, against the vacancy that arose due to the retirement of Shri Keshav due to change in percentage distribution and thus availability of vacancy subsequent to restructuring is also not just and legal. Also admittedly no one junior to the applicant has been considered. Further due to change in percentage and thus cadre position under promotion quota and LDCE quota, no post is available to be filled up under normal selection procedure. Thus, denial of promotion to the applicant is just and legal. Therefore, there is no merit in the case of the applicant.

4. The applicant filed a rejoinder denying the contentions of the respondents. The applicant further states that the respondents have allowed promotions in Grade Pay Rs.4200 in case of other departments i.e. Store & Personnel but have only not allowed promotion

in Mechanical Department where applicant is working. Respondents are misguiding this Tribunal in connection with calculation of vacancies. The respondents without any base are mixing the issue with the LDCE quota, whereas claim of the applicant is against the normal vacancies as after 02.11.2013 for which Railway Board at Annexure A/2 in para 4.3 provide that "All normal vacancies arising from 02.11.2013 will be filled by normal selection procedure". The applicant further states that the respondents have wrongly calculated the vacancies to deprive the applicant from due promotion. Thus, action of respondents is nowhere justified and, therefore, the applicant is entitled for reliefs.

5. a) The applicant has also filed M.A. No. 291/397/2015 for interim directions stating that during pendency of the Original Application, respondents issued notification dated 29.10.2015 calling applications for filling up post of Office Superintendent (OS) Grade Pay Rs. 4200 through LDCE and as per knowledge of the applicant, one post is being vacated by one Shri Keshav against which applicant is claiming promotion as per normal procedure which also includes LDCE quota and by which action, the applicant will be

deprived of promotion. Thereby the applicant prayed that respondents be directed by way of interim directions to keep one post vacant in pay band Rs. 9300-34800 with Grade Pay Rs. 4200 to the cadre of Office Superintendent.

b) In reply to said M.A., respondents state that the issuance of Notification pertains to vacancies under LDCE quota. Respondents have already stated that due to change in percentage and thus assessment of posts under 80% and 20% quota, the vacancy so caused due to retirement of Shri Keshav cannot be filled under the normal selection procedure rather the same has been included under the LDCE quota. The applicant cannot be aggrieved without disclosing any illegality therein. The applicant has also not come for consideration for promotion under the normal selection procedure and, thus, any challenge to the notification is wholly misconceived. Therefore, as the applicant has no claim against the vacancies notified under the LDCE quota, the prayer for interim relief is neither just nor legal.

6. We have heard learned counsels for the parties at length and examined the pleadings.

7. Both the applicant as well as the respondents have reiterated their submissions.

8. The factual matrix of the case is that the applicant was initially appointed as Group 'D' and thereafter promoted as Junior Clerk and then as Senior Clerk. He was allowed pay of Rs. 5200-20200 with Grade Pay Rs. 2800/-. Railway Board had issued order RBE No. 102/2013 for re-structuring of certain Group 'C' cadre on cadre strength as on 01.11.2013. Respondents have allowed several promotions in personnel as well as mechanical department. Claim of the applicant is that she is senior most as per the seniority list in Grade Pay Rs. 2800/- and, therefore, entitled for promotion in pay band Rs. 9300-34800 with Grade Pay Rs.4200/- and the applicant is not being promoted against normal vacancy though there are three vacancies as per cadre strength as well as roster in normal selection procedure.

9. We have seen that in pursuance to RBE No. 102/2013, dated 08.10.2013, the Head Quarter office vide its letter dated 24/25.02.2014 had issued revised cadre of ministerial staff for mechanical department of

Head Quarter office. In the meanwhile, restructuring was implemented w.e.f 01.11.2013. The details of the cadre, working employees and vacancies as on 31.10.2013 and 01.11.2013 were as under:

Post		G. Pay	Sanct. Cadre	Working strength	Vacancies
Chief Off. Suptd.	100%	4600	04	04	Nil
Off. Supdt.	(80% / promotion quota	4200	14	14	Nil
	(20% / LDCE)		01	Nil	-01
Senior Clerk	-	2800	06	03	-03
Clerk		1900	Nil	01	+01
			25	22	-03

After cadre restructuring, revised cadre as on 01.11.2013 was as under: -

Post		G. Pay	Sanct. Cadre	Working strength	Vacancies
Chief Off. Suptd.	100%	4600	05	05	Nil
Off. Supdt.	(80% / promotion quota		12	13	+01
	(20% / LDCE)		01	Nil	-01
Senior Clerk		2800	04	03	-01
Clerk		1900	03	02	-01
			25	23	-02

10. But, as per Railway Board letter dated 08.10.2013 only normal vacancies (except the vacancies of direct recruitment quota) as on 02.11.2013 were to be filled through 20% LDCE quota since there was doubt with regard to the instructions referred in para 4.1 of the RBE No. 102/2013, therefore, the matter was referred to Railway Board to seek further instructions. Railway Board vide its letter dated 07.08.2014 (RBE No. 87/2014) clarified the matter instructing that while calculating the quota of direct recruitment, LDCE, the total number of merged grades should be kept in mind. Thus, in revised cadre as on 01.11.2013, the assessment of post of Office Superintendent Grade Pay Rs. 4200/- were 13 wherein 80% promotion quota was 10 and 20% LDCE quota was 03. After implementation of cadre restructuring in the cadre of Office Superintendent Grade Pay Rs. 4200/-, 11 employees were working against 10 posts while there were no employees working against the 03 posts of LDCE quota. As the notification for filling up 03 vacancies under LDCE quota for Office Superintendent Grade Pay Rs. 4200/- had already been notified at Head Quarter level, therefore, it was not possible to promote anyone against the vacancy

caused due to retirement of Shri Keshav in Mechanical Department though vacancies could be seen but as the said vacancies were already filled by ministerial staff of mechanical department of Head Quarter office. Thus, non consideration of the applicant for promotion cannot be faulted.

11. Coming to the grounds raised by the applicant that though she was senior most in pay band 5200-20200 with Grade Pay Rs. 2800 and as per her seniority as well as service record, she is due for promotion in pay band Rs. 9300-34800 with Grade Pay Rs. 4200 and as per Railway Board instructions for filling up vacancies as on 02.11.2013 by normal selection procedure, respondents have not allowed her promotion in higher grade in spite of clear vacancies. Thus, action of respondents is arbitrary, unjustified and illegal and, therefore, the same deserves to be quashed and set aside. As seen, the grounds raised by the applicant are not sustainable because after implementation of cadre restructuring in the cadre of Office Superintendent Grade Pay Rs. 4200/- already 11 persons were working as against 10 posts and there were no employees working against 03 posts under

the LDCE quota. Also the notification for filling up of 03 vacancies under the LDCE quota for Office Superintendent Grade Pay Rs. 4200/-were already notified at Head Quarter level, therefore, no one could be promoted. Thus, it is clear that the applicant could not be considered for normal selection even against the vacancy caused due to retirement of Shri Keshav due to change in percentage distribution. The fact is that one has a right for consideration provided any of her juniors were considered then she could have a grievance, but such a situation does not exist in the present case. Also in given circumstances, we do not find any post to be filled up under normal selection procedure. Thus, the action of the respondents in denying promotion to the applicant cannot be said to be illegal, discriminatory or arbitrary.

12. In view of the observations made herein-above, as the action of the respondents is just and proper and the Original Application filed by the applicant being devoid of any merits, the same deserves to be dismissed. Accordingly, the Original Application is dismissed. No order as to costs.

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13. In view of the order passed in the Original Application, Misc. Application No. 291/397/2015, filed by the applicant praying for interim direction, is also dismissed.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

/nlk/