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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 46 of 1986

Uma Shanker Dwivedi and Others. Applicants.

Versus

Union of India & Others. Respondents.

Present: 1. Hon. S. Zaheer Hasan, V.C. (J)

2. Hon. Ajay Johri, Member (A)

Judgement delivered by Hon. Ajay Johri, Member (A)

The petitioners Uma Shanker Dwivedi, Siaram Yadav, Om Prakash, Bhajan Lal and Ram Singh, particulars of whom are given in the petition, were empanelled after the selection for the posts of Commercial clerks/ Ticket Collectors in the grade of Rs. 260 - 430 and Rs. 260 - 400 against 33 $\frac{1}{3}\%$ quota for promotees from class IV to class III in the Jhansi Division of Central Railway. Their names figured in a panel of 63 Commercial clerks/ticket collectors declared on 26.3.83 by the Divisional Railway Manager, Jhansi. Of this panel 48 candidates were absorbed and promoted while the remaining 15 could not be promoted as 13 employees of the Bombay Division came on inter Divisional transfer to Jhansi and were absorbed by the Jhansi Division against the remaining departmental promotees quota of 33 $\frac{1}{3}\%$. Subsequently the Divisional Railway Manager Jhansi approached the Central Railway HQs. for the extension of the currency of the panel of 26.3.83 whose life of two years had expired by then. This request was made by the D.R.M. vide his letter No. P/238/10/B/CA on 3.7.85 (Annexure-III of the paper book). The petitioners had been representing to the concerned authorities against the denial of promotion to them

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and also knocked the doors of a local politician asking help for redressal of their grievances, whenen their effort did not bring out any result. They have now approached this Tribunal for issue of a direction to the respondents for posting them as Commercial clerks, on the basis of the panel on which they were borne with retrospective effect alongwith seniority, arrears of difference of wages and other consequential benefits. The petitioners have claimed the difference of wages as they have been made to work as UTCs/Enquiry clerks/ Relieving Parcel Clerks though they have been paid only in the class IV scale i.e. in the grade of Rs.196 - 232. They filed this petitions under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. There is no dispute about the influx of some commercial clerks from Bombay Division at Jhansi. The respondents have however averred that the applicants were not working and were neither ordered to work as a Commercial clerks. They have now been regularly promoted vide letter No.P/328/10/8/CA of 24.2.86 after the sanction to extend the currency of panel was received from the Central Railway HQrs. at Bombay. The respondents have denied that any Bhajanlal Shukla was working at Gualior as UTC. They have taken a plea that the posting orders on promotion are invariably issued by the Personnel Branch of the Divisional Railway Manager's office and not by the Executive Branch and therefore Annexures-14 and 15 of the petition which have been issued by the Executive Branch appear to be a result of clerical error. The petitioners were thus not entitled to the relief that they have sought for.

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3. Shri R.K.Nigam the learned counsel for the petitioners has stressed during course of arguments that the petitioners were discharging the duties of the Commercial clerks since December, 1983. These ^{SD} posts of commercial clerks are class III posts in the grade of Rs. 260 - 430. The petitioners are being paid only class IV scales of pay i.e. Rs. 196 - 232. In support of this contention in the rejoinder affidavit petitioners have produced documentary proofs which are placed at Annexures R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, and R12. These have been relied upon by him. These Annexures are memorandum of charges for imposing minor penalties, statement of charges, receipts issued by the petitioners in their capacity as R.G.C. and letters asking for explanations from them. In all of these they have been addressed as Commercial clerks. Annexure-R-10 is a letter addressed to S.S. Jhansi by the Chief Parcel Supervisor in respect of petitioner Uma Shanker Dwivedi wherein it has been said that he has been working in the class III category as U.T.C. since December, 1983 and from March, 1986 he has been released to work as R.G.C.

4. The respondents have in their counter affidavit - para 9 denied that the petitioners were working as Commercial clerks and that it is only on 24.2.86 that they have been promoted and till then they have been working in class IV category and also paid as goods porters / parcel porters. It is difficult to place much reliance on the stand taken by the respondents in the face of overwhelming evidence produced by the petitioners e.g. the memoranda of chargesheets, the letters asking for their explanations, the letter issued

on their relief on regular promotion. It does happen that sometimes when there is shortage of staff, qualified and literate staff, in channel of promotion, are utilized against class III posts. This is what appears to have happened in the case of the petitioners. The Administration had an intention to promote the petitioners who were on the panel but during the exercise of promoting them these 15 panelists could not be promoted due to arrival of the group from Bombay. The staff who came from Bombay were shown as absorbed against the promotion quota, as the letter No. HPB/706/RT/C/JHS dated 28.10.85 in response to the Division's letters of 10.4.85 and 17.9.85 shows. This letter is placed as Annexure-R-I of the rejoinder affidavit. In para 2 of the letter it has been said that the transfer of the staff from Bombay Division was made against the posts earmarked for direct recruitment and had these 13 staff, who came on transfer, been absorbed against that recruitment quota the question of non-promotion of the panelists and granting extension to the currency of the panel would not have arisen. After reading this letter it becomes obvious that the D.R.M. Jhansi had wrongly interpreted the orders of transfer of the staff. This wrong interpretation blocked the promotion of the petitioners. It was in this background that the Central Railway HQrs. letter dated 28.10.85 asks the Jhansi Division to examine whether all direct recruitment vacancies have been filled up and if not these 13 Bombay Division staff may be posted against the direct recruitment quota.

5. The petitioners have been repeatedly representing on the injustice done to them in the stoppage of their

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promotion on the arrival of the staff from Bombay Division. The exercise to ask for the extension of the currency of the panel was initiated on 10.4.85 while the panel expired on 25.3.85. The very fact that the Division was approaching Central Railway HQrs. for extension and the currency of the panel would indicate that the Division was having second thoughts in regard to the promotion of the remaining 15 persons out of the panel of 63 declared on 26.3.83. The request made by the Jhansi Division to the Central Railway HQrs. for the extension of the currency of the panel took sometime to materialize on account of cross references and ultimately the petitioners have been promoted w.e.f. 24.2.86 after the sanction to extend the currency of panel was received by the Jhansi Division. Thus a wrong done has been righted though belated.

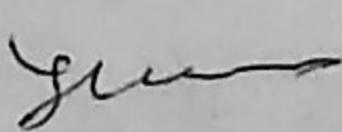
6. It is thus obvious that had the 15 persons who came on transfer from Bombay been absorbed against the direct recruitment quota the petitioners would have got their regular promotions from a date much earlier to 24.2.86. In fact in accordance with the evidence produced by the petitioners in their Rejoinder Affidavit they have been shown as working in the class III posts on the various dates to which the Appendices attached to the rejoinder affidavit refer. This does not leave any ~~out~~ ^{any iota} of doubt in our mind that petitioners who were duly qualified and empanelled were made to work against the class III posts of Commerical clerks which were vacant from dates earlier to the date of the regular promotion i.e. 24.2.86. The position of vacancies of the

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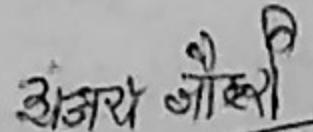
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commercial clerks on the Jhansi Division at the stations where the petitioners were asked to do the work could not be given by the respondents. The respondents could also not produce any documents to show against which class IV posts the petitioners were being paid for and whether those posts were being already manned by some other casual staff?

7. In the result we order that the petitioners should be considered for promotion against the vacancies in the promotee quota on the division in order of their position in the 1983 panel. The occurrence of these vacancies should be pinpointed by the Division by carrying out an exercise of absorption of the 13 staff who came on transfer from Bombay, who were wrongly shown absorbed against vacancies in the promotee quota, against direct recruitment quota. The exercise should be completed by the Division within a month. The petitioners have produced certain evidence that they have been made to work against these class III posts at various stations from different dates which are much earlier to 24.2.86. This has already been brought out in the paras above. This exercise should determine the dates from which the petitioners were made to work against the class III posts though they were not paid in the class III grades and were paid salaries as Goods Porters / Parcel Porters. The petitioners should be paid their due wages ^{ab and other benefits} in the class III grade from these dates. There are no orders ^{ab} as to costs.


(S. Zaheer Hasan)
Vice Chairman (J)

RKM


(Ajay Johri)
Member (A)

Dated the 19th Sept., 1986.