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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 22 DAY OF FEBRUARY, 1996

Original Application No. 606 of 1986

Yogendra Singh, S/o Shri Ram Murat Singh
aged about 30 years,
R/o Moh. Jatepur North
gorakhpur(Mithai Lal Hata), Enquiry Cum
Reservation Clerk in scale 330-560 at
Gorakhpur Junction Railway Station,
District Gorakhpur.

Applicant

Versus

1. The General Manager, North
Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager
N.E. railway, Lucknow Junction

Respondents

with
T.A. No. 1177 of 1986

Ravindra Nath Mishra,
S/o B.R.Mishra, r/o mohalla
Uttari Jatepur, Gorakhpur

BY ADVOCATE SHRI S.K. LAL

Applicant

Versus

1. Union of India through
General Manager, North
Eastern Railway, Gorakhpur

Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR. S. DAS GUPTA, MEMBER(A)

O R D E R (Reserved)

JUSTICE B.C.SAKSENA,V.C.

The above O.A. was directed to be connected with
T.A. referred to hereinabove. They are being disposed of
by a common order. When the aforesaid two matters came

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up for final hearing , no one appeared on behalf of the applicants. We have heard Shri Amit Sthalekar, learned counsel for the respondents.

2. The brief facts of O.A. 606/86 may first be noted. The applicant's case is that he was appointed as A-2 Signaller in the then scale Rs.260-430 after having been selected by the Railway Commission. The order for his appointment dated 5.1.77 has been annexed as Annexure 1. He further states that after passing the Station Master's promotion course he was posted as Assistant Station Master in the then scale of Rs.330-560 vide office order dated 17.2.77(Annexure 2). He was subsequently confirmed as ~~as~~ Assistant Station Master in the scale of Rs.330-560. He was medically decategorised for the medical category A-2 by the Chief Medical Officer, N.E. railway, Gorakhpur and was declared medically fit in medical category B-I vide Chief Medical Officer's letter dated 18.9.81 and he was absorbed as Senior Clerk in scale Rs.330-560 in the Mechanical Cadre Section of the Divisional Railway Manager vide office order dated 10.12.82. The applicant was subsequently posted as Enquiry-cum-Reservation Clerk, which carried the same scale of pay viz 330-560, against the existing vacancy and he joined as Enquiry-cum-Reservation Clerk on 5.4.83. The applicant was granted seniority on the basis of his total length of service rendered in equivalent grade of Rs.330-560. As a result of restructuring the applicant claims he was entitled to be considered for promotion as Head Enquiry-cum-Reservation Clerk in scale of Rs.425-640 w.e.f. 1.1.84. His further case is that he was not so considered for promotion but persons junior to him had been so promoted with retrospective effect from 1.1.84 vide an order

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No.E/11/203/15/ECRC/84 dated 31.3.86. The applicant preferred an appeal to which there was no response. In these circumstances the applicant filed this O.A and has prayed for the following reliefs:

- (1) It be declared that the applicant is entitled to be considered for promotion as Head Enquiry-cum-Reservation Clerk in scale Rs.425-640 w.e.f. 1.1.84. he has also sought quashing of the order dated 31.3.86 by which Shri Asrar Ahmed Khan, R.N. mishra and M.G. Gupta were promoted without considering the claim of the applicant.
- (2) The applicant has also sought a direction to be issued to the respondents to consider the promotion of the applicant to the post of Head Enquiry-Cum-Reservation Clerk in scale Rs.425-640 w.e.f 1.1.84 and to pay the difference of wages which would accrue to him consequent to the said promotion.
- (3) The applicant has also prayed for an injunction to be issued restraining the respondents from transferring him from the cadre of Enquiry-cum-Reservation Clerk.

3. The respondents have filed a counter affidavit. In the counter affidavit it has not been denied that the applicant having been medically decategorised in the A-I

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category was adjusted in B-I category post ~~first~~ ^{of Enquiry-cum-Reservation Clerk} and subsequently on the post of Enquiry-cum-Reservation Clerk. It has also been indicated that the applicant has been given due seniority on the basis of his length of service on various posts of identical grade viz 330-560. The respondents case is that the applicant alongwith four other medically decategorised staff of the Operating department were to be absorbed in the Enquiry-cum-Reservation Clerk but the same was vehemently opposed by the staff of the Enquiry-cum-Reservation Clerk on the ground that their rights would be seriously affected by such absorption. It is stated that the matter was considered between the office bearers of the Mazdoor union, N.E. Railway and the Chief Commercial Superintendent and the Chief Personnel Officer, N.E. railway Gorakhpur and it was decided that the 5 medically decategorised staff of the Operating Branch who had been absorbed in the Enquiry-cum-Reservation Clerk cadre ~~and~~ ^{be} absorbed in other cadres in the same scale of pay. A copy of the record note of the informal meeting dated 1.2.85 has been annexed as Annexure I. It has further been pleaded in the counter that the applicant's case for promotion to the post of Head Enquiry Cum reservation Clerk in the then scale of Rs.425-640 has not been considered since it was intended to transfer the applicant and four others from the cadre of ECRC to another cadre in administrative interest. It was pleaded that upon such transfer to the other cadre the applicant would be given seniority benefit on the basis of the total length of service rendered by him in identical grade posts viz 330-560.

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4. The applicant has filed a rejoinder affidavit in which he has denied the knowledge of any record note of the informal meeting stated to have been held between the office bearers of the Mazdoor union, N.E. Railway and the Authorities of the Railway Department. The applicant has reiterated his claim for ^{promotion to the post of Head Res} Enquiry cum Reservation Clerk w.e.f. 1.1.84 as a result of upgradation sanctioned by the Railway Board's letter dated 20.12.83 on the ground that since he was in the cadre of Enquiry Cum Reservation Clerk as on 1.1.84, he was entitled to the benefit of promotion.

5. From the pleadings it is not clear whether pursuant to the decision taken at the informal meeting held on 1.2.85 any orders for transfer of the applicant to any other cadre of equivalent grade for which the medical category B-I is prescribed has been passed. In the circumstances, we have to decide the OA on the material on record.

6. From the pleadings of the parties it is evidently clear that the applicant's candidature for promotion against the upgraded post of Head Reservation clerk has not been considered on the ground that he was intended to be transferred from the cadre of Enquiry Cum Reservation Clerk. That intention has not materialised, as would be evident, when we refer to the facts in TA 1177/86. The applicant was continuing as an Enquiry Cum Reservation clerk as on 1.1.84. It has not been disputed that the persons who had been promoted as Head Enquiry Cum reservation Clerk were junior to the applicant, on the basis of the total length of service put in by the

applicant as Senior clerk and Enquiry Cum Reservation Clerk which posts were in the identical grade viz Rs.330-560. The applicant was clearly entitled to have been considered for promotion to the post of Head-Enquiry Cum Reservation Clerk in the then scale of Rs.425-640 due to the upgradation ordered as per Railway Board's letter dated 20.12.83 copy of which is Annexure A to the Rejoinder.

7. The facts in T.A. 1177/86 may be noted. The applicant R.N. Misra had filed a suit in the court of Munsif Gorakhpur which was registered as suit no. 125/84. The plaintiff of the said suit was working as Enquiry Cum Reservation Clerk in scale Rs.330-560 at Gorakhpur Railway station. It is alleged that 75% of the post of Enquiry cum Reservation Clerk is filled through departmental selection and the remaining 25% are filled by direct recruitment. The eligibility for promotion is indicated as from amongst the commercial clerks including transhipment clerks, booking clerks, parcel clerks, Goods clerks, ticket collectors etc. It has been stated in the ~~plaint~~ ^{plaint} ~~suit~~ ^{suit} that sometime in 1982 transhipment at Manduadih in district Varanasi and the clerks employed in the transhipment section aforesaid were declared surplus. It was pleaded that Transhipment section of the N.E. Railway still exists and is functioning at Garara railway station of the North Eastern railway. Absorption of the surplus staff of Manduadih transhipment branch in the unit of Enquiry cum reservation clerk and for their absorption was chellnged. Also under challenge in the said suit was the absorption of medically decategorised operating staff who were absorbed in the cadre of Enquiry cum Reservation clerks and this includes Yogendra Singh the

applicant of OA 606/86

8. An application under order 39 Rule 1 and 2 C.P.C for interim injunction was filed seeking that the defendants be restrained from allowing the benefit of restructuring w.e.f. 1.1.84 and the promotion to 10 surplus staff of the Manduadah transhipment Varanasi and 6 medically decategorised category of the operating department.

9. It appears that on a consideration of the said application the learned Munsif passed an order of injunction on 20.1.84. Subsequently after objections were filed by the defendants the learned Munsif by an order dated 2.7.84 rejected the injunction application of Ravindra Nath Mishra. Feeling aggrieved by the order of rejection dated 2.7.84 he filed a misc appeal no. 249/84 in the Court of District Judge, Gorakhpur. The misc. appeal 249/84 came up for orders before the IIInd Addl. District Judge Gorakhpur and after analysing the relevant pleadings the learned II Addl. District Judge by his order dated 21.2.85 also rejected the appeal since in his opinion the plaintiff appellant had failed to show a *prima facie* case in his favour. He held that since the medically unfir staff was continuing in the reservation branch the balance of convenience is ^{not} ~~not~~ there and the plaintiff appellamt would suffer no irreparable loss.

Thus it was the suit which has been transferred to this Tribunal and has been registered as TA 1177/86.

10. It may be noted that the suit remained undecided and for all practical purposes it is the suit which has to be taken up for decision.

11. In the suit a written statement was filed on behalf of the defendants therein. In the written statement it was ^{denied} ~~pleaded~~ ^{her} that the Enquiry Cum Reservation unit is a very small unit as was alleged by the plaintiff. It was

indicated that this unit consists of 127 incumbents at the relevant time the written statement was filed. It was further pleaded that the transhipment work of the NE Railway were being done at Garhara and Manduadih transhipment yards but as a result of gauge conversion from MG to BG between Barauni Junction and Barabanki, the transhipment work at Garhara transhipment point decreased considerably and the entire work of transhipment at Manduadih was abolished thereby rendering the staff surplus there.. It was further pleaded that it was the responsibility of the defendant administration to absorb them on alternative suitable posts. Accordingly the surplus transhipment clerks at Manduadih were absorbed on administrative ground in the category of Enquiry cum reservation clerks. Similarly, it was pleaded that 5 staff of operating branch who ~~were~~ declared medically unfit were absorbed against the existing post of Enquiry cum Reservation Clerks for administrative reasons. The defendants also disputed the plea taken by the plaintiff that employees who are medically declassified in the operating branch cannot be absorbed in the commercial branch. It was pleaded that this depended on the administrative need and ~~if~~ their absorption was decided on the recommendation of the standing committee meant for declassified staff. It was further pleaded that mere chance of future promotion does not confer any right of the plaintiff to dispute the absorption of the two categories of surplus staff into the cadre of Enquiry cum reservation Clerk. The applicant does not appear to have filed any replication.

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12. The learned counsel for the respondents cited the following 2 decisions.

(i) 1983 SCC(L&S) 271 V.S. Moorthy and Ors

Vs. Deputy Chief Accounts Officer and Ors.

From the judgment it appears that the appellants were working as officiating UDCs in the office of the Chief Engineer, Nagarjuna Sagar Unit, and were transferred to the office of the Deputy Chief Accounts Officer, Nagarjuna Sagar project. Initially the posts to which they were transferred were temporary but about 8 years after their transfer, the State government by an order accorded permanent retention of those posts and directed that those posts had to be filled in by personnel already working in the Accounts organisation. and the appellants were permanently absorbed as UDCs in the establishment of the Dy. Chief Accounts officer. They were given seniority as provided in Rule 27 of the A.P. Ministerial Service Rules and some of them were also promoted as superintendents. It appears that the promotional prospects of the respondents, who were initially recruited as LDCs in the office of the Dy. Chief Accounts officer who were later promoted as UDCs there, were adversely affected due to the permanent retention and absorption of the appellants and the respondents filed a writ petition under Article 226 contending that the appellants were deputationists to the Accounts wing and they having a permanent lien in the Chief Engineer's office could not be absorbed in the office of the dy. Chief Accounts officer permanently over the respondents. The writ petition was transferred to the A.P. Administrative Tribunal, which allowed the petition and against the judgment of A.P. Administrative Tribunal the appeal was filed. This decision was cited to show that it is administratively permissible to transfer and *i bcl*

absorb surplus staff in the other cadre. From the judgment it appears that the question whether transfer and absorption adversely affecting the promotional prospects was contrary to relevant rules or not was the subject matter of a writ appeal no. 96/70 before the A.P. High court. The learned Single Judge dismissed the petition holding that the transfer was on administrative ground. It was further held that the temporary posts were converted into permanent posts and the appointments were regularised. An appeal against the decision was also dismissed. The Hon'ble Supreme Court in its decision noted such facts and held that the challenge to the transfer and induction of the respondents in the office of the Dy Chief Accounts Officer had failed. That question was not canvassed. The question of interse seniority was the only point that was held to be remaining to be considered.

13. The other decision cited by the learned counsel for the respondents has been reported in 1971(2) SLR pg 68 *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway and ors.* This case related to transfer and absorption from the Food Supply Organisation when it was wound up after the World War. The surplus staff of the Food Supply were absorbed in various departments. The question which squarely came up for consideration in the said case was whether the Railway Authorities under the Rules can transfer or not any one or more of the staff for absorption in the posts ~~were allotted of~~ any other department or departments where such transfer of transfers became administratively necessary. After noting the provisions of Rule 2007 and other relevant provisions Rule 2011 was also noted which provided for transfer of railway servants. It was held that ...pll *See*

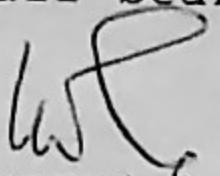
the only limitation to the power conferred on the Competent Authority to transfer a railway servant from one post to another is that such transfer cannot be to a post carrying less pay than the pay of the post on which the transferred employee had a lien. It was held that the Competent Authority has the power to transfer a railway employee even though he holds a permanent post from one such post to another, ~~and~~ ^{and} this case no doubt supports the submission that the medically decategorised persons absorbed in the cadre of Enquiry cum Reservation Clerk on administrative ground could have been absorbed in ~~the said~~ ^{BSL} department. From the pleadings in the suit it is evidently clear that the cadre of Enquiry cum reservation clerk was a progressive cadre and 10 posts were also created when the surplus staff of the Manduadih Transhipment point were absorbed. The absorption of staff from other department on administrative grounds being permissible, we are not persuaded to hold that there is violation of provisions of Art. 14 & 16. Future chances of promotion claimed to be effected does not persuade us to interfere with the order of transfer and absorption of the surplus staff in the Enquiry Cum reservation cadre. That was done for good administrative reasons.

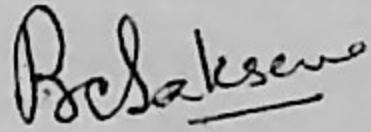
14. There is no merit in the TA, it is dismissed accordingly. Suit No. 125/84 accordingly fails. Since the pleadings do not show what action had been taken after dismissal of misc appeal no. 249/84 and as to whether or not the applicant's candidature for promotion on the post of Head Enquiry Cum Reservation Clerk had been considered or not. We, therefore, direct the respondents to consider the applicant's case for promotion to the post of Head Enquiry cum reservation ^{1 BSL}

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Clerk w.e.f. 1.1.84 treating him to be absorbed in the cadre of Enquiry cum reservation Clerk with all consequential benefits in the matter of seniority and further promotion etc in the said cadre. The parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: Feb. 22. 1996

Uv/