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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 105 of 1986

Kailash Nath Sinha Applicant.

Versus

Divisional Railway Manager,
Northern Railway, Lucknow &
another. Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this Writ Petition which has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985, the petitioner Kailash Nath Sinha, who is working as a Coaching Clerk on Northern Railway, has prayed for the issue of an order or mandamus directing the respondents to promote him to the grade of B.330-560 of Coaching Clerk with consequential pay revisions vis-a-vis Nizamuddin and Harish Chandra, Clerks.

2. The facts of the case are not in dispute. The petitioner was selected as a Goods Clerk but was utilized by the respondents as Coaching Clerk in the exigencies of service from 23.11.1972. Later on he was sent for training in P-8 course which is a course for the category of Goods Clerk. On successful completion and return from training in July, 1973 he was again put to work as a Coaching Clerk. A condition was imposed at the time of his promotion that his promotion was subject to his passing P-7 course which was considered essential

for a person, who was to work as Coaching Clerk. The petitioner did not go for this course in the long career of nearly 15 years of his working as Coaching Clerk. When the chance of promotion to the grade of Rs.330-560 came his promotion orders were issued and he was promoted in July, 1981 in an officiating arrangement but after a few months he was reverted on 16.9.1981 to the grade of Rs.260-400. His case was not considered for regular promotion as he had not passed the P-7 course. He represented against his reversion in October, 1981 and also requested for being sent back as ~~Goods~~^{Ex-a} Goods Clerks. According to his representation his lien had already been suspended on the Goods side. When nothing finally materialized he filed this Writ Petition in 1985.

3. According to the channel of promotion of Commercial Clerks, they can either go to the Coaching side or to the Goods side. For being on the Coaching side P-7 course of Zonal Training School, Chandausi has to be passed while for being on the Goods side it is the P-8 course. The petitioner, though he was made to work on Coaching side due to administrative exigency was actually selected as a Goods Clerk and while working on the Coaching side he was sent to qualify for P-8 course which he did. The respondents have said that he was asked to go for P-7 course but he did not go. Except for the posting orders which mention about the P-7 course, there is no other document to support this averment.

4. Railways have their own training schools. In the Northern Railway training is imparted at the Zonal Training School at Chandausi. There are three types of courses :-

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1. Initial, e.g. before a person is put on a working post.
2. Refresher.
3. Promotional.

The petitioner was a class IV employee originally. He was selected through a due selection test for the post of Commercial Clerk (Goods). He had then to go through the course meant for Goods Clerks. He was sent for it but he was utilised on the commercial side. He has worked for nearly 15 years on the commercial side. There is no averment to indicate that his work has not been satisfactory. Fifteen years of satisfactory working will go to support that there is no substitute for experience. If he has worked so long and the respondents have not thought it fit to send him back on the Goods side or revert him back to his original class IV post, they had another alternative to meet his requests. They could invoke the exemption clause available in case of employees above the age of 55 years, who are not employed in Train operation or Train passing duties, who are exempted from undergoing the Refresher courses. No doubt this exemption is from Refresher courses and the petitioner had not acquired the basic qualification of P-7 for Coaching Clerks. But then 15 years is a very long period to come to a decision that because of this lacuna the petitioner cannot be promoted to the grade of Rs.330-560 from where he was reverted. Having been retained on Coaching side due to administrative requirements it will now be difficult to accept that lack of basic qualification should be an impediment to further advancement for the applicant. Such an action visits him with evil consequences. ^{one} ~~as~~ cannot be

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a "mere mechanic, or a mere working mason laying brick on brick without thought to the over all design".

"The worst poverty in this land of Buddha, Mother Teresa and Gandhi is lack of piety. Piety weighted with natural justice, a virtue which seems to have been sentenced to transportation for life from the scheme of things." ~~We~~ ^{We should} not be indifferent to our fellowmen.

5. ~~in connection~~ ^{or now} There are two alternatives available to the respondents -

- i) To exempt the petitioner from the P-7 course and give him his promotion from the due date.
(We understand he has hardly a year or so to superannuate).
- ii) To return him to the Goods side with his original seniority protecting his promotions to higher grades vis-a-vis his juniors.

The petitioner has worked through out on the Coaching side. He may not be fully conversant with the new concepts and procedures introduced on the Goods side in these 15 years. We feel, he will be a more useful employee on the Coaching side. However, we will leave it to the respondents to take their own decision on any of the ^{above} ~~two~~ alternatives ^{available to them} ~~suggested by us~~ and implement the same within two months from the date of issue of these orders. We were advised at the Bar that the petitioner has no objection to go back to the Goods side.

6. The application (Writ Petition No.13652 of 1985) is disposed of accordingly with costs on parties.

Yours
Vice-Chairman.

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Member (A).

Dated: October 16, 1987.
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