

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

T.A.No.166/86

(O.S.No.589/85)

B.K. Pandey Applicant
Vs.
Union of India & Others ... Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. K. Obayya, A.M.)

The applicant entered the service of Northern Railway as junior clerk on 3-6-80 on scale of Rs.260-400. The next higher post available to him was that of Senior Clerk on the scale of Rs.330-560. According to the applicant he became eligible for promotion to this post as a consequence of Railway Board's Circular dated 18-6-81. In the said circular, the Board has approved a scheme of restructuring of cadres of ministerial staff, by which posts at different levels were upgraded by certain percentage and promotions to these posts were to be made on the basis of selection. The applicant being a graduate appeared in the selection examination held by Railway Service Commission against 13 1/3% graduate quota and having been declared successful he was empanelled at Sr. No.2 and promoted vide order dated 28-3-84. Thereafter he represented to the authorities that notwithstanding his promotion in 1984, he was entitled for proforma fixation of Pay and Seniority w.e.f. 1-10-1980, in terms of the aforesaid circular though

Later on that was considered and benefit given initially vide order dated 8/7/85 after reconsideration, the order of proforma fixation was withdrawn. Aggrieved by the above order, the applicant filed a Civil Suit (O.S. 589/85) in the Court of Munsif, Varanasi, which, by operation of law, was transferred to this Tribunal for adjudication. The applicant has prayed in the Suit for a declaration that he continues to hold the post of Senior Clerk in the scale of Rs.330-560 against 13 - 1/3% graduate quota after due selection and empanelment and that the respondents be restrained from cancellation of the said promotion.

2. In the reply filed by the respondents it is stated that the applicant had applied for the promotion as senior clerk against graduate quota and cleared the selection examination of Railway Service Commission and as a result of the said selection 7 general candidates including the applicant and 1 S.C. candidate were empanelled and all the 8 persons were promoted. The applicant preferred an appeal for proforma fixation of seniority and scale w.e.f. 1-10-80. According to the respondents the applicant is not entitled for the benefit of seniority and pay on notional basis with back date from 1-10-1980. He is entitled to get the benefit from the date of promotion only. It is also pointed out that while the Railway Board's Circular dated 18-4-81, provided the frame work of restructuring and upgradation, the modalities of giving effect to this circular were laid down by a subsequent Board's Circular dated 31-7-81; The case of the applicant was considered on the basis of these circulars and his case for proforma fixation was rejected

as he was not entitled for such a benefit.

3. In the rejoinder, the applicant has mentioned that two persons who were selected along with him viz. Shri K.L. Kuswaha and Shri A.C. Singh were also given the benefit of proforma fixation w.e.f. 1-10-80. This was, however, denied by the respondents.

4. The short point involved in this case ~~is~~ about the application of the Railway Board's letter dated 18-6-81 and its interpretation. The relevant paragraphs ~~which~~ are extracted as under:-

" Sub:- Restructuring of the cadre of Ministerial staff of departments other than personnel.

The ministry of Railways have had under consideration the question of restructuring of the Ministerial cadre of Non-accounts departments other than personnel in the wake of upgradation done in the case of personnel department vide their letter No. PC II/80/MURG/21 dt. 10-11-80. As a result of agreement reached with the staff side in the departmental council (JCM) it has been decided as under:-

(1) There shall be direct recruitment of graduate to posts of senior clerks in scale 330-560 to the extent of the total strength. The direct recruitment will be made throughout the R.S.C.

(II) 13- $\frac{1}{3}$ % of the total posts of senior clerks in scale Rs.330-560 will be filled from amongst the graduate clerks already serving in the lower grades after allowing them the age relaxation already in force. These vacancies will be filled up by competitive examination to be held by the R.S.C. in the event of graduate clerks not being available from amongst the serving employees to fill this quota the residual vacancies will be filled up by direct recruitment through the R.S.C. over and above, the 20% quota referred to in (1) above.

2. These orders will take effect from 1-10-80 but no arrears shall be payable on this account.

The pay of an employee appointed to the upgraded post may be fixed proforma from 1-10-80 but the actual payment of emoluments in the higher post should be allowed only from the date he takes over charge of the upgraded post. This has the sanction of the President.

3. All vacancies of Sr.Clerks(330-560) existing as on 30-9-80 should be filled up in accordance with the orders in force to the issue of this letter. All vacancies existing on or after 1-10-80 shall be filled in accordance with the proportion prescribed therein.

4.

Sd/-

At Director Establishment
Railway Board.

The above instruction was followed by the letter dated 31-7-1981 of the Railway Board which lays down the mode of promotion to different posts. The letter is as under :-

" Sub:-Restructuring of Cadre of the Ministerial Staff of Departments other than Personnel.

2. The manner of filling up the posts of Senior Clerks scale Rs.330-560 consequent on the restructuring of the cadre of Ministerial staff of Departments other than Personnel provided for in the above-quoted letter ~~has~~ has been considered and it has been decided that:-

i) All vacancies of Senior Clerks in grade Rs.330-560 existing as on 30-9-1980 should be filled up in accordance with the order in force prior to the issue of this Ministry's letter dated 18-6-1981 ibid.

ii) 13 1/3% the vacancies of Senior Clerks on

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scale 330-560 arising on 1-10-1960 consequent on implementation of the aforesaid orders dated 18-6-1981 will be filled from amongst the graduate clerks already serving in the lower grades in the manner indicated in Para 1(ii) of this Ministry's letter dated 18-6-1981 ibid.

(iii)

(iv) All vacancies of Senior Clerks arising on and after 2-10-1980 shall be filled up in accordance with the promotions prescribed in this Ministry's letter dated 18-6-1981 ibid.

3. The upgradation of posts in scale Rs.330-560 to the extent of 13 $\frac{1}{2}$ % and 10% which are to be filled ^{from} Graduates by the limited departmental Examination or by the direct recruitment will be effective only when such candidates are available. In the meantime vacancies arising in Junior clerks cadre due to normal wastage should be kept unfilled to the extent the post of senior clerks in grade Rs.330-560 are to be filled by direct recruitment.

4.

Sd/-
for DRM (P) BSB.

5. The Counsel for the applicant referred to the judgment of this Tribunal in O.A.No.1037/88 decided on 23-5-90 in which it was observed :-

" 11. This petition is allowed and it is directed that in case adequate number of vacancies of Stores Group II in O.L.W., Varanasi existed as on 1-10-80, the respondents shall make proforma fixation of pay as Senior Clerks with effect from 1-10-1980 in favour of the applicants if they ~~had~~ stood senior most in order of merit as per panel contained in Annexure-IV in the said Group. Their pay shall be computed

Accordingly as on their respective date of promotion as Senior clerks and they shall be paid arrears from those dates but they shall not get arrears for the period prior to such dates."

In O.A. No.132 of 1986 decided on 29-10-86 by this Tribunal it has been observed :-

"The spirit of the Railway Board's letter of 18-6-81 was that the upgradations were to be made from 1-10-80 though they were to be effective from the date the qualified candidates took over charge of the higher grade post. Their pay had to be fixed proforma keeping the date 1-10-1980 in view. This was the date of upgradation and as mentioned above no arrears were to be paid. There is no ambiguity in the Board's letter. The error has crept up due to the interpretation made by the respondents."

6. From the above it is clear that what is crucial is the availability of vacancy. It is not automatic that proforma fixation can be given from 1-10-80 in all cases, but it should be done only in such cases where the vacancy is available for upgradation. The applicant was asked to file affidavit indicating the vacancy position as on 1-10-80 in which case he could stake a claim for the same and be accommodated against such vacancy. No such affidavit has been filed by the applicant in this regard.

7. From the Railway Board's Circular referred to above it is very clear that the upgradation on proforma basis u.s.f. 1-10-80 is available only when vacancies are available as on that date. For

promotion subsequent to this date on the vacancies which arose subsequent to this date, they will not be entitled for any benefit either of proforma fixation or of seniority. The respondents have also categorically denied that the applicant was eligible for the benefit of pay fixation w.e.f. 1-10-80. The applicant has also appeared for selection examination and was promoted in 1984, evidently in a vacancy which arose subsequently in 1984 or in any case after 1980. Under these circumstances we are of the view that the applicant is not entitled for proforma fixation of pay or seniority w.e.f. 1-10-1980. The applicant was entitled for promotion and seniority from the date he qualified at selection and was duly appointed in the upgraded post. We do not see that the applicant was denied of a benefit which was due to him. This application is without merit and accordingly it is dismissed without any order as to costs.

Roshanpal
Member (A)

Dated: 28th Sept., 1992, Allahabad.

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Vice-Chairman

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