

posting order that it was purely a temporary local arrangement subject to confirmation by C.P.O., Central Railway, Bombay. In November, 1967 a Senior Clerk, R.S. Srivastava, who had also opted for the non-ministerial cadre had put in a representation that he has been posted on a post which carried lesser pay than what he was getting in the combined cadre and, therefore, he wanted to go back to his parent cadre, i.e. ministerial cadre. By this letter it was said that DSKs were allotted a lower authorised scale than that of the clerks and, therefore, the clerks and the DSKs were no longer interchangeable. On this score the posting of the said R.S. Srivastava was not correct and, therefore, his return to the parent cadre should not result in his being penalised for losing his seniority thereby indicating that the administration had made it clear that a clerk of non-ministerial cadre could not be transferred to ministerial cadre. ^{because of the difference in scale of pay} In April, 1981 a seniority list was published and the petitioner's name was shown in the seniority list of the ministerial cadre and since there were two separate independent cadres, the petitioner having opted for the non-ministerial cadre and he having earned his promotions also in the same cadre he represented against this seniority list. The petitioner by this time had worked for nearly 20 years in the so called newly formed cadre i.e. the non-ministerial cadre having joined it on 15.7.1963. He, therefore, claimed seniority on the basis of his having worked in the new cadre, when the non-ministerial cadre was again combined with the ministerial cadre, under Rule 311 of the Indian Railway Establishment Manual

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which determines seniority of a person transferred in the interest of administration. He also claimed that he should be considered for promotion to the post of Head Clerk on merger of the two cadres but his representations were not considered. In 1977 the petitioner had been confirmed as a Junior Clerk in the ministerial cadre though in the non-ministerial cadre he was working in a higher grade and he challenged the reduction from the higher pay and status that he was enjoying in the non-ministerial cadre. He, therefore, prayed that a direction be issued to the respondents to consider the representation of the petitioner and prepare a seniority list considering the petitioner's service rendered in the non-ministerial cadre instead providing him in the list on the basis of his original position in the ministerial cadre and for quashing the seniority list issued in 1981.

2. The respondents had challenged the petition on the ground that the bifurcation of the ministerial cadre into ministerial cadre into ministerial and non-ministerial was not approved by the Railway Board and, therefore, the position of the ministerial staff who had opted for the bifurcated non-ministerial cadre had to be determined on their return back to their parent cadre. According to the respondents the petitioner never severed his link with the ministerial cadre because the bifurcation had not become final and his posting was done on a temporary basis till further orders. On reverting back to the original position the petitioner's position in the seniority list had to be shown and, therefore, the issue of the lien in 1981 was not against law. The rule of seniority

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mentioned in para 311 of the Indian Railway Establishment Manual is not applicable in this case because no separate seniority list of non-ministerial cadre had been ever maintained. The circular for formation of the separate ministerial cadre was withdrawn. On the basis of seniority in the ministerial cadre the petitioner was not due to be promoted to the grade in which he was working temporarily in the defunct non-ministerial cadre. However, his pay was not reduced on repatriation to avoid hardship. The further promotions were ordered to be regulated on the basis of seniority position that he is now holding in the ministerial cadre. His seniority could not be fixed in accordance with his officiation in the defunct non-ministerial cadre. Thus though he was correctly fixed in seniority his pay that he was drawing at the time of merger of the two cadres was not reduced and his seniority cannot be fixed above those who were actually senior to him in the combined ministerial cadre.

3. Cadre is actually the strength of a service or a part of service sanctioned as a separate unit. The ^{cadres} character of the Grade 'C' and Grade 'D' posts on the railways is determined by the General Managers or the other authority to whom such powers are delegated but prior sanction has to be obtained from the Railway Ministry. If the General Managers consider it necessary to introduce a new category not already obtaining on a Railway. The non-ministerial cadre for which applications were invited by the Chief Personnel Officer in 1962 was being formed to separate the work of the stores in the Engineering Department which appears to have been

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34 ^{*proposed to be*} ultimately ~~ultimately~~ taken over by the Stores Branch. The background of the issue of the notice inviting applications from the ministerial staff with working experience in the store line on clear understanding that those who accept the appointment as Depot Store-Keeper which would be treated as non-ministerial cadre would support this proposal which was in the mind of the respondents while inviting these applications. This category did not exist under the Engineering Department earlier and, therefore, the General Manager, Central Railway could not create a new category without approval of the Ministry of Railways in terms of para 120 R-1 of the Indian Railway Establishment Code, Volume I, which lays down the powers of the General Managers, mentioned above. The Railway Board did not ultimately approve of the formation of the non-ministerial cadre and, therefore, the circular for formation of separate cadre had to be withdrawn as it was decided to continue the existing set up of the Engineering Permanent Way Depots and they were not likely to be handed over to the Store Department. This has been averred by the respondents in para 13 of their reply to the petition. They have further said C.P.O. (Engineering) 's letter no. STF/DJA, dated 5.1.1963 clarified further by C.P.O. (Engg), Bombay letter no. HPB/6BB/RE/DSK, dated 15.9.1972^{*34*} ^{*by cleared the position*} However, ^{*at refusal*} in spite of the issue of these letters and the ~~reduction~~ of the proposal by the Ministry of Railways for the creation of the non-ministerial cadre the petitioner was continued on the post of Depot Store-Keeper till the merger and thus he continued to work and also got promotions while working in the Permanent Way Stores

under the Engineering Department during the 20 years for which this position continued to exist. However, the fact remains that the creation was not made with the prior approval of the Ministry of Railways and, therefore, was in violation of para 120 R-1 of the Indian Railway Establishment Code. The petitioner has, however, not been reduced in the salary that he was drawing in the temporary cadre which could not be created because of this lacuna.

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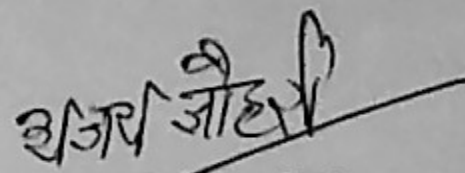
4. As far as the seniority of the petitioner is concerned untill the new cadre had come into existence there was no question of the petitioner's lien having been terminated from the ministerial cadre and preparation of a seniority list in the non-ministerial cadre. He, as a matter of fact, would not have got promoted had the original scheme continued and, therefore, his claim that he started belonging to a new seniority unit cannot be given much weight because in the absence of a new cadre coming into existence there could be no question of any seniority being assigned and any new lien being established. The petitioner's original seniority was in the ministerial cadre. He has already been protected as far as his emoluments were concerned and his pay has been retained to what he was drawing in the defunct non-ministerial cadre. It is only for matters of promotion that the seniority which he occupies in his parent cadre will come into play.

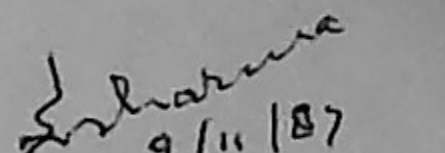
5. We, therefore, do not find any merit in the prayers made by the applicant-petitioner for the quashing of the seniority list and for giving him seniority based on the position he occupied in the cadre that ~~he~~ did not

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get finalised. He has been adequately compensated by the respondents in the matter of his emoluments. The petition, therefore, fails and is accordingly dismissed. Parties will bear their own costs.


Member (A).


9/11/87
Member (J).

Dated: November 9th, 1987.

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