

Reserved

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 10th day of November 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

Original Application No. 1046/92

1. B.B.Tiwari son of Sri Kamlapati Tripathi  
r/o 358-D New Central Colony, Dindayalnagar,  
Varanasi.
3. D.K. Mehani son of Late Bhagwan Das Mehani,  
r/o Qr. No. 196 AB, Central Colony, Dindayalnagar  
Varanasi.
4. B.K. Sinha s/o late K.P. Sahai, R/O Qr. No. 1354-A  
Manasnagar, Dindayalnagar, Varanasi.

. . . Applicants.

Counsel for the Applicants: Sri A.K. Sinha, Adv.

Versus

1. Union of India through General Manager,  
Eastern Fairlie Place, Calcutta.
2. Divisional Railway Manager, Dindayalnagar  
(Mughalsarai), Varanasi.
3. Sr. Divisional Personnel Officer, Eastern Railway,  
Dindayalnagar (Mughalsarai), Varanasi.

. . . Respondents.

Counsel for the Respondents: Sri A.V. Srivastava, Adv.

Order (Reserved)

(By Hon'ble Mr. S. Dayal, Member (A.))

This application has been filed by four  
applicants of which applicant No. 2 (P.K. Gaunguli)  
died after notices had been issued. His name was  
subsequently deleted on the request of learned

counsel for the applicant.

2. The applicants No.1 and 2 have claimed that they were appointed as Khalasis in the years 1979 and 1975 respectively and were selected and promoted to the post of Progress Chaser in the scale of Rs.260-400(R.S.)/950-1500(R.P.S.) by order dated 18.6.79. Applicant No.4 was appointed as Khalasi on 4.1.75 and was promoted to the post of Progress Chaser on 14.6.82. The applicants have not been confirmed on the post of Progress Chaser so far nor have they been promoted to higher grades. The respondents failed to convert the temporary post into permanent ones although they had been continuing for thirteen years at the time of filing this application. It is claimed that the post of Progress Chaser in Dhanbad Division had been created as permanent post since 4.5.1980 in the higher scale of Rs.330-560(R.S.)/1200-2040 (R.P.S.) The representation of the applicants dated 25.5.84 was considered by the respondents who converted the post of Progress Chaser into permanent post on 8.11.89 but did not confirm the applicants against these posts. The applicants represented personally and through Trade Union which resulted in merger of seniority of the applicants on the clerical cadre by letter dated 30.7.91 and seniority was assigned to the applicants at 36-A, 36-B, and 36-C as well as 49-A in seniority list dated 28.3.1988 by letter dated 16.8.91. The names of the applicants were however not mentioned in the subsequent seniority list dated 31.3.92. The applicants filed representation dated 22.5.92 and 24.6.92. They were informed that the

orders could not be implemented as respondent No.1 was not agreeable to merger. The respondents are said to have posted three Mistries against the sanctioned permanent post of Progress Chaser and have threatened to revert the applicants.

3. We have heard the arguments of Sri A.K. Sinha for the applicant and Sri A.V. Srivastava for the respondents and perused the case papers.

4. The respondents have challenged this application on the ground of limitation. However, we find from Annexure C.A-1 that the post of Progress Chaser was ordered to be treated as ex-cadre post and it was decided that the staff drafted or to be provided in the cadre of Progress Chaser will retain their seniority in their original cadre by order of C.P.O. Eastern Railway Calcutta dated 6.12.89. Thereafter a letter dated 4.10.91 was issued by the Chief Personnel Officer to the Divisional Railway Manager Dhanbad Danapur- Mughalsarai to implement the decision taken by the competent authority under intimation to the office of the C.P.O. The order, posting of Mistries in Electric Control and Shift Working has been issued on 15.7.92. Since the relief sought is for implementation of order dated 30.7.91 and 16.8.91 the O.A. treated <sup>as</sup> within the period of limitation.

5. The facts narrated by the parties show that the post of Progress Chaser in the scale of Rs.950-1500 (R.P.S.) created in Mughalsarai Division with effect

from 16.6.79 on a temporary basis. It continued as a temporary post till 8.11.89 when it was ordered to be converted as a permanent post. The post was ordered by Chief Personnel Officer, Eastern Railway Calcutta to be treated as Ex cadre post and the staff drafted or to be drafted in the cadre of Progress Chaser to retain their seniority in the original cadre and for avenues of their promotion accordingly. It has not been denied by the respondents that the applicants No.1 and 3 were working on this post with effect from 18.5.79 and applicant No.2 was working on this post with effect from 14.6.82. Annexure A-2 to the O.A. shows that the posts were converted into permanent posts because they had been existing as temporary posts for more than three years by order dated 8.11.89. There is no mention in the order that posts were treated to be ex-cadre posts. The respondents have also not denied that order dated 30.7.91 was passed showing their date of promotion as Progress Chaser to be 18.6.79 with respect to Applicants No. 1 and 3 and 14.6.82 with respect to applicant No.4. By the same order as well as subsequent order dated 16.8.91 the merger of the cadre of Progress Chaser in the cadre of Clerks was ordered and the applicants were given seniority between persons mentioned at serial No.36 and 37 in case of applicants No. 1 and 3 at 49 and 50 in case of applicant No.4 in the seniority list dated 28.2.88. The respondents have contended that the Chief Personnel Officer was the competent authority to decide the status of the Progress Chaser and of

promotional avenues to various posts. The learned counsel for the respondents has filed the delegation of the powers to substantiate the fact that the powers were vested in the Chief Personnel Officer. However, we find that while the power of creation of Group 'C' and 'D' posts had been vested in officers of S.A.G. level in Head Quarters office, full powers were also vested in the D.R.M. for posts controlled by them in Divisional Office. The respondents have not shown that the posts of Progress Chaser were not posts controlled by the divisional officers. We find that Rule 114 of Indian Railway Establishment Manual Volume I reads as follows:-

" 114. Power to relax or modify rules- The General Manager or the Chief Administrative Officer, may in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway Board's prior approval is however, required to long term or permanent alteration of the rules.


This power should be exercised by the General Manager or his Chief Personnel Officer, or the Chief Administrative Officer personally; but it shall not be otherwise redelegated."


But this rule also does not confer power of long term or permanent alteration of the rules without prior approval of Railway Board. It is not the case of the respondents that they had obtained prior approval before converting the permanent post of Progress Chaser into ex-cadre post. Therefore, the order of treating the post of Progress Chaser to be ex-cadre can not be sustained and has to be set aside. The

merger of the cadre of Progress Chaser in the Cadre of Clerks can similarly not be upheld in the absence of its ratification by the Railway Board. This order appear to have been passed at the Divisional level without reference to the higher echelons. This was necessary in the light of instructions contained in para 114 of I.R.E.M.

6. The respondents are directed to consider the applicants for regularisation in the cadre of Progress Chasers with effect from the date when recruitment rules for the post of Progress Chaser were finalized. They are also directed to refer the matter of merger of cadre of Progress Chasers with that of Clerks and in case the same is not found feasible, the matter of providing promotion avenues to the applicants in appropriate posts to the Railway cadre and Board. This shall be complied by the respondents within four months from the date a copy of this order is filed by the applicants.

There shall be no order as to costs.

  
Member (A.)

  
Vice Chairman