

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 8th day of August 2002

Hon'ble Maj Gen K K Srivastava, Member (A)
Hon'ble Mr. A K Bhatnagar, Member (J)

Original Application no. 731 of 1995.

1. Gopal Prasad, S/o late R P Verma,
R/o 16, Rajendra Nagar, Baluaghat,
Allahabad.
2. Rajesh Kumar, S/o Sri K L Srivastava,
R/o 323, Chak Raghunath, Naini,
Allahabad.
3. Vinay Kumar Saxena, S/o Sri D P Saxena,
r/o 299-C G.R.P. Line Colony Leader Road,
Allahabad.
4. Dilip Kumar Singh,
S/o Narendra Singh,
R/o 109-A Railway Colony No. 2,
Subedarganj, Allahabad.
5. Krishna Chandra Tripathi, S/o Sri Sudhakar Tripathi,
r/o 28-D Allapur Allahabad.
6. Sayyad Taukir Husan Abidi,
S/o Sri S.I.H. Abidi,
R/o Fatehpur Bicchuwa, Tagore Town,
Allahabad.
7. Arun Kumar Singh, S/o late Sri N P Singh,
r/o 489-B Smith Road, Allahabad.
8. Om Prakash Pal, S/o Shri Lala Ram,
r/o 293, Madhawapur Old Bairahana,
Allahabad.
9. A K Mehrotra, S/o late Sri Shyamji Mehrotra,
r/o 20, Gufrati Mohalla, Allahabad.

... Applicants

By Adv : Sri S Vijay & Sri A K Srivastava

2.

Alongwith

Original Application no. 732 of 1995.

Vinod Kumar, S/o Sri Heera Lal,
r/o 565-I, Railway Colony, Smith Road,
Allahabad.

... Applicant

By Adv : Sri S Vijay, Sri R Verma & Sri A K Srivastava

Versus

1. Union of India, through General Manager (P),
Northern Railway, Headquarters Office,
Baroda House, New Delhi.
2. Chief Commercial Manager, Northern Railway,
Headquarter Office, Baroda House,
New Delhi.
3. Chief Personnel Officer, Northern Railway,
Headquarter Office, Baroda House,
New Delhi.
4. Divisional Railway Manager, Northern Railway,
D.R.M. Office, Nawab Yusuf Road,
Allahabad.
5. Senior Divisional Commercial Manager,
Northern Railway, D.R.M. Office,
Allahabad.
6. Senior Divisional Personnel Officer,
Northern Railway, D.R.M. Office,
Nawab Yusuf Road, Allahabad.

... Respondents
(in both the OAs)

By Adv : Sri A K Shukla & Sri P Mathur (in OA no 731/95)

Sri S N Gaur (in OA no 732/95)

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O R D E R

Hon'ble Maj Gen K K Srivastava, Member (A).

Since the facts and relief sought in both the OAs are similar, both the OAs are being decided by a common order against which learned counsel for the parties have no objection. The leading case being OA 732 of 1995.

OA 731 of 1995

2. The applicants 9 in number were appointed in the cadre of goods clerk through Railway Service Commission on different dates from the year 1977 to 1982 in the initial grade of Rs. 260-430 (Old). The applicants were promoted on different dates till 1993 to the next grade of Rs 330-560 (old) Rs. 1200-2040 (RPS). The applicants were being utilized as Enquiry Cum Reservation Clerk (in short ECRC) for considerable period of their service. After closer of goods shed at Allahabad and other stations of Allahabad Division, number of posts in different grades of goods clerks were surrendered regularly by the respondents on different dates and the applicant having become surplus were put to work either as ECRC or in the office as Booking Clerk or in Cash section. The respondents did not declare the applicants as surplus and have been utilizing their services in other categories continuously. The applicants have not been absorbed in booking side, whereas similarly situated employees in Lucknow Division were absorbed in categories of identical posts or in other categories of higher grades. The respondents no. 4, 5 & 6 vide letter dated 20.1.1995 created 19 posts of ECRC at divisional level on 26.4.1995. The selection was held on 21.1.1995 in which several persons were called and the applicants were excluded, though the applicants had applied for the written test so that they could be absorbed as ECRC

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on which post they have been continuously working for more than 7 years. The applicants represented on 28.10.1994 & 25.12.1994 for their absorption in the cadre of ECRC. They also sent reminders on 16.1.1995 & 22.3.1995, but no action was taken by the respondents. When the matter was being agitated by the applicants, the respondents started withdrawing the applicants from the post of ECRC and started transferring them in other stations without clarifying to which post and against which vacancies they were being transferred. Hence the OA was filed which has been contested by the respondents.

O.A. no. 732 of 1995

3. The applicant was appointed in the cadre of goods clerk through Railway Service Commission on 3.5.1979 and belongs to SC category. Due to restructuring he was promoted as Head Clerk in the grade of Rs. 1400-2300 w.e.f. 1.1.1984. The applicant was posted at Allahabad Booking Office on 1.1.1989 to work as Batch Incharge. Allahabad goods shed was closed w.e.f. June 1988 and the goods shed of other divisions were also closed down. The staff working therein although having become surplus were not declared so by the respondents and their services have been utilized in other divisions of the Railways, against the superannuary post created either on the coaching side of the Booking Office, Parcel Office and/or in the office of Enquiry Cum Reservation. The applicant though working as booking incharge in Allahabad station since 1989 was paid his salaries etc in the grade of goods cadre and not of Batch Incharge of booking. His lien was maintained in the goods shed. The applicant before his posting in the booking office at Allahabad was imparted training also. After the closure of goods shed in Allahabad division number of posts in different grades in goods cadre

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have been surrendered regularly. The respondents even after surrendering several posts of Commercial Clerks in goods cadre and also after closure of the goods shed did not declare the staff working therein including the applicant as surplus. Instead the respondents utilized him in other categories of higher grades either in enquiry cum reservation or in booking maintaining the lien on the substantive posts of goods grade. The applicant, though working as Batch Incharge booking w.e.f. 1.1.1989, was being paid salary in the lower grade of Rs. 1400-2300 and not in the grade of Rs. 1600-2660. The applicant filed representation before respondent no. 4 on 2.4.1993 sent other representations on 9.6.1993 & 17.8.1993, but no decision was taken. Aggrieved by this the applicant filed OA no. 1472 of 1993 (Vinod Kumar Vs. U.O.I. & Ors) which was disposed of by order dated 30.9.1993 directing the respondents to finally dispose of the representation of the applicant. Infuriated by this, the respondents transferred the applicant from booking office to the goods shed at COD Cheoki on 23.10.1993. The Railway Board issued order dated 13.1.1982 to all the General Managers for the absorption of surplus staffs against the superannuary post in the same grade in which the incumbants were working or else to deploy the surplus staff either in the existing vacancies in identical posts or against the new posts. In compliance of the above Govt. order dated 15.1.1982, Lucknow division absorbed all such staffs who have been declared surplus in other categories of identical posts or in other categories of higher grades. Office of respondents no. 4, 5 & 6 created 19 posts of ECRC in Allahabad division but inspite of absorbing the applicant they did not allow him to appear in the written test. The applicant made 2 representations on 6.7.1994 & 29.9.1994 to respondents no. 4 & 1 respectively. The respondents did not

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take any action giving rise to this O.A.

4. Shri A K Srivastava, learned counsel for the applicant submitted that by not absorbing the applicant in Booking side he has been denied promotional avenues and has been subjected to monetary loss. The very fact that the applicant was deployed as Batch Incharge Booking (grade 1600-2660) and worked from 1989 to 1994 demonstrates his suitability and seniority for the post of Batch Incharge Booking. The grade of Batch Incharge Booking has been denied though the applicant is rightfully entitled for the same. The learned counsel has placed reliance on the decision of this Tribunal dated 9.1.1997 in OA no. 145 of 1991 S Alam & Ors Vs. Union of India & Others.

5. Sri A K Srivastava submitted that in the light of decision of this Tribunal Ernakulam Bench in M D Paul Vs Union of India & Ors, 1995 (1) ATJ 403 the applicant should be paid pay and allowances of the post on which he has worked. The learned counsel for the applicant submitted that the principle of pay fixation has already been fixed by Hon'ble Supreme Court in The Secretary Finance Department & Ors Vs The West Bengal Registration Service Association & Ors, 1992 (SC) SLJ 204.

6. Sri A K Srivastava learned counsel for the applicant further submitted that during 1995 there were 19 posts of ECRC against which the applicant and 9 other applicants of OA 731 of 1995 could be absorbed and regularised but respondents did not allow the applicants to appear in the selection. The action of the respondents is discriminatory because similarly placed employees of Lucknow division

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were absorbed and regularised on the booking side.

7. Sri A K Srivastava finally submitted that the applicant is being harassed by frequent transfers and also directing him to work as Chief Booking Supervisor, Naini, Chief Inspector Ticket at Naini etc.

8. The case has been contested by Sri S N Gaur & Sri P Mathur on behalf of the respondents. Sri P Mathur submitted that the salaries of the applicants and other members of the goods shed are charged from the consolidated funds of goods side. In case the request of the applicants is considered it will affect large number of booking clerks. On the matter of promotion and further advancement, the request of the applicant is not tenable under the statutory rules as contained in Chapter I of Indian Railway Establishment Manual Vol I (in short IREM). The applicants are not holding any lien on the post of booking clerk and cannot claim any seniority in that department. He also argued that the case does not fall under the category of deployment being surplus. There are vacancies in the cadre of goods department in the division as would be seen from the averment made in para 14 of the counter affidavit. The applicants are holding lien and seniority in the goods cadre and their advancement in the cadre can be done in their own avenue of channel of promotion.

9. Learned counsel for the respondents further submitted that the deployment of the applicants as ECRC will not create any right for change of cadre. They have been initially appointed as goods clerk, they hold lien

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on goods side for salary and promotion etc, therefore, theirs is a different cadre altogether. The learned counsel for the respondents has placed reliance on the decision of this Tribunal dated 1.8.1995 in OA no. 1317 of 1992. The OA no. 1317 of 1992 was dismissed being devoid of merit and the order of this Tribunal has been upheld by Hon'ble Supreme Court by order dated 1.11.2000 in Civil Appeal no. 11863 of 1995.

10. We have heard learned counsel for the parties, considered their submissions and perused records.

11. In Commercial department there are two streams viz goods side and booking side. In both the OAs applicants have prayed for direction to respondents to absorb the applicants in booking side as they were working in the booking side for number of years. Besides they should be paid equal pay for equal work.

12. Admittedly the applicants have worked on the booking side for number of years but they have been paid lower salary applicable for the goods side. The basic principle of pay fixation is that the pay scale must be commensurate with the task to be performed and the responsibility to be undertaken. This has been laid down by Hon'ble Supreme Court in Secretary Finance Department's case (supra). Therefore, the action of the respondents in not paying the salary of the post on which the applicants worked is incorrect and illegal. Had the arrangement deploying applicants on the booking side been for a short duration, the plea of the respondents is acceptable but certainly not in the instant case where the services

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of the applicants have been utilized on the goods side for number of years. In this ~~case~~ connection we would like to point out that applicant no. 1 in OA 731 of 1995 Sri Gopal Prasad has worked for more than 20 years out of total of 25 years in the reservation cadre.

13. In Allahabad Division number of goods shed were closed and many posts were surrendered which is not disputed by the respondents. In that circumstances the respondents should have taken adequate measures to ensure that the applicants in both OAs were afforded opportunity to get absorbed on the booking side as has been done in the neighbouring Lucknow division.

14. We have also gone through the judgment dated 9.1.1997 of this Tribunal in OA no. 145 of 1991 S Alam & Ors (supra) and this Tribunal in the said order directed to regularise surplus staff applicant no. 10 as ECRC. In the instant case the respondents did not declare the applicants as surplus. Respondents have pleaded that the posts are lying vacant in the goods side and the services of the applicants have been utilized on booking side on their own request. Therefore, they cannot claim the pay of post on which they worked. We do not find any force in this submission. If there were vacancies/posts on the goods side, where was the need for utilizing the services of the applicants on the booking side as ECRC or Batch Incharge Booking. The staff of the goods side were absorbed and regularised in the booking side in Delhi Division as per the decision of General Manager in PNM meeting held on 5/6.9.1989. It was decided in the said

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meeting against item no. 18/89 that the case for regularisation will be considered in respect of those who have worked continuously for 3 years (Ann A16). In our opinion respondents cannot apply different norms for the staff of Allahabad Division. Besides all the applicants except applicants no. 8 & 9 have done practical training as ECRC in May 1985 and all of them were, thereafter, posted as ECRC at Allahabad station against supernumerary posts and from the year 1985 to the date of filing this OA ie 26.7.1995, they have been continuously utilized by the respondents in the same cadre as averred by applicants of OA 731 of 1995 in para 4.6, which has not been denied by the respondents in their counter reply.

15. The learned counsel for the respondents cited the decision of this Tribunal dated 1.8.1995 in OA no. 1317 of 1992 by which the OA having similar controversy was dismissed lacking merit and the decision of this Tribunal has been upheld by the Hon'ble Supreme Court while deciding CP no. 11863 of 1995 with CP no 11864 of 1995. In our opinion the facts in OA no. 1317 of 1992 are easily distinguishable as the applicants (50 in number) of OA no. 1317 of 1992 did not belong to Commercial side and their prayer on closure of Loco Shed and declared as surplus was for absorption in the Commercial department whereas in the present OAs, the applicants belong to Commercial department itself.

16. In the facts and circumstances and our aforesaid discussions both the OAs are allowed with following directions :-

1. all the applicants shall be paid difference between salary payable on the posts they held

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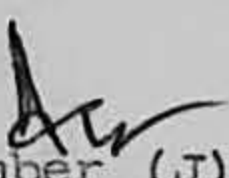
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and that payable on the goods side for the entire period they were working on posts of higher scale.

ii. action should be taken to regularise the services of those applicants in the booking side who were continuously working for more than 3 years on 26.7.1995 ie date of filing of both the OAs.

iii. the aforesaid directions shall be complied with within a period of three months from the date of communication of this order.

17. Both the OAs ie OA 731 of 1995 and 732 of 1995 stand disposed of with no order as to costs.


Member (J)


Member (A)

Dated : 08/08/2002

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