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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

(THIS THE 21st DAY OF *Versus* 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr.S.N.Shukla, Member (A)

Original Application No. 1551 of 2002
(U/S 19, Administrative Tribunal Act, 1985)

1. Pradeep Kumar Sharma,
Son of Late Shri B.N.Sharma,
R/o House No.760, Subhash Nagar,
Bareilly. Presently working as
Enquiry Cum-Reservation Supervisor,
Northern Railway, Bareilly Junction.
2. Farhan Ali Shamshi,
Son of Shri Farman Ali Shamshi,
R/o Angoori Bagh, Rampur
Presently working as Inquiry-Cum-Reservation
Supervisor, Northern Railway,
Rampur Junction.

.....Applicants

Present for Applicants: Shri S.K. Om, Advocate

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Senior Divisional Personnel Officer,
Northern Railway,
Moradabad.
4. V.P. Singh, Son of Shri Pancham Singh
R/o 214 Civil Lines,
Bareilly.

.....Respondents

Present for Respondents:Shri P. Mathur, Advocate

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O R D E R

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

The facts of the case as per the O.A. are as under:-

1. While working as Head Inquiry- Cum-Reservation Supervisor, applicant No.1 appeared against 10% graduate quota as Commercial Apprentice and after qualifying the same, he was posted as Inquiry-Cum-Reservation Supervisor in the pay scale of Rs.1600-2660/5500-9000.
2. While working as Senior Goods Clerk, applicant No.2 appeared in the selection of Commercial Apprentice against graduate quota and qualified the same. Later on, applicant No.2 was posted as Inquiry-Cum-Reservation Supervisor in the pay scale of Rs.1600-2660/5500—9000 w.e.f. 5th September, 1998.
3. The applicants are the senior most Inquiry-Cum-Reservation Supervisors Vide Annexure No.2. The next promotional post is Chief Reservation Supervisor (Selection post) in the scale of Rs.2000-3200/6500-10500.
4. On 3rd August, 2001 respondent No.2 notified the selection for two posts (i-UR and 1 S.T.) of Chief Reservation Supervisor. Name of the applicants find place at serial No.1 and 2 respectively. Later on the notification dated 3.8.2001 was cancelled. Another Notification was dated 14th November, 2002 was issued by the respondent No. 2, Annexure No.4. Written examination was scheduled to be held on 20.12.2002. Applicants' names were not found in the list of the

eligible candidates and they could not receive any information regarding the notification. However, immediately after coming to know about the notification applicants filed a representation Annexure 5 on 9.12.2002 requesting therein that they were the senior most Inquiry-cum-Reservation Supervisors, their name should also figure in the list and, as such, requested the respondents that they be permitted to appear in the written test for the post of Chief Reservation Supervisor to be held on 14.12.2002.

5. Supplementary examination was yet to be held. When the petitioners are senior most Inquiry-Cum-Reservation Supervisor, there is no justification for the respondents in not permitting them to appear in the selection for the next higher post of Chief Reservation Supervisor and the action of the respondents in not permitting them to appear is wholly arbitrary and illegal.

6. The action of the respondents is also violative of Article 14 and 16 of the Constitution of India.

7. The relief as per the O.A. sought are as under:-

(a) To issue a writ, order or direction in the nature of certiorari quashing the order dated 14th November, 2002 (Annexure No.4) passed by the respondent No.2 so far it relate to list of eligible candidates.

(b) To issue a writ, order or direction in the nature of mandamus commanding the respondents to include the name of the applicants in the list of the eligible candidates at Sl.No.1 and 2 respectively

8. The Respondent No.4 has contested the O.A. According to him, both the applicants were initially appointed under the cadre of

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Commercial Apprentices and not under the cadre of Inquiry-Cum-Reservation Clerk. Both the above cadres have different channel of promotion as per the Railway Establishment Manual, Volume-1. The persons working in the Commercial Apprentice cadre, cannot be posted in the Inquiry-Cum-Reservation Cadre and they have to be posted and further promoted in their own cadre.

9. In the year 1998, both the applicants were posted as Reservation Supervisor in the Enquiry-Cum-Reservation Cadre and thereafter, being aggrieved by the aforesaid action of the respondent No.2 and 3, some raised objection and made a representation to the respondent No. 2 with a copy to the Chief Personnel Officer stating that on account of the aforesaid induction of the applicants in the Inquiry-Cum-Reservation Cadre, from the Commercial Apprentice Cadre, the seniority as well as further chances of promotion of the answering respondent was seriously affected inasmuch as the Inquiry-Cum-Reservation Cadre is a very small cadre in which the chances of promotion are very rare.

10. The matter was being agitated by the Enquiry-Cum-Reservation Clerk cadre staff and ultimately, the matter was taken up in the P.N.M through the Northern Railway Men's Union wherein the aforesaid matter was taken up as the Item No.30/2002 and it was decided that two Commercial Apprentices (applicants) have wrongly been posted in the cadre of Enquiry-Cum-Reservation clerk whereas they should have been posted in their parental cadre and it was also decided that in the next seniority list, their names shall be deleted and they shall be adjusted in their own parental cadre of Commercial

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Apprentice. The aforesaid decision of the P.N.M was communicated to all concerned vide letter dated 6.9.2002 with the clear stipulation to implement all those decisions which had been shown as final or F/I for which no separate order shall be passed and that the decision taken in the P.N.M is final-Annexure CR-III. After the decision in the PNM vide letter dated 6.9.2002, their names have been deleted from the seniority list and they have been adjusted in their parental cadre.

11. That ERC Grade-II (Rs.1400-2300) is non-selection post applicant No.1 was promoted in ERC grade II (Rs.1400-2300) vide office letter dated 17.1.1995. As per General Manager (P), New Delhi's letter No.844 E/183/XIX/SIC dated 21.11.1995, was placed on the panel of Commercial Instructor in grade Rs. 1600-2660 and was posted at Zonal Training Centre, Chandausi vide letter dated 21.11.1995 Annexure R-2.

12. Selection for the post of Commercial Apprentices grade Rs.1600-2660 (NP) against 10% serving graduate quota was initiated by the Division vide office letter dated 21.11.1996 Annexure R-3 the applicants were applied and were empanelled for the post of Commercial Apprentices grade Rs.1600-2660 (RPS) along with four others vide office letter dated 22.9.1997.

13. Both the applicants are posted in the cadre of E.R.C. A representation was received from ERCs against the posting of Commercial Apprentices in the cadre of ERCs.

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14. Commercial Apprentices will be recruited not only in the category of Commercial Inspector but for the entire commercial group which will include Booking Clerks, Goods Clerks and Ticket Checking staff for Commercial Apprentices i.e. Applicant Nos. 1 and 2 are posted in E.R.C cadre, was the issue raised by Northern Railway Men's Union in the PNM meeting and the issue was sent to Head quarter's office vide Sr.D.P.O's letter No.E/10/Goods/Comml/App/Part-3 dated 17.5.1999 and GM (P) New Delhi's letter No.752-E/552/Misc/ERC dated 24.5.99 on account of the fact that they were adjusted in their parental cadre.

15. The Official respondents have also filed supplementary counter annexing certain documents.

16. The applicants have filed their rejoinder affidavit in which they have reiterated the contentions raised in the O.A. In addition, they have made certain additional pleas also relying upon Annexure RA-3 letter dated 21.5.1987. They have also contended that the administration has come under heavy pressure of the unions.

17. When the case was listed for hearing Shri S.K. Om counsel for the applicants not being present, in view of the provisions of Rule 15 of the Central Administrative Tribunal Procedure Rules, 1987 the O.A. was considered on merit and order reserved giving liberty to parties to file written submissions. No written submissions were filed on behalf of the applicant. In their written submission the official respondents have contended as here under:-

(a)

(a) Applicants No.1 and 2 belong to the cadre of Commercial Apprentices and were promoted against 10% graduate quota through LDCE in the grade 1600-2660. The names of the applicants along with one Shri Kafyat Ullah were mentioned. Shri Kafyat Ullah has also filed an original application before this Hon'ble Tribunal being O.A. No.39 of 2003, Kafyat Ullah Vs. Union of India and Others seeking the same direction for not changing the category and permitting him to appear in the selection notified by the respondents. The claim of that applicant was duly considered by this Tribunal vide judgment and order dated 26.08.2010 and was rejected.

(b)

(b) The Railway Board vide letter dated 21.5.1987 has provided, that the Commercial Apprentices will be recruited not only from the category of Commercial Inspector but for the entire commercial groups, which includes booking Clerk, Goods Clerk and Ticket Checking Staffs for Commercial Apprentices. The clarification would further reveal that the Commercial Apprentices in the grade of Rs.5500-9000 cannot be considered to be posted in the cadre of ERC as per the channel of promotion and as such the very claim of the applicants for inclusion of their name is not tenable. They can very well claim their promotion in their respective parent cadre for the posts of Chief Parcel Supervisor/Chief Goods Supervisor only and not otherwise.

18. The applicants belonging to a Commercial cadre being a Commercial Apprentice posted under 10% serving graduate quota

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they can only be promoted to the post of Chief Parcel Supervisor and not as Chief Reservation Supervisor in the grade of s.6500-10500.

19. The pleadings have perused and the written submission by the respondents considered. Commercial apprentices are governed by Rule 130 of the IREM Vol I which has been as under:-

(iv) COMMERCIAL APPRENTICES

130.

1. 25% of the ***{posts} in the categories of Commercial Inspectors, Claims Inspectors, Rates Inspectors, Chief Booking/ Parcel /Goods Clerks in Scale Rs. 1600-2660 {5500-9000} will be filled by recruitment Commercial Apprentices as under

i. #### {15% plus shortfall, if any, against LDCE quota as at (ii) below, by direct recruitment through the Railway Recruitment Boards; and}

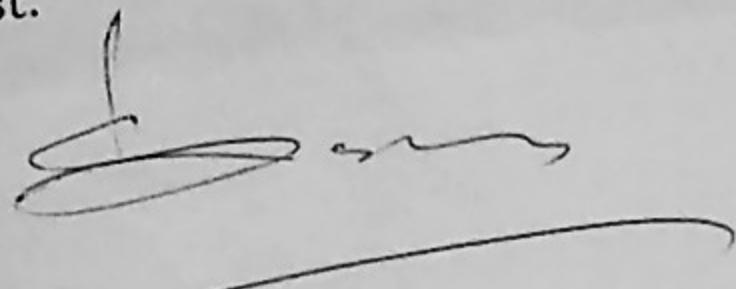
[Authority : Ministry of Railway 's letter No. E(NG)I-99/PM1/29 dated 20.04.2000 (RBE 69/2000)]

ii. 10% by Limited Departmental Competitive Examination from amongst serving graduates in Commercial Department (other than Ministerial) upto 40 years of age.

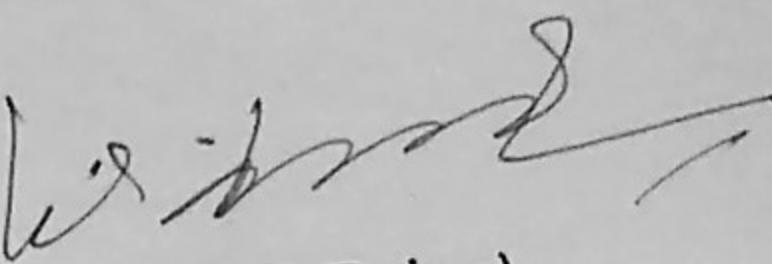
20. The commercial apprentice by itself does not form a cadre. It is a compendious name of apprentices who are thereafter distributed to various wings such as commercial, traffic etc., and provision does not exist for posting a commercial apprentice as Enquiry cum Reservation Cadre. This was precisely the grievance of some of those in the said ERC Cadre which they had brought to the notice of the Chief Personnel Officer stating, that on account of the aforesaid induction of the applicants in the Inquiry-Cum-Reservation Cadre, from the Commercial Apprentice Cadre, the seniority as well as further chances of promotion of the answering respondent was seriously affected inasmuch as the Inquiry-Cum-Reservation Cadre is a very small cadre

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in which the chances of promotion are very rare. The respondents have considered the case of the applicants but in view of the clear legal position, they could not permit the applicant to be considered for the post of Chief Reservation supervisor. Of course, the applicants have other avenues such chief Parcel Supervisor and Chief Goods Supervisor. Hence, their promotion chances are not depleted. Hence, the OA being devoid of merits, **the same is dismissed.** No cost.



(S.N. Shukla)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)

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