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(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 3rd day of October, 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN.
HON'BLE MR. K.S. MENON, MEMBER-A.**

ORIGINAL APPLICATION NO. 151 OF 2006

1. Mahendra Nath Tiwari, S/o Sri L.N. Tiwari, R/o 1131-A, Shiv Nagar, Allahpur, Allahabad.
2. Rakesh Prakash Gupta, S/o Sri S.P. Gupta, R/o 36-A, EWS, Kalindipuram, Rajrooppur, Allahabad.
3. Mohd. Miyan, S/o Sri Sadruddin, Commercial Inspector, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
4. Vinod Kumar Lal, S/o Sri Banvasi Lal, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
5. Pankaj Kumar Tripathi, S/o Sri Paras Nath Tripathi, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
6. Santosh Kumar Tripathi, S/o Sri A.P. Tripathi, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
7. Y.D. Pathak, S/o Sri N.D. Pathak, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
8. Afshar Javed, S/o Mohammad Habib, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
9. Anil Kumar Yadav, S/o Sri R.P. Yadav, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.

.....Applicants.

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. General Manager (P), North Central Railway, Allahabad.
3. Chief Commercial Manager, North Central Railway, Allahabad.

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4. Sanjay Kumar Pandey, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.
5. Vashwaner Kumar Dwivedi, CMI, Office of Chief Commercial Manager, N.C. Railway, Allahabad.

..... Respondents

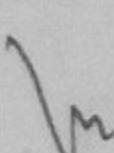
Present for the Applicants: Sri B.K.S. Raghuvanshi
 Present for the Respondents : Sri Saumitra Singh
 Sri S.S. Sharma

O R D E R

BY HON'BLE MR. JUSTICE KHEM KARAN, V.C.

Above nine applicants, working as Chief Commercial Inspector (in short C.M.I) in North Central Railway, Allahabad Division in pay scale Rs. 5500-9000/-, have prayed for quashing the communication dated 28.12.2005 (Annexure- A) and 23.01.2006 (Annexure- B) issued by the respondent No. 2 coupled with prayer for commanding the respondents No. 2 and 3 to publish amended seniority list and not to give effect to the existing seniority list.

2. It appears from the pleadings on record that on creation of North Central Railway, these applicants came to it before 30.04.2004 as CMI. According to the applicants, there are four different grades in the cadre of CMI. Initial grade is of Rs. 5000-8000, next grade is of Rs. 5500-9000, third grade is Rs. 6500-10,500/- and upper most grade is of Rs. 7450-11,500/-. They say, C.M.I grade Rs. 5500-9000 is a non selection grade to which induction is to be made from lower grade and only 15% of the vacancies should be filled by direct recruitment through Railway Recruitment Board. According to them, there are only seven sanctioned post in the grade of Rs. 5500-9000/- and by cadre closing date i.e. 30.04.2004, 12 C.M.I.s had already joined including two Commercial Apprentice. They say, there were no vacancies in the grade of Rs. 5500-

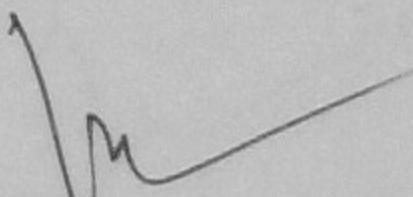


9000/- so as to accommodate respondent Nos. 4 and 5. It appears that the respondent No. 4 namely Sri Sanjay Kumar Pandey was working as Commercial Inspector in Sonepur Division and on his request he joined North Central Railway in scale of Rs. 5500-9000 some time in September, 2004. Likewise respondent No. 5 namely Sri Vashwaner Kumar Dwivedi, earlier to his joining here on 03.12.2004 as C.M.I in pay scale Rs. 5500-9000, was working as Chief Commercial Clerk in Maysoor Division of another Railway. The contention of the applicants is that firstly, both the respondents No. 4 and 5 could not have been accommodated here in N.C.R in the grade of Rs. 5500-9000/- as there were no vacancies in that grade so as to accommodate them; secondly, the respondent No. 4, who was promoted in C.M.I cadre, could not have been inducted here under 15% quota of direct recruitment and thirdly, the respondent No. 5, who was in the cadre of Commercial Clerk in Maysoor Division, could not have been absorbed here as C.M.I in the grade of Rs. 5500-9000/-. They want to say that if these two persons namely respondent No. 4 and 5 were accommodated here as C.M.I, they ought to have been assigned bottom Seniority, below all those CMIs, who were already working here in any grade. They say that ^{applicants} ~~they~~ have wrongly been shown junior to the respondents No. 4 and 5 in seniority list, copy of which is Annexure- B to the O.A. It appears that their representation for showing them senior to respondents No. 4 and 5, has been rejected vide communication dated 28.12.2005 (Annexure- A) and they have not been shown in Notification dated 23.01.2006, amongst the candidates to be considered for promotion to the next grade of Rs. 6500-10500/-.

3. Respondents No. 1 to 3 have filed their reply, contesting the claim almost on the same lines as disclosed in communication dated

28.12.2005. They say that in C.M.I grade Rs. 5500-9000, there were only seven posts but at the time of considering the request of respondents No. 4 and 5, to transfer them to N.C.R in that grade, the vacancies existing in the entire cadre (all of the grade of C.M.I) were taken into consideration and it was found that there were 14 vacancies in the entire cadre, out of which two vacancies fell under 15% direct recruitment. They say that respondent Nos. 4 and 5 have accordingly been assigned bottom seniority in scale of Rs. 5500-9000. They have stated in para 7 of their Counter Reply that the respondent No. 5 was appointed as Commercial Apprentice in the grade Rs. 5500-9000/- in Maysoor Division and was posted as Chief Commercial Clerk there. They say that in some of the Railways, Commercial Apprentice can be posted in any stream of Commercial cadre i.e. Coaching, Commercial, Parcel, Booking Clerk etc. and this posting in different cadres is interchangeable and so no objection could be taken to the posting of respondent No. 5 here as C.M.I in grade of Rs. 5500-9000/-.

4. Respondent No. 5 has also filed his reply, stating in so many words that by the time, he joined here in N.C.R on 03.12.2004 as C.M.I in pay scale Rs. 5500-9000/-, none of the present applicants was in that scale. In para 7 to 11 of the counter affidavit of respondent No. 5, it has been demonstrated that there were no sufficient number of vacancies in the cadre of Rs. 5500-9000/- in 2005, to promote all the applicants to that grade. He says none of the applicants was upgraded to the grade of Rs. 5500-9000/- as a result of restructuring. What remarkable is that the averment made in para 7 to 11 of the Counter Affidavit of respondent No. 5, have not expressly been refuted in the Rejoinder Affidavit filed by Sri Mahendra Nath Tiwari in November, 2006. The respondent No. 5 has



tried to say that the applicants, who got promoted to the scale of Rs. 5500-9000/- after his joining on 03.12.2004 in the same scale, cannot claim seniority over and above him.

5. It transpires from perusal of interim order dated 20.02.2006 that this Tribunal restrained the respondents from pronouncing the result of selection, which was scheduled to take place on 26.06.2006 for the next grade of Rs. 6500-10,500/- as per the Notification dated 23.01.2006. That interim order is still continuing.

6. We have heard Sri B.K.S. Raghuvanshi, learned counsel appearing for the applicants, Sri S. Sing for official respondents and Sri S.S. Sharma for private respondent No. 5 and have also perused the entire material on record.

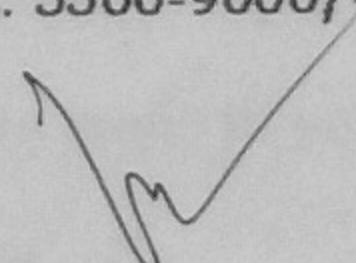
7. Arguments of Sri Raghuvanshi are three fold. His first contention is that in absence of any vacancy in grade of Rs. 5500-9000/- in N.C.R, Headquarter at Allahabad, respondent Nos. 4 and 5 could not have been allowed to join here as C.M.I in the grade of Rs. 5500-9000/-. His second argument is that the respondent No. 4 did not come within 15% direct recruitment quota in the relevant grade, therefore, he could not have been transferred to this Railway in that scale and likewise respondent No. 5, who was working as Chief Commercial Clerk in Maysoor Division, could not have been allowed to join here as C.M.I in grade of Rs. 5500-9000. His third argument is that in any case, both of them ought to have been placed at the bottom of the entire cadre of C.M.I, including all the grades. He has also contended that the contention of respondents No. 1 to 3 are not correct in saying that for accommodating respondents No. 4



and 5, vacancies existing in different grades of C.M.I cadre could have been taken in to consideration. He argues that the order dated 03.12.2004 in respect of respondent No. 5 was interpolated by adding "as ^{afterwards} C.M.I grade Rs. 5500-9000/-" to a bottom seniority." Learned counsel has taken us through the seniority list (Annexure- B) and other papers on record.

8. On the other hand Sri S.S. Sharma, learned counsel appearing for the respondent No. 5 has argued that the applicants, who came to this grade of Rs. 5500-9000/- in the cadre of C.M.I, after the joining of respondents No. 4 and 5 in grade Rs. 5500-9000/-, cannot claim seniority over and above them. He has also contended that as demonstrated in para 4 to 11 of the Counter Affidavit of respondent No. 5 and not controverted by the applicants, induction of most of the applicants to the grade of Rs. 5500-9000/- in 2005 was without any vacancy in that grade, so they cannot successfully challenge the induction of respondent Nos. 4 and 5 as C.M.I in grade of Rs. 5500-9000/- Citing Railway Board's Circular dated 15.05.1987, Sri Sharma has stated that Commercial Apprentice can be posted as Chief Parcel Clerk ,Chief Goods Clerk and may be changed from one side to another and so no objection could be taken to the posting of Respondent No. 5 as C.M.I in grade of Rs. 5500-9000/-.

9. Sri Saumitra Singh, learned counsel for the respondents No. 1 to 3 has also tried to support the order dated 28.12.2005 as well as the seniority list wherein the respondent No. 4 and 5 have been shown senior to the applicants in C.M.I grade of Rs. 5500-9000/-.



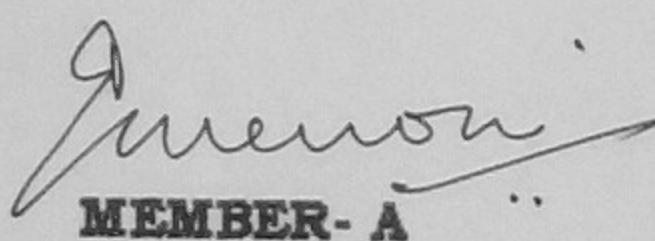
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10. We have considered the respective submissions . It appears more than evident from material on record and it is also not in dispute that in September and December, 2004, when the respondents No. 4 and 5 joined in N.C.R as C.M.I in grade Rs. 5500-9000/-, none of the applicants was in that grade and they were promoted to that grade later on in 2005. Learned counsel for the applicant does not dispute that the seniority in the cadre of CMI is to be determined grade wise. In other words, there is a graded seniority of C.M.Is. C.M.I in the grade of Rs. 7500-11,500/- have to be placed in different seniority list as per their grade and likewise CMIs in grade Rs. 5500-9000/- have to be placed in a different seniority list. If the induction of respondent Nos. 4 and 5 as C.M.I in grade of Rs. 5500-9000/- is not bad for any reason, the applicants , who were not in that grade by the time respondents No. 4 and 5 joined here, cannot successfully challenge the seniority list. The grounds taken by the applicants for challenging the transfer of respondents 4 and 5 to the N.C.R does not appeal to us at all. When it is not in dispute that Commercial Apprentice can be posted in different streams including in the cadre of Commercial Clerks, then how objection can be taken by the applicants to the posting of respondent No. 5 in CMI cadre in grade Rs. 5500-9000/-. Respondent No. 4, according to the applicants, was already Commercial Inspector in Sonepur Division before he came to N.C.R on his own request. As regards the question as to whether there were vacancies in the grade of Rs. 5500-9000/-, the respondents say in their communication dated 28.12.2005 (Annexure- A to the O.A) that the vacancies of the entire cadre of C.M.I could have been taken in to account and on taking the same in to account, vacancies were there so as to accommodate respondents No. 4 and 5. No doubt, it transpires from the averments made in para 4 of O.A and in the

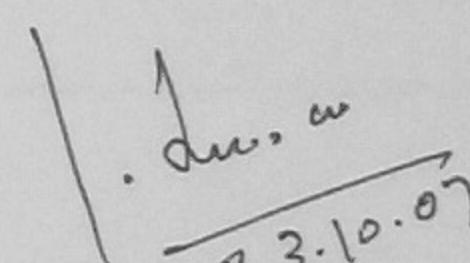
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Counter Affidavit of respondent No. 5 that persons were taken in grade of Rs. 5500-9000/- without caring for the number of vacancies. The respondent Nos. 4 and 5 came to that grade long back in September and December, 2004. If the applicants were aggrieved of their induction in grade of Rs. 5500-9000/- on the ground that there were no vacancies or on any other ground, the matter should have been agitated then and there. The respondents No. 4 and 5, to our mind, were rightly assigned bottom seniority in the grade of Rs. 5500-9000/-. The applicants, who came to that grade later, have no case to say that they should rank senior to respondents No. 4 and 5 in the grade Rs. 5500-9000/-. Since the grade of Rs. 5500-9000/- had element of direct recruitment (15%), so induction of respondents No. 4 and 5 from other Railways was not impermissible.

11. We are of the view that the case of the applicants is devoid of any merits. The O.A is accordingly dismissed but with no order as to costs. Interim order granted by this Tribunal dated 20.02.2006 and extended from time to time, is hereby vacated.



MEMBER- A



3.10.07

VICE-CHAIRMAN.

/Anand/