Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.337 of 2006

Allahabad, this the 19th day of December, 2007

Hon'ble Mr. G. George Paracken, Member(J)
Hon'ble Mr. K.S. Menon, Member (A)

Umesh Prasad S/o Mahendra Prasad,
R/o 106A, Jateypur Colony, Railway Colony,
Gorakhpur, At present Senior Clerk Balika Inter College, N.R. Railway, Gorakhpur.

..Applicant

(By Advocate :Shri S.N. Tripathi)

Versus

1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. General Manager, Northern Eastern Railway, Gorakhpur.
3. Chief Personnel Officer/General Manager (Personnel), Gorakhpur, North Eastern Railway, Gorakhpur.
4. Senior Personnel Officer, Head Quarter, Gorakhpur, North Eastern Railway, Gorakhpur.

..Respondents.

(By Advocate : Shri S. K. Anwar)

Alongwith Original Applciation No.338 of 2006

Raj Dev S/o Late Ramjas,
R/o Village Ekia Basar,
P.O. Bagahalgarh Via Bhawapur,
Gorakhpur,
At present senior Clerk C.P.O. Office,
N.R. Railway, Gorakhpur.

..Applicant.

(By Advocate : Shri S.N. Tripathi)

Versus

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1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. General Manager, Northern Eastern Railway, Gorakhpur.
3. Chief Personnel Officer/General Manager (Personnel), Gorakhpur, North Eastern Railway, Gorakhpur.
4. Senior Personnel Officer, Head Quarter, Gorakhpur, North Eastern Railway, Gorakhpur.

..Respondents

(By Advocate : Shri S.K. Anwar)

Alongwith Original Application No.339 of 2006.

Jaddo Ram S/o Late Raja,
R/o Bassalatpur, Gorakhpur.
At present Senior Clerk C.P.O. Office,
N.R. Railway, Gorakhpur.

..Applicant

(By Advocate : Shri S.N. Tripathi)

Versus

1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. General Manager, Northern Eastern Railway, Gorakhpur.
3. Chief Personnel Officer/General Manager (Personnel), Gorakhpur, North Eastern Railway, Gorakhpur.
4. Senior Personnel Officer, Head Quarter, Gorakhpur, North Eastern Railway, Gorakhpur.

..Respondents

(By Advocate : Shri S.K. Anwar)

Alongwith Original Application No.341 of 2006.

Ashok Kumar Tiwari, S/o Late Kapil Dev Tiwari,
R/o 640/P, Shiv Nagar Colony, Basalatpur,
Gorakhpur.
At present Senior Clerk Chief Administration Office
C.A.O./C/N.R. Railway, Gorakhpur.

..Applicant.

(By Advocate : Shri S.N. Tripathi)

Versus

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1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. General Manager, Northern Eastern Railway, Gorakhpur.
3. Chief Personnel Officer/General Manager (Personnel), Gorakhpur, North Eastern Railway, Gorakhpur.
4. Senior Personnel Officer, Head Quarter, Gorakhpur, North Eastern Railway, Gorakhpur.

..Respondents

(By Advocate : Shri S.K. Anwar)

O R D E R

By Hon'ble Mr. G. George Paracken, Member(J)

The issue raised in these four Original Applications is the same and, therefore, they are disposed of by this common order.

2. The brief facts of the case are that while the applicants were working as Senior Clerks in the scale of pay of Rs.4500-7000/- under the respondent No.3, namely, the Chief Personnel Officer/ General Manager (Personnel) Gorakhpur, North Eastern Railway, the letter has issued the impugned letter dated 30.1.2006 declaring 26 posts of Head Clerks in the scale of pay of Rs.5000-8000/- and 19 posts of Senior Clerks in the Scale of pay of Rs.4500-7000/- as surplus. The applicants were included the category of Senior Clerks. By the very same letter, the surplus Head Clerks/ Senior Clerks were also given the option to be re-deployed as ECRC in the scale of pay of Rs.4500-7000/-, Commercial Clerks in the scale of pay of Rs.3200-4900/- and Ticket Collectors in the scale of pay of Rs.3050-4590/-. Those who have opted to be re-employed were required to apply for such re-deployment in the prescribed

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forms by 10.2.2006. They were also required to under go screening test on 21.2.2006 and 23.2.2006. As the applicants did not attend the screening test on the aforementioned dates, by Annexcur-A-2 letter dated 24.2.2006, the 3rd respondent gave them one more opportunity to appear for the test on 28.2.2006. By the Annexure-3 letter dated 27.2.2006, the 3rd respondent informed all the surplus staff that they stood released from their existing posts w.e.f. 27.2.2006 and directed them to report the Area Manager's Office, Gorakhpur. They were also informed that their attendance will be maintained in future in the said office and their posting will depend upon their screening, training etc. Further, their salary will not be drawn in Headquarter w.e.f. 28.2.2006.

3. Earlier, the applicants in these OAs had filed a joint application before this Tribunal vide OA No.281/06. However, by order dated 24.3.2006, this Tribunal rejected the application for joining together, but in view of the prima-facie case made by the applicants their prayer for interim relief was considered and stayed the operation of the Annexure-A-3 impugned letter dated 27.2.2006. After these individual applications have been filed also. The aforesaid interim stay against the Annexur-A-4 letter dated 27.2.2006 was granted to all the applicants individually.

4. The contention of the applicants in these OA is that impugned annexure-1 order would amount to an order of reversion as they have been forced to accept the lower post in the scale of pay of Rs.3200-4000/- as against their present scale of

Rs.4500-7000/-. According to them, even by granting pay protection, the respondents cannot exonerate themselves from affecting their seniority by forcing them to accept the bottom seniority in the commercial department in the lower grade. They contended that the respondents could have re-deployed them as Senior Commercial Clerks in the scale of pay of Rs.4500-7000/- itself protecting their pay and seniority. They have also contended that the Senior Personal officer, Mechanical Workshop who has issued the Annecure-1 order had no power to declare the staff as surplus. The other contention of the applicants is that they do not have the requisite qualifications to hold the re-deployed posts and they cannot be compelled to under go the screening test and training for the lower post. They alleged discrimination in as much as Smt. Smriti Dutta and Km. Meera Sidkar who were juniors to the applicants in the seniority list of Senior Clerks have been retained in the office of 3rd respondents itself by creating the new posts of Teacher. Further, the juniors S/Shri Inder Prasad, Ram Bachan, Ashok Kumar Smt. Salestina Tete and A.K. Kharwar, who were far below in the seniority list of Senior Clerk as Sl. No. 98 to 108 have also been retained violating the Principles of "first come last go". They also submitted that they have the right to know the reasons and criteria for declaring them as surplus staff but the respondents have not given any reply to their application to that effect. They have also submitted that there were 18 non surplus employees who have given options for joining the surplus list of employees whereas the respondent No.3 did not consider the same and declared the applicants as surplus.

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5. The respondents in their reply, while admitting that the applicants were working as Senior Clerks in the scale of pay of Rs.4500-7000/- submitted that according to the existing instruction issued by the Railway Board, surplus staff should be considered on priority basis for re-deployment in the department by imparting necessary training and without insisting on the prescribed educational qualifications as applicable to those posts except for surplus Maintenance Staff for the absorption/re-deployment in running categories. The surplus staff working against grades in which an element of direct recruitment exist, they should be straight way re-deployed against direct recruitment vacancies including those in other department after necessary screening. Further, where it is not possible to re-deploy the surplus staff as indicated in the above manner, such surplus staff should be re-deployed in alternative categories against vacant post, even if those vacancies are in the lowest grade. However, there is a provision for protection of their pay when re-deployed in lower alternative post. The respondents have, therefore, refuted the contention of the applicants that the re-deployment in the lower alternative post with protection of pay was reversion from the higher post to the lower post. They have also stated that the applicants have refused to undergo screening for re-deployment in alternative post/categories in ECRC, CC and TC in spite of the directions given to them by the Annexure-1 & 2 letters dated 30.1.2006 and 24.2.2006. As regards the cases of the Smt. Smriti Dutta and Km. Mera Shikar the respondents have submitted that they were working as Senior Clerks at

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the time of declaring the applicants and other surplus but they had been adjusted against the vacancies of Teacher in the N.E. Railway Boys Inter Collage Gorakhpur and N.E. Railway Senior Secondary School Gorakhpur for advancement of cultural activities as they were earlier recruited in the Railway against Cultural Quota vacancies. As regards the juniors of the applicant Shri Inder Prasad, Ram Bachan, Ashok Kumar Salestina Tete and A.K. Kharwar were concerned, the respondents submitted that they belong to SC/ST categories and in terms of Ministry of Home Affairs OM No.3/27/65/CSII dated 25.2.66, while declaring the staff surplus in a particular cadre, the SC and ST employees in those grades should not be included so long as the total number of SC /ST employees in those grades has not reached the prescribed percentages of reservation for them in the concerned grade/cadre and it was under those policy decision only the aforementioned SC/ST employees were not declared surplus. The respondents have also denied that the applicants were not given the requisite information under the right Information Act. They have field a copy of the letter dated 3/4 -10-2006 from the General Manager (Personnel), North Eastern Railway by which detailed information has been supplied to the applicants.

6. We have heard Shri S.K. Anwar learned counsel for the respondents at length and perused the documents filed by the parties very carefuly. The counsel for the applicant Shri S.N. Tripathi has also submitted a detailed written arguments and the same has also been given due consideration. It is well settled the position of law that power to abolish the posts as a measure of economy based on

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the need for streamlining of the administration and make it for more efficient is exclusively within the domain of the departments concerned. The respondents counsel has rightly relied upon the judgment of the Apex Court in this regard in the case of Avas Vikas Sansthan and another Vs. Avas Vikas Sansthan Engineers Assn. and others (2006) 4 SCC 132 wherein the entire issue of abolition of the post and declaration of staff as surplus has been considered in detail. The Apex Court has specifically referred to its earlier judgment in M. Ramanatha Pillai Vs. State of Kerala (1973) 2 SCC 650 wherein it has been held that the "discharge of the Civil servant on account of abolition of post held by him is not an action proposed to be taken as a personal penalty but it is an action concerning the policy of the State whether a permanent post should continue or not". The Apex Court has clearly held " The power to abolish any civil post is inherent in every sovereign Government". In fact, the said judgment of the Apex Court further says that such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. The Apex Court has also referred its another earlier judgment in K. Rajendran Vs. State of T.N. (1982) 2 SCC 273 on the same issue in which it was held as under :

> **"The question whether a person who ceases to be a government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the court has no voice."**

7. In the present case, even though the respondents have no obligation to re-deploy the surplus staff, as a matter of policy they have

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decided to re-deploy them on priority basis by imparting necessary training required and without insisting on the prescribed qualifications as applicable to those posts. The respondents have also ensured the pay protection of the surplus staff who were re-deployed in the lower alternative post. We have also seen that the orders of the respondents declaring the applicants as surplus staff and re-deploying them in alternative lower post with protection of pay are not in any way discriminatory or malafide. It is certainly not a penalty of reduction from a higher post to lower post as alleged by the applicants. The retention of the two lady Senior Clerks who are juniors to the applicants in the same pay scale in the alternative post of Teacher was in accordance with the requirement of the department. Again, the selection of some of the junior SC/ST employees as Senior Clerks was also based on the existing orders of the Ministry of Home Affairs and it was against their quota. The applicants cannot have any valid grouse against such orders. The other contentions of the applicants have also no relevance in view of the judgment of the Apex Court in the aforementioned cases.

8. In the above facts and circumstances of the case, we do not find any merits in these OAs and accordingly they are dismissed. The interim order of this Tribunal dated 4.4.2006 staying the impugned Annexure-3 letter of the respondents dated 27.2.2006 is also hereby vacated. There shall be no order as to costs.

Member-A

Member-J