

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

HON'BLE MR. A.K. GAUR , MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM (A)

Original Application Number. 637 OF 2007.

ALLAHABAD this the 28 day of January , 2009.

Amar Kant Ojha, S/o Late Sri Nagesh Shankar Ojha, R/o Jagannath Pur,
Post Sada, Distrcit- Gorakhpur.

.....Applicant.

VER S U S

1. Union of India through the General Manager, N.E. Railway,
Gorakhpur.
2. Senior Manager, Printing and Stationary, Railway Press, N.E.
Railway, Gorakhpur.

.....Respondents

Advocate for the applicant: Sri B. Tiwari

Advocate for the Respondents: Sri Ravi Ranjan

ORDER

Delivered by Hon'ble Mr. A.K. Gaur, J.M.

The applicant Through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for setting aside the order dated 23.05.2007 (Annexure A-2 of O.A) issued by Senior Manager, Printing and Stationary, Railway Press, N.E. Railway, Gorakhpur (respondent No. 2) coupled with prayer for a direction commanding the respondents to give promotion to the applicant in scale of Rs. 5000-8000/- as Master Crafts Man in Aurakshan Anubhag in N.E. Railway, Gorakhpur with fixation of correct seniority, pay and other consequential relief(s).

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2. The factual matrix of case is that the applicant was appointed as Casual Khalasi on 21.10.1980 and in due course, he was promoted as Technician Grade-I in pay scale Rs. 4500-7000/- w.e.f. 01.11.2003. The next channel of promotion is on the post of Master Crafts Man in Anurakshan Anubhag, Railway Press, N.E. Railway Gorakhpur in pay scale Rs. 5000-8000/-. According to the applicant, the Railway Board had issued a letter dated 09.10.2003 about restructuring of certain Group 'C' and 'D' cadres and also in scale of Rs. 5000-8000/- for Artisan Staff and as a consequence thereof 5% had been increased to 8% and in pursuance of said Railway Board's letter, restructuring was taken by the department and by office order dated 16.07.2004 (Annexure A-7 of O.A), three posts of the Master Crafts Man in scale of Rs. 5000-8000/- were upgraded. Learned counsel for the applicant contended that by office order dated 08.05.2006 (Annexure A-5 of O.A) issued by Senior Personnel Officer, Railway Press, an approval was granted for one post of Mater Crafts Man in maintenance section. According to the applicant, by office order dated 27.04.2007 issued by Senior Manager (respondent No. 2), 10 posts (1 permanent and 9 temporary) were sanctioned in scale of Rs. 5000-8000/- for Process Section and 10 posts were also sanctioned for Anurakshan Anubhag out of which 7 posts were permanent and 3 were temporary posts. Learned counsel would further contend that 10 posts for Process Section and 10 posts for Anurakshan Anubhag were sanctioned by the department but while one post is sanctioned in Process Section after cadre review on 01.04.2006 but no post for Anurakshan Anubhag was sanctioned although sanction strength in scale of Rs. 5000-8000 in both the sections is equal i.e. 10. In support of his contention, learned counsel for the applicant contended that if total percentage is counted $10 \times 8 + 10 \times 8 = 1.60$ comes, meaning thereby two posts are increased in

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pursuance of Railway Board letter dated 09.10.2003 and as such one post in Anurakshan Anubhag also is liable to be increased because 7 permanent and 3 temporary posts in scale of Rs. 5000-8000/- are sanctioned but the respondents have sanctioned only one post in scale of Rs. 5000-8000/- as Master Crafts Man for Anurakshan Anubhag. Learned counsel for the applicant further alleged that on one hand the respondents is taking into consideration 10 posts for Anurakshan Anubhag, 6 posts for Carpenter and 4 posts for Mono Section for calculation of review structuring but at the time of division, the respondents did not adopt this principle, which is clearly violative and discriminatory. Once the post is being taken for consideration of enhancement of cadre then post of Anurakshan Anubhag is also liable to be taken into consideration for distribution of post. According to the applicant, by office order dated 16.07.2004, respondents increased three posts of Master Crafts Man in scale of Rs. 5000-8000/-. Learned counsel for the applicant would contend that against the action of the respondents, General Secretary, N.E. Railway Press had given an application dated 03.05.2007 to the Senior Manager, Printing and Stationary, Railway Press, N.E. Railway Gorakhpur (respondent No. 2) for correct fixation of cadre strength in Anurakshan Anubhag, which has been rejected vide order dated 23.05.2007 (Annexure A-2 of O.A). Learned counsel further contended that after the application dated 03.05.2007, the applicant filed representation dated 04.05.2007 and 25.05.2007 (Annexure A-9 and A-10 of O.A) before the respondent No. 2, but the respondents did not pay any heed to them.

3. The applicant aggrieved by the order dated 23.05.2007 (Annexure A-2 of O.A) filed the instant O.A alleging that approval of one post in scale of Rs. 5000-8000/- for Anurakshan Anubhag had been taken from Financial

Advisor and Chief Accounts Officer, N.E. Railway, Gorakhpur for the Railway Press (Annexure A- 5 of O.A), but at the time of distribution of post, the said approval has been ignored, which is contrary to the provisions of rule. It has further been alleged that since the approval was taken by the Railway Press from Financial Advisor and Chief Accounts Officer, N.E. Railway, Gorakhpur for one post of Master Crafts Man, question of merger of post in other section does not arise for calculation and fixation of cadre strength particularly in the circumstances when the approval was taken for Anurakshan Anubhag for the post of Master Crafts Man and no sanction was taken in Mono Section but promotion is being given in other section, which is totally discriminatory and contrary to the approval of F.A and C.A.O.

4. In support of his contentions, learned counsel for the applicant has vehemently argued that no discrimination can be done in service matter in view of law laid down by the Hon'ble Supreme Court in the case of **Ramanna Daya Ram Shetty Vs. International Airport Authority of India- 1979(3) SCC 489 page 506**, in which it has been held that where the government is dealing with public whether by way of giving jobs or granting other forms of largesse, the government cannot act arbitrarily at its sweet will but its action must be in conformity with standard of norms which is not arbitrary irrational or irrelevant. The power of discretion of the government must be confined and structured by the rational relevant and non-discriminatory standard or norms and if the government departs from such standard or norms in particular case or cases , action of the government would be liable to be struck down. To buttress his contention, learned counsel for the applicant submitted that in the instant case, one post of Master Craftsman has been created in Process Section but no post has been sanctioned in Maintenance Section (Anurakshan) while the

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cadre strength of this section is equal to Process Section i.e. 10, which is highly discriminatory and unconstitutional.

5. On notice the respondents have filed Counter Reply refuting the claim of the applicant on the ground that the promotions are given as per revised B.O.S approved by the F.A & C.A.O as on 01.04.2006. It has been stated by the respondents in para 14 of the Counter Reply that three different sections i.e. Maintenance, Mono and Carpenter having very few numbers of sanctioned posts are clubbed together for the purpose of taking the clear cut percentage of posts and making of floating post to enable the employees of these section to get promotion as per rules on the basis of integrated seniority and suitability. It has further been stated in same para that the applicant is at Sl. No. 3 as per integrated seniority of above section and will be promoted on his turn, if found suitable. According to the respondents, as per revised B.O.S approved by F.A & C.A.O, the internal distribution of posts in different sections were done with the consent of recognized Union and Railway Administration. In para 16 of Counter Reply, it has been stated by the respondents that as per Rule 107(B) of Recruitment, Training and Promotion of the staff in the Railway Printing press, promotion of staff working in the various section of the press to the higher grades shall be strictly confined to the section itself up to the stage of the top Supervisors of section in Charge-man -A (now Junior Engineer in scale Rs. 5500-9000). It has further been stated that on the basis of revised percentage prescribed by Railway Board vide their letter dated 09.10.2003, the calculation has been done for permanent and temporary posts of both the sections separately. According to the respondents, as per calculation, 01 clear cut post of Master Crafts Man (now Senior Technician) in scale Rs. 5000-8000 has come for Process Section, whereas no post of M.C.M (5000-8000) has come totaling the

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permanent and temporary posts separately in Maintenance Section (Annexure CA-6 of Counter Reply). Learned counsel for the respondents vehemently argued that the grounds on which the claim of the applicant has been assailed are totally misconceived and devoid of merits and sought for dismissal of O.A.

6. Applicant has filed Rejoinder reiterating the facts enumerated in the O.A, to which the respondents have filed Supplementary Counter Reply.

7. In Supplementary Counter Reply, it has been stated by the respondents that as per revised cadre strength sanctioned and approved by FA & CAO as on 01.04.2006, the promotion of different sections of Railway Press has been made. During course of arguments, learned counsel for the respondents invited our attention to paragraph 5 of Supplementary Counter Reply, in which it has been stated that the distribution of the post after cadre review have been done as on 01.04.2005 with the joint signature of Senior Manager, Printing and Stationary, Senior Personnel Officer/Press, Secretary, North Eastern Railway Mazdoor Union (Press Branch) and Secretary P.R.K.S (Press Branch on 01.12.2006 in the following manner: -

| Sl. No. | Name | Promoted as | Scale | Reference |
|---------|----------------------------|------------------------|-----------|--|
| 1. | Sakir Ali | Sr. Tech (Binding) | 5000-8000 | Office Order No. E / MOS /383/Estt/05/ Pt.I Dated 26.03.07 |
| 2. | Rameshwar Prasad | Sr. Tech (Binding) | 5000-8000 | |
| 3. | Ram Sakal (SC) | Sr. Tech (Binding) | 5000-8000 | |
| 4. | Triyugi Prasad Tripathi | Sr. Tech. (Machine) | 5000-8000 | |
| 5. | Fasiuddin | Sr. Tech (Machine) | 5000-8000 | |

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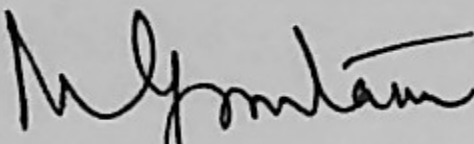
Learned counsel for the respondents would further contend that the aforesaid distribution has not been challenged by the applicant and sought for dismissal of O.A.

8. We have heard arguments advanced by the learned counsel for both sides and perused the pleadings on record as well as the written submissions filed by the learned counsel for applicant. Prima facie we find that the order dated 23.05.2007 (Annexure A- 2 of O.A) has been passed on the application dated 03.05.2007 preferred by "Shakha Mantri" N.E.R.M.U, in which no where it has been stated that the benefit of availability of the post of Master Crafts Man in terms of cadre review dated 01.04.2006 may be given to the applicant. It is also seen from the record that the impugned order has been passed on the basis of decision taken in consultation with the Union representatives. Further we find that the first representation dated 04.05.2007 (i.e. prior to the impugned order dated 23.05.2007) has been moved by several persons including applicant, whereas another representation is dated 25.05.2007 (Annexure A-10 of O.A) (i.e. after the impugned order dated 23.05.2007 was passed). On perusal of both the representations, we find that the applicant in his representation/s no where has stated that he is the senior most in his department and he deserves to be given one post of Master Craftsman. The applicant has also not given any calculation as indicated in the O.A, entitling him to get one post in his cadre being senior most. The representation of the applicant is not exhaustive and lacking certain necessary facts. The applicant also failed to indicate in his representation/s that one post of Master Craftsman has been created in Process Section but no post has been sanctioned in Maintenance Section (Anurakshan Anubhag), while the cadre strength of both the section is 10.

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9. Accordingly we dispose of the O.A with direction to the applicant to file a certified copy of this order alongwith complete copy of the O.A (with all annexures) and additional comprehensive representation, if so advised, within two weeks from the date of receipt of certified copy of this order before the concerned competent Authority and the said authority shall consider and decide the same by a reasoned and speaking order meeting all the contentions raised by the applicant in his O.A as well as in additional representation, within a period of three months on receipt of certified copy of the order, as contemplated above, in accordance with law and relevant rules on the subject and communicate the decision to the applicant forthwith .

10. There will be no order as to costs.


(MEMBER- A)


(MEMBER-J)

/Anand/