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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Date of Order: 07.09.2001

OA No.99/2001

Abdul Rahim son of Shri Abdul Mazid, aged about 39 years, resident of Far Bazar, Near Gajner Road, Bikaner, at present employed on the post of Welfare Assistant (Sports), in the office of DRM Bikaner, Northern Railway.

APPLICANT.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
3. Divisional Sports Officer, Northern Railway, Bikaner Division, Bikaner.
4. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
5. Senior Sports Officer, Northern Railway Sports Association, Baroda House, New Delhi.

RESPONDENTS.

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Mr. J.K Kaushik, Counsel for the applicant.

Mr. Salil Tribedi, Counsel for the respondents.

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Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

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(ORDER)

(per Hon'ble Mr. A.P. Nagrath)

The applicant belongs to the cadre of Train Lighting Fitter (TLF). While working as Highly Skilled Fitter Gr.II, he was appointed as Welfare Assistant (Sports) (WLA) by letter dated 7.2.94 on adhoc basis with a further condition that he can be reverted from the said post as soon as a selected candidate becomes available, vide letter dated

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27.11.2000 Annexure A/1. The applicant was regularised on the post of WLA (Sports) with immediate effect while retaining his lien in the cadre of HS Fitter-II (TL). A notification was issued dated 6.2.2001 inviting applications for filling up the same post of WLA (Sports) dated 8.3.2001 (Annexure A/2) in which the scale of the post has been shown as 4000-6000. This notification dated 8.3.2001 was issued in supersession of the earlier notification dated 6.2.2001, in which the scale of the post had been indicated as Rs.4500-7000. The applicant has assailed this notification dated 8.3.2001 Annexure A/2, on the ground that he is duly selected regular WLA (Sports) and fresh applications for filling up this post cannot be invited. He is also aggrieved with the impugned order dated 27.11.2000, in so far as it relates to classifying the post of WLA (Sports) as ex-cadre post, and of keeping his lien on the post of HS Fitter-II (TL).

1. Applicant's plea is that vide letter dated 8.12.2000 his pay had been fixed in the grade of Rs.4500-7000 after declaring him as regular on the post of WLA (Sports). But now he is being posted to another post in the name of promotion, so as to cause a loss him. As per his averments, the post of WLA (Sports) is in the grade of Rs.4500-7000, and he was holding this post on regular basis, after the order of the respondents dated 8.12.2000. In that back ground, he challenges the impugned orders dated 27.11.2000 and 8.3.2001 as ex facie, illegal and arbitrary.

3. In reply, the respondents have denied that the post of WLA (Sports) carries a pay scale of Rs.4500-7000. Their contention is that prior to 5th Pay Commission pay scales, this post was in grade of Rs.1200-2040 and on implementation of

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recommendations of the 5th Pay Commission the replacement scale is Rs.4000-6000. It has been stated that the post of WLA (Sports) from the very beginning has been an ex-cadre post, and no person can have a vested right to hold an ex-cadre post. The respondents submit that the applicant was promoted as HS Fitter-I (TL) in scale of Rs.4500-7000 on 16.4.99. The applicant submitted his refusal for this promotion for one year and his refusal was accepted by the competent authorities w.e.f. 5.9.2000. It has also been mentioned that the applicant's performance on the post of WLA (Sports) was not considered satisfactory. Since the applicant holds a lien in the Train Lighting cadre he cannot claim any vested right to hold an ex-cadre post. The respondents have initiated selection to fill up the post of WLA (Sports) in response to the notification already issued. They have also mentioned that the applicant has been absconding from his duties since 27.3.2001.

4. The short controversy involved is whether the applicant can claim, as a matter of legal right, to hold the post of WLA (Sports) and whether the post is in scale of Rs.4500-7000 or in Rs.4000-6000.

5. Learned counsel for the applicant argued that as per respondents' own letter dated 8.12.2000 the scale of the post of WLA (Sports) has been indicated as Rs.4500-7000. He also gave an example of Jodhpur Division contending that the post of WLA (Sports) in Jodhpur Division is also being operated in the scale of Rs.4500-7000. Learned counsel for the respondents placed before us a letter dated 6.9.2001 from Divisional Personnel Officer ~~before~~ Jodhpur which clarifies the position by stating that the pay scale of the post of WLA (Sports) is Rs.4000-6000 only w.e.f. 1.1.96. However, the incumbent of the post in that division, one Shri Jogendra Singh, is a senior

clerk from Personal Branch. Since the scale of Senior Clerk which was also 1200-2040 prior to 5th Pay Commission has now been replaced by scale of Rs.4500-7000. Shri Jogendra Singh is entitled to that grade and is being given that grade only.

5. On the two questions whether the post is ex-cadre or the scale of the post, we are of the view, that it is not for this Tribunal to determine both these issues. It is for the competent authorities in the department to decide whether the post belongs to any cadre or is ex-cadre. We find from the letter dated 25.3.91 Annexure R/3 that the post of WLA (Sports) has been declared to be an ex-cadre post. Thus, no fault can be found in the letter dated 27.11.2000, wherein it has been mentioned that this post is excadre. As an obvious consequence,

no lien can be assigned to any person against an ex-cadre post.

The applicant's plea that the department could not have assigned him lien in the cadre of TL Fitter, is without foundation. Having determined that the post is ex-cadre, no vested right can accrue in favour of any employee to hold an ex-cadre post. It is for the concerned authority to decide as to who and for how long any person can hold an ex-cadre post.

6. The next question is whether the post is in Gr.4500-7000 or Rs.4000-6000. This again is for the concerned departmental authorities to determine, based on the Policy of the Government, recommendations of the Pay Commission and decisions of the Government of India. The replacement scale for Rs.1200-2040 on the basis of recommendations of 5th Pay Commission is only Rs.4000-6000 and it is only in specific categories in erstwhile grade of Rs.1200-2040 have now been assigned the scale of Rs.4500-7000 (like in the case of Senior Clerks). The reliance placed by learned counsel that the same post in Jodhpur

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Division carries scale of Rs.4500-7000 has also been found to be without basis. The fact that the incumbent of the post in Jodhpur Division is enjoying scale of Rs.4500-7000 cannot create a right in favour of the applicant. In fact, the authorities in Jodhpur Division are expected to examine whether their action of permitting higher pay scale to a person holding a post in a lower scale is an order. This is moreso, because the order of Jodhpur Division dated 6.9.2001 no where indicates that any element of the higher grade post of Rs.4500-7000 has been transferred from the Personal Branch to enable the incumbent to continue to enjoy the scale of Rs.4500-7000 while working as WLA (Sports). Notwithstanding this, no wrong or irregular benefit given to any employee can create a legal right in favour of others. We do not find any ground for interference in the action of the respondents for calling for application for filling up the post of WLA (Sports) in Gr.4000-6000 as per rules. The applicant has been promoted in his own cadre to the scale of Rs.4500-7000. He is better advised to move to join in his cadre now that the period of refusal of promotion has come to an end. There is no merit in this application and the same is liable to be rejected.

6. We therefore dismiss this OA, but with no order as to costs.

Chkd 7/9/2001

(A.P. Nagrath)

Admn. Member

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(A.K. Misra)

Judl. Member

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