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CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

Original Application No. 367 of 1990

K.P. Singh and others

Applicants

versus

Union of India & others

Respondents.

Shri K.P.Srivastava Counsel for Applicants.

Shri Sidharth Verma Counsel for Respondents.

Shri O.P.Mani Tripathi for Private respondents

Coram:

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C.Srivastava, V.C.)

The applicants who are members of the Operating Accounts section of the D.R.M. Office, Northern Railway, Lucknow have prayed for a writ of mandamus directing the opposite parties not to implement the Merger Order contained in Annexure No.1 and they may be commanded to hold the examination for promotion for the post of Senior Clerk and Assistant Superintendent, overlooking the merger.

2. Earlier, before the re-grouping and re-organisation of the railways in 1951, the Operating Accounts section direct was under the control of the Divisional Accounts Officers of the respective divisions, Allahabad, Lucknow and Moradabad. After re-grouping, the Section

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Officer of the Accounts or the employees who passed the examination of Works Accounts, to control over the staff and as a liaison between the Executive and the Accounts. After regrouping of the Indian Railways three Divisions as mentioned above and separate cadre of operating accounts section of these divisions are governed by the Code Rules and they have separate seniority and promotions, and so the Lucknow Division has a separate cadre and separate seniority list so also Allahabad and Moradabad Divisions. According to the applicant, there was no operating Accounts Section as such on Ferozpur, Jodhpur, Delhi and Bikaner, because Jodhpur and Bikaner were State Railways and owned by Bikaner and Jodhpur States and Delhi and Ferozpur were the portions of E.P. Railway and these divisions have working different from Allahabad, Lucknow and Moradabad Division. According to the applicant this merger and various other sections including various divisions have got separate cadre separate and/seniority list and in case the merger takes place the same will adversely affect the services conditions of the applicants, not only in the matter of seniority and promotion but also in the transfer and also the same will be violative of Rule 140 and 141 of the Railway Establishment Code, as has been done in the instant case.

3. According to the respondents there were certain factors which made for merger and each decision was modified after consulting both the Unions. According to

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them ~~then~~ the decision for merger for two of the cadres of office clerks in the Engineering department of Lucknow Division was done by the Divisional Superintending Engineer (Coordination), who is the controlling authority of Engineering Department and the said decision was taken in consultation with the recognised Trade Unions, N.R.M.U and U.R.M.U. and the process for merger of two cadres of Clerks, namely Engineering Branch Clerks and Operating Accounts Branch Clerks in Lucknow Division of Northern Railway and the D.R.M. Lucknow has full powers to create posts of office clerks ~~and~~ of all the grades controlled by him. Till the decision was taken on administrative level in the office of Engineering Division there were two separate cadres known as separate seniority units, and accordingly, a decision was taken to bring forth uniformity in the functioning of the Engineering Department Officers/ Sub units on Lucknow Division with those of ~~other~~ divisions e.g. Delhi, Ferozpur, Bikaner, Jodhpur and Ambala, as has been indicated above. While all the other departments have only one single cadre of office clerks under each of them, viz. Transportation, Commercial, Electrical, Signal and Telecommunication, Mechanical Personnel and Medical Departments.

4. The learned counsel for the applicant contended that only the Railway Board is competent for merger of cadres and in this connection he has drawn our attention to the delegation of powers of D.R.M.s. Reliance

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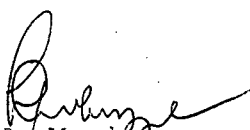
has been placed on creation of non gazetted class III posts in the clerical post have been delegated to D.R.M. and besides no other powers have been delegated. While according to the respondents, so far as creation of non gazetted posts is concerned, full powers have been delegated to the D.R.M. and as such the D.R.M. was fully empowered so far as merger is concerned. It has not only been conferred the power of selection of non gazetted staff but it has got wider scope. Even if the D.R.M. did have the power, it has got the tacit approval of the Railway Board and as such the contention that the power has not been delegated to D.R.M., cannot be accepted. So far as para 140 and 141 is concerned it only provides regarding section officer (Accounts). Obviously in case there is a merger and no such post exists, merely because posts exist it cannot be said that the post of Section officer (Accounts) ~~exists~~ is must and cannot be abolished. Thus the creation of post, and bifurcation of the cadre and merger is purely an administrative matter and in the exigencies of matter the Government decides to merge a particular department and bifurcates and does not call for interference. Reference may be made to the case of State of Kerala vs. M.K. Krishnan Nair and others (AIR 1978 Supreme Court- 747) wherein it was held that it was not and cannot be disputed that it is open to the State Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency. A reference was also made wherein it has been observed


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that it was exclusive jurisdiction of the Government to bifurcate or merge the cadres and accordingly it being the jurisdiction of the Government an employee cannot have any say in the matter. Accordingly, we are of the opinion that as far as the merger is concerned, the same does not call for any interference and the application deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

  
Admin. Member.

  
Vice Chairman.

Shakeel/-

Lucknow: Dated 5.1.93.