

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No 133 of 2006

Date of order : 3rd February 2012.

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Urmita Datta (Sen), Member [J]

Rajeshwar Prasad, S/o of Shri Ganauri Storeman under Sr. S.E. [P.Way], Con, E.C. Railway, Danapur, R/o village – Toret Pali, P.O./P.S., Naubatpur, District – Patna.

.....Applicant.

By Advocate : Shri M.P. Dixit.

Vs.

1. The Union of India through the G.M., E.C. Railway, Hajipur.
2. The Chief Personnel Officer / G.M[P], E.C. Railway, Hajipur.
3. The CAO, Construction, E.C. Railway, Mahendraghat, Patna.
4. The Divisional Railway Manager, E.C. Railway, Danapur.
5. The Sr. DPO, E.C. Railway, Danapur.
6. The Dy. Chief Engineer [Con], E.C. Railway, Danapur.
7. The Sr. Section Engineer, E.C. Railway, Danapur.
8. The Dy. Chief Engineer [Bridge], Con. E.C. Railway, Patna.

.....Respondents.

By Advocate : Shri S.K. Singh.

O R D E R

Naresh Gupta, M [A] - This OA has been filed by one Rajeshwar Prasad seeking a direction to the respondents to implement, in favour of the applicant, the decision taken for merger of the post of Storeman with Material Checker which was said to have been subsequently treated as ministerial staff [clerical cadre] [Annexure A/9 of OA], and thereby give him the benefit of post, pay, seniority and promotion etc. The facts of the case as presented in the OA are as follows:

2. The applicant was initially appointed on 25.05.1972 as Casual Gangman, attained temporary status with effect from 01.01.1981 and was promoted as Storeman with effect from 01.08.1990. While working as Storeman under the respondent No. 7, viz. the Sr. Section Engineer [P. Way], Con. E.C. Railway, Danapur, the lien of the applicant was said to have been fixed in open line i.e., under the Divisional Railway Engineer [respondent No. 4] vide office order No. 80 of 1995 dated 28.2.1995 which was circulated by the Dy. C.E [Con.], Danapur [respondent No. 6] vide office order No. 44 of 1995 dated 05.04.1995 [Annexure 10 of OA], which shows that his lien had been fixed in

the post of Storeman. In the meanwhile, the post of Storeman was merged as Material Checker vide circular No. 161 of 79 serial No. 42 [Annexure A/1 of OA] and subsequently the same said to have merged in clerical cadre. Thereafter, the applicant submitted a representation to the Sr. DPO, E.C. Railway, Danapur [respondent No. 5] on 09.06.2004 stating his case and seeking placement [Annexure A/2 of OA], and this was forwarded to the Sr. Section Engineer [P.Way], Con. E.C. Railway, Danapur [respondent No. 7] and the Dy. C.E [Con.], E.C. Railway, Danapur [respondent No. 6] vide letters dated 10.06.2004 and 11.06.2004 [Annexure A/3 & Annexure A/4 of OA respectively]. In as much as the above representations did not elicit any reply, the applicant sent another representation to the respondents on 08.09.2004 [Annexure A/5 of OA] which was forwarded by the SSE/P.Way/Con./DNR vide letter dated 13.09.2004 [Annexure A/6 of OA] to the Dy. C.E [Con.], E.C. Railway, Danapur. Another representation was also sent on 23.09.2004 [Annexure A/7 of OA] through the Vice-President, OBC Association, E.C. Railway and Danapur, and a representation [appeal] in detail on 31.05.2005 [Annexure A/8 of OA] whereon the Dy. C.E/C/Patna [respondent No. 8] recommended vide [Annexure A/9 of OA] the case of the applicant to the Sr. Divisional Personnel Officer, E.C. Railway [respondent No. 5] and sought early consideration.

3. It is stated that the applicant has not yet been granted the benefit of merger of post, promotion, seniority etc till the date, and as such he was suffering while his juniors were enjoying the benefit of promotion, seniority etc. It is contended that the respondents were without any justification when the post of Storeman had been merged with Material Checker and subsequently in Clerical Cadre. The action of the respondents was discriminatory and in violation of Articles 14, 16 and 311 of the Constitution of India.

4. The respondents have in their written statement submitted that the application was hit by the principles of resjudicata, estoppel, waiver and acquiescence and also barred by limitation under Section 21 of the Administrative Tribunals Act. The applicant was initially engaged as casual labour and in due course regularized vide Office No. 80/95 dated 20.02.1995 [Annexure A/10] and his lien fixed in Group 'D' category in Open Line in the scale of Rs. 2500-3200/- and not in the scale of Rs. 2650-4000/-. He got two promotions in Constructions Department to the Grade of Rs. 2610-3540/- and 2650-

4000/- and continued to work in Gr. 'D' scale. The applicant was claiming the grade in Construction Department, while he has been in Open Line.

5. It is contended by the respondents that the Clerical cadre is in Group 'C' for which due process has to be followed for selection, and it is only after selection for promotion to Group 'C' that the seniority of the applicant could be merged into clerical category and till then his lien would continue to be in Group 'D', and that the revised designation was to be adopted without any change in pay scale, method of recruitment, seniority and avenues of promotion, and further the existing promotional quota available within the Store Department would remain unchanged.

6. In the rejoinder to the written statement, the applicant has stated that vide office order No. 44 of 1995 dated 05.04.1995 [Annexure A/10 of OA], the lien of the applicant was fixed in open line as Storeman in the scale of Rs. 2650-4000/- [name of applicant is at Sl. No. 17 in the list in that order], and that the post of Storeman was merged /re-designated as Material Checker which was in clerical cadre Group 'C' as evident from Annexure A/1 and Annexure A/9 of the OA. The post of Material Checker had been re-designated as Office -Clerk/Clerk Gr. II/Jr. Clerk in the pay scale of Rs. 950-1500/- = 3050-4590/- with effect from 01.01.1996 following the 5th Pay Commission, the merger being evident from the letter dated 18.07.2003 addressed to the Dy. CEC [Con. I, E.C. Railway, Danapur [Annexure A/11 of rejoinder]. It is further stated that the applicant was promoted as Storeman after conducting screening / selection with effect from 01.08.1990 and again screening was conducted on 15.09.1993 and 11.09.1993 in which the applicant was declared fit as Storeman.

7. In the supplementary written statement, the respondents have argued that the Office Order No. 44 of 1995 dated 05.04.1995 was not for fixing of lien. The lien of the applicant was fixed in open line in Gr. 'D' only and the scale indicated of Rs. 2650-4000/- is for Group 'D'. The policy in this regard has been annexed at Annexure R/1 of the supplementary written statement. The applicant was working on deputation in Construction Department, and the post indicated in Annexure A/9 [letter of Dy. C.E/C/Br/Patna dated 01.07.2005 addressed to the Sr. Divisional Personnel Officer, E.C. Railway, Danapur] was Storeman which does not imply that the lien of the applicant is in Group 'C'. The applicant was mixing up the Construction Department and the Open Line.

The applicant was working in Construction Department with monetary benefit and trying to seek the same post or equivalent in Open Line. Further, those erroneously promoted to Gr. 'C' cadre from Open Line were reverted to Gr. 'D' post [copy of order in the case of one Sisir Kumar Sinha marked as Annexure R/11 of supplementary written statement].

8. Heard the learned counsel for the applicant and the respondents on 19.01.2012 and perused the entire record. It is seen from the statement enclosed with the Railway Board's letter No. PC/75/Standardization/1 dated 20.06.1979 [Annexure A/1 of OA] that the post of Storeman was re-designated as Material Checker [Sl. No. 42 in the list], that the provisional lien of the applicant was fixed in open line in the post of Storeman vide Office Order No. 44 of 95 dated 05.04.1995 as per Office Order No. 80 of 1995 docketted by DRM's letter dated 28.02.1995 [applicant's name at Sl. No. 17 – Annexure A/10 of rejoinder], but nowhere is it indicated that the post of Storeman or Material Checker [after re-designation] was in clerical category /Group 'C' post. In the case of one S.K. Sinha, his designation was noted as Material Clerk and not Material Checker [Annexure A/11 of rejoinder], and this was recommended to be changed to Clerical Gr. II. The statement [Annexure -A in Annexure A/1 of OA] displays the post of Material Checker separately [at Sl. No. 44] as distinct from the post of Storeman [at Sl. No. 42] – the latter being re-designated as Material Checker [and not Material Clerk]. The scales of pay of Material Checker and Material Clerk are different with Material Clerk being in a higher scale. Further, the communication of the Dy. C.E/Con/Bridge/Patna dated 01.07.2005 [Annexure A/9 of OA] relied upon by the applicant is a letter addressed by him to the Sr. Divisional Personnel Officer, E.C. Railway, Danapur, and not an order declaring the post held by the applicant to be in clerical cadre [Gr. 'C']. The written statement and the supplementary written statement filed by the respondents categorically state that movement to clerical cadre which is in Gr. 'C' from Gr. 'D' can be only by a due process of selection. The lien of the applicant was fixed in the scale of Rs. 2550-3200/- with next two grades [on promotion] in Construction Department being Rs. 2610-3540/- and then Rs. 2650-4000/- and his lien was not fixed in the scale of Rs. 2650-4000/- as Storeman. It also appears from the written statement filed by the respondents that the applicant while being on deputation in Construction Department had got two promotions but his lien was in Open Line in Gr. 'D' only. In the case of one S.K.

Sinha cited by the applicant in the rejoinder [Annexure A/11], his designation was Material Clerk and not Material Checker, and is, therefore, distinguishable from that the applicant.

9. In view of the position set out above, it is not possible to accept the prayer of the applicant in the OA, and the OA is accordingly rejected. No order as to costs.

Urmita Datta (Sen)

[Urmita Datta (Sen)] M [J]

Naresh Gupta

[Naresh Gupta] M [A]

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