

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 128/2006

Dated : 26th September, 2012

C O R A M

Hon'ble Mr. A.K.Jain, Member [Administrative]
Hon'ble Ms. Bidisha Banerjee, Member [Judicial]

Subhash Chandra Das, S/o Shri Sharda Nand Das, R/o H.N. 1A, Road No.
3/A, Mahesh Nagar, P.S. - S.K. Puri, Patna-23, and 24 others.

Applicants. — ?

By Advocate : Shri Manoj Kumar

vs.

1. The Union of India through General Manager, East Central Railway, Hajipur.

2. The Chief Personnel Officer, East Central Railway, Hajipur.

3. The Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna-1.

4. Jai Prakash, S/o not known to applicants, working as Commercial Inspector Grade-II, under Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna -1.

5. Pankaj Nayan , S/o not known to applicants, working as Commercial Inspector Grade-I, under Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna -1.

6. Mrityunjay Kumar, S/o not known to applicants, working as Commercial Inspector Grade-I, under Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna -1.

7. Pankaj Priyadarshi, S/o not known to applicants, working as Commercial Inspector Grade-I, under Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna -1.

8. Ashok Kumar, S/o not known to applicants, working as Commercial Inspector Grade-II, under Chief Commercial Manager, East Central Railway, Chamber Bhawan, 5th Floor, Judge's Court Road, Patna -1.

..... Respondents.

By Advocate : Shri A.K.Singh, ASC

O R D E R

Bidisha Banerjee, Member [Judicial] :-

This application is filed seeking the following reliefs :

[1] That your lordships may be graciously pleased to direct the Respondent

Authorities to award the benefit of restructuring of cadre to these applicants from 1.11.2003 instead of 13.4.2005 in the light of letter dated 30.10.2003 [Annexure-A/3] further inter-se seniority in the grade/scale of 5500-9000 and 5000-8000 of Commercial Inspectors is to be decided afresh accordingly the combined seniority list be published including the private respondents.

[2] Further to pass any other relief or reliefs including heavy cost against the respondents for getting end of justice.

2. The facts of the case are as follows :

Pursuant to bifurcation of Eastern Railways and carving out of new East Central Railway, options were called for from staff of other zonal railways to serve at Headquarters, East Central Railway vide order dated 9.7.2002 [Annexure-A/1] in view of Board's decision dated 9.7.2002 in the following manner :

"1.A. FROM STAFF OF HEAD QUARTERS :

[i] Options are invited from the Staff of all Departments working in Head Quarters Offices of Eastern Railway.

[ii] The Staff who are willing to join at Head Quarters of the East Central Railway/Hajipur as mentioned above may submit their options.

B. FROM STAFF OF AFFECTED DIVISIONS [DNR MGS & DHN] :

Options are also invited from the Non-gazetted Staff working in DNR, MGS and DHN Divisions as follows :

[i] Whether they would like to continue to work wherever they are working present; or

[ii] Proceed to the Head Quarters Offices of East Central Railway/Hajipur.

Note : Non-gazetted Staff of above mentioned Divisions, in Categories/Cadres controlled by Head Quarters of Eastern Railway will have the option to remain in Eastern Railway/Kolkata or join East Central Railway/Hajipur for which they must exercise option. In case, no option is exercised, they Staff will be deemed to have opted for transfer to East Central Railway/Hajipur.

C. FROM STAFF OF OTHER DIVISIONS [SDAH, HWH, ASN & MLDT] :

Options are invited from all Non-gazetted Staff working in SDAH,

HWH, ASN and MLDT Divisions for working in East Central Railway/Hajipur.

[i] Options are to be given as per format as at ANNEXURE-A, through proper channel.

[ii] Options once exercised will be treated as final.

[iii] Preference for transfer on option to East Central Railway/Hajipur should be given in the order as indicated in Para-1 above.

It was specified that -

[iv] Staff in Workshops, Stores Depots and RPF are not included in the scheme of calling options for transfer. There is, however, no bar for the Clerical Staff posted in Workshops and Stores Depots, borne in Divisional seniority, exercising their option along with other staff of respective Divisions for the East Central Railway/Hajipur."

Regarding seniority of opted staff, it was provided that -

"[i] The seniority of staff going on transfer from Eastern Railway/Kolkata to East Central Railway/Hajipur will be determined in each Grade on the basis of non-fortuitous length of service in the Grade, as on the date East Central Railway/Hajipur becomes operational i. e. 01.10.2002 will be maintained."

3. As on 31.12.2002 [Annexure-A/2], the General Manager East Central Railway -

".... in concurrence with FA & CAO sanctioned the following posts of Commercial Deptt./HQ Office

3	CL-I	5500-9000	16
4	CL-II	7450-10500	29

Further, on 30.10.2003, the Railway Board directed to close the cadres in the head quarters offices of the New Zones on 31.10.2003 for stabilizing the fluid condition of cadres in the new zone.

4. The applicants claim that when they opted for their transfer, they were as follows :

Applicant NO.	Parent Railway	Scale/Grade	Date of Joining in the present grade
1	Eastern Railway	5000-8000	15.3.97
2	Eastern Railway	5500-9000	01/12/01

<i>Applicant NO.</i>	<i>Parent Railway</i>	<i>Scale/Grade</i>	<i>Date of Joining in the present grade</i>
3	Eastern Railway	5500-9000	20.5.2002
4	Eastern Railway	5000-8000	Dec. 1995
5	North Eastern Railway	5000-8000	01/01/96
6	Eastern Railway	5000-8000	Jan. 1996
7	Eastern Railway	5000-8000	01/10/96
8	Eastern Railway	5000-8000	May, 1995
9	Eastern Railway	5000-8000	28.3.97
10	Eastern Railway	5000-8000	28.3.97
11	Eastern Railway	5000-8000	March 1997
12	Eastern Railway	5000-8000	01/04/97
13	Eastern Railway	5000-8000	Jan. 1999
14	Eastern Railway	5000-8000	25.4.99
15	North Eastern Railway	5000-9000	01/07/99
16	Eastern Railway	5000-9000	10/08/99
17	Eastern Railway	5000-9000	12/08/99
18	Eastern Railway	5000-9000	25.5.2000
19	Western Railway	5000-9000	Feb. 2001
20	Eastern Railway	5000-9000	2001
21	Eastern Railway	5000-9000	02/05/02
22	Eastern Railway	5000-9000	25.5.2002
23	Eastern Railway	5000-9000	27.8.2002
24	North Eastern Railway	5000-9000	26.2.2003
25	Eastern Railway	5000-9000	29.1.2004

It is claimed that - The applicants No.1, 4 to 25 belong to commercial category of 5000-8000 scale/grade and the applicant no.2 and 3 of 5500-9000. They were urgently required against the vacant sanctioned post available of Commercial Inspectors, as evident from Head Quarter posting letter No. ECR/HRD/POS/283/Commercial dated 31.12.2002 showing the vacancy position at the time of acceptance of options given by the applicants.

5. The applicants who opted for their transfer within the cut off date feel that they were not granted proper posting vis-a-vis the private respondents. They are aggrieved by the fact that the respondents who had similarly opted and were relieved from their parent cadre have been promoted in the following manner and against the posts available on restructuring in terms of Boards letter dated 9.10.2003 and 06.01.2004 vide office order no. 402/2004 [Annexure-A/4] -

BB.

<u>Sl. No.</u>	<u>Respondents</u>	<u>Relieved As</u>	<u>Promoted As</u>
1.	4	Commercial Clerk Rs.5000-8000	Commercial Inspector 55000-9000 on 11.10.04
2.	5-7	Comm. Supervisor 5500-8000	Comml. Inspector 6500-10500

6. The applicants feel that they have been discriminated arbitrarily. Aggrieved whereby they filed joint representation [Annexure-A/6] on 11.10.2004.

7. On 13.4.2005, the applicants were declared as surplus and redeployed as Commercial Inspectors vide letter No. ECR/HRD/174/Meeing Commercial dated 13.4.2005 despite the facts that the applicants have been continuously working as Commercial Inspectors since their joining in the new zone under the respondent Railways. Such acts or actions probably resulted in a heart burning amongst the optees. The applicants feel that having opted alike the respondents they are entitled to be promoted against restructured vacancies.

8. The applicants lament that -

[i] The letter dated 13.4.2005 [Annexure-A/7] seriously affected them by depriving them of the benefit of cadre restructuring in the light of letter dated 30.10.2003 [Annexure-A/3] as the applicants neither got the benefit of restructuring in their parent department nor under respondents railways.

[ii] It is stated here that Railway Board's letter No.E[N.G.] I-2000/SR6/23 dated 25.5.2004 [RBE/Est. No.105/04] is not applicable in the present case due to the reason that the transfer of these applicants were made on the basis of urgent requirement of the new Zonal Office under the respondent authorities in the administrative interest.

[iii] It is added that the letter dated 25.5.2004 is based on the judgment delivered by Hon'ble Supreme court of India wherein it has been decided that the persons officiating already on the post will be senior to the new comer appointees/transferees, vide order dated 18.11.08 passed in Civil Appeals No.1669, 2463, 2464 of 1972 in Ramakant Chaturvedi's case with other cases as well as reported in 1980 [Supp] Supreme Court cases page 621.

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9. The respondents have contested the claim by stating that "at the time of cadre restructuring applicants were also working in Commercial Clerk cadre but they did not come under the zone of consideration for promotion under restructuring. Hence, nothing is arbitrary in implementing the re-structuring order." It is further added that - "It was noticed that in the cadre of Commercial Clerk excess staff have come on transfer on option basis in East Central Railway and such a decision was taken by the railway administration and representatives of both the recognized unions that the excess Commercial Clerk staff in grade of Rs. 5500-9000 and 5000-8000 maybe declared surplus and the same was done according to rules. Thus, the claims of the applicants are misleading and hence, they are denied".

10. The applicants in their rejoinder have controverted the submissions made by the respondents in the following manner :

[i] The applicants after joining started working as per the recruitment of the Headquarter office of the respondent as Commercial Inspectors.

[ii] That no further posting or change of work or any distribution of work were made to these applicants afresh even after the letter dated 13.04.2005 [Annexure-A/7] as such no case of redeployment is made out and there was no occasion of declaring surplus against the post available in the zonal office under the respondents.

11. Heard the learned counsel of both the sides.

12. We note that while declaring the applicants as surplus vide Annexure-A/7 dated 13.4.2005, they have been referred to as Head Commercial Clerks in the scale of Rs. 5000-8000 barring applicants no.2 and 3 who have been referred to as Commercial Supervisor II in the scale of Rs. 5500-9000.

13. The applicants have failed to declare against which posts they were adjusted in new zonal Railway.

14. We also noticed that the applicants no.2 and 3 have been redeployed in the

scale of Rs. 5000-8000 as Commercial Inspector II and the rest of the applicants are redeployed as Commercial Inspector III in the scale of Rs. 5000- 8000.

15. It is further noticed that the respondents were already Commercial Clerk Grade II in the scale of Rs. 5500-9000 when they were promoted under modified selection procedure to CL Grade I in Rs. 6500-10500 vide Annexure-A/4 series in 2003 and 2004.

16. we also note that the applicants have failed to challenge the order dated 13.4.2005 [Annexure-A/7] whereby they were declared surplus.

17. It is not the case of the applicants that while absorbing them in the new railway they have been discriminated vis-a-vis the respondents no.4 to 7 and such claim is also too late a day to be raised. There is apparently no comparison between the applicants and the Respondents No.4 to 7 due to the observations made hereinabove. They belong to 2 distinct and separate class. As such the question of discrimination in the matter of grant of a benefit to a particular class cannot arise. In the same way the claim of an unequal class for a benefit given to the other class fails.

18. Having observed as such, we hold that this application lacks merit. However, we also feel that in the case of applicants no.2 and 3 who were in the scale of Rs. 5500-9000 as Commercial Supervisor II as on the date of restructuring may have a claim. Hence, we direct the authorities to examine their grievance whether they stood senior to the respondents no.4 to 11 by virtue of para 4[i] of the order dated 9.7.2002 and to pass speaking order within three months from the date of communication of this order.

19. The application with regard to the rest of the applicants fail and for them barring applicants no.2 and 3 the OA stands dismissed. No costs.

B.Banerjee
[Bidisha Banerjee]
Member [Judicial]
mps.

A.K.Jain
[A.K.Jain]
Member [Administrative]