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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

27.07.2011

OA No. 151/2008

Mr. Nand Kishore, Counsel for applicant.
Mr. B.K. Pareek, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

Put up for hearing on 01.09.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(Justice K.S. Rathore)
MEMBER (J)

AHQ

20/11

1-9-2011

Mr. Nand Kishore, Counsel for applicant
Mr. T.P. Sharma, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rathore
(Justice K.S. Rathore)
M(J)

20/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 1st day of September, 2011

ORIGINAL APPLICATION No. 151/2008

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Suraj Singh Yadav son of Late Ram Charan aged about 48 years, working as Office Superintendent II in scale Rs.5500-9000, presently residing at Plot No. 18, Heerawat Nagar, Dadawari Road, Sanganer, Jaipur (Rajasthan).

... Applicants

(By Advocate : Mr. Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Chief Administrative Officer (Construction), North Western Railway, Jaipur.

... Respondents

(By Advocate : Mr. T.P. Sharma)

ORDER (ORAL)

The applicant has filed this OA praying for the following relief :

- i) Respondents may be directed to consider the case and he may be promoted to the post of Office Superintendent in scale Rs.6500-10500 on and from July/August, 2007 even in construction department i.e. extended cadre of respondent No. 1. Annexure A/1 dated 2.4.2008 may be set aside and quashed.
- ii) Respondents may be further directed to fix the pay of the applicant and pay the difference as due.
- iii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. The applicant has stated that he was promoted as Office Superintendent-II in scale of Rs.5500-9000 on 24.05.1996 on regular basis and his lien and seniority is being maintained in

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the office of General Manager in operating branch. He submitted a seniority list dated 29.01.2007 (Annexure A/2).

2. The applicant further submitted that he is the seniormost in scale of Rs.5500-9000/- and is entitled for promotion in the scale of Rs.6500-10500 against the vacancy created due to sad demise of Shri Ram Chander Meena, Ex. O.S.-I of operating branch, on & from 28.07.2007 i.e. date of death of Shri Meena. A copy of letter dated 23.08.2007 has been submitted as proof of death as Annexure A/3. The applicant has represented his case to the General Manager (E) for his promotion but the respondents have rejected his request on the ground that the issue about lien on the operating branch is pending in the case of Shri Phool Chand Meena (Annexure A/1) though the promotion order in other branch of Office Superintendent-I in scale Rs.6500-10500 are being issued. Copy of letter dated 16.01.2008 and 25.02.2008 are being submitted and marked as Annexure A/4 collectively. Therefore, the applicant has requested that he may be promoted to the post of Office Superintendent-I in the scale of Rs.6500-10500 from July/August, 2007.

3. The respondents have filed their reply. The respondents have submitted in their reply that the applicant, Suraj Singh Yadav, Office Superintendent-II, scale Rs.5500-9000/- (RSRP) was granted lien in operating branch from 16.06.2006 in reference to OA No. 482/2004 and his seniority was fixed in operating branch vide Annexure A/2. The respondents further submitted that the sanction strength of Office Superintendent-I, scale Rs.650—10500 (RSRP) is 5 out of which 5 men on roll are working against the sanctioned strength, so at present there is no clear vacancy of Office Superintendent-I, scale Rs.6500-10500 (RSRP) in operating branch. However, it is true that Shri Ram Chandra Meena, Office Superintendent-I, expired on 28.07.2007 but no vacancy arise due to his said demise because at that time Shri Amarli Lal Meena, Office Superintendent-I, was excess in the cadre of Office Superintendent-I, scale Rs.6500-10500 (RSRP), who was

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adjusted against the higher grade vacancy of Chief Office Superintendent; scale Rs.7450-11500 (RSRP), which was temporarily downgraded due to non availability of eligible candidates in selection to Chief Office Superintendent.

4 The respondents have also stated that at present one post of Chief Office Superintendent, scale Rs.7450-11500 (RSRP), is lying vacant in the cadre of operating branch and the post of Chief Office Superintendent is a selection post and eligible employees for calling in selection are available in selection as Office Superintendent-I, scale Rs.6500-10500 (RSRP). A proposal was moved to fill up the vacancy but the competent authority raised query about granting lien of the employees of construction department to operating branch and also refused to temporarily downgrade the post of Chief Office Superintendent, scale Rs.7450-11500 in Office Superintendent-I, scale Rs.6500-10500. This decision of the competent authority was communicated to the applicant vide his letter dated 02.04.2008 (Annexure A/1). Moreover no junior employee of regular line in operating branch has been promoted by overlooking the applicant. Moreover temporary downgrading the post in lower scale is an ad hoc arrangement in the interest of administration, for which no employee can claim as a matter of right.

5. The respondents have stated that in view of above, it is clear that the applicant has no right to claim his promotion against the higher grade vacancy of Chief Office Superintendent, scale Rs.7450-11500, being a selection post and it will be filled by positive act of selection first and then the resultant vacancy in Office Superintendent-I, scale Rs.6500-10500 (RSRP), will be filled as per seniority of Office Superintendent-II, scale Rs.5500-9000 (RSRP), in operating branch. In view of the above, the respondents have submitted that the present OA deserves to be dismissed.

6. The applicant has filed rejoinder reiterated the submissions made in the OA.

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7. Heard learned counsel for the parties and perused the documents. Learned counsel for the applicant argued that a clear vacancy of Office Superintendent-I arose due to death of Shri Ram Chander Meena on 28.07.2007. Therefore, the applicant being the senior most in Office Superintendent-II should have been promoted in that vacancy but the respondents have denied him that opportunity on frivolous grounds. Shri Amarli Lal Meena, Office Superintendent-I, scale Rs.6500-10500, was promoted on 18.08.2006. The respondents have already fixed the lien of the applicant from 01.11.2003 in the operative branch vide letter dated 03.12.2007. Therefore, the applicant is entitled for promotion from July/August, 2007.

8. Learned counsel for the respondents argued that it is not disputed that Ram Chander Meena, Office Superintendent-I, in operative branch expired on 28.07.2007 but no vacancy arose due to said demise because Shri Amarli Lal Meena, Office Superintendent-I, was in excess in Office Superintendent-I and was adjusted against the vacancy of Chief Office Superintendent, scale Rs.7450-11500, which was temporarily downgraded due to non availability of available candidates in the grade of Chief Office Superintendent.

9. This Tribunal vide order dated 12.12.2008 directed the respondents to file an affidavit whether the post of Chief Office Superintendent in the scale of Rs.7450-11500 is available with the department and if so, why steps for filling up the said post is not initiated in terms of instructions contained in Para No. 2.1 of RBE 272/1999. In compliance of these directions, the respondents have filed an additional affidavit in which they have clarified the position. In this additional affidavit, they have stated that one post of Chief Office Superintendent in the scale of Rs.7450-11500 was lying vacant in the cadre of operating branch. Since no suitable/eligible candidate is found for selection to the aforesaid post and, therefore, the Railway Administration had no option except to consider Shri Amarli Lal

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Meena, Office Superintendent-I, after downgrading the post. Thereafter, Amarli Lal Meena had been promoted vide order dated 18.08.2006. This decision of the competent authority was communicated to the applicant. Since one post of Chief Office Superintendent was downgraded, therefore, no post was available in that cadre.

10. During the course of arguments, learned counsel for the respondents drew our attention to the letter dated 30.10/04.11.2009 vide which the applicant has been promoted to the post of Office Superintendent-I in the pay band of Rs.9300-34800 with grade pay of Rs.4600/-. It was not disputed by the learned counsel for the applicant that the applicant has been promoted as Office Superintendent-I in the year 2009 but his contention was that applicant should have been promoted in July/August, 2007.

11. Having heard the rival submissions of the respective parties and perusing the documents, we are of the view that since there was no vacant post of Office Superintendent-I in July/August, 2007, the applicant could not have been promoted from that date. Subsequently, when the post became available, he has been given promotion. It is also admitted by the learned counsel for the applicant that no junior person to the applicant was promoted as Office Superintendent-I prior to the applicant. The respondents have promoted the applicant as & when vacancy became available. Therefore, there is no arbitrariness on the part of the respondents and no right of the applicant has been violated. The applicant has since been promoted vide order dated 30.10/04.11.2009; we find no reason to interfere with the orders issued by the respondents. In our opinion, the present OA has no merit and deserves to be dismissed. Consequently, the OA is dismissed with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

J. S. Rathore

(Justice K.S.Rathore)
Member (J)

AHQ