

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 4th day of May, 2011

ORIGINAL APPLICATION No.345/2010

With

MISC.APPLN. Nos.210/2010, 250/2010, 262/2010

& 8/2011

CORAM :

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

1. K.L.Sain
S/o Shri Narbada Prasad Sain,
R/o 1208, Niwai Mahant ka Rasta,
Ramganj Bazar,
Jaipur.
2. O.P.Kulshrestha
S/o Shri U.S. Kulshrestha,
R/o D-109, Bapu Nagar,
Jaipur.
3. Batti Lal Meena
S/o Shri Prabhu Lal Meena,
O/o CHOS, CCMs Office,
North Western Railway,
Jaipur.
4. M.C.Bansal
S/o Shri B.P.Bansal,
R/o Malviya Nagar,
Jaipur.
5. Vivekanand Sharma
S/o Shri Umesh Chand Sharma,
O/o CVI, Railway Board.
6. Shyam Sunder
S/o Shri Jhabar Mal,
O/o CHOS, CCMs Office,
North Western Railway,
Jaipur.
7. Shakti Bali
S/o Shri Somdutt Bali,

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O/o Chief Rate Inspector,
CCM, Jaipur.

8. Mahaveer Singh Nahar
S/o Shri Shanker Lal,
O/o DCMI HQ CCM Office,
Jaipur.
9. Ajay Sankhla
S/o Shri B.L.Sankhla,
O/o CRI, HQ, Jaipur.

... Applicants

(By Advocate : Shri Rajendra Vaish)

Versus

1. Union of India through
Secretary,
Ministry of Railways,
Government of India,
New Delhi.
2. General Manager,
Personnel,
North Western Railway,
Jaipur.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

The applicants have filed this OA thereby praying for the following relief :

- "a) by an appropriate order or direction the respondents be directed to insert the name of the applicants in the list of candidates eligible to appear for the written competitive examination for the post of Asstt. Commercial Manager even in Annex. A/1 and any such notification issued subsequently or like to be issued. The respondents be directed to allow the applicants to participate in the competitive examination, selection, promotion as ACM 70% quota and after adjudging their merit appointments/promotions be released;
- b) by an appropriate writ; order or direction the respondents be directed to amend their notification dated 4.6.2010 and allow the applicants for

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appearing in the competitive examinations in accordance with Annex.A/3) and further the artificial restriction of calling limited number of persons for the said examinations be declared as illegal, arbitrary and be quashed and set aside and all eligible candidates including the applicants in accordance with Annex A/3 be considered for participation in the competitive exam;

- c) by an appropriate order or direction, the respondents be directed to first re-determine the seniority and only thereafter, proceed for selections against Annex.A/1 and the applicants be declared senior in the grade pay of 4600 in accordance with Annex.A/3 and only thereafter, the selection as per Annex.A/1 be further proceeded;

If any examination/selection or any promotion for the post of Asstt. Commercial Manager 70% quota is made without determining the seniority and without deciding the representations /objections of the applicants, during the pendency of this OA the same may kindly be taken a note of and may kindly be quashed and set aside;

- d) any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case may also be awarded to the applicants."

2. The main grievance of the applicants is that the respondents have deprived them of their seniority and have not allowed them to participate in the selection in the qualifying exam for promotion to the post of Assistant Commercial Manager, Group-B, in accordance with the notification dated 4.6.2010, which is contrary to their own statutory instructions issued after 6th pay Commission implementation and their order dated 29.3.2010.

3. The brief facts of the case are that the applicants were appointed by the respondents from the open market by the due process of law and by a duly constituted selection committee as Commercial Apprentices and the applicants resumed their duty on 18.8.1986. They were designated as Commercial Inspector after the training. Subsequently, they were promoted as Senior Commercial Inspector in 1990 and further as Senior Commercial Inspector Grade-I in the pay scale of Rs.6500-10500 (by selection) on 3.7.1995. Thereafter, the

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applicants were promoted as Divisional Commercial Inspector in the pay scale of Rs.7450-11500 in September, 1998.

4. The post of Assistant Commercial Manager (ACM, for short), is 100% promotion post from the feeder posts from the streams of Booking Supervisors, Goods Supervisors, Parcel Supervisors, Reservations Supervisors, Ticket Inspectors, Commercial Inspectors. All these categories are from Commercial Department, while the Law Assistants are from Legal Department. 70% of ACM posts are filled by selection after departmental exam, medical fitness exam and viva-voce and thereafter from amongst such qualified selected persons, the promotion/appointment to the post of ACM is given in order of integrated seniority from the feeder posts. The remaining 30% posts are filled through fast track competitive departmental exam from amongst the same integrated feeder category posts.

5. Claim of the applicants in this OA is confined to 70% ACM posts to be filled by selection from integrated feeder cadre. The applicants have stated that prior to 6th Pay Commission, the ACM 70% promotion quota was filled after determining inter-se seniority in the integrated manner of the seven feeder categories including the applicants and this was done only on the basis of the pay scale of Rs.6500-10500 as the higher pay above Rs.6500/- was not available in any stream other than the stream of the applicants and the Law Assistants. The applicants were in the pay scale of Rs.7450-11500 and the other feeder categories were in the pay scale of Rs.6500-10500 but still due to non-availability of the higher pay in the other streams the applicants were treated in the pay scale of Rs.6500-10500 for determining the integrated inter-se seniority from amongst the feeder cadres of ACM 70% quota promotional posts. The applicants have annexed the integrated seniority list dated 31.5.2004 as Ann.A/2.

6. The applicants have submitted that after commencement and implementation of the 6th Pay Commission, the applicants

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were continued in the grade pay of Rs.4600/- which they were drawing since long while the other stream persons who were in the pay scale of Rs.6500-10500 (PR) were put in the grade pay of Rs.4200/- and at a much later stage this pay scale and the grade pay was upgraded for the other stream persons and their grade pay was raised to Rs.4600/- only and only w.e.f. 11.9.2008 in accordance with the circular No.PC-VI/2 dated 17.9.2008 while the applicants were drawing this grade pay of Rs.4600/- much prior to the other stream persons. Previously, the applicants were put below in the seniority qua the other streams for drawing up the integrated seniority for promotion to the ACM 70% quota only and only on the count of length of service in the pay scale of Rs.6500-10500 (although the applicants were drawing higher pay scale). Now the seniority is to be determined on the basis of date of grade pay drawn by the persons of different streams and not in accordance with the pay scales they were drawing. Accordingly, the seniority has to be revised on the basis of grade pay which the applicants were drawing much prior to the other stream persons and accordingly the applicants require reconsideration of their position of seniority before any such examination is concluded including the notification dated 4.6.2010 (Ann.A/1).

7. The respondents had issued the latest statutory instructions laying down the eligibility conditions for promotion to Group-B including the post of ACM. The instructions dated 29.3.2010 are self explanatory and from all four corners make the applicants eligible and entitled for participation in the competitive selections for the post of ACM including Ann.A/1, but the applicants have been deprived from even participation for the reasons best known to the respondents and this action on the part of the respondents is arbitrary, illegal, unjustified and is liable to be quashed and set aside. Copy of the statutory instructions dated 29.3.2010 has been enclosed and marked as Ann.A/3.

8. The applicants have further submitted that all the candidates in the integrated seniority are to be called for the

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above said written examination and viva-voce etc. and after the final select list of successful candidates the appointments can be restricted in order of seniority but at the threshold the applicants cannot be deprived of their right to appear in the said examination.

9. Thus, the main contentions of the applicants in this OA are two folds; (i) that the integrated seniority has to be re-determined on the basis of the grade pay as per Ann.A/3; & (ii) that all eligible candidates should be called for selection/written examination without limiting the number of persons as has been done in the notification (Ann.A/1).

10. The respondents have filed their reply contesting the claim of the applicants. In their reply, the respondents have stated that as per Railway Board's letter No.E(GP)99/2/22 dated 29.4.2009, Group-B selection may be continued as per extant instructions of the Railway Board i.e. on the basis of combined length of non-fortuitous service in grade Rs.6500-10500 (5th CPC) and above ignoring promotions to the grade Rs.7450-11500 (5th CPC). This fact is also evident from a bare perusal of Ann.A/2 as the eligible staff working in the pay scale of Rs.7450-11500 has not been given any benefit in the seniority list. The respondents have further stated that the category of old pay scale Rs.6500-10500 was allotted the pay band of Rs.9300-34800 + 4200 (Grade Pay). But, now the pay scales of Rs.6500-10500 and Rs.7450-11500 have been merged in the single grade pay of Rs.4600/-. A bare perusal of Ann.A/3 would make it crystal clear that in the integrated seniority of Group-C employees for selection to Group-B (70% quota) employees in the Pay Band-2 (Rs.9300-34800) with the grade pay of Rs.4600/- will be placed above to those in the Pay Band-2 (Rs.9300-34800) with the Grade Pay of Rs.4200/-. In either category, the relative seniority of different streams will be determined with reference to non-fortuitous service in the scale of PB-2 i.e. Rs.4600/- or PB-2 i.e. Rs.4200/-, as the case may be.

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11. The issues raised by the applicants have been re-examined and the name of Shri M.C.Bansal [Applicant No.4] has been included in the eligibility list vide order dated 16.7.2010 and he has been called for the written examination to be held on 7.8.2010 on the basis of length of service rendered in the Grade Pay of Rs.4600/- which starts from entry into the grade of Rs.6500-10500 + 7450-11500. It is also relevant to mention here that the date of entry of Shri M.C.Bansal in the grade Rs.6500-10500/4600 is 11.3.92 and the last man is Chhote Lal whose date of entry in the grade is 1.3.93, much earlier than the other applicants.

12. The respondents have further submitted that the prayer made by the applicants for calling all the candidates in the integrated seniority and eligibility category is not sustainable in the eye of law for the reason that the Railway Board have already issued instructions to call the candidates by the number of vacancies multiplied by three i.e. three times of the vacancies. The logic of reasoning submitted by the applicants cannot be sustained since the Railway being governed by the provisions of Code and Manual and also with the departmental instructions issued from time to time. Moreover, there is no provision for calling all the candidates of the eligible categories working in the Railways in one selection i.e. selection of ACM. So far as the number of candidates qualifies for the selection is concerned, the same is not an effect of the procedure followed by the Railway making selection for the post of ACM. Be that as it may, selection to the post of APO is governed by the relevant rules and instructions issued vide letter No.E(GP)99/2/22 dated 26.12.2008 and is a separate selection and hence the two selection cannot be compared with and, therefore, the claim of the applicants merits rejection.

13. The respondents have submitted that the 6th Pay Commission was made applicable from 1.1.2006 and all those who were working in the grade Rs.6500-10500, now Rs.9300-34800/4600, and rendered more service in the grade ranked senior to those with lesser service in the grade. Hence the

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allegations are baseless and without any material fact to support the averments made. The candidates in the selection have been called on the basis of norms laid down by the Railway Board and there is no violation of any provision of the Constitution and, therefore, the OA merits rejection.

14. The number of candidates called for the selection depends upon the number of vacancies in this selection. In the instant case, there are six vacancies, as such 18 candidates are required to be called and in addition of twice the number of failed to the above 18 (4 employees) and 12 names in the standby list in order of general seniority.

15. The applicants have also filed rejoinder stating therein that the seniority list of 2004 has become redundant and cannot be acted upon in view of the latest statutory instructions of the Railway Board (Ann.A/3). The respondents are duty bound to release the seniority list of the interested employees including the applicants in accordance with their grade pay as per the notification dated 29.3.2010 (Ann.A/3).

16. Heard learned counsel for the parties and perused the material available on record. Learned counsel for the applicants reiterated the same facts and points as raised by him in the OA as well as rejoinder. He argued that prior to 6th Pay Commission, the seniority was determined in accordance with the respective pay scales of the employees. In the instant case, the pay scale of the applicants was 7450-11500 while other feeder cadre employees were in the pay scale of Rs.6500-10500 but still due to the non-availability of higher pay in other streams, the applicants were treated in the pay scale of Rs.6500-10500 for determining integrated inter-se seniority from amongst the feeder cadre of ACM (70% quota) promotional posts. He also argued that the applicants were promoted in the grade Rs.7450-11500 in September, 1998 and since then they have been working in this grade. After the introduction of 6th Pay Commission, this scale was replaced in PB-2 with Grade Pay Rs.4600/-, whereas the other employees

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who were in the feeder cadre of ACM (70% quota) in the pay scale of Rs.6500-10500 were given the replacement scale of PB-2 with Grade Pay Rs.4200/-. He further argued that as per the provisions of 6th pay Commission, inter-se seniority among the employees is to be determined not on the basis of pay scale but on the basis of grade pay and since the applicants' grade pay of Rs.4600/- is higher than the grade pay of the other employees, whose grade pay is Rs.4200/-, the applicants be declared senior to the other employees in the feeder cadre of ACM (70% quota) and, therefore, the inter-se seniority should be re-determined by the respondents.

17. In reply, learned counsel for the respondents argued that the applicants were working in the pay scale of Rs.7450-11500 since September, 1998. Admittedly, they were in the higher pay scale than the other employees of the feeder cadre (except the Law Assistants from the Legal Department). He further argued that the applicants themselves have admitted that due to the non-availability of higher pay scale in the other streams, the applicants were treated in the pay scale of rs.6500-10500 for determination of integrated inter-se seniority from amongst the feeder cadre of the ACM (70% quota) promotional posts. The inter-se seniority is determined on the basis of combined length of non-fortuitous in the grade of Rs.6500-10500 (5th CPC) and above ignoring promotions to the grade of Rs.7450-11500 (5th CPC). Learned counsel for the respondents in this regard referred to the Master Circular on Instructions Governing Promotion from Group 'C' to Group 'B' posts. Para-9 of the said Circular reads as under :

"9. INTEGRATED SENIORITY OF EMPLOYEES
BELONGING TO DIFFERENT STREAMS/SENIORITY
UNITS FOR THE PURPOSE OF PROMOTION TO
GROUP 'B' POSTS

9.1 Where employees from the different streams are eligible to appear for the selection, their integrated seniority for the purpose of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.6500-10500 and above. In other words the date of

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appointment to grade Rs.6500-10500 on a non-fortuitous basis will be the criterion."

18. This position has not been disputed even by learned counsel for the applicants. It is not disputed that though the applicants were promoted in the higher grade of Rs.7450-11500 (5th CPC) from September, 1998 and there was no dispute of seniority upto 31.12.2005 i.e. the date prior to introduction of the 6th Pay Commission. Learned counsel for the respondents also argued that replacement of pay scale of Rs.6500-10500 to Rs.9300-34800 (PB-II) with grade pay of Rs.4200/- would have placed the other employees to disadvantage in their seniority which was undisputed for a long time, therefore, the Railway Board issued instructions dated 22.12.2009 (Ann.A/3), which reads as under:

"3. This Ministry has received a large number of references from various Railways/Production units and other institutes/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. Consequent upon decision taken by Ministry of Finance, it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006. Further, as already stipulated in note 2 under schedule circulated vide Annexure 'B' of Board's letter No.PC-VI/2008/I/RSPR/1 dated 11.9.2008 in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500."

Thus, he argued that this upgradation in the grade pay has taken effect w.e.f. 1.1.2006 and, therefore, the seniority position will not change and there is no need to redetermine the seniority. The mandate of 6th Pay Commission was to recommend the replacement scales for the employees and not to disturb the inter-se seniority of the employees and since in the instant case the employees working in the pay scale of Rs.6500-10500 have also been given the grade pay of

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Rs.4600/-, therefore, the inter-se seniority need not be redetermined. We are convinced with the arguments of the learned counsel for the respondents and hold that in view of the facts stated above there is no need to redetermine the inter-se seniority, as prayed for by the applicants.

19. Learned counsel for the applicants further argued that the applicants are eligible to appear in the selection process but they have been deprived from even participation. The respondents have allowed only 18 employees against 6 vacancies + 4 employees against twice failed category. In Railways, there are several other cadres where promotion is by way of selection and in those examinations there is no limit fixed for eligible candidates to appear in the selection process. In those selections all eligible candidates are allowed to appear in the examination. Therefore, following the same practice in this selection also, all eligible candidates should be allowed to participate in the selection process and appear in the written examination etc.

20. Learned counsel for the respondents argued that the Ministry of Railways have issued a Master Circular on Instructions Governing Promotion from Group 'C' to Group 'B' posts. The zone of consideration for selection for 70% vacancies has been provided in para-8 of the said Circular, which reads as under :

"8. ZONE OF CONSIDERATION FOR SELECTION
FOR 70% VACANCIES

8.1 The field of consideration of eligible employees will be determined as under :

No.of vacancies No.of employees to be considered

1	5
2	8
3	10
4 or more	three times the number of vacancies"

Thus, it is clear that the candidates for this selection were invited on the basis of these provisions and, therefore, there is

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no violation of the rules on selection. Learned counsel for the respondents pointed out that it is for the employer to fix the conditions for promotion and selection. In this regard, he referred to a judgement of the Hon'ble Apex Court in the case of **R.Prabha Devi & Ors. v. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors.** [(1988) 2 SCC 233]. Relevant portion of Para-16 of the said judgement is quoted below :

"16. In any event, the appropriate rule-making authority is the best judge in this regard. The rule-making authority is certainly competent to amend the rule and extend the period from six years to eight years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the rule-making authority; the Tribunal cannot sit in judgement over the opinion of the rule-making authority. No court or Tribunal can substitute its own view in a matter such as this. Such a rule framed by a competent authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

21. In view of the above discussions and from the perusal of the documents on record, we are of the view that there is no reason to interfere in the decision taken by the respondents in calling the limited number of candidates in the selection and on this count no relief can be granted to the applicants. Thus, the present OA has no merit and it stands dismissed accordingly.

22. It is also relevant to mention here that the applicants were allowed to appear in the examination by way of an interim order granted by this Tribunal on 5.8.2010. As such, the respondents need not to declare the result of the applicants except in case of applicant No.4, Shri M.C.Bansal, who was in any case allowed by the respondents to appear in the examination because he was found eligible to appear in the examination.

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23. In view of the order passed in the OA, there is no need to pass a separate order in MA 210/2010, MA 250/2010, MA 262/2010 & MA 8/2011, which shall also stand disposed of accordingly.

24. No order as to costs.

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(ANIL KUMAR)
MEMBER (A)

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K.S. Rathore

(JUSTICE K.S.RATHORE)
MEMBER (J)