

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO.463/2011

Order reserved on : 15.4.2015

Date of Order: 20.4.2015

CORAM

**HON'BLE MR. JUSTICE HARUN-UL-RASHID,
JUDICIAL MEMBER**

**HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE
MEMBER**

1. Suresh Kumar Sharma S/o Late Shri Ramesh Chand Sharma, aged about 32 years, Resident of Qr. No.L3-A, In Front Sant Francis Nursing Home, Baiwar Road, Ajmer and presently working as Technician Grade-I, Office of Section Engineer(Loco), Open Line, North Western Railway, Ajmer.
2. Ramesh Chand Son of Shri Panna aged ab out 57 years, resident of Railway Colony, Qr. No.1-342, Chandmari Road, Dhobi Ghat, Abu Road, and presently working as Senior Technician (MCF) under Senior Divisional Mechanical Engineer(Power), North Western Railway, Ajmer.

.....Applicants

(By Advocate Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Mechanical Engineer (Power), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate Mr. Anupam Agarwal)

ORDER

(Per Hon'ble Mr. R.Ramanujam, Member(A))

The applicants have filed the present OA inter alia praying for the following reliefs:-

8.(i) That the respondents be directed to give promotion to the applicants as per their service and eligibility against vacant posts of Assistant Loco Foreman and Loco Foreman (Section Engineer and Senior Section Engineer) by quashing note dated 10.3.2011 (Ann.A/1) with all consequential benefits.

(ii) That respondents be further directed to open channel of promotion by down gradation of posts and not to block promotional channel of the applicants available in non running side i.e. loco maintenance as per provisions of Annexure A/10..

2. The applicants No.1 and 2 are presently working as Technician Grade-I and Senior Technician (MCF) respectively and belong to the non-running staff of the respondents. Their grievance is that the respondents have refused to fill up the post of Junior Engineer through promotion of the non-running staff, although the post of Junior Engineer Gr.II and Gr.I and thereafter Section Engineer and Senior Section Engineer are to be filled up by promotion from Gr.I/MCF of the non-running staff. Respondents abolished the post of JE-I and JE-II in 1994 without any sound basis. The applicants and others belonging to their category made representation from time to time but their grievance was not redressed. After obtaining information under the RTI Act, 2005 the applicants

came to know that the posts of non-running staff were being filled in from the running staff. Due to this, the promotional avenues available to the applicants have been blocked and hence the application before this Tribunal.

3. The respondents in their reply have pointed out that the applicants' case for promotion to the post of ALF/LF is not supported by the Railway Board order dated 9.1.1998 (Ann. A/4) and letter dated 15.5.2006 (Ann.R/1). As per these orders, the said posts are to be filled up by running staff while the applicants belong to maintenance cadre. The post of Maintenance Supervisor now belongs to running staff and thus no more posts exist for the staff of maintenance side because there is no work of maintenance. The applicants were not under the zone of consideration and could not have any grievance against the alleged surrender of posts. The orders of the Railway Board dated 9.1.1998 (Ann.A/4) and letter dated 15.5.2006 (Ann.R/1) have not been challenged by the applicants. The abolition of the posts or transfer of the same from one cadre to another is the prerogative of Respondents and done keeping in view the exigencies of work. It could not be challenged on the ground of

curtailment of promotional avenues available to any particular cadre or category of employees.

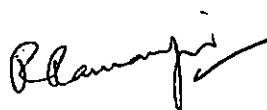
4. We have heard the counsels for the applicants and the respondents and also perused the records. The applicants are questioning the action of the respondents to make changes in the scheme of appointment on different posts from prescribed channels. Such changes necessarily involve surrender of certain posts or their inclusion in another cadre. The changes have been contested not on grounds of efficiency of operations or other public interest but solely on the plea that it affects their promotional avenues. On the other hand, the respondents contend that applicants belong to a dying cadre and have no right to promotion to the posts which are now to be filled by appointment of running staff.

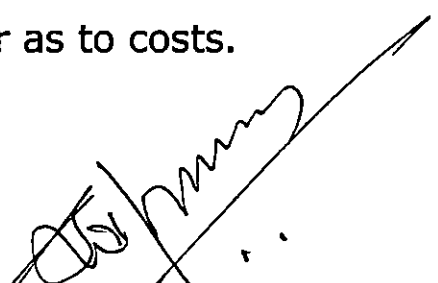
5. After carefully examining the rival contentions, we are of the view that the applicants have failed to make out any case to challenge the decision of the Railways to move some of the posts which were earlier available to the non-running staff to the side of running staff. Inclusion and exclusion of posts under the different categories are the prerogative of the competent authority and could not be interfered with unless it is established that such action is arbitrary or malafide or

against public interest. The Tribunal is not competent to go into the functional requirement of the respondents to decide which posts are best included or excluded in different cadres. Nor could it be held that once included in a particular cadre/channel, the competent authority would be debarred from taking a relook into the matter even when functional exigencies warrant such action.

6. We also notice that while directing the merger of certain posts from non-running staff to running staff, the respondents have also taken care to ensure that the existing non-running staff would continue to work till they vacate the post. Filling up of such posts by running staff would happen only after such posts fall vacant in due course. Thus no undue hardship has been caused to the incumbents.

7. The applicants cannot claim a right to promotion to posts which are no longer in their channel. The Original Application is, therefore, devoid of merits and is accordingly dismissed with no order as to costs.


(R. RAMANUJAM)
MEMBER(A)


(JUSTICE HARUN-UL-RASHID)
MEMBER(J)

Adm/