

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3072/2011

Order Reserved on: 08.08.2016
Order pronounced on 01.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Vishal Sharma
S/o Sh. V.K.Sharma
Commercial Inspector
Office of Chief Comml. Manager/PM
IRCA Building
State Entry Road
New Delhi.

Residential Address

5337-C8, 2nd Floor
Jawahar Nagar
Delhi – 110 007.

... Applicant

(By Advocate: Sh. G.D.Bhandari)

Versus

1. Union of India
Through the General Manager
Northern Railway
Baroda House
New Delhi.
2. Chief Comml. Manager/PM
IRCA Building
State Entry Road
New Delhi.

3. Divisional Railway Manager
Northern Railway
DRM Office
State Entry Road
New Delhi.

... Respondents

(By Advocate: Shri Shailendra Tiwary)

ORDER

By V. Ajay Kumar, Member (J):

Aggrieved by the Annexure A1 proceedings No.NDCR/E-40/BC/40/06 dated 13.05.2011 of the respondents-Railways in rejecting the request of the applicant to regularize him on the post of Commercial Inspector, the present OA has been filed.

2. The applicant was appointed as Commercial Clerk in the then grade of Rs.975-1540, in pursuance of his selection through the Railway Recruitment Board. He was promoted to the next higher grade of Rs.1200-2040 in November, 1997, as Senior Commercial Clerk.

3. It is submitted on behalf of the applicant that while working at Delhi, Sarai Rohilla he was transferred to work under the Chief Commercial Manager/PM, IRCR Building, New Delhi to work in the Commercial Inspector Cell as Commercial Clerk till 2007 and thereafter, he was put to work and shoulder the job responsibilities of the Commercial Inspector (CMI, for short) for all purposes, where he

has been working as such without any break or interruption. It is further submitted that the applicant was nominated for duty during monsoon session of Parliament 2007 and he performed duty as such vice Shri K.D.Tripathi, Senior Commercial Inspector. Since then, he has been working as Commercial Inspector continuously. Since he has been continuously working in the higher post of Commercial Inspector, he made representations seeking to regularize his services as Commercial Inspector with all consequential benefits with effect from the date of his initial entrustment of Commercial Inspector work. The respondents rejected the said request vide the impugned Annexure A1 dated 13.05.2011 by stating that the post of Commercial Inspector is a selection post and that the applicant cannot be directly posted as CMI without training, and without following other norms governing the said post.

4. Heard both sides, and perused the pleadings on record.

5. Shri G.D.Bhandari, the learned counsel appearing for the applicant, submits that since the respondents posted the applicant in a place occupied by a regular Commercial Inspector and that utilized his services in the higher post from August, 2007, the applicant is entitled for regularization of his services in the post of Commercial Inspector w.e.f. August, 2007 with all consequential benefits.

6. Per contra, Shri Shailendra Tiwary, the learned counsel appearing for the respondents would submit that the applicant is working in a

substantive post of Senior Booking Clerk/Senior Commercial Clerk in the Grade Pay of Rs.2800 and claiming promotion on the post of Commercial Inspector which carries the Grade Pay of Rs.4600, a much higher grade, is untenable and unsustainable.

7. The learned counsel for the respondents further submits that the post of Commercial Inspector (CMI), which is in the Grade Pay of Rs.4600/-, is a selection post. In the Railway Board's letter No.E(NG) II?84/RC3/15 (AIRF) New Delhi dated 15.05.87 issued by Deputy Director Establishment (N) Railway Board, which pertains to Recruitment of Traffic/Commercial Apprentices, it was mentioned as under:

"In terms of existing rules/orders on the subject, 25% of the vacancies in the scales Rs.455-700/470-750(RS)/1400-2300/1400-2600(RP) in the category of Commercial Inspectors and in the operating categories of Station Masters, Yard Masters Traffic Inspectors and Selection Controllers are filled by recruitment of Commercial and Traffic Apprentices. Out of this, 15% is filled by direct recruitment from the open market and 10% by Limited Departmental Competitive Examination from amongst serving graduates in the Traffic and Commercial Departments (other than ministerial staff) below the age of 40 days".

It is further submitted that only getting awards, commendation certificate and cash award is not the criteria for promoting any staff in CMI grade without sitting/qualifying in the CMI examination.

8. It is also submitted that the contention of the applicant that he has been continuously working as Commercial Inspector from the year 2007 onwards, without any break, is incorrect. The applicant was only utilized as Inspector (CMI) during the Session of Parliament in the

years 2007 (04 days), 2008 (15 days), 2009 (14 days), 2010 (13 days), and 2011 (5 days). Accordingly, he prays for dismissal of the OA.

9. The applicant has not chosen to deny the submissions of the respondents by filing any rejoinder. He has also failed to show any rule or instruction which permit the respondents to regularize those persons whose services were utilized in any higher post for few days, for which the recruitment is by selection. It is also not the case of the applicant that the respondents regularized any other person who was holding the substantive post of Senior Commercial Clerk as Commercial Inspector.

10. In these circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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