

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3312 OF 2010

New Delhi, this the 11th day of May, 2016

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

1. Rakesh Babbar,
s/o Sh.Bhagwan Das,
R/o KD-172, Pitampura, Delhi.

2. Praveen Chandra Tiwari,
S/o Sh.Harish Chandra Tiwari,
R/o D-89, Sector-9,
New Vijay Nagar, Ghaziabad.

3. Mohd. Aslam Khan,
S/o Sh.Late N.H.Khan,
R/o 32, Street No.5, Rasheed Market,
Khazuri Khas,
Delhi.

4. Mohd. Firoz,
S/o Sh.Sayeed Ifjal Hussain,
R/o M-49, Batla Hhouse,
Jamia Nagar, Okhla, New Delhi

1 1
Applicants

(By Advocates: S/Shri M.S.Saini & A.K.Wahi)

Vs.

1. Union of India, through General Manager,
Northern Railway,
Baroda House,
New Delhi

2. The Divisional Personnel Officer,
Northern Railway,
Baroda House, New Delhi

1 .
Respondents

(By Advocates: S/Shri V.S.R.Krishna & Shailendra Tiwari)

1 .

ORDER

Per Raj Vir Sharma, Member(J):

The applicants have filed the present O.A. seeking the following reliefs:

- ØI. To direct the respondents to promote applicants to the posts of Goods Supervisor w.e.f. 1.11.2003 and along with consequential benefits including the arrears.
- II. Cost of the proceedings may be awarded to the applicants.
- III. Any other relief which this Hon'ble Tribunal may also be passed in favour of the applicants.Ø

2. Opposing the O.A., the respondents have filed their counter reply. The applicants have also filed their rejoinder reply refuting the stand taken by the respondents. In compliance with the Tribunal's orders passed on different dates, additional affidavits have been filed by the respondents, and the applicants have also filed their affidavits in reply thereto.

3. We have carefully perused the records, and have heard S/Shri M.S.Saini and A.K.Wahi, the learned counsel appearing for the applicants, and S/Shri V.S.R.Krishna and Shailendra Tiwari, the learned counsel appearing for the respondents.

4. The brief facts of the case, which emerge from the pleadings of the parties and are relevant for the purpose of deciding the issue involved in the case, are as follows:

4.1 While the applicants were working as Head Goods Clerks (Rs.5000-8000) in the Commercial Department of New Delhi Division of Northern Railway, the circular dated 9.10.2003 (Annexure A/1) was issued by the Railway Board for restructuring of certain Groups -C₀ and -D₀ cadres in the Railways. Through the circular dated 9.10.2003, *ibid*, the percentage of Commercial Staff in the grade of Rs.6500-10500/- was increased from 8% to 12%, and that of in the grade of Rs.5500-9000/- was increased from 12% to 18%.

4.2 The Chief Goods Supervisors were in the grade of Rs.6500-10500/-, the Goods Supervisors were in the grade of Rs.5500-9000/-, and the Head Goods Clerks were in the grade of Rs.5000-8000/-.

4.3 As a result of cadre restructuring, the cadre strength of the Chief Goods Supervisors was revised from 40 to 58, and that of the Goods Supervisors was revised from 56 to 86 as on 31.10.2003.

4.3.1 Prior to 31.10.2003, there were 7 existing vacancies in the cadre of Chief Goods Supervisors, and after revision of its strength by way of cadre restructuring, 18 additional vacancies arose in the said cadre. Thus, the total vacancies in the cadre of Chief Goods Supervisors became 25 as on 1.11.2003.

4.3.2 Prior to 31.10.2003, there were 9 existing vacancies in the cadre of Goods Supervisors, and after revision of its strength by way of cadre restructuring, 30 additional vacancies arose in the said cadre as on 31.10.2003. Consequent upon promotion of 25 incumbents from the grade of

Goods Supervisors to the grade of Chief Goods Supervisors with effect from 1.11.2003, vide order dated 16.5.2005, 25 more vacancies arose in the grade of Goods Supervisors as on 1.11.2003. Thus, the total vacancies in the cadre of Goods Supervisors became 64 as on 1.11.2003.

4.4 Respondent no.2, by order dated 1.5.2006, promoted 38 Head Goods Clerks to the grade of Goods Supervisors with effect from 1.11.2003.

4.4.1 While the position stood thus, OA No.1046 of 2007 was filed by All India OBC Railway Employees Union and Mr.Rakesh Babbar (applicant no.1 in the present O.A.). It was claimed by the applicants in OA No.1046 of 2007 that as per paragraph 15 of the circular dated 9.10.2003 issued by the Railway Board, all the vacancies arising as on 1.11.2003 ought to have been filled by way of promotion. Therefore, they prayed that appropriate direction should be issued by the Tribunal to the respondent-Railways to consider the cases of Head Goods Clerks for promotion to the grade of Goods Supervisors against the additional vacancies arising out of the restructuring order as on the cut-off date. The coordinate Bench of the Tribunal, by its order dated 29.7.2008, disposed of the said O.A. and directed the respondent-Railways to recalculate the vacancies as per paragraph 15 of the circular dated 9.10.2003,*ibid*, and thereafter consider the claim of the applicants for promotion to the grade of Goods Supervisors.

4.4.2 In compliance with the Tribunal's order dated 29.7.2008, the respondent-Railways considered the cases of six Head Goods Clerks, which included the cases of three Head Goods Clerks who were already

empanelled for promotion to the grade of Goods Supervisors with effect from 1.11.2003, vide order dated 1.5.2006, and granted promotion to three incumbents from the grade of Head Goods Clerk to the grade of Goods Supervisors with effect from 1.11.2003.

4.4.3 Thus, as against 64 vacancies in the grade of Goods Supervisors arising as on 1.11.2003, the respondent-Railways promoted 41 Head Goods Clerks to the grade of Goods Supervisors with effect from 1.11.2003.

4.5 The names of the four applicants respectively appeared at Sl.nos.61, 56, 57 and 55 of the seniority list of Head Goods Clerks.

5. In the above context, it is the contention of the applicants that had the respondents considered their cases, along with others, for promotion against the aforesaid remaining 23 vacancies, they would have been promoted to the grade of Goods Supervisors with effect from 1.11.2003.

6. The stand taken by the respondents is that while calculating the vacancies, the Direct Quota and LDCE Quota were not taken into consideration. Their positions in the seniority list of Head Goods Clerks being at sl.nos. 61, 56, 57 and 55 respectively, the applicants did not come in the zone of consideration for promotion to the grade of Goods Supervisors with effect from 1.11.2003, and, therefore, they cannot claim consideration of their cases for promotion with effect from 1.11.2003.

7. Mr.M.S.Saini, the learned counsel appearing for the applicants, invited our attention to paragraph 15 of the circular dated 9.10.2003 issued by the Railway Board, and submitted that the direct recruitment percentage

was not applicable to the additional posts arising out of the restructuring order as on the cut-off date, and, therefore, all the vacancies arising out of the restructuring order as on 1.11.2003 ought to have been filled by promotion. It was also submitted by Mr.M.S.Saini that the respondents having failed to fill all the vacancies arising out of the restructuring order, and, as a consequence, having failed to consider the cases of the applicants, appropriate direction should be issued to them in the matter.

8. Besides reiterating the stand taken by the respondents in their counter reply and affidavits, Mr.V.S.R.Krishna, the learned counsel appearing for the respondents, produced before us a copy of the order dated 17/18.7.2014, and submitted that as per the instructions issued by the Railway Board, vide Order No.102/2013 dated 8.10.2013, further cadre restructuring took place with effect from 1.11.2013, and the cases of the applicants, along with others, were considered by them, and the applicants were promoted to the grade of Chief Commercial Supervisors in PB-2: Rs.9300-34800/- + Grade Pay of Rs.4600/- with effect from 1.11.2013. Therefore, the applicants' claim for consideration of their cases for promotion from the grade of Head Goods Clerks to the grade of Goods Supervisors with reference to the Railway Board's circular dated 9.10.2003, *ibid*, is untenable.

9. We have given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties.

10. Paragraph 15 of the circular dated 9.10.2003 issued by the Railway Board regarding cadre restructuring reads thus:

ð15. Direct recruitment percentages will not be applicable to the additional posts arising out of these restructuring orders as on the cut-off date. The direct recruitment percentage will apply for normal vacancies arising on or after the date following the cut-off date. Also the direct recruitment quota as on the date preceding the cut-off date will be maintained.ö

11. It is not in dispute that prior to 31.10.2003, there were 9 existing vacancies in the cadre of Goods Supervisors, and 30 additional vacancies arose in the cadre of Goods Supervisor as a result of cadre restructuring. Prior to 31.10.2003, there were 7 existing vacancies in the grade of Chief Goods Supervisor. Consequent upon arising of 18 additional vacancies in the grade of Chief Goods Supervisor as a result of cadre restructuring, 25 Goods Supervisors were promoted to the grade of Chief Goods Supervisor with effect from 1.11.2003. Resultantly, 64 (9+30+25) vacancies arose in the grade of Goods Supervisors as on 1.11.2003. As per paragraph 15 of the circular dated 9.10.2003, out of those 64, 34 vacancies in the grade of Goods Supervisors had to be filled by applying the quota rule stipulated in the Recruitment Rules, while 30 additional posts arising on account of cadre restructuring had to be filled up by the respondent-Railways only by promotion.

12. In view of the stipulations contained in paragraph 15 of the circular dated 9.10.2003 issued by the Railway Board that direct recruitment percentages would not be applicable to the additional posts arising out of the

restructuring order as on the cut-off date, that the direct recruitment percentages would apply for normal vacancies arising on or after the date following the cut-off date, and that the direct recruitment quota as on the date preceding the cut-off date would be maintained, and further in view of the admitted facts that prior to 31.10.2003 there were 9 existing vacancies in the cadre of Goods Supervisors, and that 25 vacancies arose in the cadre of Goods Supervisors on account of promotion of 25 Goods Supervisors to the grade of Chief Goods Supervisor with effect from 1.11.2003, we do not find any substance in the contention of the applicants that all the 64 vacancies existing as on 1.11.2003 ought to have been filled by promotion without applying the direct recruitment percentage. As per paragraph 15 of the circular dated 9.10.2003, *ibid*, only 30 additional posts arising out of cadre restructuring in the grade of Goods Supervisor had to be filled up by promotion as stipulated in the circular dated 9.10.2003, *ibid*, and no direct recruitment percentage was applicable, while filling up those 30 additional posts of Goods Supervisor.

13. As noted earlier, 38 Head Goods Clerks were promoted to the grade of Goods Supervisor, vide order dated 1.5.2006, and 3 Head Goods Clerks were promoted to the grade of Goods Supervisors, vide order dated 24.7.2009, with effect from 1.11.2003. Thus, it is clear that though in terms of paragraph 15 of the circular dated 9.10.2003 the respondent-Railways ought to have promoted 30 Head Goods Clerks to the grade of Goods Supervisor against 30 additional posts arising out of cadre restructuring

order, without applying the Direct Quota percentage, the respondent-Railways had promoted 41 Chief Goods Clerks to the grade of Goods Supervisor with effect from 1.11.2003 by promotion.

14. The respondents have not produced before this Tribunal any material to show that the said remaining 23 vacancies in the cadre of Goods Supervisors arising as on 1.11.2003 have been filled by them as per the provisions contained in the Recruitment Rules. The provisional seniority list of Goods Supervisors as on 31.12.2006 annexed to the applicantsø affidavit dated 8.7.2014 and the statement annexed to the respondentsø affidavit filed on 15.12.2015 also do not go to show that all the aforesaid 64 vacancies arising in the cadre of Goods Supervisors as on 1.11.2003 have been filled by the respondents with effect from 1.11.2003. The counter reply and other affidavits, which have been verified by respondent no.2, do not also contain specific averment that all the aforesaid 64 vacancies in the grade of Goods Supervisors arising as on 1.11.2003 have been filled with effect from 1.11.2003.

15. Considering the totality of the facts and circumstances of the case, we dispose of the present O.A. by issuing the following directions:

- (1) The General Manager, Northern Railway (respondent no.1) shall call for the relevant records from respondent no.2 and examine the same to find out as to how many vacancies out of the aforesaid 64 vacancies in the cadre of Goods Supervisors arising as on 1.11.2003 remained

to be filled with effect from 1.11.2003 as per the provisions of the Recruitment Rules.

- (2) Thereafter, the respondent no.1 shall examine the claim of the applicants for consideration of their cases for promotion to the grade of Goods Supervisors with effect from 1.11.2003 and take appropriate decision.
- (3) The respondent no.1 shall complete the whole exercise and communicate its decision to the applicants within three months from today.

15. With the above observation and direction, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

AN