

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

This is the 24th .day of December 2018

No. OA 330/520/2009

Present: **Hon'ble Mr.Gokul Chandra Pati, Administrative Member**
Hon'ble Mr.Rakesh Sagar Jain, Judicial Member

Amar Kant Ojha, S/o Late Sri Nagesh Shankar Ojha, R/o
Jagannath Pur, Post Sadar, District- Gorakhpur.

.....Applicant.

VERSUS

1. Union of India through the General Manager, N.E.Railway, Gorakhpur.
2. Senior Manager, Printing and Stationary, Railway Press, N.E.Railway, Gorakhpur.
3. Controller of Stores, N.E.Railway, Gorakhpur.
4. S.M.Suri, Technician Grade I in Mono Section, Railway Press, N.E.Railway, Gorakhpur.

.....Respondents.

Advocate for the applicant : Shri P.K.Mishra
Shri B.Tiwari

Advocate for the respondents : Shri P.N.Rai

O R D E R

Per Mr.Gokul Chandra Pati, Administrative Member

The OA has been filed by the applicant with the prayer for following reliefs :

- i) to issue an order or direction setting aside the office order dated 11.7.2007 passed by Senior Manager, Printing and Stationary, Railway Press, N.E.Railway, Gorakhpur and office order dated 15.4.2009 passed by Controller of Stores, N.E.Railway, Gorakhpur and communicated by Senior Personnel Officer, Railway Press, N.E.Railway, Gorakhpur (Annexure No. A-1 and A-2 respectively)
- ii) to issue an order or direction commanding the respondents to give promotion to applicant in scale of Rs.5000-8000/- as Master Craftsman w.e.f. 11.7.2007 in Maintenance Section of Railway Press, N.E.Railway, Gorakhpur, in pursuance of Railway Board letter dated 9.10.2003 along with fixation of increment, arrears of pay and other service benefits permissible under law;
- iii) to issue any order or direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case;
- iv) to award the cost.

2. The brief facts of the case as mentioned in the OA are that the applicant was appointed as Casual Khalasi on 21.10.1980 and was promoted on 1.11.2003 to the post of Technician Grade I in the Pay scale Rs.4500-7000/-. The next channel of promotion of the applicant was on the post of Master Crafts Man (in short MCM) in the pay scale of Rs.5000-8000/-. The Railway Board had issued a letter dated 9.10.2003 (Annexure A/4 to the OA) about restructuring of certain Group C and D cadres including MCM cadre in the scale of Rs.5000-8000/- which had been increased from 5% to 8%. By order dated 8.5.2006 (Annexure No. A/5 to the OA) approval for one post of MCM had been taken by financial Advisor and Chief Accounts Officer (Non-Gazetted), N.E.Railway, Gorakhpur. By office order dated 27.4.2007 (Annexure No. A/6 to the OA) issued by Senior Manager, Printing and Stationary, 10 posts (1 permanent and 9 temporary) were sanctioned in scale of Rs.5000-8000/- for Process Section and 10 posts were also sanctioned for Anurakshan Anubhag out of which 7 posts were permanent and 3 were temporary posts.

3. After review of the cadre on 1.4.2006, one post was sanctioned by the respondents in the Process Section, but no post was sanctioned for Anurakshan Anubhag or Maintenance Section (in short AA), although sanction strength of technical staff in both the sections is equal i.e. 10. Being aggrieved by the decision, the applicant had given applications dated 4.5.2007 and 25.5.2007 (Annexure No. A/8 and A/9 to the OA) to the Senior Manager, Printing and Stationary, Railway Press and Chief personnel Officer for promotion to the post of MCM in AA which should be given one post of MCM.

4. It is stated in the OA that approval had been taken for one post in scale of Rs.5000-8000 to be given to the AA Section from the Financial Advisor & Chief Accounts Officer, Gorakhpur, but at the time of distribution of post such approval was ignored, which is contrary to principle of estoppels. It has been further stated that the applicant is the seniormost employee in his section and he is first person who is entitled to be promoted in this grade. Since approval was taken from the competent authority for transfer of one post of MCM to the AA, the question of merger of post with other section does not arise.

5. Aggrieved by the inaction on the part of the respondents on the applicant's representation, the applicant filed OA No. 637/2007 with a prayer to direct the Railway administration to give promotion to the applicant in the scale of Rs.5000-8000/- in pursuance of the Railway Board letter dated 9.10.2003 by which restructuring in the cadre was approved by the Railway Board. During pendency of the case, this Tribunal passed an interim order directing the respondents not to declare the result of selection till the disposal of the OA vide order dated 26.6.2007 (Annexure No. A/10 to the OA). It is alleged in the OA that the respondents disobeyed the order of this Tribunal. Consequently, the applicant filed a contempt petition No. 91 of 2007 before this Tribunal and this Tribunal vide order dated 28.1.2009 (Annexure No. A/11 to the OA) directed the respondents to consider the case of the applicant within three months from the date of receipt of the order. In compliance of the order dated 28.1.2009, the Controller of Stores, N.E.Railway, Gorakhpur passed order dated 15.4.23009 (Annexure A/2 to the OA) rejecting the claim of the applicant. It is stated that the order dated 15.4.2009 passed by the Controller of Stores, N.E.Railway, Gorakhpur is contrary to the decision given by this Tribunal.

6. It is further stated in the OA that while one post is sanctioned for the Process Section in pursuance of restructuring, no post was sanctioned for Maintenance Section although cadre strength of both sections is equal and one post of MCM should have been retained in the Maintenance Section after restructuring. It is further stated that in pursuance of the order dated 15.4.2009, the respondents are going to promote the persons who are not eligible to be promoted.

7. In the counter affidavit filed by the respondents, it is stated that during restructuring of the cadre, the percentage of all the categories have been revised. On the basis of revised percentage, the posts have been distributed in Maintenance, Process and other Sections. As per instruction given in Railway board letter dated 9.10.2003, 4.12.2003 and 26.9.2006, the cadre review as on 1.4.2006 was conducted. It is stated that as a result of cadre review, numbers

of posts have been reduced. Accordingly, on the basis of revised percentage and reduced strength, the BOS indicating number of posts was approved by FA & CAO as on 1.4.2006 and promotions are being given on the basis of the approved BOS. As the three different sections i.e., Maintenance, Mono and Carpentry had very few number of sanctioned posts, these were clubbed together and a floating post of MCM (5000-8000) was made available for the purpose of giving promotion of staff working in these sections on the basis of integrated seniority and suitability. Since, there was only one vacant post of MCM in scale of Rs.5000-8000 in Mono Section, the seniormost employee Shri Surendra Mohan Suri as per the inter-se-seniority was called for suitability test and after getting qualified in suitability test for promotion, Shri Suri was promoted and posted to the post of MCM in Mono Section vide office order dated 11.7.2007 (Annexure A/1 to the OA).

8. Aggrieved by the promotion of Shri Suri, the applicant had filed OA No. 637/2007 before this Tribunal and this Tribunal vide order dated 26.6.2007 instructed the respondents that the selection process may go on, but the result may not be declared till the decision of the OA. After issue of order dated 11.7.2007, the applicant filed contempt petition No. 91/2007 before this Tribunal. In compliance of the order passed in contempt petition, the Railway Administration had to cancel the promotion order and accordingly all the Tech-I (4500-7000) employees who were promoted to the post of MCM, were reverted back in Tech-I (4500-7000) vide order dated 21.11.2007. Later this Tribunal vide order dated 5.11.2008 dismissed the Contempt Petition and vide order dated 28.1.2009 (copy of which was not enclosed by the parties with their pleadings), directed the applicant to file a certified copy of this order along with complete copy of OA and additional comprehensive representation, if so advised, before the competent authority who shall consider and decide the same by reasoned and speaking order within three months and OA No. 637/2007 was disposed of accordingly. In compliance, the authority examined the matter and passed the reasoned and speaking order dated 15.4.2009.

9. In the rejoinder affidavit, the applicant denied the contentions raised in the counter affidavit and reiterated the contentions of the OA.

10. Heard learned counsels for both parties and perused the pleadings available on record. Learned counsel for the applicant argued that applicant being the seniormost employee in Maintenance Section is eligible for promotion but since no post of MCM is available for the Maintenance Section he has not been promoted. He pointed out that as per the order at Annexure A/6 both the Process Section and Maintenance Section have the total strength of 10 staff as indicated in the order. But as this statement indicates the Processing Section has one post of MCM in pay scale of Rs.5000-8000 whereas the Maintenance Section has not been given any post of MCM, although it has the same strength of 10 as the Process Section. Learned counsel for the applicant also submitted a copy of the Railway Board circular dated 9.10.2003 by which decision was taken to restructure some Group 'C' and 'D' cadres.

11. Learned counsel for the respondents Mr.P.N.Rai submitted that as explained in the counter affidavit the distribution of the posts of MCM after restructuring has been done taking into account the requirement of the respondents. The Maintenance Section has been combined with Mono and Carpentry Section and combined seniority list for the staff has been prepared. This combined Section has been allocated one post of MCM against which the seniormost is being promoted.

12. In this case the applicant is aggrieved by the fact that the Maintenance Section has not been given the post of MCM while restructuring the cadre as per the order dated 20/27.4.2007 (Annexure A/6). It is explained in the counter in para 6, the Maintenance, Mono and Carpentry Sections have less number of strength, hence these were clubbed together and the combined Section has been allocated one post of MCM. This decision of the respondents has not been challenged in the OA. The contentions in para 6 of the counter regarding merger of 3 Sections have not been specifically contradicted by the applicant. The applicant in para 3 of the rejoinder has submitted that the Maintenance Section is entitled for a post of MCM depending on its sanctioned

strength. However, there is no guideline or decision of the respondents has been furnished in support of the said argument. There is nothing in this circular dated 9.10.2003 of Railway Board submitted by the applicant's counsel, which states whether the Maintenance Section under the respondents in which the applicant is working, deserves to get one post of MCM or not.

13. It is a fact that creation of post in a section or in an office is an administrative function of the respondents, depending on the workload and administrative exigencies. It is not for this Tribunal to go into this aspect unless it is established that such decision is arbitrary or against the rule. **In the case of State of Orissa & Ors. -vs- Bhikari Charan Khuntia [2003 (10) SCC 144]**. Hon'ble Apex Court has held as under :

"8. As was observed by this Court in Govt. Of Orissa v. Haraprasad Das 1998 1 SCC 487 whether to fill up or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decision of the Government and direct it to make further appointments. In the present case, no selection was made and not even any selection list was in existence. Even if there had been any such selection or inclusion of any of the names in the select list, the same could not have given any right. Therefore, mere sending of names by the employment exchange could not have, and in fact, has not conferred any right. The writ applications were thoroughly misconceived, and the Court misdirected itself as to the nature of relief to be granted."

14. In the case of **Delhi Development Authority, New Delhi & Anr. -vs- Joint Action Committee etc. [2007 (14) SCALE 507]** the following observations are made by Hon'ble Apex Court regarding judicial review of administrative/policy decisions :

"59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is dehors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy."

15. In view of the above discussions, since the decision of the respondents to club the Maintenance, Mono and Carpentry Sections and to allocate one post of MCM to the combined section and to have a combined seniority list of all the staff working in these three sections is not under challenge in this OA, we cannot interfere with the decision not to allocate one post of MCM to the Maintenance Section only. Moreover, how the posts will be allocated between different sections is to be decided by the respondents depending on the workload and administrative exigencies. It has not been demonstrated to us that the action of the respondents violates any rule or guideline or instructions of Government. Hence, we are not inclined to interfere with the decision on the matter. Accordingly, the OA being devoid of merit, it is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
JUDICIAL MEMBER

(GOKUL CHANDRA PATI)
ADMINISTRATIVE MEMBER

I.Nath

