

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 516/2011

Reserved on: 03.07.2019
Pronounced on: 16.07.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

1. Rajendra Singh Chundawat, son of Shri Girdhari Singh Chundawat, age about 40 years, resident of House no.21, UIT Colony, behind Taramani School, Shastri Nagar, Ajmer. Presently posted in Personnel Department in the office of DRM, Ajmer in the pay band 9300-34800+4200 GP.
2. Gyanwati Saxena, wife of Shri Gaurish Saxena, age about 43 years, resident of 18, Rana Pratap Nagar, Jhotwara, Jaipur. Presently posted in personnel department in the office of General Manager, N.W.R. Headquarter, near Jawahar circle, Jaipur as Office Superintendent, in the pay band 9300-34800+4200 GP.
3. Ram Kumar S/o Shri Pyare Lal, age about 45 years, resident of Plot No.1150, Near Kalptaru Garden, Pragati Nagar, Kotra, Ajmer. Presently posted in the office of Chief Workshop Manager, N.W.R., Ajmer as Office Superintendent in the pay band 9300-34800+4200 GP.
4. Yogesh Jha, son of Shri KR Jha, age about 38 years, resident of House no.15 12/13, street no.5, Subhash Nagar, Ajmer. Presently posted in the Compilation office, N.W.R., Ajmer as Office Superintendent in the pay band 9300-34800+4200 GP.
5. Mohit Kumar Rao, son of Shee Krishna Rao, age about 43 years, resident of House no.74/27, Bheron-wali Gali, Jones Ganj, Ajmer. Presently posted in Personnel Department in the office of DRM, Ajmer as Office Superintendent, in the pay band 9300-34800+4200 GP.

(2)

6. Nand Kishor Gupta son of Shri Ghan Shyam Dutt, age about 47 years, resident of 1/756 Malviya Nagar, Jaipur. Presently posted in Commercial Department in the office of General Manager, N.W.R. Headquarter, near Jawahar circle, Jaipur as Office Superintendent, in the pay band 9300-34800+4200 GP.

...Applicants.

(By Advocate: Shri Alok Garg for Shri G.C.Garg)

Versus

1. The Union of India, through Chairman, Railway Board, Ministry of Railway Rail Bhawan, New Delhi.
2. The General Manager, North Western Railway, Headquarter office, Near Jawahar-Circle, Jaipur (Rajasthan).

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

The brief facts relating to this Original Application, (OA), are that the applicants, who were holding the posts of Clerk and Senior Clerk in the respondent Railways, were selected for the post of Office Superintendent – Grade II, (OS Grade-II), through a Limited Departmental Competitive Examination, (LDCE), pursuant to a restructuring of certain Group 'C' & 'D' cadres by the respondent Railways; (Annexure A/3 refers). The applicants aver that at the time of the introduction of the restructuring scheme itself, a quota of 80% was set for non-LDCE promotions from the lower grade of Rs.5000-8000 to OS Grade-II in the pay

(3)

scale of Rs.5500-9000. The remaining posts, (i.e. 20%), were to be filled by direct recruitment. Subsequently vide RBE No.05/2004 dated 06.01.2004, (Annexure A/4 para 3 refers), it was decided that this restructuring of cadres would be with reference to the sanctioned cadre strength as on 01.11.2003 and the staff who were placed in a higher grade as a result of implementation of these orders would draw pay in the higher/restructured grades with effect from 01.11.2003. Thereafter, Circular No.E(NG)I-2005/PM1/20 dated 20.02.2006, (Annexure A/5), refers to a decision dated 17.06.2005, (Annexure A/8), that the direct recruitment quota of 20% of the posts in the category of OS Grade-II would be replaced by an LDCE quota to the same extent. The applicants thus contend that posts of OS Grade-II to which they were appointed as a result of successfully clearing the LDCE examination were part and parcel of the restructuring mandated vide RBE No.177/2003 dated 09.10.2003; (Annexure A/3). Thus, they contend that as per the provisions of para 3 (4.4) of RBE No.05/2004 dated 06.01.2004, (Annexure A/4), they, having been the placed in the vacancies arising out of the restructuring, **"should be given benefit of the promotion w.e.f. 01.11.2003".....**; [Annexure A/4 para 3(4.4) refers]. The applicants however contend that when they asked for such pay fixation under Rule 1313 (FR-22)(I)(a)(1)-RII w.e.f.01.11.2003, this was not acceded to and that while the persons promoted under the 80% non-LDCE quota of the

(4)

restructuring scheme were allowed this benefit with effect from 01.11.2003, they were allowed this benefit only from the date of issue of the impugned orders, (Annexures A/1 and A/2), i.e. 21.05.2010 for applicants 1 to 5 and 03.10.2011 for applicant No.6.

2. The impugned orders at Annexures A/1 and A/2, (note 3 to Annexure A/1 specifically refers), also placed the applicants, who were in the erstwhile Rs.5500-9000 scale, below those who were promoted to the restructured scale of OS Grade-II from the erstwhile Rs.5000-8000 scale. The applicants aver that this occurred in contravention of the express provisions of DoP&T OM No.20020/4/2010-Estt.(D) dated 13.09.2012, (Annexure A/29), and the Railway Board's own R.B.Estt.No.107/2012 dated 26.09.2012, (Annexure A/30), issued by way of adopting the DoP&T circular in the Railways; [para 2(ii) of both circulars refer].

3. Aggrieved by this, the applicants instituted OA No.516/2011 in the Central Administrative Tribunal, (CAT), Jaipur Bench but this was dismissed on grounds of limitation. Thereupon, the applicants approached the Hon'ble Rajasthan High Court in D.B.Civil Writ Petition No.17056/2011. Vide its order dated 09.10.2012, the Hon'ble Rajasthan High Court set aside the CAT order dismissing OA No.516/2011 on the ground of limitation and remanded the same to this Tribunal for decision on merits.

(5)

Accordingly, the applicants now seek the following relief from this Tribunal:-

1. Quash and set aside the impugned Annexure-1/1 order dated 21.5.2010 posting the applicants 1 to 5 and Annexure 1/2 order dated 3.10.2011 posting the applicant no.6 only up to the extent of not granting the benefit of restructuring to them w.e.f. 1.11.2003 including the foot note part of granting of bottom seniority to them in the grade 5000-8000.
2. The action of the official respondents be declared illegal and arbitrary as the respondents have not granted the benefits of restricting w.e.f. 1.11.2003 (Limited Departmental Competitive Examination Quota) to the applicants in pursuance to the examination dated 31.8.2008 for promotion to the post of office superintendent grade-II pay scale 5500-9000.
3. The official respondents be further directed to grant proper pay fixation to the applicants with effect from 1.11.2003 on account of restructuring of the post of Office Superintendent Grade-II (5500-9000) and proper assigning of seniority and with all consequential benefits in the light of Railway Board Circular dated 6.1.2004.
4. That the cost of the application be quantified to the applicant from the Respondents.

4. In reply, the respondents aver that the LDCE written examination in question was held on 31.08.2008 pursuant to which the applicants, who were successful in the same, were issued posting orders as OS Grade-II only on 21.05.2010, (Applicants No.1 to 5), and on 03.10.2011; (Applicant No.6). These applicants were not eligible to be considered for

(6)

restructuring with reference to the scale of Rs.5000-8000 or Rs.5500-9000 with effect from 01.11.2003 as at the time of restructuring they were working as Senior Clerk/Clerk in the scale of Rs.4500-7000/3050-4590. They were however eligible to sit for the LDCE in question, (as stated by them also in Para-11 of the OA), and accordingly they were allowed to sit for the examination which they cleared as stated. Vide RBE No.155/2004, (Annexure C-1, produced and placed on record at the time of arguments), it has been made clear that, as expressly provided vide para-3 (4.4) of Annexure A/4, the special benefit of the promotion with effect from 01.11.2003 would be available only for the vacancies arising out of the restructuring, i.e. for the 80% non-DR promotions. For the others, i.e. the 20% DR appointments, the normal rules of prospective promotion from the date of filling up of the vacancies would apply. The suggestion that the revised percentages be implemented before merging the cadres was specifically rejected vide para-2 of RBE No.155/2004; (Annexure C-I). Given this position, the respondents contend that the 20% initially DR and later LDCE quota was to be implemented only **"after"** and not during the restructuring exercise. Consequently, the applicants' claim that the vacancies to which they have now been appointed as OS Grade-II arose as part and parcel of the restructuring with effect from 01.11.2003 is incorrect. As regards the question of the seniority of the applicants vis-à-vis those in the erstwhile pay

(7)

scale of Rs.5000-8000 prior to their promotion as OS Grade-II, the respondents rely on para 2(1) of RBE 107/2012 dated 26.09.2012, (Annexure A/30) which sets 04.09.2008, (the date of implementation of 6th CPC recommendations in the Railways), as a cut-off date. Thus, the respondents contend that since the applicants became OS Grade-II after that date in 2010 and 2011, (Annexures A/1 and A/2 refer), the higher seniority of those in the erstwhile Rs.5000-8000 scale will be protected as the applicants were all in a lower scale, i.e. Rs.4500-7000/3050-4590, (para 11 of reply refers), at the time of the restructuring.

5. Learned counsels for the parties were heard and the material available on record was perused. In their arguments, counsel for the opposing parties reiterated the points made by them as detailed earlier. In addition, as regards the applicants' plea for grant of seniority to them above the persons in the erstwhile Rs.5000-8000 scale, learned counsel for the respondents pointed out that such a plea cannot be considered as those affected by it, (i.e. the persons in the erstwhile Rs.5000-8000 scale), have not been impleaded as party respondents in this case.

6. The first issue in this case relates to the date from which the benefits of the higher/restructured post of OS Grade-II are to be granted to the applicants. It is undisputed that this date should

(8)

be 01.11.2003 in case the vacancies in question are considered as having been created at the time of the restructuring. Conversely, in the event of these vacancies being considered to have arisen after the restructuring, it would follow that the normal rules of prospective promotion from the date of filling up of the vacancies would apply in the case of the applicants. RBE No.05/2004 dated 06.01.2004, (Annexure A/4), para 3 (4.1) provides for promotion in the restructured scales and excludes the DR quota from the same. In this case however, since the originally conceived DR quota of 20% was replaced by an LDCE quota to the same extent, (Annexure A/5 dated 20.02.2006 read with Annexure A/8 dated 17.06.2005 refer), there remains no DR quota *per se* for OS Grade-II and we have a situation in which the restructured posts of OS Grade-II in this case have to be filled up 80% by way of normal promotion, (non-LDCE), and 20% by way of promotion through LDCE. As such therefore, it cannot be said that the 20% LDCE promotion quota posts arose later than the 80% non-LDCE promotion quota posts as they are both obviously percentages/parts of the same whole and therefore a simultaneous creation of the same restructuring exercise. Consequently, in case the benefit of higher pay etc. on the restructured post of OS Grade-II is given to a person coming to that post from the 80% non-LDCE promotion quota, then it would be discriminatory, to say the least, if the same were not also given to those coming to this post from the 20% promotion

(9)

through LDCE quota. As it is undisputed that those promoted from the 80% non-LDCE quota have been given the benefits of restructuring on the post of OS Grade-II with effect from 01.11.2003, the same has to be allowed to those coming to this post from the 20% promotion by LDCE quota. Thus, the relief sought by the applicants in terms of making the benefits of the higher/restructured post of OS Grade-II available to them from 01.11.2003 appears to be eminently justified.

7. As regards the question of seniority however, there appears to be force in the respondents' contention that the seniority of the applicants cannot be revised upwards vis-à-vis persons in the erstwhile Rs.5000-8000 pay scale without impleading the affected parties and hearing their objections, if any. A plain reading of this Tribunal's earlier order dated 23.11.2011 read with the order of the Hon'ble High Court of Rajasthan setting aside the Tribunal order and remanding the case to this Tribunal on 09.10.2012, reveals that while the seniority list under issue in this case is purportedly a provisional one to which objections were invited by the respondents. The record does not *prima facie* confirm whether any such objections were duly heard and disposed of as per law and a final seniority list issued. Given this position, it would appear to be in the interest of justice to remand this issue to the respondents so that the process of determining a final seniority list can be completed after scrupulously and

(10)

comprehensively following the procedure prescribed under rules for the same.

8. Accordingly, this OA is allowed in part with the following directions:

i) The consequent benefits of the placement of the applicants on the post of OS Grade – II be granted to them with effect from 01.11.2003 by the respondents. This is to be done within one month of the receipt of a certified copy of this order.

ii) The respondents carry out the process of determining the final seniority list of the applicants vis-à-vis all others in the OS Grade – II cadre after following the procedure prescribed under law and rules for giving those concerned an opportunity to represent on the same. This exercise shall be carried out within a period of three months from the date of receipt of a certified copy of this order.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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