

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH,
CALCUTTA.**

Original Application No. 1230 of 2011

Reserved on 5.2.2016

This the 23rd day of February, 2016

Hon'ble Ms. Bidisha Banerjee, Member-A

Hon'ble Ms. Jayati Chandra, Member-A

1. Pradip Basak, aged about 55 years, S/o late M.M. Basak, working as Head Transshipment Clerk under Station Manager (Gazetted), New Jalpaiguri residing at Sunila South Deshbandhu Para, Beside Pipe line, P.O. Siliguri town Darjeeling Pin 734 001.
2. Sri Kanchan Ghosh, S/o late Sushil Kumar Ghosh, aged about 56 years, working as Senior Transshipment Clerk under Station Manager (Gazetted), New Jalpaiguri, residing at Main Road, P.O. & P.S. Bagdogra, District Darjeeling.
3. Sri Justin Lakra, S/o late Stephen Lakra, aged about 57 years, working as Senior Transshipment Clerk under Station Manager (Gazetted), New Jalpaiguri, residing at P.O. New Rangia, P.S/. Matighara, District Darjeeling.
4. Sri Ashish Kumar Patrag, S/o Sri D.N. Patang, aged about 58 years, working as Chief Transshipment Clerk-I under Station Manager (Gazetted), New Jalpaiguri, residing at Suniti Nivas, A.J.C. Bose Road, Hakimpura, P.O. Siliguri, Darjeeling.
5. Sri E. Dungdung, S/o late Brice Dungdung, aged about 58 years, working as Chief Transshipment Clerk-I under Station Manager (Gazetted), New Jalpaiguri, residing at Railway Quarter No. 15/A, South Colony, P.O. Bhaktinagar, District Jalpaiguri.
6. Sri Anil Suba, S/o late A.S. Suba, aged about 55 years, working as Chief Transshipment Clerk-I under Station Manager (Gazetted), New Jalpaiguri, residing at Sukanta Palli, P.O. Silliguri Bazar Ward no. 32, District Jalpaiguri.
7. Sri Ajit Kumar Rabha, S/o late Siro Nath Rabha, aged about 56 years, working as Chief Transshipment Clerk-II under Station Manager (Gazetted), New Jalpaiguri, residing at 78/B Central Colony, Bhakti Nagar, Jalpaiguri.
8. Sri Kamakhya Kundu, S/o late Ram Ram, aged about 56 years, working as Chief Transshipment Clerk-II under Station Manager (Gazetted), New Jalpaiguri, residing at Near Kutthi Mill Njp Station Road, South Desh Bhandu Para, Siliguri

.....Applicants

By Advocate : Sri S.K. Dutta and B. Chatterjee.

Versus.

1. Union of India service through the General Manager, North East Frontier Railway, Maligaon, Guwahati, Pin 781 001 Assam.

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2. The Chief Commercial Manager, North East Frontier Railway, Maligaon, Guwahati Pin 781 011.
3. Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati 781 011, Assam.
4. Chief Commercial Manager (Freight & Manager (North East Frontier Railway, Maligaon, Guwahati Pin 781 011, Assam.
5. The Divisional Railway Manager (P), North East Frontier Railway, Katihar Division, Katihar.
6. Senior Divisional Commercial Manager, North East Frontier Railway, Katihar Division, Katihar.
7. The Area Manager, North East Frontier Railway, Katihar Division, New Jalpaiguri.
8. The Station Manager (Gazetted), North East Frontier Railway, Katihar Division, New Jalpaiguri.

.....Respondents.

By Advocate : Sri A.K. Banerjee.

ORDER

Per Ms. Jayati Chandra, Member-A

The applicants have filed this O.A. under Section 19 of A.T. Act, 1985 seeking following relief(s):-

- (a) *Leave may be granted to move this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal Procedure, 1987;*
- (b) *An order do issue directing the respondent authority to set-aside, cancel and/or rescind the impugned order dated 4.4.2011 issued by the Chief Commercial Manager/Rates;*
- (c) *An order do issue directing the respondents authority not to implement the impugned order dated 4.4.2011 without determining the modalities regarding fixation of seniority with protection of such seniority as per length of service in the respective grades and further career advancement in the parcel offices as well as without approval of the Railway Board or any other competent authority as per rules;*
- (d) *An order do issue directing the respondent authority to consider the representation of the applicants dated 13.8.2011;*
- (e) *And to pass any other order or orders direction or directions as Your Lordships may deem fit and proper."*

2. The facts, as averred by the applicants, are that the applicants, who have been jointly allowed to pursue this O.A, were initially appointed to the posts of Junior TRC and at the time of filing of this O.A., holding the post of Head TRC, Sr. TRC, Sr. TRC, Chief TRC-I, Chief TRC-I, Chief TRC-II and Chief TRC-II respectively all under Station Manager, New Jalpaiguri. These positions form a separate water tight unit having separate seniority list and they were transferable to other establishments

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under the Commercial Department of North East Frontier, Railway. The Railway Board vide RBE No. 260/89 conveyed a decision for merger of different non-gazetted cadres in the Commercial department of the Railways as an experimental measure. This order did not include the non-gazetted employees of Transshipment Establishment. This merger was to be given effect to from 1.6.1990 (Annexure-1). A second Circular in clarification of the earlier circular namely RBE No. 119 of 1993 was issued on 6.8.1993 (Annexure no.2). As per the second circular a decision of merger was taken as a one time measure to be effective from 1.11.1993. These circulars were never implemented by North Frontier Railway Administration. However, suddenly it was decided by the Chief Commercial Manager/Rates (respondent no.2) to close down parcel Transshipment Point at Katihar and New Jalpaiguri vide impugned letter dated 4.4.2011 (Annexure-3). The applicants, who belong to Transshipment point at Katihar and New Jalpaiguri, submitted a representation dated 13.8.2011 against such merger on closer of Parcel Transshipment point at Katihar and New Jalpaiguri, without obtaining any option from them and also without disclosing or specifying designation and nature of work in the new cadre (Annexure-4). A joint meeting of the Administration at the divisional level with the recognized union was held on 13.10.2011 in which inter-alia it decided that as soon as Joint seniority and BOS will be implemented, the physical work at units will also be merged and will be brought under Parcel units with CS/Parcel of the respective locations. The minutes of the meeting is at Annexure no.5. The cut off date for implementation of merger was scheduled to be 1.1.2012, but the administration is forcing the applicants to work in other units and insisting on transfer of the applicants out of Transshipment point at Katihar and New Jaipaguri even without determining the seniority and BOS; hence this O.A.

3. The respondents have through their Counter Reply have elaborated the background of the decision of 4.4.2011 whereby a decision was taken to close Parcel Transshipment point at Katihar and New Jalpaiguri and on the basis of the aforesaid letter, an initial action was taken on 23.5.2011 to merge both the office of Parcel and Transshipment point at New Jalpaiguri.

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Simultaneously, action was taken for merger of staff of Parcel and Transshipment Units, a meeting was held on 30.8.2011 with respective staff unions in which following decisions was taken:-

"BOS be merged with equivalent grade Pay : Since the parcel cadre comes under commercial Clerk Cadre hence BOS of Transshipment cadre should be merged with equivalent grade pay of Commercial Clerk Cadre.

All vacant posts of both cadres in higher grades be filled up in next 03 months.

Likewise seniority of Transshipment Clerk and Commercial Clerk cadre also be merged and re-casted as per extant rules. Cut off date for implementing the scheme will be 1.1.2012 or earlier if seniority and BOS is merged early.

After 1.1.2012, there will be no cadre of Transshipment Clerk and all Transshipment Clerk will be administered as per the rules of Commercial Clerk cadre for promotion, posting, transfer and other establishment matters.

As soon as Joint Seniority and BOS will be implemented, the physical work at units will also be merged and will be brought under Parcel Units with CS/Parcel of the respective location."

Subsequent to the decision taken in the meeting, the task of merger was kept in abeyance. It is stated that in terms of para 4 of RBE No. 260/89 the railway is free to lay down details within the broad framework of the above provisions so as to achieve the objective of having a unified cadre in the aforementioned categories. More-over, in terms of Railway Board's order no. 119/93 it was decided that all commercial staff should be merged into one unified cadre. Thereafter an interim order was passed in the aforementioned O.A. with following directions:-

"Having considered the aforesaid submissions, I find it a fit case for grant of interim relief and directing the respondents to comply with clause 6 of the decision taken in the joint meeting held on 30.8.2011, Annexure A-5 to the OA. before implementing the same."

Clause 6 of the Joint Meeting reads as follows:-

"As soon as joint seniority and BOS will be implemented, physical work at unit will also be merged and will be brought under Parcel unit with CS/Parcel of the respective location."

In compliance of the same, the respondents have drawn up a provisional seniority list of merged cadre of Commercial Clerks and Transshipment Clerk as on 1.8.2012.

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4. The applicants have filed Rejoinder refuting the contentions of the respondents so made in the Counter Reply and reiterated the averments already made in the Original Application. Moreover, the applicants have pointed out the contradiction in the Counter Reply inasmuch as the respondents have stated that in view of minutes of meeting drawn on 30.8.2011, the merger of Parcel and Transshipment units was withdrawn in the month of August 30, 2011 and on the other hand, it is stated that the merger was kept in abeyance. If an order is withdrawn, the same cannot be kept in abeyance. More-over, the respondents have published a combined seniority list, which is full of errors and omission regarding taking into account the dates of appointment in equivalent Grade pay, length of service etc. Such decision did not take into account all the reservations and questions, which were raised by the applicants, in their representation. Apart from that, the respondents cannot now after a lapse of so many years decide to implement the Railway Board's circular dated 1.6.1990 read with circular 6.8.1993 without getting the same revalidated by the Railway Board's order.

5. During the course of hearing, learned counsel for the applicants pointed out to the Railway Board's circular no. 260/89 dated 16.10.1989 wherein class 2 (i) stipulated that "this scheme will come up into force with effect from 1st June, 1990. In other words, all persons appointed to any of the categories mentioned above, whether by direct recruitment, promotion or otherwise after 1.6.1990 will belong to the unified cadre. The unified cadre, thus, be applicable to new entrants only". Clause 2(ii) stipulates that "all the employees appointed on regular basis to any of these categories upto 31.5.1990 will continue therein, and progress in their respective cadres as in the position at present." Since the applicants had all joined earlier, the provisions of merger of cadre does not apply to them. Further, the applicants had also stated that during the pendency of the O.A., all the applicants with the exception of applicant nos. 1 and 6 have since retired from service.

6. We have heard the learned counsel for the parties and have also perused the pleadings on record.

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7. It is seen from the relief sought for by the applicants that the applicants had sought quashing of order dated 4.4.2011. The said order is a merger of certain offices. It does not state whether there will be any merger of any posts/cadre. The order being short-one, is being quoted below:-

"At present two parcel transshipment offices are available at KIR and NJP stations of your division are existing and involving loading and unloading of parcel packages, although parcel offices are there. In all other places, where transshipment offices are merged with parcel offices after abolition of brake of gauge transshipment.

So existence of both transshipment and parcel offices at KIR and NJP are basically creating duality of job and cause delay/miss dispatch etc. of parcel package apart from lack of consideration among the staff.

In view of the above, it has been decided to close the transshipment offices at KIR and NJP immediately and merged with existing parcel offices thereon. The overall responsibility of functioning of parcel offices at KIR and NJP will remain with CS/ Parcel of the respective location."

8. The question of merger of offices in order to ensure quality of services and/or as part of certain economic measure are matters of executive policy lie entirely in the domain of administration. In a full Bench judgment of Allahabad High Court (State of U.P. Vs. Dr. Prem Behari Lal Saxena reported in (1969) ILLJ 247 (All.) it has been observed that "every sovereign government has within its own jurisdiction, the right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration and to abolish offices as it may deem "superfluous." In such a case judicial intervention is warranted only in the case of that there has been arbitrary use of power or that an order has not been made in public interest.

9. In this case, while the applicants have stated that the respondent no.2 did not have the authority to pass such an order, but they have failed to produce any rule or regulation, which would show that the said order has been passed by the respondent no.2 beyond his jurisdiction.

10. Coming to the consequent issue of nature and duties to be performed by persons holding posts in the merged offices/closed

offices, while there is no particular order to the same, it is evident from the minutes of meeting dated 13.10.2011 that there was general agreement to a merger of posts. However, the closure per-se was not objected to only the date of effective the merger was defined and made subject to clause 6. The applicants have not sought the quashing of the agreement so arrived at. While the agreement remains valid, the relief prayed for with regard to quashing of the order becomes infructuous. By an interim order, it was directed that merger may be effected only after a joint seniority list and BOS is drawn up. The same has been drawn up, as submitted by the respondents alongwith their Affidavit dated 10.10.2012. The applicants may have various grievances with regard to fixation of such seniority for which separate O.A. needs to be filed as no relief to that effect has been prayed for in this O.A.

12. In view of the discussions made above, the O.A. has no merit and the same is accordingly dismissed. However, liberty is given to the applicants to file separate O.A. against the provisional seniority list of merged cadre of Commercial Clerks and Transshipment Clerk as on 1.8.2012. Interim order passed earlier stands vacated. No costs.

(Ms. Jayati Chandra)
Member-A

(Ms. Bidisha Banerjee)
Member-J

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