

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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O.A. 1103 of 2017

Reserved on: 6.11.2019
Date of order: 20-11-2019,Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Tapash Kumar Ballav,
 Son of late B. N. Ballav,
 Aged about 49 years,
 Working as Technician - II (Machinist),
 Office of the Assistant Manager,
 Printing & Stationery Department,
 Eastern Railway,
 Howrah,
 Residing at 29, Vidyasagar Street,
 P.O. - Kommagan
 P.S. - Uttarpara,
 Dist. - Hooghly,
 Pin - 712 235.

... Applicant

V.E.R.S.U.S -

1. Union of India
 Through the General Manager,
 Eastern Railway,
 17, N.S. Road,
 Kolkata - 700 001.
2. The Chief Personnel Officer,
 Eastern Railway,
 17, N.S. Road,
 Kolkata - 700 001.
3. Senior Manager (Printing & Stationery),
 Eastern Railway,
 17, N.S. Road,
 Kolkata - 700 001.

... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. S.K. Das, Counsel

S.K.D.

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- “(a) An order quashing and/or setting aside the impugned communication dated 26.9.2016, 11.1.2017 and 3.7.2017.
- (b) An order directing the respondents to review the case of the applicant and to consider his case by granting him promotion to the post of Technician Grade - II (Machinist) with effect from 1.11.2013 with all consequential benefits including difference of pay & allowances.
- (c) An order directing the respondents to produce/cause production of all relevant records.
- (d) Any other order or further order / orders as to this Hon'ble Tribunal may seem fit and proper.

2. Heard both Ld. Counsel examined pleadings and documents on record.

3. The submissions of the applicant, as articulated through his Ld. Counsel, is that the applicant is functioning as a Technician Gr. II (Machinist) with the respondent authorities. The applicant was promoted in the year 2016 through a process of normal selection. According to the applicant, however, his promotion was consequent to a resultant vacancy due to restructuring w.e.f. 1.11.2013 implemented in accordance with RBE No. 102 of 2013 and the applicant was entitled to receive his promotion w.e.f. 1.11.2013. Inappropriate application of RBE No. 102 of 2013 led to arbitrarily denial of his promotion w.e.f. 1.11.2013. The applicant further submits that his representations in this regard was rejected by the respondent authorities vide their communication dated 11.1.2017 (Annexure A-7 to the O.A.) as well as 3.7.2017 (Annexure A-9 to the O.A.) wherein the respondents have reiterated their stand that the resultant vacancy in the post of Technician Gr. II (Machinist) on account of restructuring was a “Nil”. Aggrieved with such rejection, the applicant has approached the Tribunal for relief.

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4. The respondents have disputed the claim of the applicant as follows:-

(a) The applicant, Sri Tapash Kumar Ballav, Technician 'Gr. - II/Machinist, working under Assistant Manager (Ptg. & Sty.), was initially appointed as Substituted Khalasi w.e.f. 6.8.1993. He attained temporary status w.e.f. 4.12.1993 in scale Rs. 750-940/-.

Thereafter, he was promoted to the post of Technician Gr. III/Machinist w.e.f. 16.6.2006.

(b) In the meantime, the Railway Board issued an order vide RBE No. 102/2013 for financial upgradation under Restructuring of certain Group 'C' cadres with effect from 1.11.2013.

In terms of said restructuring order, the sanctioned strength (S/S), Men on Roll (O/R) and vacancy position of Technician Cadre/Machinist was as under:-

Category	Before restructuring			After restructuring w.e.f. 1.11.13		
	% age	Sanctioned strength	Men on Roll	% age	Sanctioned strength	Men on Roll
1. Sr. Technician	8%	Nil	Nil	16%	1	1
					1. Sri Ranjit Mondal promoted w.e.f. 1.11.2013	
2. Technician Gr. I	41%	2	2	44%	3	3
					1. Haradhan Ghosh (OR) from w.e.f. 18.8.2011	
					2. Deb Narayan Ghosh w.e.f. 1.11.2013	
					3. R.C. Hansda w.e.f. 1.11.13	
3. Technician Gr. II	26%	2	2	20%	1	Nil
4. Technician Gr. III	25%	2	2	20%	1	1
					1. Tapas Kumar Ballav (On Roll)	
5.					2. Sahadev Manna (retired)	

(c) According to the respondents, no normal vacancy in any grade existed as on 1.11.2013 and 1 vacancy of Sr. Technician arose due to restructuring against which Sri Ranjit Mondal was promoted as Sr. Technician w.e.f. 1.11.2013. 2 vacancies of Technician Gr. I (i.e. 1 vacancy due to restructuring and 1 chain vacancy) arose due to cadre

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restructuring w.e.f. 1.11.2013 against which Sri Deb Narayan Ghosh and Sri R.C. Hansda were promoted as Technician Gr. I w.e.f. 1.11.2013.

(d) The applicant was in the category of Technician Gr. III as on 01.11.2013, i.e. the cut off date of the said restructuring and, as a result of reduction of % age of Technician Gr. II Cadre from the existing 26% to 20%, the sanctioned strength of Technician Gr. II was reduced from 2 posts to 1 post and, as no additional post became available as a result of restructuring, the applicant, who was working as Technician Gr. III, could not be considered for promotion to Technician Gr. II under restructuring order w.e.f. 1.11.2013, but was promoted against 1 existing vacancy available on 02.11.2013 through normal selection procedure (i.e. Trade Test) w.e.f. 20.5.2016 in terms of Para 4.5 of the CPO's Sl. Circular No. 111/2015 which clearly says that in cases where percentages have been reduced in the lower grade and no additional post becomes available as a result of restructuring, the existing vacancies on 1.11.2013 should be filled up by normal selection procedure.

5. The only issue to be decided upon in the instant Original Application is whether the available vacancy in the post of Technician Gr. II (Machinist) consequent to the restructuring as on 1.11.2013 is to be interpreted as an existing vacancy *vis-à-vis* a consequent vacancy.

6. To decide on the above issue, we refer to the admission of the respondent authorities wherein they have stated in their reply (para 9) as follows:-

"The applicant was in the category of Technician Gr. III as on 1.11.2013, i.e. the cut off date of the said restructuring and as a result of reduction of percentage of Technician Grade-II cadre from the existing 26% to 20%, the sanctioned strength of Technician Gr. II reduced from two post to one post."

We would hereafter refer to the provisional seniority list of Maintenance Section of Printing Press, Howrah as on 1.7.2010 as

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circulated on 1.2.2011 (Annexure A-1 to the O.A.). In particular, we examine the provisional seniority list of Technician Gr. I (Machinist), Technician Gr. II (Machinist) and Technician Gr. III (Machinist) as annexed at page 18 (Annexure A-1 to the O.A.) The said seniority position is reproduced as under:-

Provisional seniority list of Technician Gr. I (Machinist) as on 1.7.2010 in scale Rs. 5200-20200/- (RSRP) Rule -08 in PB-1 with Grade Pay Rs. 2800/-

SN	Name & PF No.	Design. & Stn.	Date of birth	Date of appointment	Date of present appt.
1.	Joseph Gomes 817535	Tech. II (Machinist) HWH	16.12.55	19.6.79	10.7.96
2.	Ranjit Mandal (SC) 1111542	Do HWH	30.1.66	2.2.91	19.4.06

Provisional seniority list of Technician Gr. II (Machinist) as on 01.7.10 in scale Rs. 5200-20200/- (RSRP) Rule - 08 in PB-1 with Grade Pay Rs. 2400/-

S/S-02

SN	Name & PF No.	Design. & Stn.	Date of birth	Date of appointment	Date of present appt.
1.	Haradhan Ghosh 1106975	Tech. II (Machinist) HWH	22.6.64	24.11.84	27.6.00
2.	Debnarayan Ghosh 1107756	Do HWH	02.6.61	24.11.84	29.4.06

Provisional seniority list of Technician Gr. III (Machinist) as on 1.7.2010 in scale Rs. 5200-20200/- (RSRP) Rule-08 in PB-1 with Grade Pay Rs. 1900/-

S/S-02

SN	Name & PF No.	Design. & Stn.	Date of birth	Date of appointment	Date of present appt.
1.	Raban Ch. Hansda, (ST) 1106975	Tech. III (Machinist) HWH	14.01.64	03.11.89	21.8.98
2.	Tapas Kr. Ballav 833564	Do HWH	20.03.69	04.12.93	16.06.06

During hearing it transpired that consequent to restructuring, one vacancy occurred in MCM post. Accordingly, Joseph Gomes, Technician Gr. I, who was Srl. No. 1 in seniority, having expired, the post of MCM was filled up by the next in seniority, namely, one Shri Ranjit Mandal.

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Three posts of Technician Gr. I arose on account of restructuring. These were thereafter filled up in accordance with seniority by Sri Haradhan Ghosh, Tech. II (Machinist), Sri Debnarayan Ghosh, Tech. II (Machinist) and Sri Raban Ch. Hansda, Tech. III (Machinist), the latter being the seniormost among the two Tech. III Machinists in the seniority list. In such an eventuality, as one post was available for Technician Gr. II on account of reduction of percentage of Tech. Gr. II cadre from 26% to 22%, the applicant was the only incumbent on roll eligible to be posted as Tech. II in the post of Tech. II (Machinist) that survived consequent to the restructuring process. Accordingly, the post of Tech. II that became available to accommodate the applicant was in reality a post resulting out of restructuring. Altered availability of posts subsequent to restructuring cannot be interpreted as an existing post. There was no need of an additional post to accommodate the applicant. The respondents have hence erred in filling up the post of Tech II as a normal vacancy.

Mr. Counsel for the respondents would strenuously refer to the notification dated 8.10.2013 (Annexure A-2 to the O.A.) on restructuring of Gr. 'C' cadres and argue on the basis of paras 4.4. and 4.5 of the same which are reproduced below:

"4.4 All vacancies (including chain/ resultant vacancies) arising purely due to this cadre restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 1.11.2013 whereas for the normal vacancies existing on 1.11.2013, junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date of taking over the posts as per normal rules. Thus the special benefit of the promotion w.e.f. 1.11.2013 is available only for vacancies arising out of cadre restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply.

4.5 In cases where percentages have been reduced in the lower grade and no additional post becomes available as a result of restructuring, the existing vacancies on 1.11.2013 should be filled up by normal selection procedure."

It is true that no additional post became available but one post was resultantly available in the post of Tech. II on account of restructuring

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and logically, the applicant being the senior-most in Tech. III cadre after the promotion of Sri Raban Ch. Hansda to Tech. I category should have been seamlessly appointed in the resultant vacancy. The respondents have erred in searching for an additional vacancy which was not at all required to accommodate the applicant.

Consequently, we are convinced that there is considerable strength in the argument of the Ld. Counsel for the applicant that the applicant should have been accommodated in the resultant vacancy and not against the normal vacancy and that the scope of searching out an additional post did not arise at all in these circumstances.

7. Accordingly, we find considerable merit in this Original Application and allow the same.

The respondents are directed to pass necessary orders antedating the date of promotion of the applicant w.e.f. 1.11.2013 with consequential benefits. The exercise should be completed within eight weeks from the date of receipt of a copy of this order.

The O.A. succeeds. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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