
(2012) 08 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1908 of 2003

Rajendra Prasad Verma

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2012) 08 MP CK 0023

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : R.B. Dubey, for the Appellant; Gourav Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—Being unsuccessful in seeking direction from the Central Administrative Tribunal, Jabalpur Bench, Jabalpur for correction of seniority and a regular promotion as Chief Commercial Inspector in Grade Rs. 2000-3200 (RPS) with effect from 1.3.1993, the petitioner has filed this petition; whereby, besides quashment of the order dated 18.7.2002 passed by the Tribunal, the petitioner seeks direction to respondents to grant him the seniority above respondent No. 3, in the Commercial cadre and promotion as Chief Commercial Inspector in grade Rs.2000-3200 w.e.f 1.3.1993 instead of 29.10.1996. The petitioner has since retired as Chief Commercial Inspector (Claims) in the year 2002. Having been appointed as Commercial Clerk on 11.5.1965, the petitioner rose to the rank of the Chief Commercial Inspector (Claims).

2. While in service grievance of the petitioner was that the respondent No. 4, appointed as Commercial Clerk on 7.12.1974, as such junior, was given a march over him.

3. For redressal of said grievance petitioner approached the Tribunal vide Original Application: O.A. No. 46/1998. Said application was disposed of on 28.1.1998 with a direction to respondents to decide his representation by a speaking order.

4. The said representation came to be decided in the following terms on 22.4.1998:

Please refer your representation dated 5-1-98. As direction given by Hon''ble Tribunal, your case has been examined by this office. The detail position is as under.

Shri Kota Govind Rao was selected as Commercial Apprentice in Gr. Rs. 455-700 (RS)/1400-2300(RPS) against departmental quota on 10/4/87 and has completed his training successfully on that particular date you were working in Gr. Rs. 425-640(RS)/ 1400-2300(RPS) i.e. a non selection post. After implementation of 4th Pay Commission both the grades were merged into a singal grade Rs.1400-2300 (RPS) as Shri K.G. Rao who had already been promoted to Gr. Rs.455-700(RS) was placed before you at the time of assignment of seniority for Gr. Rs. 1400-2300 (RPS).

It is further stated that Shri Rao was promoted as Comml. Inspector Gr. Rs. 1600-2660 (RPS) w.e.f. 29-6-91 on proforma basis whereas in this grade you were promoted on 22-8-91. Accordingly Shri Rao was promoted in Gr. Rs. 2000-3200 (RPS) earlier to you.

The post of Gr. Rs. 2375-3500 (RPS) is controlled by HQ and the senior most person on the basis of zonal seniority were promoted. It is further pointed out that neither Shri K.G. Rao nor any junior to you was promoted. Hence your claim is fictitious.

5. Still aggrieved, and being unsuccessful in having affirmative response from the department on his representation petitioner preferred another Original Application : OA 521/1998 before Central Administrative Tribunal, Jabalpur Bench, Jabalpur. The Tribunal, vide impugned order negatived the claim, holding that there being no violation of any rule in promoting respondent No. 3 and that the vacancies cropped up due cadre restructure as on 1.3.1993 were 13 and not 24.

6. Petitioner is before us against the rejection of his claim.

7. In the Commercial Department, Railways, as borne out from respective pleadings, the channel of promotion of a Commercial Clerk is to that of Senior Commercial Clerk to Head Commercial Clerk to Chief Commercial Clerks/ Inspectors to Commercial Supervisor/Chief Commercial Inspector (Goods- Parcel-Coaching. Prior to implementation of recommendation of IVth Pay Commission; whereas, the Head Commercial Clerk was a non-selection post carrying pay scale of 425-640, there was a post of Commercial Apprentice carrying the pay scale of 455-700. The said post was a selection post to be filled by selection on the basis of merit.

8. With the acceptance of recommendation of IVth Pay Commission the pay scales of Head Commercial Clerk and that of Commercial Apprentice were merged into 1400-2300 w.e.f. April 1987. With the, merger the incumbent

carrying the pay scale 455-700 were placed above those who were in Grade Rs. 425-640 in the seniority list of Commercial Inspector/Commercial Clerk. It is also to be noted that there are two grades of Commercial Supervisors; one carrying the pay scale of Rs. 2000-3200 (PRS)/Rs. 6500-10500(RP) and Rs. 2375-3500 (RPS)/Rs. 7450-11500 (RP).

9. Respondent No. 3 was selected as Commercial Apprentice in Grade 455-700. That, by order dated 10.4.1987 and on his successful completion of training he was posted as Commercial Inspector by order dated 13.4.1989. Since he was promoted on a higher scale than the petitioner who at relevant time was a Commercial Clerk, respondent No. 3 was placed above the petitioner in the gradation list of Commercial Inspectors/ Commercial Clerks.

10. That, with the implementation of recommendation of IV Pay Commission and with merger of certain pay scales there was also a change in classification of various posts. Selection post converting into a non-selection and vice versa. This led the Railway Board to issue letter No. E(NG)I-86.PM 1-11 dated 5.2.1987 relating to classification of non-gazetted post as selection or non-selection.

11. The aforesaid circular was issued in furtherance to Ministry of Railways letter No. PC-IV/86/RPQ/1 dated 25.9.1986.

12. Paragraph 3 (vi) of the circular stipulated: "In case where the classification of a lower grade post is changed from selection to non selection and that of the immediate higher grade post is changed from non-selection to selection, persons who have been promoted to the lower grade on a regular basis after a due process of selection will not be required to undergo a selection again for promotion to the immediate higher grade which is now classified as selection; however, their suitability for promotion to such immediate higher grade will be adjusted in the same manner through which such higher grade post was being filled before the crucial dates as non selection posts."

13. That, prior to issuance of aforesaid circular post of Chief Commercial Clerk/ Inspector in Grade Rs. 1600-2660 (RPS)/ Rs. 5500-9000 (RP) was a selection post converted into a non-selection one as a result whereof respondent No. 3, who was made Senior Commercial Inspector on ad hoc basis vide order dated 28.10.1991 was given a proforma promotion on said post w.e.f. 29.6.1991 and regular promotion w.e.f. 28.10.1991 by order dated 27.4.1993.

14. We are not commended to any material as would suggest that the said promotion order of respondent No. 3 was questioned by the petitioner when the same was passed. Respondent No. 3 thus ranked senior to the petitioner not only in Grade 455-700 (1400-2300) but also in grade Rs. 1600-2660 which is feeder grade for promotion to the post of Commercial Supervisor carrying the pay scale of Rs. 2000-3200. Furthermore, respondent No. 3 was promoted on 11.8.1995 as Commercial Supervisor on the basis of modified selection. The petitioner on said date was holding the post of Chief Commercial Inspector (Claims) and by order dated 13.2.1996 he was promoted on ad hoc basis as Chief Booking

Supervisor in grade Rs.2000-3200 and was regularly promoted on the said post after empanelment on 29.10.1996. Thus, apparent it is from above that from the stage of Commercial Inspector in Grade Rs. 455-700 respondent No. 3 ranked senior to the petitioner. In our considered opinion the Tribunal was, therefore, justified in rejecting the claim put-forth by the petitioner seeking seniority over respondent No. 3.

15. One more issue was raised by the petitioner qua restructuring of cadre w.e.f 1.3.1993 and for his consideration for promotion on the post created after the cadre restructure. The Tribunal in its order examined the said issue and held that only 13 posts in the restructured cadre were available as on 1.3.1993 and not 24 as contended by the petitioner.

16. The restructuring as apparent was in pursuance to Railway Board Circular No. PC III/93/01/51/15/2 dated 27.1.1993; whereby cadres of certain groups of C and D staffs were reviewed. Paragraph 4 of said circular dealt with existing classification and filling up of vacancies. It stipulates:

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders if an individual Railway Servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and Confidential Reports without holding any written or viva-voce test. Similarly for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation as "out-standing" will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders.

4.1 Vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- (i) from panels approved on or before 1.3.1993 and current on that date
- (ii) and the balance in the manner, indicated in para 4 above.

4.2 Such selections which have not been finalised by 1.3.1993 should be cancelled/abandoned.

4.3 All vacancies arising from 2.3.93 will be filled by normal selection procedure.

4.4 Extant instructions for D&A/Vigilance clearance will be applicable for effecting promotions under these orders with the critical date being 1.3.93.

17. Record reveals that in furtherance to aforesaid circular the Commercial Cadre was restructured as under:

Grade (Rs.)

Existing before restructuring

Revised after restructuring

Increased or decreased

2375-3500(7450-11500)

1

7

+6

2000-3200 (6500-10500) (posts of CPS,CBS, SGS etc.

21

31

+10

2000-3200 (6500-10500) (Commercial Inspector

10

7

-3

TOTAL

13

CPS - Chief Parcel Supervisor

CBS - Chief Booking Supervisor

CGS - Chief Goods Supervisor

18. It is borne out from the return filed on behalf of respondents that one vacancy in Grade 2000-3200 (RPS) was available on 28.2.1983. The total vacancies, therefore, which existed in the Commercial Cadre as on 1.3.1993 was 14 and not 24 as alleged by the petitioner. Petitioner is unable to demonstrate as to how 24 vacancies were available. Presumably petitioner has taken into consideration even those vacancies which cropped up on 2.3.1993. The petitioner since fails to demonstrate his entitlement for promotion as on 1.3.1993, no relief can be granted on that count too. In the result there being no substance in the petition, the same fails and is hereby dismissed. No costs.