

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.8/2007**

% **Date of Decision: 18.07.2011**

Union of India & Ors. Petitioners

Through Mr.Kumar Rajesh Singh, Advocate.

Versus

Kulwant Singh Banga & Ors. Respondents

Through Mr.A.K.Trivedi, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, Union of India through the General Manager, Northern Railway and Ors. has challenged the order dated 3rd August, 2006 passed by the Central Administrative Tribunal, Principal bench, New Delhi in O.A No.1672/2005 titled as 'Kulwant Singh Banga & Ors.v. Union of India & Ors.' allowing the original application of the respondents and setting aside the order dated 30th June, 2005, whereby the claim of the respondents for giving them an option to choose between the cadre of Booking clerks and Parcel clerks, before assigning

them seniority in the cadre of Booking Clerk was rejected. The Tribunal directed the petitioners to re-examine the entire matter in light of the respondents opting for the parcel cadre and to transfer them in that cadre on permanent basis and to consider their seniority in accordance with the rules and instructions and to maintain status quo till then.

2. Brief facts to comprehend the disputes between the parties are that the respondents were initially appointed as Coaching Clerks and subsequently after completing the necessary training they were promoted as Head Coaching Clerks in the Bikaner Division of Northern Railway (presently North Western Railway).

3. The channel of promotion of Coaching Clerk is as under:-

“Coaching Clerk→Senior Coaching Clerk→Head Coaching Clerk→Supervisor→Chief Supervisor.”

4. The cadre of Coaching Clerks in Bikaner Division includes the Parcel Clerks as well as Booking Clerks and the work/post of the parcel clerks as well as booking clerks was interchangeable. The seniority list too in the Bikaner Division of Booking and Parcel Clerks was common.

5. After divisionalization of Railways, a part of Bikaner Division i.e. from Khalilpur Railway Station to Delhi Sarai Rohilla Railway Station,

was transferred to Delhi Division with effect from 1st April, 2003. Consequently the respondents who were in Bikaner Division were also transferred to Delhi Division with effect from 1st April, 2003 and were posted at Delhi Sarai Rohilla.

6. In Delhi Division the Parcel Clerks and Booking Clerks have separate cadre and their seniority list is also separate for the purpose of further promotion. From Bikaner Division 87 Coaching Clerks, most of whom were working as Booking Clerks in Bikaner Division, were also posted in the Delhi Division.

7. The respondents had made a representation dated 14th September, 2004 for their transfer to the Parcel cadre and fixing their seniority thereof, with repeated reminders on 2nd December, 2004 and 17th February, 2004. However the same was not even considered by the petitioners.

8. Thereafter, the respondents filed an O.A. No. 560/2005 against the action of the petitioners, which was disposed of at the admission stage itself by order dated 15th March, 2005 directing the petitioners to consider the claims of the respondents and pass a speaking order within the time limit prescribed.

9. In compliance of the directions issued by the Tribunal in O.A. No 560/2005, the petitioners passed the order dated 30th June, 2005, wherein the claims of the respondents was rejected on the sole ground that action had been taken with the consent of the two recognized Unions, which represent the interests of the respondents, in a joint meeting held on 30th September 2004 and reliance was placed on the scheme of PS. NO. 10841. It is against this order dated 30th June, 2005 that the respondents had filed the O.A. No. 1672 titled as 'Kulwant Singh Banga & Ors.v. Union of India & Ors.' before the Tribunal, seeking its quashing and a declaration to the effect that the whole action of the petitioners fixing the seniority of the 87 persons who were transferred from Bikaner Division to Delhi Division in different cadres was without adopting any criteria and was merely on the basis of a pick and choose policy without giving an option to the respondents. They further sought directions to fix the seniority of the respondents in the parcel cadre with all consequential benefits.

10. The respondents contended that in the Bikaner Division, they were working as Commercial Clerks and after the transfer in Delhi Division, they should have been given an option to choose between the parcel and booking cadre. It was further contended that similarly situated persons, namely one Sh. Rattan Lal who was working as a Sr. Booking Clerk in Bikaner Division had requested his seniority to be

fixed in the Parcel cadre, which was accepted and the same was given effect to by order dated 22nd July 2003. The respondents also challenged the plea of the petitioners that their cadre could not be transferred on the basis of any union's decision without inviting option from them and considering their option.

11. The pleas and contentions of the respondents were contested by the petitioners contending, inter-alia, that before the divisionalization, the respondents were working as Head Booking Clerks in the Bikaner Division, where the seniority of the Booking Clerks and the Parcel Clerks was common. The petitioners also pleaded that staff of the Booking/Parcel and Goods wing of the commercial department were having separate seniority, however, their seniorities were merged in Central Railway and South-Central Railway. Subsequently, the Railway Board had decided to merge the three cadres into a combined cadre on all the Zonal Railways and instructions were issued by the Railway Board by P.S No.10841 dated 16th December, 1993 which was operative with effect from 1st November, 1993. Consequent thereto fresh entrants, Commercial Clerks of Commercial Department of Railway were to have a combined seniority and the existing staff of the three wings, who had joined prior to 1st November, 1993 were also merged in a single cadre. However with regard to the Delhi Division the scheme of the Railway Board was implemented only in the case of the new entrants and the

employees already working prior to 1st November, 1993 remained in separate units.

12. According to the petitioners the respondents were transferred to Parcel Cadre from Booking Cadre at their own request made on 31st August, 2004 prior to the decision taken in the joint meeting held with recognized unions on 30th September, 2004 to fix the seniority of the staff transferred from Bikaner Division and Jhansi Division. The petitioner further pleaded that in view of the decisions of the joint meeting held with the recognized unions the respondents were assigned seniority in the cadre of Head Booking Clerk in the grade of Rs.5000-8000/- as they were working in the cadre as on 1st April, 2003. The fixation of seniority of respondents in Booking cadre was also justified on the ground that the appointment of the respondent as Coaching Clerk was prior to 1st November, 2003 and therefore, the assignment of their seniority as Head Booking Clerks in the grade of Rs.5000-8000/- at Delhi Division is correct and thus the order dated 30th June, 2005 is justified.

13. The Tribunal after considering the pleas and contentions of the parties took note of the order dated 1st March, 2006 passed by the Tribunal in O.A. No. 127/2006 titled as 'Anil Kumar Sharma & Anr. vs. Union of India & Anr' where identical issues and claims were raised

and therefore passed the impugned order dated 3rd August, 2006 in terms of para 20 of the said order. The relevant para. 20 is reproduced as under.

“20. In the result, for the foregoing reasons, this OA is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to re-examine the entire matter in the light of applicants having opted for the parcel cadre and transfer in that cadre on permanent basis and thereafter an option be extended to them to opt for the cadre and on their option, their seniority be operated in accordance with rules and instructions. This shall be done within a period of three months from the date of receipt of a copy of this order. Till then, status quo as on date shall be maintained by the respondent.”

14. In O.A. No. 127/2006 the Tribunal held that the service condition of the respondents could not be altered to their disadvantage without affording a reasonable opportunity to them and relied on Grid Corporation of Orissa & Ors v. Rasananda Das, 2004 SCC (L&S) 214. Relying on the scheme stipulated in P.S No.10841 dated 16th December, 1993 on the subject of “Merger of certain non-gazetted cadres in commercial Department” the Tribunal held that under the scheme the option had to be sought from the date of issue of the instructions regarding option for a particular cadre. The Tribunal also noted that the respondents had been transferred to the Parcel cadre after transfer from Bikaner Division to Delhi Division, which was on permanent basis and the fact of respondents being transferred to the parcel cadre was not on agenda or reference before the joint meeting held on 30th September,

2004 between the ADRM and both the recognized unions. The observations of the Tribunal are as under:-

14. On divisionalization of railways, though on administrative exigencies, the joint meeting held on 30.9.2004 in the chairmanship of ADRM with both the recognized Unions wherein the issue relating to the staff who have come to Delhi Division after taking over the new Sections and more particularly the Commercial Clerks, who have been transferred from Bikaner Division and who were appointed after 31.10.1993, their seniority is to be merged with the seniority of the Commercial Clerks of Delhi Division on as is where is basis. In the case of the applicants, who are the pre-appointee of 31.10.1993, three separate cadres of Goods, Booking and Parcel are existing having distinct seniority units on as is where is basis. Whereas the aforesaid decision was taken in consultation with Shri Vinod Kumar Bhatt, Divisional Secretary, URMU, one of the Unions of Railway. However, the fact remains that by an order passed on 20.12.2005, the applicants, who are temporarily working in Parcel cadre, have been repatriated and this clearly signifies that earlier vide notice at Annexure A-3, the staff having completed more than four years of continuous service, have been transferred and the applicants, who had been transferred on their own request in Parcel Clerk cadre, cannot be disputed.

15. The aforesaid plea and the fact that the applicants, who had been transferred to Parcel Clerk cadre, does not show through this order any indication as to their temporary transfer. This is to signify that the applicants have been transferred on permanent basis and this fact of their being transferred to Parcel Clerk cadre was not an agenda or reference before the Joint meeting held on 30.9.2004 between the ADRM and both the recognized Unions.

16. The aforesaid led to espousal of four persons, including the applicants, who were similarly circumstanced, by writing a letter by the Divisional Secretary of NRMU to the Divisional Railway Manager stating that when the decision to merge the cadre and to operate the seniority in separate cadre was taken, the fact

that the applicants, who had been transferred from Booking to Parcel Clerk cadre before the Joint meeting session, was not taken into consideration. This resulted in transfer of the applicants in the same stream to which they belong to, i.e., their erstwhile division from where they were transferred to inter-division.

17. It is trite law that any decision, which lacks transparency and has not taken into consideration the correct factual position, the same cannot stand scrutiny of law, though no administrative exigencies or reasons are forthcoming as the transfer on divisionalization of railways may be an administrative exigency but operation of the seniority thereunder dehors the correct legal position as to transfer of the applicants from Parcel cadre without extending them an option for transfer to a particular cadre, certainly as an alteration of conditions of service and without putting them to notice, the same would not be in consonance with the principles of natural justice but also prejudicially affect their rights. In that event, the others whose seniority have been operated and pitted against the applicants, who are already working in Parcel cadre do not form one class. Any equal treatment meted out to unequals would also offend the principles of equality enshrined under Articles 14 & 16 of the Constitution.”

15. The Tribunal observed that in the O.A. No.127/2006 the same contentions and issues were raised as in the O.A. No. 1672/2005, and therefore upheld the decision of the co-ordinate bench by order dated 3rd August, 2006.

16. The order dated 3rd August, 2006 is challenged by the petitioners contending, inter-alia, that since the respondents were originally appointed as Coaching Clerks and they remained in the Booking cadre right from the time of their appointment therefore, they were liable to be retained to their parental cadre of Booking Clerks and therefore, the

order dated 30th June, 2005 is not vitiated on any of the grounds raised by the respondents. The order is also impugned on the ground that the issue of seniority of goods, parcel and booking clerks working in Delhi Division and those who were transferred from Bikaner Division to Delhi Division was discussed at length by the petitioners with the representatives of the recognized unions on 30th September, 2004 and thereafter, the decision was taken and the respondents were repatriated from the cadre of parcel clerks to the cadre of booking clerks. According to petitioners on 31st August, 2004 on transfer from Bikaner Division to Delhi Division the respondents were placed in the booking cadre, and therefore, they could not contend that they ought to be given an option of being placed in the cadre of the parcel clerks. Since the respondents were working in the cadre of booking clerks as on 1st April, 2003 when the administrative control of the area where they were working came under the Delhi Division, therefore, they were liable to be placed in the cadre of Booking clerks and they could not claim that they should be placed in the cadre of Parcel clerks.

17. The respondents have contested the writ petition and filed a counter affidavit dated 7th February, 2008 by Sh. Kulwant Singh Banga, respondent No.1 contending inter-alia that in the Bikaner Division there was no separate cadre for booking clerks and the parcel clerks rather the work/post of parcel as well as booking clerks were interchangeable

and the seniority list of Coaching Clerk (common seniority list of booking and parcel clerks) was maintained by the petitioners. The respondents pleaded that they joined their duties as Head Parcel Clerks with effect from 1st September, 2004 as the cadre of parcel clerks and booking clerks was different in Delhi Division and was not common as was the case in the Bikaner division from where they were transferred on account of divisionalisation of the Railways. The respondents also asserted that before placing them in the cadre of booking clerk their option was not sought nor was it considered and the alleged union could not exercise individual option on behalf of various parcel clerks and booking clerks who had been in Bikaner Division and who stood transferred to Delhi Division. The learned counsel for the respondents emphasized that the petitioners did not give any option to the respondents before placing them in the booking cadre, and had merely followed a pick and choose policy without adopting any criteria, hence they were illegally retained in the cadre of booking clerks in Delhi Division by order dated 30th June, 2005.

18. This Court has heard the learned counsel for the parties in detail and has also perused the writ petition filed by the petitioners and the record of the Tribunal. Along with the writ petition the entire record of the Tribunal was not filed, however, later the learned counsel for the petitioner filed all the relevant record on 8th July, 2011 which was

before the Tribunal on the basis of which impugned order dated 1st March, 2006 was passed against the petitioners.

19. This is not disputed that prior to 1993 even in Bikaner Division the cadre of booking clerks, coaching clerks and parcel clerks were different. Pursuant to the policy and instructions issued by the Railway Board vide P.S No.10841 dated 16th December, 1993 after taking options from the respondents who were appointed prior to 1st November, 1993, since the P.S No.10841 had become operative with effect from 1st November, 1993, a combined cadre list was made for the commercial clerks of the commercial department of the Railways and the new entrants after 1st November, 1993 were also kept in the same cadre comprising of coaching clerks, booking clerks and parcel clerks. If that be so then on divisionalisation of Railways when the respondents were placed in Delhi Division, no reliance could be placed by the petitioners on the fact that the respondents were working as booking clerks in Bikaner Division as the cadre for booking clerks and parcel clerks was common. The cadre of booking clerks and parcel clerks are different in Delhi Division and no criteria and factors have been shown by the petitioners for placing the booking and parcel clerks from the same cadre in Bikaner Division to different cadres in Delhi Region. Though the alleged agreement with the recognized Unions have been relied on by the petitioners, however, neither the copy of alleged

agreements nor the criteria adopted by the petitioners and alleged recognized Unions for placing employees from joint cadre in Bikaner Division to separate cadre in Delhi division has been shown. The learned counsel for the petitioners is also unable to show any decision taken by the petitioners deciding that the booking clerks from Bikaner division who had been in the common cadre of booking and parcel clerks had to be necessarily placed in the separate cadre of booking clerk in Delhi division. The learned counsel for the petitioners is also unable to admit that all the booking clerks of the Bikaner division have been placed in the separate cadre of booking clerks in Delhi division.

20. The learned counsel for the petitioner has not shown any rule or any policy decision to show that on transfer of Bikaner Division to Delhi Division, as the cadres of booking clerks and parcel clerks are different in Delhi Division, the booking and parcel clerks having a common cadre in Bikaner Division were liable to be placed in a different cadre of booking clerks in Delhi and could not be placed in the cadre of parcel clerks. This has not been disputed that option was required to be taken from the booking clerks or the parcel clerks who stood transferred from Bikaner Division to Delhi Division for their placement in either parcel clerk cadre or booking clerk cadre as in Delhi Division there are different cadres, whereas in Bikaner Division there was a common cadre. This is an admitted case of the petitioners that the option was

not obtained from the respondents. The contention of the respondents, that the negotiations with the unions could not curtail the rights of the respondents individually cannot be rejected in the facts and circumstances. The petitioners have also not produced anything to show that pursuant to alleged joint meeting with the recognized union on 30th September, 2004 the rights of the respondent to exercise their option could be curtailed. The Tribunal has held that the service condition of the respondent could not be altered to their disadvantage without affording a reasonable opportunity to them. The learned counsel for the petitioners have not been able to show anything on the basis of which it could be inferred that a reasonable opportunity was given to the respondent before placing them in the booking clerk cadre.

21. The decision of the Tribunal in the facts and circumstances does not suffer from any illegality, irregularity or such perversity which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioners were liable to place the respondents according to their options. The respondents were placed in the cadre of parcel clerks on their transfer from Bikaner division to Delhi division and no legally acceptable reason has been disclosed by the petitioners to place them in the cadre of booking clerks instead of determining their seniority in the cadre of parcel clerks. The order of Tribunal cannot be faulted on any of the grounds raised by the

petitioners. The writ petition in the facts and circumstances, is without any merit and is liable to be dismissed and petitioners are liable to comply with the decision of the Tribunal. The writ petition is, therefore, dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

July 18, 2011

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SUDERSHAN KUMAR MISRA, J.