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

\+ W.P.(C) 4992/2011

TECHNICAL EMPLOYEES ASSOCIATION OF RAILWAYS AND ORS ..... Petitioners

Through: Mr.Vinod Zutshi, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Ms.Geetanjali Mohan, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **27.07.2017**

The petitioner has preferred the present petition to assail the orders dated 08.07.2009 and 03.02.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2560/2008 and the Review Application filed therein being RA No.4/2011. The Tribunal has dismissed both the Original Application as well as the Review Application preferred by the Applicants/petitioners. The petitioners are the Technical Employees Association of Railways and its members. The petitioner No.1 Association is affiliated with the Indian Railways Technical Employees Federation, however, it is not a recognised association by the Railways. The background in which the Original Application was preferred, was that on 28.09.1998 while implementing Fifth Central Pay Commission recommendations regarding pay scales for Khalasis in Diesel/Electric Loco/EMU Sheds, the respondent issued a Railway Board Establishment circular R.B.E. No. 222/98. This circular conveyed that 50% of the Group 'D' posts of Artisan Khalasis in Diesel/Electric Loco/EMU maintenance trades with matriculation /Apprenticeship pass under Apprentices Act in relevant trades/Diploma in Electrical/Mechanical/Electronic Engineering in the relevant trade being an additional desirable qualification in the case of matriculates would be, as existing on 01.09.1998 will be placed in the grade of Rs.950-1500 (Rs.3050-4590), 10% of the posts in these two grades on 01.09.1998 were required to be surrendered in the grade of Rs.750-940. The revised percentage distribution of the Group 'D' posts existing on 01.09.1998 in the Diesel/Electric Loco/EMU maintenance trades is indicated hereinbelow:-

S.No.	*Scale*	*Existing percentage*	*Revised percentage*
1.	Rs.950-1500/Rs.3050-4590	NIL	50
2.	Rs.800-1150/Rs.2650-4000	80	30
3.	Rs.750-940/Rs.2550-3200	20	10
4.	To be Surrendered		10

Clause 4 of this circular is pertinent and the same reads as under:-

"4. The additional posts in grade Rs.3050-4590 in terms of these orders will be added to the skilled grade of Rs.950-1500 (Rs.3050-4590). However, there will be no consequent increase in the number of posts in the grades higher than Rs.3050-4590. In other words, the skilled Artisan cadre will not get automatically restructured in accordance with the prescribed percentages with enlarged base in the grade Rs.3050-4590."

Thus, it would be seen that this circular consciously provided that there would be no consequent increase in the number of posts in the grade higher than Rs.3050-4590. It specifically states that the skilled Artisan Cadre would not get automatically restructured in accordance with the prescribed percentages with enlarged base in the grade of Rs.3050-4590. The petitioners had no grievance with this circular and in fact, they benefitted therefrom as they got the upgraded scale. On 09.10.2003, the Railways Board Establishment came out with another Circular No.177/2003 for restructuring of Group 'C' and 'D' Cadres with a view to strengthen and rationalise the staffing pattern on Railways. This circular, specifically, provided that detailed instructions given therein should be strictly and carefully adhered to. The Clause 2, 18 and 20 thereof read as under:-

"2. **Applicability to various cadres:** These orders will be applicable *on the regular cadres (excluding surplus & supernumerary posts) of the Open Line establishments including Workshops and Production Units.* These orders will, however, not be applicable to staff of RDSO for which separate orders will be issued.

2.1. *These orders will not be applicable to ex-cadre and work-charged posts* which will continue to be based on worth of charge.

2.2. *These instructions will also not be applicable to Construction Units and Projects*, where posts are generally created on worth of charge basis, *though those should broadly be conforming to these percentage distributions.*

18. **Matching Savings:** Entire scheme of restructuring is to be a self-financing and expenditure neutral proposition. Financial implications should be worked out taking into account the mid points of the scales of pay of the respective posts (mean of the minima and maxima of the scale), existing number of posts and revised number of posts in the grade on the basis of the revised percentage distribution of posts. After working out the financial implications, the matching savings should be effected from the category itself. Wherever it is not possible to do so from the category itself, the matching savings should be arranged from the department at the divisional/zonal level. *But before restructuring the cadre as per the revised percentage distribution of posts, matching savings will have to be ensured and if the Department/Railways are not able to provide the matching savings, the particular category/department will not be restructured.* While effecting surrender of posts of equivalent financial value, the existing vacant posts available in the categories on the cut-off date should be considered for the purpose of off-setting the cost of restructuring/financial effects of restructuring. Board desire that the General Managers should ensure that the restructuring is implemented expeditiously with matching savings without any exception and difficulty. There would be no restructuring without matching savings by surrender of posts.

20. **Annual review:** As per instructions contained in Board's letter No.PC-III/91/FP-2, dated 8.10.2002, (*Bahri's183/2012, p.208)* the Annual Reviews for gradewise percentage distribution of posts in force were to be conducted from 1.4.2003 taking into account the cadre strength as on 1.4.2003. It has now been decided that the next Annual Review will be undertaken from 1.4.2005 taking into account the cadre strength as on 1.4.2005. The Annual reviews, wherever conducted already as per instructions dated 8.10.2002 will not be undone."

Since the petitioners were not granted the benefit of restructuring under the circular dated 09.10.2003, they raised a grievance before the Tribunal that the benefit of circular dated 09.10.2003 had been erroneously denied to them even though their posts also stood upgraded in accordance with circular dated 28.09.1998. The Tribunal has vide its impugned order rejected the claim made by the petitioners by holding as under:-

> "As per this Circular, specified Group 'C' & 'D' categories of staff were to be restructured in accordance with the revised percentages as indicated in the Annexure appended in this Circular. It was also mentioned that the restructuring was to be done with reference to the sanctioned cadre strength on the cut off date as specified therewith.
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> A careful reading of the Circular shows that the scope of the intended restructuring had been defined carefully keeping the economy consideration in view. Para-2 of the Circular made it clear that these orders were to be applicable only to regular cadres of the Open Line Establishments. The ex-cadre posts, work-charged posts, surplus and supernumerary posts and even the posts under the Construction Units and Projects were excluded from the

benefits of enhanced percentages stipulated under this restructuring. Para 18 of this Circular mentioned the need for matching savings within a cadre failing which within a Division or a Zonal level. This was mandatory as would be clear from the following categorical instructions quoted below

> "18. xxxxx. But before restructuring the cadre as per the revised percentage distribution of posts, matching savings will have to be ensured and if the Department/Railways are not able to provide the matching savings, the particular category/department will not be restructured. xxxxx""

The submission of learned counsel for the petitioners before us is that the circular dated 09.10.2003 nowhere excludes the petitioners who were also upgraded to Group 'C' posts. According to him, the petitioners were regular in the Group 'C' cadre upon their upgradation at the time of implementation of the circular dated 28.09.1998.

Learned counsel for the petitioners further argues that in respect of other divisions, the respondents have implemented the Circular dated 09.10.2003 in respect of similarly situated upgraded Group 'C' employees.

On the other hand, Ms.Geetanjali Mohan, learned counsel for the respondents emphasises on the condition contained in Clause 4 of the Circular dated 28.09.1998 which states that there would be no consequent increase in the number of posts in the grades higher than Rs.3050-4590 and that the skilled Artisan cadre will not get automatically restructured in accordance with the prescribed percentages with enlarged base in the grade of Rs.3050-4590.

She further emphasises on clause 2 of this circular dated 09.10.2003 which provides that the said order would be applicable "on the regular cadres (excluding surplus & supernumerary posts)". It also provides that the said order would not be applicable to "ex-cadre and work-charged posts which will continue to be based on worth of charge". Ms.Mohan submits that merely because the petitioners posts were upgraded to the scale of Group 'C' posts, they did not become part of Group 'C' cadre. While relying on Clause 18 of the Circular dated 09.10.2003, she points out that the financial implications of restructuring had to remain neutral, and therefore, emphasised that the relief sought by the petitioners could not be granted while maintaining the said neutrality.

Ms.Mohan also submits that the Railway Board has issued the Circular No.88/2008 dated 23.07.2008 specifically directing that wherever an interim benefit has been granted to any of the employees by including the upgraded Group 'D' posts for grant of benefit granted under circular dated 09.10.2003, the same should be reversed. The said circular *inter alia* provides:-

> "It has been brought to the attention of the Board that some Sheds on some Railways have erroneously taken into account these additional posts for the purpose of implementation of Railway Board's letter No.PC-III/2003/CRC/6 dated 09.10.2003 although there were no specific instructions contained therein for the same. It is reiterated that the posts upgraded vide Board's letter

> dated 28.09.1998 were not to be included for implementation of Railway Board's letter dated 09.10.2003.
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> Accordingly, Board desires that the Railways should review the position in all the Diesel/Electric Loco/EMU Sheds under their control and take corrective steps immediately to ensure that the upgraded Group 'D' posts are not taken into account while implementing cadre restructuring vide Railway Board's letter dated 09.10.2003."

She further submits that the petitioners, in any event, cannot claim their relief on the basis of negative equality, since they do not have legally sustainable claim.

Having heard learned counsel for the parties and perused the record, we are of the view that the Tribunal has while rejecting the claim of the Petitioner, rightly considered the effect of the Circular dated 28th September, 1998 which clearly provided that though 50% posts as on 1st September, 1998 in the group categories of Diesel/Electrical/Loco EMU Sheds would be upgraded but there would be no consequent increase in the number of posts in the grade higher than Rs.3050-4590. In our view once the initial Circular vide which certain posts were upgraded for a limited purpose of grant of higher payscale itself stipulated the rider that the said upgradation would not increase the number of sanctioned posts in the higher cadre, the Petitioner could neither be treated as a part of regular Group `C' cadre nor they could claim future benefits granted to the regular Group `C' cadre. The benefit of the restructuring of the Cadre carried out vide Circular dated 9th October, 2003 could not be extended to the Petitioners, who were only occupying ex cadre posts as the said Circular clearly states that it will be applicable only to the regular cadre and not to the ex-cadre posts.

There is no merit in the present petition and the same is hereby dismissed with no order as to costs.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 27, 2017
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