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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.159/2002

New Delhi, this 22nd day of October, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member(A)

Bishan Dayal
A-545, Sector 11
Vijai Nagar, Ghaziabad .. Applicant

(Shri M.L. Sharma, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Administrative Officer (Constrn.)
Northern Railway
Kashmiri Gate, Delhi
3. Divisional Railway Manager
Northern Railway, Allahabad .. Respondents

(Shri R.L. Dhawan, Advocate)

ORDER (oral)

Shri M.P. Singh, Member(A)

By filing the present OA, applicant seeks directions to the respondents to:

- i) quash the impugned Annexure 1 order dated Nil and Annexure A-2 order dated 12.6.2001 insofar they deny the benefit of restructuring of cadre schemes w.e.f. 1.1.1984 and 1.3.1993 with arrears payable under the scheme but allowing proforma fixation only; and consequently;
- (ii) release benefits of restructuring scheme of 1984 w.e.f. 1.1.84 in the pay scale of Rs.330-480 by fixing his pay under FR 22C as ESM-II as has been granted to his juniors with arrears of pay and allowances with revision of pay w.e.f. 1.1.86 correspondingly upto 28.2.93 in the pay scale of Rs.1200-1800; and
- (iii) release the restructuring benefits w.e.f. 1.3.1993 in pay scale of Rs.1320-2040 as ESM-I with difference of arrears and revised pay scale w.e.f. 1.1.1996 at the corresponding stage.

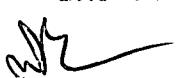


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2. Briefly stated, it is the case of the applicant that he became due for higher grade of Rs.330-560 w.e.f. 1.1.84 on restructuring of cadre at par with juniors but since being posted away, far from Divisional Hqr. of Allahabad Division in Construction Organisation at New Delhi, he was not given this benefit from due date. Again when his juniors got further benefit of next restructuring in ESM Grade I (Rs.1320-2040/4500-7000) w.e.f. 1.3.93, he has been given proforma promotion only from 8.4.95 on the pretext of his junior Keshav Dev Prasad having been promoted w.e.f. 8.4.1995. Aggrieved by this, applicant is before us seeking the aforementioned reliefs.

3. Respondents have stated in their reply that though applicant was included in the notification for trade test for promotion to the post of ESM Gr.II against restructuring w.e.f. 1.1.84, he could not be trade tested as his exact station of posting was not available. Subsequently he was trade tested and was allowed proforma promotion as ESM Gr.II w.e.f. 1.1.84 vide order dated 4.7.96. He was got trade tested for promotion as ESM/Gr.I and having been declared fit he was allowed benefit of proforma promotion as ESM Gr.I w.e.f. 8.4.95. This date has now been corrected to 1.3.93 vide letter dated 17.5.2002. In view of this, applicant is not entitled for the reliefs prayed for.

4. Heard the learned counsel for the parties and perused the records.



5. During the course of the arguments, learned counsel for the applicant has submitted that the applicant is entitled for the benefits of restructuring of cadre as ESM Gr.II w.e.f. 1.1.1984 as well as ESM Gr.I w.e.f. 1.1.1993 having come under the zone of consideration as per his seniority and also the requisite trade tests for both grades having been passed in first attempt. He has also submitted that applicant's junior counterparts have been given the above benefit from due date and therefore the applicant is also entitled for the pay and allowances including difference of arrears from the date of promotion i.e. from 1.1.1984 and 1.3.1993 at par with junior counterparts.

6. On the other hand, learned counsel for the respondents has contended that since the applicant did not actually shoulder duties and responsibilities of the higher post, he is not entitled for payment of difference of pay and allowances on the principle of 'no work no pay'. He has placed reliance in this regard on the judgement of the apex court in the case of Virender Kumar Vs. Avinash Chander Chadha 1990(3) SCC 472. However, there is no specific denial by the respondents to the contention of the applicant that his junior counterparts have been given the benefits of payment of arrears on cadre restructuring.

7. The learned counsel for the applicant has further contended that the aforesaid judgement of apex court is not applicable to applicant's case in view of Railway Board orders dated 10.7.1985 (Annexure A-12 to rejoinder) under which the restructuring scheme was introduced

[Signature]

clearly stating that benefits of fixation of pay are to be given under Rule 2018-B(FR 22C)R-II w.e.f. 1.1.84 [✓] and on proforma basis and current payment w.e.f. 1.7.85 in 1st restructuring and under rule 1316(FR 22C) R-II w.e.f. 1.3.93 in 2nd restructuring. Para 6 of Railway Board letter dated 27.1.1993 also states that "In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result of restructuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities, as considered appropriate".

8. We have gone through the instructions issued by the Railway Board, referred to by the applicant, we agree with the submissions made by applicant's counsel that the applicant is entitled to the benefits of restructuring in terms of the aforesaid instructions. Besides, when it is not specifically denied by the respondents ^{and ✓} applicant's junior counterparts have been given the said benefits. The contention of the council for the respondents that the applicant has not actually shouldered the duties and responsibilities of the higher post cannot be accepted in view of the instructions contained in Para 6 of the Railway Board letter dated 27.1.1993 as mentioned in Para 7 above. Moreover, it was not the fault of the applicant that he could not perform the duties of higher post on restructuring but it was due to the mistake of the respondents that the applicant was not promoted on time to the higher grades of ESM Grade II and ESM Grade I and



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therefore could not shoulder responsibility of higher posts. The applicant, therefore could not be made to suffer for the fault of respondent-railways.

9. Therefore, in view of what has been discussed above, we hold that the applicant is entitled to the reliefs prayed for. Respondents are directed to grant the arrears of pay and allowances to the applicant from due dates i.e. 1.1.1984 and 1.3.1993 within a period of three months from the date of receipt of a copy of this order. OA is thus disposed of. No costs.

mp Singh
(M.P. Singh)
Member(A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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