

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION Nos.537, 572 & 573 of 2013

Dated this Tuesday, the 17th day of December, 2019

**CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Harishchandra R. Shukla, S/o Ramlakhan Shukla, Age about 59 years, Worked as Junior Engineer Gr.II, in Central Railway at Matunga Workshop, Mumbai 400 019 and Residing at Sudhakar Mama Desai Chawl, Room No.3, Tulshi Pada Pipe Line, Bhandup (West), Mumbai 400 078. *... Applicant in OA No.537/2013*

Vidyadhar Manishankar Mhatre, Age about 59 years, Worked as Junior Engineer Gr-II, in Central Railway at Matunga Workshop, Mumbai 400 019 and Residing at Central Railway Colony, Matunga Building No.125, Mumbai. *... Applicant in OA No.572/2013*

Rajnarayan Bhagwatiprasad, Age about 59 years, Worked as : Junior Engineer Gr-II, in Central Railway at Matunga Workshop, Mumbai 400 019 and Residing at : Vastunirman Co. Society B. Wing Room No.04, Aajad Nagar, Mira Road, Mumbai 401 105. *... Applicant in OA No.573/2013*

(By Advocate Ms. Vaishali Agane)

Versus

1. The Union of India, Through the General Manager, Central Railway, CSTM, Mumbai 400 001.
2. The Chief Workshops Manager, Matunga Workshop, Central Railway, Mumbai 400 019.
3. The Chief Workshop Manager, Locomotive Workshop, Central Railway, Parel Workshop, Parel, Mumbai 400 012. *... Respondent in all OAs*

(By Advocate Shri V.S.Masurkar)

**COMMON ORAL ORDER
Per : R.Vijaykumar, Member (A)**

These OAs have been filed on 13.08.2013 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs as drawn from OA No.537/2013 treating it as the lead case:

“8(a). This Hon'ble Tribunal may graciously pleased

to call for the records of the case from the Respondents and after examining the same it may be declared that Orders dated 13.02.2013 Anx. "A1", dated 18.04.2013, Anx. "A2" and dated 09.01.2013, Anx. "A3" are illegal and may please be quashed.

8(b). It may be declared the Applicant date of promotion which granted by the Respondent as Junior Engineer Grade II Scale Rs.5000-8000/- with effect from 27.2.2012 be pre-pond from 01.11.2003 in accordance with all consequential benefits.

8(c). It may be further declared that the Cadre Strength of the Matunga Workshop was 129 and not 116 as on 30.10.2003.

8(d). Grant any other benefit or such other benefits as this Hon'ble Tribunal deems it fit and proper."

2. This matter was earlier considered by this Bench on 25.09.2013 and orders were passed on that day on the treatment of communication dated 13.02.2013 received under the RTI by the applicants on which this Tribunal had held that such communication could not be the subject matter of proceedings under Section 19 of the Administrative Tribunals Act, 1985. The matter was taken to the Hon'ble High Court of Bombay which considered the matter and directed that the information obtained under the RTI Act could be the subject of challenge by the affected employees since RTI Act bars the jurisdiction of the Tribunal only in matters relating to its

own subject and not in consequent matters.

This case is now being heard in obedience to the directions of the Hon'ble High Court of Bombay.

3. All the three cases are being heard together with the consent of the learned counsels for the parties and have been disposed of by this common order. For the purpose of these orders, facts are drawn from OA No.537/2013 and are agreed by parties to be identical to the other OAs.

4. The concerned applicants have since retired while working as Junior Engineer Grade II in the years 2013, 2015 and 2016. The basic grievance of the applicants in the aforesaid OAs are that in view of the restructuring ordered by the Railway Board vide their letter dated 09.10.2003, the applicant should have been promoted to the post of Junior Engineer Grade II with effect from 01.11.2003 and not from 27.02.2013 when they were actually promoted. However, during the course of the hearing, it has transpired that the same issue was raised by all the applicants. The applicant in the aforesaid

OA earlier also approached this Tribunal in OA No.614/2004 and 652/2004 as part of batch of cases and the same was decided by this Tribunal vide a common order/judgment dated 11.03.2005 (Annexure A-6). The operative portion of the order/judgment reads as below:

"It is clear from the portions quoted above that the promotion to the next higher scale of Rs.5000-8000 will have to be within the sanctioned strength of Supervisor (Maistry) any not beyond that. It is also clear from para 13.2(b) that those Supervisors who do not get promoted to the grade of Rs.5000-8000 shall continue to hold the post in the existing grade of Rs.4500-7000/- + Rs.100/- S.A. as personal to them till their existing incumbent vacate the post by way of further promotion, retirement etc. and on vacation, the same will be automatically operated in the grade of Rs.5000-8000. The scheme therefore envisages that Supervisor (Mistry) have to be promoted from the grade of Rs.4500-7000/- + Rs.100 SA to the extent of the cadre strength and, therefore, the contention of the applicants who were not promoted to the higher grade of Rs.5000-8000 to the post of Junior Engineer Grade II for their promotion does not have any force whatsoever. This upgradation of Supervisor (Mistry) to that of Junior Engineer Grade II is on the basis of restructuring which has been effected and if the upgradation has been done strictly according to seniority, there is no ground for interference with this order of upgradation in which senior people have been upgraded. It is not the case of the Applicants that the applicants inspite of being senior have not been upgraded but juniors have been. The upgradation, as a result of restructuring, has been done to the extent of cadre strength and this has financial implications for which the executive is the deciding authority, we do not think that the Tribunal can interfere in this matter. We have already opined that the respondents are in the correct position to state as to what the cadre strength is. There is no convincing proof given by the applicants in relation to the cadre strength except for statement that a few trades have not been included, which is difficult to believe in view of the categorical statement by the respondents of the cadre strength being 116. In OA No.615/2004 and 652/2004 the prayer is the same i.e. quashing of the reversion order dated 06/09/2004 and/or continuance as Junior Engineer Grade II in the lower grade of Rs.4500-7000/- + Rs.100/- S.A.

In OA 614/2004 three applicants and in OA 652/2004 three out of four applicants have made a prayer for promotion to the post of Junior Engineer Grade II in the scale of Rs.5000-8000. The other two cases are also overlapping. OA 316/2004 is filed by six applicants and relief sought is promotion to the post of Junior Engineer Grade II. After three of the applicants in OA 316/2004 have been promoted to Junior Engineer Grade II there is a fresh OA 750/2004 against the reversion order dated 06/09/2004. As we have discussed above, no ground has been made to give promotion as Junior Engineer Grade II to those Supervisors (Mistries) also who are above the cadre strength and, therefore, the five applicants in the three cases namely – OA Nos.614/2004, 651/2004 and 652/2004 and three applicants in the other two cases, namely – OA 316/2004 and 750/2004 cannot be given the relief as regards promotion to the cadre of Junior Engineer Grade II in the higher pay scale.

11. The next question is relating to the reversion order dated 06/09/2004 by which the Supervisor (Mistry) in the grade of Rs.4500-7000/- + Rs.100 S.A. have been reverted as Technician Grade I in the scale of Rs.4500-7000 or Senior Technician in the scale of Rs.5000-8000/-. It is seen that Harishchandra Shukla, Rajnarayan Bhagwatiprasad, R.R.Yadav and S.J.Khan are reverted from the grade of Rs.4500-7000/- + Rs.100/- SA to the post of Technician Grade I in the grade of Rs.4500-7000/-. This according to respondents is in accordance with para 13.2(b) of the restructuring order dated 09/10/2003 where it is clearly provided that those Supervisors who do not get promoted to the grade of Rs.5000-8000/- shall continue to hold the post in the existing grade of Rs.4500-7000/- + Rs.100 SA as personal to them : to that extent the post upgraded to the grade of Rs.5000-8000 will be operated in the lower grade of Rs.4500-7000 + Rs.100 SA till the existing incumbent vacate the post by way of promotion, retirement etc. The reversion to the grade of Technician Grade I in the light of these instructions does not seem to be in order. In case the Supervisor (Mistry) does not get promoted as Junior Engineering Grade II, he has to continue in the scale of Rs.4500-7000 + Rs.100/- as personal to them and, therefore, they could not possibly be reverted to the post of Technician Grade I. In this connection, Shri Walia has argued that a portion of the order dated 24.03.2004 is not in accordance with the restructuring order. The order dated 24.03.2004 is as follows:

“Vide this office letter of even number dated 16.02.2004, 103 posts of Mistry have been upgraded to JE-II Grade Rs.5000-8000 (RSRP) with effect from 01.11.2003, 13 posts of Mistry have been surrendered with effect from 01.11.2003. Now there will be no cadre of

Maistry. The present incumbent will continue to work as Maistry till they retire or are promoted. No post of Maistry will be filled in hereafter. This is for information and updating your shop office record”.

5. From the above, it is evident that the issue raised by the applicant had already been raised by them in a previous round of litigation and the same has been decided by this Tribunal vide order/judgment dated 11.03.2005 (Annexure A-6) and the said judgment has attained finality.

6. In view of the aforesaid, the present OAs are barred by res-judicata and therefore, the same deserves to be fail.

7. In view of the above, the OA is dismissed. However, keeping in view of the fact that the applicant in OA No.537/2013 has already retired in 2014, applicant in OA No.572/2013 has retired in 2013 and applicant in OA No.573/2013 has retired in 2016 and are represented through counsel, costs are exempted.

(R.N.Singh)
Member (Judicial)

(R.Vijaykumar)
Member (Administrative)

*kmg**

5/2/12/12