

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2805/2001

(13)

New Delhi this the 31st day of October, 2002.

HON^{BLE} MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON^{BLE} MR. SHANKER RAJU, MEMBER (JUDICIAL)

Bhagwan Dass Miglani,
S/o Sh. Mool Chand Miglani,
R/o House No.758,
Sector-14,
Sonipat (Haryana)-131 001.

-Applicant

(By Advocate Shri H.P. Chakravorty)

-Versus-

2. Union of India through
the Chairman Railway Board,
the Principal Secretary to Govt. of India,
Ministry of Railway,
Rail Bhawan, New Delhi.
3. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
New Delhi.

-Respondents

(By Advocate Shri R.P. Aggarwal)

ORDER

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents order dated 22.8.2001 and has sought quashment of this order and extension of benefit of restructuring in the pay scale of Rs.2000-3200 (pre-revised) with effect from 1.1.84 alongwith refixation of pay and accord of retiral benefits.

2. Applicant was promoted as Head Train Examiner (HTXR) on 27.7.82. The next promotion due to the applicant was on the post of Chief Train Examiner (CTXR), which became due on 1.1.84 on account of restructuring of cadre by modified selection. Applicant as per the Scheme was initially accorded the benefit by an order dated 10.9.87 but the same was divested away by an order dated 24.6.88.

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Applicant was promoted through normal selection on 24.11.88.

3. Applicant preferred OA-1258/1988, which was allowed on 17.3.94 by directing the respondents to increase the limit of 87 numbers, i.e., zone of consideration and to fill up the remaining upgraded post of CWS.

4. Respondents released the benefit of restructuring to 11 CTXR on 3.9.93 w.e.f. 1.1.84 and thereafter in pursuance of judgment (supra) also released the benefit in respect of nine persons. Further by an order dated 30.6.95 restructuring scheme was provided to five persons and thereafter to seven more by an order dated 10.3.97. In the last instalment of releasing the payment in favour of HTXR w.e.f. 1.1.84 against the resultant vacancies of CTXR benefits to CTXR was CWS/CWI was released on 1.11.95. Applicant who was due and was coming under the zone of consideration for restructuring benefit to the post of CTXR submitted representations at par with his counter-part one Subhash Chandra to whom the benefits have been accorded by an order dated 6.11.97.

5. Shri H.P. Chakravorty, learned counsel appearing for the applicant contended that not only one Mr. K.L. Taneja but also R.L. Tandon who had been working in the headquarters office alongwith others of different Divisions there vacancies have been counted for the purpose of restructuring and as K.L. Taneja has not been shown to be working against an ex-cadre post and who was out of the cadre of C&W Technical Supervisor of Northern Railway got his restructuring benefits. Isolation of this post for restructuring was bad in law. It is contended that the post of CTXR/CWS being headquarters controlled post, all the posts irrespective of whether the incumbent is working

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in the headquarter or division in C&W department has been included for restructuring. As Taneja was given the benefit of restructuring being in Delhi Division none of the post in C&W, Northern Railway has been kept outside from the purview of restructuring.

6. Applicant contends that he approached this Tribunal and by an order dated 14.5.2001, directions have been issued to pass a reasoned order and by an order dated 22.8.2001 his claim has been rejected.

7. Placing reliance on Rule 102 of Indian Railway Establishment Code, Volume-I (IREC-I) it is contended that K.L. Taneja who has been working in the headquarter office cannot be said to be the holder of an ex-cadre post.

8. Sh. Chakravorty has also filed his written submissions and by placing reliance on Annexure A/1 it is contended that applicant alongwith his senior Subhash Chandra was found to be in the zone of consideration and no orders have been placed on record to establish working of Taneja on an ex-cadre post. Sh. Chakravorty states that all the posts of CWS/CWI whether working in Railway Board Office, Headquarter Office or Division and resultant vacancies would go to the Division as per the restructuring scheme but the applicant's claim has been arbitrarily rejected. He contends that earlier he was included in the list of persons for benefit of fixation of pay w.e.f. 1.1.84 but later on the same has been taken out arbitrarily, which violates Articles 14 and 16 of the Constitution of India.

9. On the other hand, respondents' counsel Sh. R.P. Aggarwal strongly rebutted the contentions and stated that in pursuance of the restructuring of the cadre of

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Train Examiner staff promoted against upgraded posts w.e.f. 1.9.81 were to be allowed fixation of pay from that date and staff promoted against the upgraded and resultant vacancies w.e.f. 1.1.84 to be allowed fixation from the even date. In so far as Delhi Division issued promotion orders of 21 persons effective from 1.9.81 as CTXR the orders of 16 resultant vacancies in the cadre of TXR were to be filled by Delhi Division in pursuance of OA-1258/88. Headquarters allowed the benefit of promotion w.e.f. 1.1.84 as CWS in the grade of Rs.840-1040 to CTXR and seven HTXR were given the benefit of restructuring w.e.f. 1.1.84. Against these seven resultant vacancies the applicant has not been within the zone of consideration as per his seniority was denied the benefit of restructuring, whereas K.L. Taneja who has been working in the ex-cadre post of headquarters office with lien maintained in the parent division Delhi and was due for promotion as CTXR which has been certified by letter dated 26.12.94 and being senior to the applicant his case cannot be compared with that of applicant. In so far as direction of the court in OA-180/2000 case of the applicant was re-examined but not acceded to through speaking orders. The claim of the applicant cannot be considered against the vacancies of K.L. Taneja as the promotions will have only prospective effect. The earlier claim of the applicant was not acceded to in OA-1258/88. Although applicant was promoted as CTXR in the grade of Rs.2000-3200 w.e.f. 24.11.88, as in the zone of consideration and in the seniority list name of one Subhash Chandra figures at serial No.86 in the list of TXR whereas applicant stood at serial No.87 as per seniority he could not get the benefit of restructuring. Sh. Taneja who was working in headquarters office on an ex-cadre post

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having lien maintained in Delhi Division promoted as CTXR w.e.f. 9.1.81 but extended the benefit of promotion in CWS cadre w.e.f. 1.1.84 under the NBR as per his seniority position. Benefit of restructuring is to be allowed only for the restructured and resultant post and this cannot be extended retrospectively. The impact of working of A.K. Sharma and Dilbagh Singh in headquarters office against the headquarter post will not affect the number of restructured post, as the calculation is to be done on the sanctioned post and not on vacancies. As far as resultant seven vacancies on restructuring benefit being accorded to seven HTXR applicant was not found as per his seniority within the zone of consideration.

10. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the claim of the applicant for benefit of restructuring w.e.f. 1.1.84 is concerned, seven CTXR have been accorded the benefit of promotion as CWS on 30.6.95. By order dated 30.6.95, consequently seven seniormost HTXR have been given the benefit of restructuring in the grade of Rs.700-900 w.e.f. 1.1.84 against the resultant seven vacancies dated 10.3.97. The last man on the list was Subhash Chandra. As his name figured at serial No.86 of the seniority list of HTXR and as the applicant figured at serial No.87 in the said seniority list as per seniority, he did not fall within the zone of consideration for extending the ^{benefit} ~~zone~~ of promotion as CTXR w.e.f. 1.1.84 under the restructuring scheme. We do not find any legal infirmity in the action of the respondents.

11. In so far as the claim of the applicant for extending benefit against the resultant vacancy of K.L.

Taneja is concerned and his resort to Annexure A-10 to contend that his case has been recommended for being accorded of benefit of restructuring w.e.f. 1.1.84, we find that Taneja working against ex-cadre post in the headquarters office having maintained lien in the parent unit, i.e., Delhi Division he was due for promotion as CTXR in the grade of Rs.700-900 w.e.f. 1.19.81 and this fact of his being on the ex-cadre post has been certified through a letter dated 26.12.94 at Annexure R-3. Shri Taneja was senior to the applicant and holding an ex-cadre post. Against this vacancy the applicant cannot have a right for being accorded the benefit of restructuring. Taneja who was already officiating in the headquarters office on ad hoc basis against an ex-cadre post in the grade of Rs.2375-3500 was extended the benefit of promotion as CWS under NBR w.e.f. 1.1.84 as per his seniority.

12. Moreover, we find that in view of the decision of the Apex Court in Union of India v. M. Janqammayya, AIR, 1977 SC 757, promotion will have to be prospective even in cases where the vacancies relate to earlier years and a retired employee has no grievance for promotion unless any of the juniors has been given promotion from the date prior to his superannuation and in that event occurrence of vacancy has no relevance. As the applicant has no valid claim to be accorded the benefit of restructuring against the ex-cadre post of K.L. Taneja, the claim of the applicant is not well founded.

13. In the result as the OA is found bereft of merit the same is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

Gopinathan S. Tampi
Member (A)