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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 602/2001

New Delhi, this the 9th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Lalan Prasad
Air Conditioned Coach Incharge
(In short A.C.C.I) N.Rly.,
under Bikaner Division
at Delhi Sarai Rohilla, Delhi.

R/o 160/2, Railway Colony
Delhi Kishenganj, Delhi.

Applicant
(By Advocate Shri M.L.Sharma)

V E R S U S

UNION OF INDIA : THROUGH

1. General Manager
Northern Railway
Headquarters Office
Baroda House, New Delhi.

2. The Divisional Rail Manager
Northern Railway
Bikaner.

(By Advocate Shri B.S.Jain)

Respondents

O R D E R

By Hon'ble Shri Govindan S.Tampi.

Reliefs claimed by the applicant in this OA
are as below :-

(i) to entertain applicant's this application
and to decide it at the admission stage itself ;

(ii) to direct the respondents to allow all
the benefits of promotion/fixation of pay etc. as a
result of restructuring and upgradation on 1-3-1993
and 1-1-1996 in the category of A.C.C.I. itself at
par to those already given to A.C.F. category and to
allow the applicant to continue in the category of
A.C.C.I.

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(iii) in the event of changing the category of the applicant from A.C.C.I. to HSK-I/AC in scale of Rs.1320-2040/4500-7000/- becomes necessary, the respondents be directed to grant all the benefits of promotion/pay fixation and seniority etc. first which his erstwhile juniors have already been granted in that category and to pay the arrears with 12 % interest thereon.

(iv) any other reliefs which are deemed fit and proper in the facts and circumstances of the case may also be granted in favour of the applicant.

(v) the cost of the case may also be granted in favour of the applicant and against the respondents.

2. Heard S/Shri M.L.Sharma and B.S.Jain, learned counsel for the applicant and the respondents respectively.

3. Shri Lallan Prasad, applicant who joined as Khallasi in Northern Railway on 5-4-1979 was promoted as class III as Air Condition Fitter (ACF) on 1-1-1984. Thereafter he opted to become Air Conditioned Coach Incharge (ACCI) in the grade of Rs.1200-1800/-, (instead of ACF-II in the same grade) was trade tested for the same, selected and appointed as such w.e.f. 8-9-1988. Applicant and 7 others, who were placed in the seniority list of ACCI issued on 20-3-1996, did not get the benefit of re-structuring and upgradation of 1-3-1993 and 1-1-1996, though were allowed to continue in the same grade of Rs. 1200-1800/-/Rs. 4000-6000/-. At the same time, those who opted to remain in the ACF Stream, were given the benefit of restructuring and promotion to the higher grade of Rs. 1320-2040/4500-7000/-. Instead of

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giving the applicants, also the above benefit, they have been called for the trade test for the post of Highly Skilled Fitter, though in terms of Railway Board's instructions, for promotion from Technician-II to Technical-I grade was only by ACRs. Respondents have promoted ACCI and placed them in ACF grade I, without obtaining option from them. Applicants have protested against this changeover, but the respondents were going ahead with it, without giving the applicants promotion in the category of ACCI itself, as was required. This has put the applicants in financial loss, and delay in promotion vis-a-vis those in ACF category. The action of the respondents in merging the two categories of ACCI and ACF, without giving the benefit of restructuring and upgradation to one category was illegal, arbitrary and improper and should be quashed and set aside, plead the respondents.

4. In the reply, filed on behalf of the respondents, it was pointed that the applicant became an A.C.Fitter III on 26-10-1985 (not on 1-1-1984), wherefrom he opted and was trade tested for and promoted as Air Conditioned Coach Incharge (ACCI) in the scale of Rs 4000-6000/-. He was also placed in the appropriate seniority list. Both ACCI and Highly Skilled Fitter II (HSF-II) (ACF II) are eligible for promotion as HSF-I in the grade of Rs. 4500-7000/-, on the basis of their placement in a combined seniority list. Accordingly, the applicant was also called for the trade test for promotion as HSF-I, by letter dated 22-2-1999, which he declined to attend, by his letter dated 25-3-1999. He could not, therefore, be promoted as HSF-I. One of the reasons

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for the ACCIs seeking to continue in that category itself is the benefit of travelling allowance, they get in preference to HSF. During the cadre restructuring ordered on 30-3-1993, 3 posts of ACF-I were upgraded and one post of ACF arose, following promotion to MCM (AC). Therefore, four persons from ACF category were given the benefit of restructuring as ACF.I in the grade of Rs. 1320-2040/4500-7000/-. This benefit was not admissible to the applicant, as he had remained in ACCI stream, and not as HSF-II, which was kept in the single grade of Rs. 1200-1800/Rs. 4000-6000/-. There was no cadre restructuring on 1-1-1996. In view of the above, the applicant could not have been given any benefit either w.e.f. 30-3-1993 or 1-1-1996. Respondents do not at all propose to change the cadre of the applicant from ACCI to HSF, as apprehended. It is further pointed by the respondents that the OA is hit by limitation as well as estoppel. The applicant has come against the cause of action which arose on 22-2-1999, two years later i.e. on 22-2-2001, and that too without filing any application for condonation of delay. Besides, having chosen to remain as ACCI and declined to come over as ACF, the applicant cannot claim any promotion in that line. The applicant had opted to remain as ACCI, when the option was called for and given promotion accordingly. Still on the basis of the combined seniority, he was called for being trade tested for HSF-I, which again he had declined to do. In the circumstances, the applicant cannot make any further claims, according to the respondents.

5. According to the applicant and the oral submissions made on his behalf by Shri M.L.Sharma, Id.

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counsel, it is reiterated that the applicants have been discriminated vis-a-vis ACF/ASFs who were given the benefit of restructuring and upgradation on 1-3-1993 and 1-1-1996. There was no reason, why the ACCI, who also fell in the same group of artisan class, as ACFs was kept outside the purview of restructuring by the respondents, while giving a benefit to ACFs including the juniors. Applicant was, therefore, given an opportunity to file an additional affidavit, wherein he pointed out that as he was originally promoted against 25 % quota as Skilled Artisan (Skilled Fitter III), whereafter after taking a joint trade test, he went over as ACCI, Skilled Grade II. He was thus a skilled artisan in terms of para 159 (i) of IREM and was thus entitled for the benefit of restructuring, which has unjustifiably been denied to him. He also states that when the posts of ACF (HSF) were upgraded, all posts were filled up by those from the AC Fitters stream, on the basis of their separate seniority. Not considering the applicant at that stage had hit him adversely and the present move to have him trade tested for HSF-I, had come too late in the day, according to Shri Sharma, ld. counsel.

6. Reiterating his submissions on behalf of the respondents, Shri B.S.Jain, learned counsel, points out, that in terms restructuring orders dated 27-1-1993, those serving in the pay scale of Rs.950-1500/-, 1200-1800/-, 1320-2040/- and 1400-2300/- were shown as artisans in Group 'C' Engineering staff. However, by the Railway Board's order dated 30-3-1993, the benefit of restructuring has been given only to ACF, ACF II, ACF I and MCM

(AC). This was a conscious decision. Restructuring was, therefore, confined to ACF stream and not extended to ACCI stream, who were working in Rs. 4000-6000/- grade. Promotions were also made accordingly in 1993 and the applicant, if aggrieved should have come up much earlier, and not now. The applicant had on his volition opted to remain as ACCI and declined to become ACF II, as far back as on 25-7-1988 had again chosen to remain an ACCI by his letter dated 25-3-1999 and had also specifically protested against the apprehended change of his category from ACCI to HSF. What he has so far got was in strict consonance of what he had asked for and he had no further case at all, pleads Shri Jain, Id. counsel.

7. We have carefully considered the rival contentions. The applicant who, on promotion from AC Fitter III grade, opted to be an ACCI, in the scale of Rs. 1200-1800/- (revised scale of Rs. 4000-6000/-) instead of ACF-II also in the same grade - is aggrieved that he has been asked to appear for the trade test for selection as ACF/HCF I, in which selection he finds himself as junior to his erstwhile juniors, who had remained in ACF stream and had in the meanwhile secured the benefit of restructuring w.e.f. March, 1993. His plea is that he should also have been granted the benefit of restructuring in the cadre of ACCI itself ^{as} ₂ she was also in the skilled artisan's category, which had been illegally denied to him. The preliminary objection raised by the respondents that the OA is hit by limitation, has to be repelled, as the matter relates to pay and allowances and is a continuous cause of action, as held by the Hon'ble

Supreme Court in the case of M.R.Gupta Vs. Union of India (1995 (5) SCALE 29). However, as the applicant had specifically declined to opt for the ACF stream way back in 1988 itself and has again refused to take the trade test for promotion as ACF-I on 25-3-1999, he cannot, in law, have any legitimate grievance that he had been discriminated in any matter. Perusal of the Restructuring order dated 30-3-1993 passed by the respondents makes it clear that the same was ordered only with reference to the categories of ACF, ACF-II, ACF-I and MCM and, therefore, unless the applicant belonged to AC Fitter Category, when the restructuring was ordered, he could not have got the benefit of restructuring. And it definitely is not the case of the applicant that he belongs to ACF category or he wants to come over to the said category. It is also seen, the respondents have taken a conscious decision to keep ACCI in the same grade, without any upgradation. Therefore, the applicant's plea that he should be given the benefit of restructuring, extended to ACF cadre, which he had specifically declined not once, but twice, while permitting him to remain in ACCI stream has no basis at all. The applicant, who has chosen to cast his lot as ACCI, would have to face the consequences thereon and cannot complain against it. Respondents' action in not giving him the benefit, he is seeking, cannot be called in question in law. Other reliefs claimed by the applicant follows suit.

8. In the above view of the matter, we are fully convinced that the application has not made out

any case for our interference. OA, therefore, fails
and is thus dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

/vks/

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)