

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2083 of 1998

New Delhi, this the 10th day of December, 1999

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Smt. Sushila Tripathi
Head Ticket Collector
Northern Railway,
New Delhi Railway Station,
New Delhi.

....Applicant

(By Advocate: Shri H.K. Gangwani)

Vs.

Union of India and Others

Through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
Allahabad.
3. The Divisional Railway Manager,
Northern Railway,
Allahabad.

....Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant in this OA is aggrieved by the rejection of her representation whereby she has been denied the higher grade because of restructuring scheme which came into effect from 1.1.1984. She further claim that the benefit of the same restructuring has been granted to her juniors. She has prayed for setting aside the order of rejection and has also prayed that the respondents be directed to give her the benefit of restructuring of the Railway Board's order dated 16.11.1984 and to place the applicant in the grade of

Rs.425-640 w.e.f. 1.1.1984 with all other consequential benefits.

13

2. Facts in brief are that the applicant was appointed as Ticket Collector w.e.f. 17.7.76 and thereafter she was promoted as Senior Ticket Collector (hereinafter referred to as STC) in the grade of Rs.330-560 and in the seniority list, she was shown at S.No.8 above Shri Naseem Khan who was shown at S.No.9 in the said seniority list.

3. It is further alleged that on 16.11.1984 the Railway Board issued an order for cadre review and restructuring of Group 'C' and 'D' posts vide Annexure A-3. Pursuant to this restructuring, number of juniors to the applicant, namely, Naseem Khan, Bhagvan Singh, Upendra Kumar Pandey etc. had been promoted to the grade of Rs.425-640 w.e.f. 1.1.1984 but the claim of the applicant was ignored.

4. It is further stated that the principle of seniority was not followed and she was transferred from Allahabad Division to Delhi Division in the exigencies of public interest as STC in the pre-revised scale of Rs. 330-560.

5. It is further stated that in deference to letter dated 27.1.1993 for cadre review of restructuring of Group 'C' and 'D' posts effective from 1.3.93, she had

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been appointed as Head Ticket Collector, New Delhi under the Delhi Division in the old scale of Rs.425-640. This was done by taking cognizance of the seniority of Shri A.C. Ojha of the year 1980 in which he was inducted into the service. Whereas the year of entry of service of the applicant was 1976. As such, this decision is also patently wrong and illegal because no authority have to exclude the period of service of the applicant.

14

6. It is further stated that juniors to the applicant had been given a higher grade of Rs.425-640 as Head TTE vide their letter Annexure A-4 dated 30.10.1985 and though the applicant was also due for promotion to the grade of Rs.550-750 under the restructuring policy of Railway Board dated 27.1.1993, the said benefit has also not been granted her.

7. It is further stated that the applicant had also been recommended vide Annexure A-5 for grant of higher benefit by the Chief Area Manager but the respondents did not give her the benefit.

8. It is also stated that the applicant has also worked as TTE as admitted by the respondents and as per the scheme of November, 1985, the applicant is entitled to be granted the benefit of restructuring w.e.f. 1.1.1984, so it is prayed that the respondents be directed to give her the benefit w.e.f. 1.1.1984 when her juniors had been given benefits.

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9. Respondents contested this OA and their main contention is that first of all the application is time barred as the period of limitation prescribed under Section 21 of the Administrative Tribunal's Act, 1985 has lapsed and the applicant should have approached this Tribunal within a period of limitation. (15)

10. The second objection of the respondents is that as per the channel of promotions circulated under Northern Railway printed S.No.1861 as Annexure R-1 the applicant was promoted as TTE w.e.f. 5.8.80 and after performing duty as TTE, the applicant herself expressed her inability to work as TTE and requested to be posted as STC and her request was granted and the staff junior to the applicant, who were also promoted as TTE along with her, namely, Naseem Khan, Bhagwan Singh and U.K. Pandey continued to work as TTEs and they became senior to her for the post of TTE. So as per the scheme of restructuring, they were correctly promoted to the Grade of Rs.425-640 w.e.f. 1.1.1984 and since the applicant has not stated in her application that she had gone to the post of STC on her own request, so the O.A. is not maintainable.

11. We have heard the learned counsel for the parties and have gone through the records.

12. The only objection raised by Shri Dhawan appearing for the respondents is that since the applicant has not worked as TTE, so she could not be promoted to the

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next grade of Rs.425-640. Had she been working as TTE, then she could have been given that scale. However, the contention of the applicant in this regard is that she had been working as TTE and if in case she was posted as STC in the same scale, she did not raise any objection but the fact remains that she has never refused to work as TTE. The counsel for the applicant submitted that there is nothing on record which may show that she had ever made any request to be posted as STC or she had ever expressed her inability to work as TTE. On the contrary, the counsel for the applicant submitted that there is admission on the part of the respondents-Railways that the applicant did work as TTE and had performed her duty as TTE from 5.8.80 to 15.9.80. So now the respondents cannot say that she had not worked as TTE. (16)

13. Shri Gangwani further submitted that no document has been submitted by the respondents that she had ever made any request that she is unable to work as TTE. As such, the respondents cannot deny this benefit to the applicant.

14. To our mind also, it is an admitted case on the part of the respondents that she was promoted as TTE vide order dated 20.6.80 w.e.f. 5.8.80. There is nothing on record to indicate that she had ever denied to work as TTE. Thus, the respondents cannot say that the applicant had of her own choice not accepted the post of TTE and has been working as STC. So the respondents also cannot say

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that since she has not been working as TTE so she not is entitled to the benefit.

17

15. Besides that, we also find that vide letters Annexure A-5 and A-6, the Chief Area Manager had also recommended her case and according to the Chief Area Manager she was entitled to the benefits which the junior had been granted and Chief Area Manager had written D.O. letters to ADRM, Allahabad. We do not find any reply to the letter of the Chief Area Manager or rejection of the ADRM. In those letters also the Chief Area Manager had written that the juniors to the applicant had been granted the benefits and she also deserves promotion in the grade of Rs.425-640 w.e.f 1.1.1984. Accordingly, we are of the considered opinion that the sole objection of the respondents that she has not worked as TTE so she is not entitled to the grade of Rs.425-640 w.e.f. 1.1.1984, has no merits because first of all it is an admission on the part of the respondents itself that she for sometime worked as TTE and she was shown in the seniority list of TTE by the respondents themselves. Merely because she was not asked to perform the job of TTE later on does not mean that she was taken out of list of TTEs, and she cannot be denied the benefits given to her juniors.

16. In addition to that we may observe that if we go through the scheme of restructuring as annexed as Annexure-3, the first paragraph of the Scheme says that the Ministry of Railways have decided with the approval of the President to restructure certain categories of Group

18

'C' and 'D', as detailed in the annexure enclosed. The annexure to this restructuring scheme does not make any distinction between the post of TC and TTE. Rather the foot note to the annexure says that 20% of posts in the scale of Rs.330-560 will be placed in the grade of Rs.425-640. So according to that even otherwise it is immaterial if the incumbent was working as Sr. TC or TTE but if the incumbent comes within the 20% of the cadre, the incumbent was entitled to the senior scale. In this case since the applicant's juniors have been included in the 20%, so the applicant is also entitled to the benefits given to her juniors.

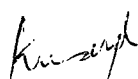
17. The counsel for the respondents had also taken an objection that the application is barred by time and is not maintainable under Section 21 of the Administrative Tribunal's Act. But in this regard the counsel for the applicant has referred to a judgment, i.e., entitled M.R. Gupta Vs. U.O.I. & Others, ATJ 1995(2) SC 567 wherein it has been held by the Hon'ble Supreme Court as follows:-


"Administrative Tribunals Act, 1985
- Section 21 - Limitation - Pay Fixation -
Cause of Action - Where the fixation of
pay was not in accordance with rules, it
is a continuing wrong against the
concerned employee giving rise to a
recurring cause of action each time he was
paid salary - Under the circumstances a
fresh cause of action arises every month -
Where the claim is found correct on merits
- Incumbent entitled to be paid according
to the properly fixed pay scale in future
- Question of limitation would arise for
recovery of arrears for the past period -
Further other consequential relief such as
promotion etc. would also be subject to
the defence of laches etc."

19

18. In this case also we find that it is purely a case of pay fixation coupled with promotion to the selection grades but the so called promotion is not a normal promotion when the DPC is to be held and only a selected candidate who reaches upto the bench-mark is given the promotion. Rather in this case, 20% of the senior-most incumbents of a particular grade are to be given the benefit of restructuring. So it is more or less a case of pay fixation. Hence the case of M.R. Gupta (Supra) fully applies to the facts of the present case. So the plea of limitation, as taken by the learned counsel for the respondents, is no bar.

19. In view of the above discussion, OA is allowed and the respondents are directed to place the applicant in the grade of Rs.425-640 w.e.f. 1.1.1984 at par when her juniors were placed in that grade with all the consequential benefits. This may be completed within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.


(KULDIP SINGH)
MEMBER (J)


(S.P. BISWAS)
MEMBER (A)

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