

Central Administrative Tribunal
Principal Bench

O.A.No.678/95
O.A.No.2175/95

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

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New Delhi, this the *SH* day of October, 1999

O.A.No.678/95:

Bhanu Dutt Sharma
s/o late Shri Gauri Shanker
Office Supdt. Gr.I
Statistical Branch
Northern Railway Headquarters
New Delhi.
r/o RZ/23-E, Indira Park
Palam Colony
New Delhi - 110 045. ... Applicant

(By Shri K.N.R.Pillai, Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
New Delhi.
2. Shri R.K.Malhotra
Office Supdt. Gr.I
Statistical Branch
Northern Railway
New Delhi.
3. Shri Naresh Kumar
Office Supdt. Gr.I
Statistical Branch
Northern Railway
Kishanganj
Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O.A.No.2175/95:

1. R.K.Choudhary
s/o Shri S.K.Choudhary
Office Supdt. Gr.II
Statistical Branch
Northern Railway Headquarters
New Delhi
r/o 4/6, Old Rajinder Nagar
New Delhi.
2. Sh. Mange Lal
s/o Shri Khyati Ram
Office Supdt. Gr.II
Statistical Branch
Northern Railway, Kishan Ganj
Delhi; r/o 1805-A, Nai Basti
Rewari, Haryana.
New Delhi.

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3. Shri A.K.Roy
s/o Late Shri S.B.Roy
Office Supdt. Gr.II
Statistical Branch
Northern Railway Headquarters
New Delhi
r/o 106/3, Rly. Qrs., Thompson Rd.
New Delhi.
4. Shri S.S.Bhola
s/o Shri Thulsi Ram
Office Supdt. Gr.II
Statistical Branch
Northern Railway
Jalandhar City
r/o Qr.No.244-F
New Rly. Colony
No.3, Jalandhar City.
5. Shri D.C.Arora
s/o Shri Chhabil Dass
Office Supdt. Gr.II
Statistical Branch
Northern Railway
Kishanganj, Delhi.
r/o E-128, Shastri Nagar
Delhi.
6. Sh. Shyam Singh
s/o Shri Gulab Singh
Office Supdt. Gr.II
Statistical Branch
Northern Railway
Jodhpur.
r/o 2127, New D.S.Colony
Jodhpur.
7. Shri S.K.Dutta
s/o Shri Jagir Dor Dutta
Office Supdt. Gr.II
Statistical Branch
Northern Railway
Jalandhar City.
r/o E.H.120
Mohyal Nagar
Ladowali Road
Jalandhar City.
8. Sh. O.P.Chahar
s/o Sh. Mohan Lal
Office Supdt. Gr.II
Statistical Branch
Northern Railway
Kishanganj
Delhi.
r/o VIII & P.O.Silani Adha Pana
Teh. Thajjar
Distt. Rohtak.

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9. Shri Shankar Lal Sharma
s/o Shri Shoba Ram Sharma
Office Supdt. Gr.II
Statistical Branch
Northern Railway Headquarters
New Delhi
r/o 421/4, Gali No.1
Moh: Nand Ram
Brahampuri
Delhi-53.
10. Shri Chaman Lal
s/o Shri Kesho Ram
Office Supdt. Gr.II
Northern Railway
Kishanganj, Delhi.
r/o X-1049 A, New Chand Mahalia
Gandhi Nagar
Delhi - 31.

(By Shri K.N.R.Pillai, Advocate)

Vs.

1. Union of India through
The Secretary
Railway Board (Ministry of Railways)
Rail Bhawan
New Delhi.
 2. The General Manager
Northern Railway
New Delhi. ... Respondents
- (By Shri O.P.Kshatriya, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

Since both the OAs raise the same question of law, they are being disposed of by this common order.

O.A.No.678/95:

2. The applicant was working as a Head Clerk in the Statistical Branch of the Northern Railway when he was promoted on ad hoc basis as Office Superintendent Grade-II w.e.f. 27.2.1992 and on

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regular basis w.e.f. 29.7.1994. The grievance of the applicant is that his ad hoc promotion was as per seniority and against a regular vacancy; in any case he was entitled for regular appointment as Office Superintendent Grade-II w.e.f. 1.3.1993 in accordance with the Railway Board's orders for restructuring the C&D cadres. The case of the applicant is that in 1989 there were 18 vacancies of Assistant Superintendent, now redesignated as Office Superintendent Gr.II, (hereinafter called as OS Gr.II). A notice was issued for initiating the selection procedure and 54 candidates were called for the test. However the selection could not be finalised as OA 1109/89 (G.R.Matta and Ors. Vs. Union of India) was filed before the Tribunal on the allegation that an unduly large number of Scheduled Caste candidates had been called for selection. The Tribunal gave an interim direction that no appointment should be made on the basis of the impugned selection until further orders. This stay was vacated only by an order dated 12.1.1994 in the context of cadre restructuring which created many more vacancies. The applicant's contention is that as a result of the restructuring there was an increase of 10 posts of Office Superintendents in Gr.I and 6 posts in Gr.II. Thus in addition to the initial 18 vacancies 16 more vacancies, giving a total of 34 became available w.e.f. 1.3.1993. This was apart from the vacancies which became available due to normal attrition on account of retirements between 1989 and 1.3.1993. The applicant submits that since his seniority number was at Sl No.24, he had become entitled, on the basis of the seniority, for promotion as OS Gr.II and it was only because no regular

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appointments could be made in view of the interim directions of this Tribunal that the respondents resorted to ad hoc appointments and the applicant being within the zone, was also given ad hoc promotion w.e.f. 27.2.1992. The applicant states that on the vacation of the stay given by the Tribunal, orders of promotion were given in respect of 6 senior persons w.e.f. 1.3.1993. However for the full panel for regular promotion as OS Gr.II consisting of 44 persons the order, Annexure A1, was issued on 27.7.1994, "with immediate effect". The applicant submits that the posts of OS Gr.II were to be filled through promotion on the basis of seniority cum fitness. The applicant would have, but for the interim orders of this Tribunal, obtained regular promotion even prior to 1.3.1993. The Railway Board in the restructuring, copy at Annexure-AXI also prescribed that all the pending vacancies for which regular panels were available, and all new vacancies which became available on account of restructuring would be filled in w.e.f. 1.3.1993 on the basis of a modified selection process. Since the vacancies against which the applicant had been promoted, was available even prior to 1.3.1993, his regular promotion had to take effect at least from 1.3.1993 if not from the earlier date of his ad hoc promotion.

3. The respondents in their reply have stated that in accordance with the restructuring orders dated 27.1.1993, staff selected and posted against additional higher grade posts will have their pay fixed under FR 22-C w.e.f. 1.3.1993. In terms of the said Scheme, 6 additional upgraded posts of OS Gr.II

became available. One more post also became available due to the resultant vacancy of OS Gr.II being promoted to OS Gr.I. In the restructuring Scheme, 7 posts were thus available w.e.f. 1.3.1993 and accordingly 7 senior most persons were accorded promotion from that date. The applicant can have no grievance on that account since he was far junior to those 7 persons, his name being at Sl. No.24. Thus the applicant was correctly given promotion with immediate effect from the date of issue of the orders, i.e., 29.7.1994.

4. We have heard the counsel. It is contended on behalf of the applicant that the respondents went about the promotions in a wrong manner by first filling up the new vacancies arising out of the restructuring by appointing the senior most persons to those posts and filling up the earlier vacancies by their juniors. Shri K.N.R.Pillai, learned counsel arguing on behalf of the applicant pointed out that the normal and natural process is to fill up those vacancies which arise first by senior persons and to give the later vacancies to those next in the order of seniority. In the present case, according to the learned counsel for the applicant, the respondents have filled up the vacancies of 1.3.1993 first but had filled up the vacancies available in the year 1989-1993 later in 1994 by the impugned order of appointment of junior persons. Therefore, in any case, according to the learned counsel for the applicant, all the vacancies, as they were available on the same date, i.e., 1.3.1993 should

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have been filled simultaneously from the same panel of 44 persons in which the applicants name stood at Sl. No.24.

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5. We have carefully perused the Scheme of restructuring of C&D cadres dated 27.1.1993, Annexure-AXI. We find that there is substance in respondents' plea in regard to the financial benefits which would accrue to those who are promoted and adjusted against the posts which became available as a result of the restructuring. Para 1 and 3 of the restructuring Scheme reads as follows:

Para 1: "This restructuring of cadres will be with reference to the sanctioned cadre strength on 1.3.1993. The staff who will be placed in higher grades as a result of implementation of these orders, will draw pay in higher grade w.e.f. 1.3.1993."

Para 3: "Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316(FR 22-C) R-II w.e.f. 1.3.1993 with necessary option for pay fixation as per extent instructions."

6. In the normal course promotions would take effect from the date of issue of the orders. However, if that had happened and the seniors had been adjusted against the earlier vacancies then they would have also got promotion from the date of the issue of the orders while their juniors since they were being adjusted against the posts within the ambit of the restructuring Scheme, would have got pay from 1.3.1993. Of course the respondents could have given retrospective promotion to the applicant as well as his seniors from the date of the availability of the vacancies. However, it lies within the discretion of the respondents to fill up the vacancies on their own convenience and as per their requirements. The Supreme Court has also in Union of India & Others Vs.

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Majji Jangamayya & Others, AIR 1977 SC 757 held that no employee has any right to have a vacancy in the higher post filled as soon as the vacancy accrues; the Government has a right to keep the vacancy vacant as long as it chooses. Therefore, the applicant could not claim that he had to be promoted or even considered for promotion as soon as the vacancy became available. In the present case the respondents were also handicapped in filling up the vacancies due to the interim directions of the Tribunal. In the circumstances, if as a consequence, a situation had arisen where an additional benefit was available to those who were adjusted against the posts arising after restructuring then the respondents cannot be faulted for giving such a benefit to the seniors.

7. The case of the applicant is also weakened by the fact that it was not only the applicant alone but also some of his seniors who were also promoted with immediate effect, i.e., from 1994 by the impugned order dated 27.7.1994. The applicant cannot claim any preferential treatment over them. Those seniors have not made an issue of their late promotion. The applicant obviously could not claim promotion till seniors were adjusted.

8. In the result, finding no ground for interference, the OA is dismissed. No Costs.

O.A.No.2175/95:

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9. The issue raised in this OA is in substance similar to the one in the above OA No.678/95 though presented in a different form. The applicants herein were also Head Clerks in the Statistical Branch of the Northern Railway and were promoted by order dated 29.7.1994 on regular basis. Their claim is that all the vacancies arisen earlier to the restructuring and created on account of restructuring had to be filled from 1.3.1993. They submit that the respondents illegally modified the Scheme by a so called clarification, Annexure A-III dated 18.3.1993.

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10. The case of the applicants is that by a clarification the Railway Board cannot radically alter the list and substance of the restructuring Scheme which is statutory in nature and even if the clarification is created to be a statutory modification, it cannot have the effect of taking away the right which was vested in the applicant as a result of the restructuring Scheme dated 27.1.1993, Annexure A-I.

11. The controversy in regard to the filling up the new posts first by granting the senior persons and the earlier vacancies thereafter has been examined by us while dealing with OA No.678/95. We have therefore to examine the other contention of the applicants in the present case that the clarification could not alter the restructuring Scheme dated 27.1.1993.

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12. The applicants submit that the Supreme Court in B.S.Vadera Vs. Union of India & Others, AIR 1969 SC 118 have held that a Scheme framed by the Railway Board which has been authorised by the President under Article 309 would be statutory in nature. They contend that the restructuring Scheme, Annexure A-I is accordingly also statutory in as much as it has been issued with the approval of the President. A perusal of the Scheme dated 27.1.1993, does not indicate that this has been issued in exercise of the powers under Article 309. Even assuming that the approval of the President implies that it is in exercising of powers under Article 309, we have to conclude that any clarification of the said Scheme would be an inseparable part of the original order. Of course a clarification is intended to remove any scope for doubt or to facilitate correct implementation; it cannot however change the original provision since that would amount to an amendment. We may now compare the clarification with the original to see whether it seeks to remove any doubts or that it amount to amending the original provision.

13. According to the applicants, the following provisions have been made in the restructuring Scheme in regard to promotions:

Para 1: "This restructuring of cadres will be with reference to the sanctioned cadre strength on 1.3.93. The staff who will be placed in higher grades as a result of implementation of these orders will draw pay in higher grades w.e.f. 1.3.93."

Para 4.1: "Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

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i) from panels approved on or before 1.3.93 and current on that date; (ii) and the balance in the manner indicated in para 4 above."

14. The clarification reads as follows:

"Date of promotion for existing and restructured vacancies:

All vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of promotion and arrears w.e.f. 1.3.93 whereas for the normal vacancies existing on 1.3.93 junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date of taking over the post as per normal rules. Thus the special benefit of promotion w.e.f. 1.3.93 is available only for vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply."

15. The aforesaid para 1 of the Scheme, in our view, does not specifically provide that vacancies arising prior to 1.3.1993 must be filled up w.e.f. 1.3.1993. One could perhaps argue that Para 4.1 in so far as it speak of modified procedure for selection of all vacancies available upto 1.3.1993 and those available after restructuring would indicate that the earlier vacancies as well as the new vacancies, being subject to the same selection procedure, are to be filled up simultaneously w.e.f. 1.3.93. The learned counsel for the applicant would have^{wo} conclude that there could be no other interpretation. This can obviously not be accepted. Para 4.1 of the Scheme does not debar filling up the vacancies from an earlier date, than, 1.3.93 and for the same reason it cannot be said that these vacancies cannot be filled up from a later date. That being so, the clarification which relates only as to who should be given the benefit of the new vacancies would not appear to be in contravention of the provisions of para 4.1 of the restructuring Scheme. The clarification relates only to the rights of the

seniors arising out of the restructuring Scheme and not in regard to the date of filling up of these new vacancies. Since it cannot be said that old vacancies are part of and the effect of restructuring, the clarificatory orders cannot be said to be in nature of an amendment or in contravention of para 4.1.

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16. Another contention of the applicants is that the matter has been settled already by an order of this Tribunal in R.C.Gupta Vs. Union of India, O.A.No.585/94, decided on 10.6.1994, Annexure AXIII. That applicant therein was seeking promotion to OS Gr.I w.e.f. 1.3.1993. His claim was that he had been working as Head Clerk in the Statistical Branch of Northern Railway and his position was at Sl. No. 21 in the combined seniority list of Head Clerks. He secured the 7th position in the written test for promotion as Assistant Superintendent (later redesignated as OS Gr.II). However due to the interim orders in OA No.110/89 in the case of G.R. Matta and Others Vs. Union of India the process of selection was not finalised and only ad hoc appointments had been made. The applicant was also promoted as OS Gr.II on ad hoc basis. The restructuring Scheme of 27.1.1993 provided that the employees who retired/resigned between the period 1.3.93 to the date of actual implementation of the orders will be eligible for the fixation of benefits and arrears w.e.f. 1.3.93. The applicant was promoted as OS Gr.II w.e.f. 25.2.1994. Only three days later on 28.2.94 orders were passed promoting him further as OS Grade.I from the date of the order and not from date 1.3.93. The applicant claimed that though the

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selection initiated in 1989 was not completed, he was given ad hoc promotion w.e.f. 3.12.1990. He was 8th in turn for further promotion and there were 9 additional vacancies of OS Gr.I created by the restructuring Scheme dated 1.3.1993. The applicant had superannuated from the date of his promotion to OS Grade-I, i.e., 28.2.1994. He claimed that since his adjustment was against a new post arising out the restructuring he had to be given the benefit from 1.3.93. That OA was allowed and directions were given that he should be treated as Office Superintendent Gr.I w.e.f. 1.3.1993 and his pay and retiral benefits should be revised accordingly. It would be seen that the claim of Shri R.C.Gupta in OA 585/94 was in regard to the vacancy of OS Gr.I arising due to restructuring. This was not a vacancy available prior to 1.3.1993. Once the respondents had promoted him to OS Gr.I against the restructuring vacancy, then in terms of Para-I of the Scheme his financial benefits had to be from 1.3.1993. Para 11 of the Scheme, which is relevant, reads as follows:


Para 11: "Employees who retire/resign in between the period from 1.3.93 i.e. the date of effect of this restructuring to the date of actual implementation of these orders, will be eligible for the fixation of benefits and arrears under these orders w.e.f. 1.3.93."

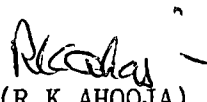
17. The applicants in the present OA have admittedly not been adjusted against a new post arising out the restructuring. For this reason their cases falls in^a different category than that of Shri R.C.Gupta. The learned counsel for the applicant submitted that the respondents had themselves granted promotion to all those who were senior to R.C.Gupta also from 1.3.93. This had to be ^{the} natural corollary of

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the orders of the Tribunal in OA No.585/94. The applicants herein were admittedly not senior to R.C.Gupta. It was next contended by the learned counsel for the applicants that even in their promotion orders it was stated that these were subject to the out come of the decision in R.C.Gupta's case. The only implication of that, according to the learned counsel for the applicant, was that if the OA is allowed, then the applicants herein would also get the benefit of the ratio of that order. We are unable to agree with the logic of this argument. The nature of the order of the Tribunal could not be anticipated. It was only a precaution on the part of the respondents that they made these orders subject to the out come of the case of R.C.Gupta. In our view the directions given by the Tribunal in R.C.Gupta, have no impact on the claim of the applicants herein.

18. In the result, finding no ground for interference, the OA is accordingly dismissed. No Costs.


(SYED KHALID IDRIS NAQVI)
MEMBER(J)


(R.K.AHOOJA)
MEMBER(A)

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