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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2329/2004

New Delhi this the 16th day of July, 2007

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

Shri Vikramjeet Yadav,
Senior Section Engineer,
Under Senior Divl. Electrical Engineer,
Western Railway,
Tughlakabad. ... Applicant.

(By Advocates Mrs Meenu Mainee and Shri B.S. Mainee)

Versus

Union of India

1. The General Manager,
Western Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
Western Central Railway,
Kota.
3. The Senior Divisional Electrical Engineer,
Western Central Railway, (TRS),
Tughlakabad. ... Respondents.

(By Advocate Shri Rajinder Khatter)

ORDER

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)

An order was issued by the second respondent on 23.9.2004 (Annexure A-1), which, according to the applicant, was adverse to his interest since it was practically a reversion order as far as he was concerned. According to him, this was without any tenable reasons and without giving him an opportunity to make a representation. It is claimed that while working as Senior Section Engineer in the pay scale of Rs.7450-11500, he has been compelled to go over to the position of Section Engineer in the pay scale of Rs.6500-10500. It is claimed that he had been given the senior scale on 28.5.1992 though

on ad hoc basis but interruptedly and, therefore, is entitled to continue in the higher scale.

2. It appears that applicant was promoted in Group 'C' scale of Rs.2375-3500 (Rs.7450-11500) on ad hoc basis. However, he was not regularized on that post. The interest of applicant appears to have been affected because of restructuring of Group 'C' and Group 'D' cadres. The case projected is that since the posts had been upgraded on the basis of "AS IS AND WHERE IS", persons placed against the cadre post could not have been disturbed. As the respondents have disturbed him, the issue is whether the orders could be deemed as one, which is arbitrary or passed without authority of law.

3. The applicant has placed reliance on judgments of the Hon'ble Supreme Court in **Karnail Singh Vs. The State of Punjab & Anr.** (ATJ 1995 (1) 259) as also **A.M.S. Sushanth and Ors. Vs. M. Sujatha and Ors.** (2000 (10) SCC 197), ATR 90 (1) 407 as also page 422 of the said volume. Reference was also invited to the decision reported in SLJ 92 (3) 26 (Calcutta), (**State of West Bengal Vs. P.K. Das**).

4. The claim built up is that when he had put in almost 12 years of service in the higher post, his service has to be considered generally as satisfactory. It was not a case where a regular selection was held. What was contemplated was a restructuring process, where benefits were proposed to be extended so as to avoid stagnation. He is the senior most Section Engineer to be given the benefit of upgraded post but his juniors alone have been conferred with the higher scale. According to the counsel, the decision as above supported the applicant's claims.

5. We had occasion to hear Shri B.S. Mainee, learned counsel appearing for the applicant and Shri Rajinder Khatter, learned counsel, appearing on behalf of the Railway Administration. Shri Khattar points out that the basic claim of the applicant is that he has been denied the benefit of higher scale. He also points out that the judgments cited have no application. It is a fairly recognized position that ad hoc promotion can always be subject to review. According to him, the applicant very well knew that his service records were not satisfactory and he had been advised of the same. It is also brought on record that a process of selection had been introduced, as far as superior positions were concerned for conferment of benefits of higher pay at the time of restructuring, and the applicant is feigning ignorance over these contentions.

6. By reply statement, the allegations made in the application have been controverted by the Department, and the authority for issuing Annexure A-1 order has been disclosed.

7. We find that the applicant has referred to judgments, which do not deal with the issue, as is relevant here. Ad hoc promotion enjoyed for over a period of years can at times give vested rights, and the Courts have in abstract frowned upon the administration resorting to steps for reversion, particularly noticing the hardship that may be involved. But that is not always the rule, and the administration is expected to act in consonance with the circulars and rules, which have to govern the situations. When restructuring of Group C and Group D cadres had been introduced, Mr. Khattar points out that a circular had been issued by the Railway Board as 177/2003, which alone was to govern the situation. A copy thereof had been made available for our perusal. The restructuring was to be carried out on the parameters so approved by the President. The instructions, which have been



incorporated in the circulars, take care of the date of effect, and the cadres, to which such operations were to apply. Paragraph 4 of the circular might be material as far as the present case is concerned.

8. There it had been noticed that the existing classification of the posts covered were by 'selection' and 'non-selection', and they remained unchanged. However, it is necessary that the instructions contained in Para 13.2 have to be followed in case of placement of Supervisory personnel. Paragraph 13 (a), which is relevant, could be extracted hereinbelow :

13. Upgradation of the posts of Supervisor (erstwhile Mistries) :

- (a) Subject to provisions of Para 13.2 below, all the posts of Supervisors (erstwhile Mistries) in grade Rs.4,500-7,000 + Rs.100 Special Allowance (excluding Supervisors (P.Way) should enbloc be upgraded to the posts of Junior Engineer Gr. II in the pay scale of Rs.5,000-8,000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs.5,500-9,000, 6,500-10,500 & 7,450-11,500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders".

The order indicated that the suitability for the posting was to be adjudged by following modified selection procedure, according to which, the selection was to be based on scrutiny of service records and confidential records.

9. Thus, although the service rules do not provide for placement to the senior scale by a normal selection, a less rigorous method had been directed to be brought about. The Railway Board orders are not under challenge. They prescribed for a modified selection procedure, which we observe could not have been avoided in the case of the applicant as well. It is noticeable that Annexure A-1 reflects this

position. The applicant has been shown as not fit for conferment of senior scale.

10. On an earlier occasion when the case was taken up, this precise point of eligibility assessment, was in dispute. Respondents, of course, had pleaded that the examination for suitability of eligible employees in respect of upgraded posts under the restructuring programme, was done, on the authority of modified procedure. The administration had been directed to place before the Tribunal the service records, which were claimed as relied on. The standing counsel had made available the records pertaining to the applicant. It is seen that almost consistently the applicant has been shown as an average employee.

11. Even though it may not be considered as adverse remarks by itself, when the Railway Board orders permits a process of selection, it may not be proper to sit in judgment over the decision of the administrative action. It should be considered as taken, in the interest of proper administration. When a person competes with or is even compared with persons who are superior in merit, necessarily he has to give way to them. Although it may involve heartburn, it cannot be characterised as arbitrary as merit is to be recognised if rules prescribe for such a contingency. Further, the applicant had canvassed for a position that be considered as if the process of selection was not authorized and the administration had evolved a procedure without authority of law. But this principal argument appears to be not available to him in view of the materials that is placed before us.

12. Consequently, the application fails and it is dismissed. The interim orders in operation, whereby the reversion is stayed, are vacated. However, the applicant will be entitled to retain with him the

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monetary benefits that he has been enjoying on the basis of interlocutory orders passed during ~~in~~ early 2004. No costs.



(Mrs. Neena Ranjan)
Member (A)



(M. Ramachandran)
Vice-Chairman (J)

'SRD'