

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1667/2004

New Delhi, this the 4th day of October, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

B.S. Tyagi,
S/o Shri N.C. Tyagi,
R/o H.No.148, Sarvodaya Colony,
Asoda Road, Harpur,
Distt: Ghaziabad (UP) ... APPLICANT
(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway,
Muradabad Division,
Muradabad ... RESPONDENTS
(By Advocate: Shri R.L. Dhawan)

O R D E R

By Mukesh Kumar Gupta, Member (J)

MA No. 1273/2006 seeking permission to file additional documents is allowed.

2. By present O.A., Shri B.S. Tyagi, IOW, who retired on attaining the age of superannuation on 28.02.1998, prayed that he be granted the special grade retrospectively 1.1.1989, i.e. the date his junior was granted such a grade with consequential benefits. He also seeks quashing of pay fixation order dated 31.07.2001 and direction to re-fix his pay after grant of special grade of Rs.2375-3500 w.e.f. 1.1.1989 with all consequential benefits.

3. Admitted facts of the case are that applicant, on an earlier occasion, had filed OA No.2066/1997 assailing order dated 11.04.1997 passed by the General Manager (P), Northern Railway, rejecting his claim for grant of benefit under restructuring scheme. A scheme of restructuring was introduced in the year 1985 under which posts of IOW (Inspector of Works) were distributed in three categories and IOW Grade-I was allowed pay scale of Rs.700-900/-. The allegation had been that juniors to him were upgraded in aforesaid grade vide Memorandum dated 02.09.1985 w.e.f. 1.1.1984, but said benefit of restructuring had been denied to him. He, therefore, had filed OA No.1691/1996, which was decided on 02.12.1996 directing Respondents to reconsider his case and pass a reasoned and speaking order. He made representation, which had been rejected vide order dated 11.04.1997 stating that Selection Committee did not assess him fit for empanelment for promotion on the basis of his ACRs for three years. Adverse ACR for period ending 31.3.1984 was communicated to him. It was contended that said adverse remarks were not communicated to him till the time he became due for promotion either against selection post or against non-selection post and, therefore, same cannot be taken into consideration.

4. The said OA had been contested stating that by virtue of seniority in the cadre of IOW, scale of Rs.1600-2660, which in turn, was a feeder cadre for promotion to the post of IOW Grade-I scale of Rs.2,000-3200/-, his case for promotion in connection with restructuring of his cadre w.e.f. 1.1.1984 was processed and a panel of suitable candidates considered fit for promotion to post of IOW

grade Rs.2000-3200/- was formed, and issued by respondents' office vide communication dated 2.9.1985. Shri K.K.L. Srivastava, junior to applicant was empanelled against item No.9 in the aforesaid letter. Adverse remarks were conveyed to him vide letter dated 09.11.1985, whereas process of empanelment for promotion to Grade-I IOW had already been initiated as on 1.1.1984 and the panel was published on 02.09.1985, which included his junior. In these circumstances, impugned communication dated 11.4.1997 was quashed and the respondents were directed "to re-consider the case of the applicant for promotion to IOW Grade I w.e.f. the date his juniors were so promoted without taking cognizance of the adverse entry made in the ACR for the year ending 31.3.1984. In case the applicant is empanelled for promotion as IOW Grade-I ignoring his adverse ACR for the year ending 31.3.84, he would be entitled to all consequential benefits in accordance with law."

5. A Contempt Petition was also preferred, which had been dismissed vide order dated 09.05.2002 noticing that a cheque for an amount of Rs.76,915/- had been handed over to applicant. However, an observation was made that if any grievance still survives, it will be open to the petitioner to pursue the matter in accordance with law. Prior to said date, applicant had been promoted as IOW Grade-II w.e.f. 1.1.1984 and his pay was fixed vide order dated 31.07.2001.

6. The grievance of the applicant in the present OA is that as per direction of the Tribunal vide order dated 04.05.2000, he was entitled to "all consequential benefits" which have been denied to him without any just reasons. He has been promoted to IOW Grade-I w.e.f.

1.1.1984, the next special grade of Rs.2375-3500, which has been revised to Rs.7450-11500/-, has been denied to him though his junior, namely Shri Vidya Ram was allowed such a special grade w.e.f. 1.1.1989. Despite representation made, Respondents have not considered his just and legal claim and hence Respondents' action is illegal and arbitrary and cannot be sustained in law. Reference was also made to the combined seniority list of Engineering Supervisors issued vide Circular dated 14.06.1994 to contend that various juniors were granted such benefits ignoring his claim.

7. Respondents contested the claim laid and raised preliminary objections regarding limitation as well as constructive res-judicata. It was stated that Shri Vidya Ram was allowed such benefit w.e.f. 1.1.1989, which fact was in the knowledge of applicant. Though he had filed the OA in the year 1997 i.e. much after the grant of such benefit to Shri Vidya Ram, but no such plea was raised. Furthermore, Shri Vidya Ram is not junior to applicant as he was promoted to the Grade of Rs.700-900/- w.e.f 9.12.1982, while he was promoted under the restructuring scheme w.e.f. 1.1.1984. Shri R.L. Dhawan, learned counsel further stated that Shri Vidya Ram belongs to SC category, while applicant was a general candidate. In these circumstances, there is no comparison between the said officials. Reliance was also pleased on 1996 (3) AISLJ 101 (SC) **Commissioner of Income Tax, Bombay v/s T.P. Kumaran** to contend that a relief which could not have been claimed in the original Suit cannot be claimed in a separate Suit. Moreover, no junior has been impleaded by applicant in these proceedings. The OA was filed on 03.06.2004 while the claim relates

to the year 1989. Shri R.L. Dhawan further contended that OA suffers from delay and laches.

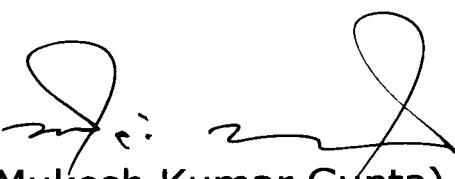
8. Applicant by filing rejoinder reiterated the submissions made vide his OA.

9. We have heard learned counsel for parties and perused the pleadings besides judgment relied upon carefully.

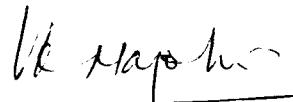
10. The term "all consequential benefits", vide judgment and order dated 04.05.2000 in OA No.2066/1997 has to be read in the context of relief prayed therein & not otherwise. In the said OA, applicant had been aggrieved by the denial of benefit of restructuring w.e.f. 1.1.1984. It is an admitted fact that he had been allowed the benefit of restructuring w.e.f. 1.1.1984 with all consequential benefits, viz. arrears of pay, seniority etc in grade of Rs.1600-2660/- . What has not been allowed is further promotion, which was a selection post. For selection post, one has to come within the zone of consideration as well as satisfy other requirement of statutory rule. Merely because in the meantime some persons were granted such selection post and benefit, could not be a ground to grant the same benefits to applicant, ignoring the mandate of rules. Moreover, it was well within his knowledge that Shri Vidya Ram, SC, had been allowed such benefit of special grade of Rs.2375-3500/- w.e.f. 1.1.1989, which fact had not been made the basis either for grant of relief or attack in the earlier proceedings nor such were the directions issued by the Tribunal. Moreover, Respondents have explained that Vidya Ram was promoted in Grade of Rs.700-900/- w.e.f. 9.12.1982 while applicant was granted the benefit under restructuring w.e.f. 1.1.1984. This aspect has not

been denied in the rejoinder filed by applicant. Such being the case, applicant's case is not comparable with Shri Vidya Ram.

11. In the circumstances and in view of discussion made hereinabove, applicant has not been able to make out any case for interference at this belated stage, particularly when he had already attained the age of superannuation and retired on 28.02.1998. Accordingly OA lacks merit and is dismissed. No costs.



(Mukesh Kumar Gupta)
Member (J)



V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

/PKR/