

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.282 of 1998

Allahabad this the 04th day of September, 2003

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Shri B.N. Pathak, Chief Health Inspector, Western
Railway, Idgah, Agra (U.P.)

Applicant

By Advocate Shri P. Mishra

Versus

1. The General Manager, Western Railway, Church Gate, Bombay.
2. The Chief Medical Superintendent, Western Railway, Kota.
3. The Divisional Railway Manager, Western Railway, Kota.

Respondents

By Advocate Shri Amit Sthalekar

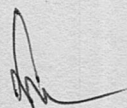
O R D E R (Oral)

By Hon'ble Maj Gen K.K. Srivastava, Member (A)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for direction to the respondents to consider the promotion of the applicant as Chief Health Inspector Grade Rs.1600-2660 on regular basis w.e.f. 01.03.1993 with all consequential benefits including the arrears.

2. The facts of the case, in brief, are that


...pg.2/-



the applicant joined the respondents' establishment as Health Inspector Grade III. The applicant was promoted as Senior Health Inspector in 1990 in the grade of Rs.1400-2300 and was eligible for promotion as Chief Health Inspector grade Rs.1600-2660 against the upgraded post as a result of restructuring w.e.f. 01.03.93. In the seniority list dated 11.07.94 of Health Inspector Grade Rs.1400-2300, name of the applicant is shown at serial no.3. The grievance of the applicant is that he has not been granted promotion as Chief Health Inspector under restructuring though he was entitled for the same by dint of his seniority. He filed representations before the respondents, which have been rejected by the impugned order dated 07.11.1997(annexure A-1).

3. Learned counsel for the applicant submitted that there were 3 posts available for promotion on 01.03.1993 as Chief Health Inspector. Against those 3 posts, only 2 persons namely Shri R.P. Gautam and Shri B.K. Sharma were accommodated, whereas one Shri O.P. Mathur who was at serial no.1 in the seniority list and the applicant were left over because of the disciplinary cases pending against them.

4. Learned counsel further submitted that by order dated 20.12.1995(annexure-5), disciplinary proceedings against the applicant were dropped and he was exonerated. Shri O.P. Mathur who was at sl. no.1 in the seniority list was not promoted because of pendency of disciplinary proceedings andpg.3/-



Shri O.P. Mathur retired from service on 31.10.1994. On retirement of Shri O.P. Mathur, the applicant was seniormost incumbent and the action of the respondents in not promoting him against the upgraded post of Chief Health Inspector Grade 1600-2660 is arbitrary and illegal.

5. Learned counsel for the applicant also argued that from perusal of annexure C.A.-2, which is the order dated 16.06.1998, it would appear that Shri O.P. Mathur was promoted as Senior Health Inspector in the grade of Rs.1600-2660 on proforma basis w.e.f. 20.07.1990. He was further promoted as Chief Health Inspector in the pay scale of Rs2000-3200 w.e.f. 13.05.91, thus, on 01.03.93 i.e. the date from which restructuring was to be effected, only one post was vacant and, therefore, the claim of the respondents that because of Shri O.P. Mathur who was senior to the applicant, he could not be upgraded under modified selection, is not sustained in the eye of law.

6. Resisting the claim of the applicant, learned counsel for the respondents submitted that the claim of the applicant is for promotion under restructuring w.e.f. 01.03.93 but the O.A. has been filed in the year 1998, therefore, the O.A. is barred by period of limitation.

7. Another ground taken by the respondents is that the applicant himself has admitted in para-4.10 that he should have been adjusted on the higher post

on retirement of Shri O.P. Mathur on 31.10.1994 and, therefore, claim of the applicant for promotion w.e.f. 01.03.93 is self contradictory.

8. Learned counsel also submitted that one post had to be kept vacant as disciplinary proceedings cases were pending against Shri O.P. Mathur and for remaining 2 vacant posts, Shri R.P. Gautam and Shri B.K. Sharma were given the benefit of promotion under restructuring as they were senior to the applicant in the grade of Rs1400-2300. Besides, on 31.10.1994 the applicant was under D.A.R. proceedings and as such, the question of his promotion during D.A.R. proceedings did not arise. On finalisation of D.A.R. proceedings, the applicant was promoted to the post of Chief Health Inspector in the pay scale of Rs.1600-2660 on ad hoc basis, vide order dated 09.04.96.

9. We have heard the counsel for the parties and closely perused the record.

10. Admittedly, as a result of restructuring, 3 posts had to be filled under modified procedure for promotion as Chief Health Inspector in the scale of Rs.1600-2660. The respondents have all along maintained that the applicant is not entitled to the benefit of promotion under restructuring because the applicant was not within the seniority zone of consideration being at serial no.4 in the pay scale of -1400-2300. On perusal of order dated 16.06.1998 (annexure C.A.-2) we notice that Shri O.P. Mathur was given promotion

to the scale of Rs.1600-2660 w.e.f. 20.07.1990. Not only this, Shri O.P. Mathur by the same order has been ordered to be promoted as Chief Health Inspector in the pay scale of Rs.2000-3200 w.e.f. 13.05.1991. Under the circumstances, we have no hesitation to observe that

Shri O.P. Mathur who is stated to be number 1 in the scale of Rs.1400-2300, ^{in view of his promotion w.e.f. 20.7.1990} ~~was~~ nowhere on the list for ^{he} ~~consideration~~ ^{he would be} for promotion to the scale of Rs.1600-2660 and, therefore, once the name of Shri O.P. Mathur is taken out, obviously applicant's position in the seniority list increases by one number and, thus, only ^{are left} 3 names ~~were~~ to be considered for promotion under restructuring. Shri R.P. Gautam and Shri B.K. Sharma were already given the benefit of promotion under restructuring and only the applicant was left over.

11. We would have appreciated if the case of the applicant was reviewed for promotion under restructuring after the issue of letter dated 16.06.98. Unfortunately, no such exercise was undertaken by the respondents. It is incumbent upon the respondents to ensure that precautions are taken so that the career prospects ^{of an employee} are not marred and also the employee is not denied his rightful claim.

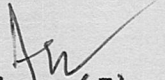
12. We have closely perused the order dated 07.11.97 and the sole ground taken by the respondents is that under restructuring 3 posts were available for upgradation. The seniormost person could not be benefited by restructuring because of the pendency of disciplinary proceedings and also that two persons were given the benefit of..Pg.6/-

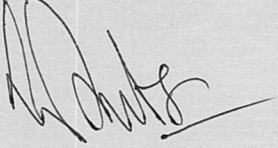


promotion under restructuring. We have already observed earlier that the senkormost person, as also admitted by the respondents, is Shri O.P. Mathur who in view of the order dated 16.06.1998 could not affect the claim of the applicant. Even the applicant who was exonerated and against whom disciplinary proceedings were dropped by order dated 20.12.1995, was entitled for re-consideration of his claim for promotion as Chief Health Inspector.

13. In the facts and circumstances, and for the reasons stated above, the O.A. is allowed. The impugned order dated 07.11.1997(annexure A-1) is quashed. The respondents are directed to grant the benefit of promotion under restructuring to the applicant w.e.f. 01.03.1993 with all consequential benefits, except that the applicant shall not be entitled for arrears.

14. There shall be no order as to costs.


Member (J)


Member (A)

/M.M./