

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 11th day of March 2005.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. NO. 929 of 1998

Smt. Kiran Gupta, aged about 37 years, Wife of, Sri Surendra Gupta, R/O 31, Lowther Road, Allahabad.

.....Applicant.

Counsel for applicant : Sri S. Agrawal.

Versus

1. The Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager/General Manager(P), Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager/Divisional Railway Manager(P), Northern Railway, Allahabad.
4. The General Manager, North Eastern Railway, Gorakhpur.

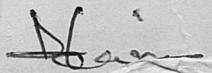
.....Respondents.

Counsel for respondents : Sri D.C. Saxena, Sri P. Mathur and Sri V. K. Goel.

with

O.A. No. 724 of 1998

1. J.K. Tiwari, aged about 29 years, son of Shri R.C. Tiwari, Senior Draftsman, Divisional Railway Manager's Office, Northern Railway, Allahabad, R/O Railway Qr.No.626-A, 2nd Avenue, Nawab Yusuf Road, Allahabad.
2. Vinay Kumar Agrawal, aged about 32 years, son of Shri V.S. Agarwal, Senior Draftsman, Divisional Railway Manager's Office, Northern Railway, Allahabad, R/O Railway Qr.No.626-A, Smith Road, Allahabad.
3. Yogesh Kumar Saxena, aged about 32 years, son of Shri G.P. Saxena, Senior Draftsman, Divisional Railway Manager's Office, Northern Railway, Allahabad, R/O Railway Qr.No.629-A, 1st Avenue, Nawab Yusuf Road, Allahabad.



: 2 :

4. A.K. Malviya, aged about 45 years, son of G.S. Chaturvedi, Senior Draftsman under General Manager, Railway Electrification, Allahabad, R/O 5-B/2, Dharamveer Marg, Allahabad.

.....Applicants.

Counsel for applicant : Sri S.D. Kapoor.

Versus

1. The Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager/General Manager(P), Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager/Divisional Railway Manager(P), Northern Railway, Allahabad.
4. The General Manager, North Eastern Railway, Gorakhpur.

.....Respondents.

Counsel for respondents : Sri D.C. Saxena, Sri P. Mathur and Sri V. K. Goel.

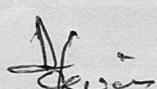
O R D E R

BY HON. MR. D.R. TIWARI, A.M.

Since common question of facts and law are involved in these two O.As., it would be convenient to dispose them of by a common order and the learned counsel for the parties have no objection. O.A. No.929/98 would be the leading case.

2. In O.A. No.929/98 filed under section 19 of the A.T. Act, 1985, the applicant has prayed for the following reliefs :-

- i) to issue a mandamus directing the respondents and in particular to Respondent No.3 to treat the applicant in the scale of Rs.1400-2300 strictly in accordance with the order dated 19.1.1998 passed by Respondent No.2 at Allahabad Division and to give all consequential benefits besides paying



regular current salary in the pay scale of Rs.1400-2300.

- ii) to issue a mandamus directing the respondent No.3 to implement the orders passed by Respondent Nos.2 and 4 in respect to the applicant regarding her promotion in the scale of Rs.1400-2300 on the post of Senior Draftsman w.e.f. 1.3.1993 and to give all consequential benefits to the applicant accordingly.
- iii) to issue a mandamus directing the Respondent No.3 to prepare seniority list of Senior Draftsman as a result of implementation of the order dated 19.1.1998 passed by Respondent No.2 after including the name of the applicant in the said seniority list and consider the names of eligible persons including the applicant for promotion to the post of Head Draftsman (Pay scale of 1600-2660.

Whereas the applicants in O.A. No.724/98 has prayed for the following reliefs :-

- a) That the Hon'ble Tribunal may graciously be pleased to quash the General Manager (P), North East Railway's letter dated 18.6.98, 24.6.96 and General Manager (P), Northern Railway letter No.754-E/EO/XXVIII/EiiBi(Loose) dated 19.1.98.

The prayers made in O.A. No.929/98 are just contrary to the prayer made in the O.A. No.724/98. This means, if O.A. No.929/98 succeeds, the O.A. No.724/98 is bound to fail and vice-versa.

3. Necessary relevant facts to decide the controversy is that applicant was initially appointed as Telephone Operator in the scale of Rs.260-440 in North Eastern Railway (N.E.R. for short), Gorakhpur on

Dhewar

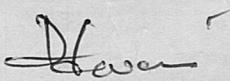
6.7.1983. On 14.8.1984, the cadre of the applicant was changed by the General Manager (P), N.E.R., Gorakhpur and she was posted as Tracer. On 22.9.1989, the applicant was promoted to the post of Assistant Draftsman (now designated as Draftsman) in the pay scale of Rs.1200-2040 at N.E.R., Gorakhpur. While she was working as Draftsman, she was married to a person, who was resident of Allahabad. Consequently, she applied for her transfer under Rule 226 and 229 of Indian Railway Establishment Code, Vol.I read with Rule 154(i) and 312 (ii) of I.R.E.M., Vol.I to Allahabad which was under Northern Railway (N.R. for short) (now N.C.R. Allahabad). On 24.11.1992, N.E.R., Gorakhpur recommended the applicant's transfer from NER to N.R. Allahabad Division. The General Manager (P), Northern Railway, Baroda House, New Delhi issued an order dated 4.3.1993 permitting the applicant's transfer in Allahabad Division. Accordingly, the applicant joined at Allahabad on 12.4.1993 on the post of Draftsman in the pay scale of Rs.1200-2040 (Annexure A-1). In pursuance of the order dated 4.3.1993, by another order dated 5.4.1993, N.E.R. made it clear that this transfer is on the request of the applicant and she has accepted bottom seniority. It was also mentioned in the order that she would not be entitled for joining time and T.A./D.A. etc. for joining (Annexure A-2).

4. While the matter of transfer of the applicant was under consideration, the Railway Board issued a circular dated 27.1.1993 for cadre restructuring of group 'C' and 'D' posts by which modified procedure for promotion on the basis of scrutiny of service record and confidential reports without holding any written or viva-vice tests, was permitted vide para 4 and 4.1 of the Scheme. Para 4.1. provided that the modified procedure would be

*N
New*

applicable to vacancies existing on 1.3.1993 except direct recruitment quota and

those arising on that date from this cadre restructuring including chain/resultant vacancies. N.E.R., Gorakhpur considered the applicant's promotion under cadre restructuring circular dated 27.1.1993 and approved her promotion as Senior Draftsman in the scale of Rs.1400-2300 w.e.f. 1.3.1993. However, the formal order could not be issued immediately thereafter. Since the applicant's matter of promotion in pursuance of cadre restructuring was not finalized and no formal order was issued, the applicant made a representation to the D.R.M., Allahabad for the purpose. Accordingly, D.R.M., Allahabad, vide letter dated 23.1.1996 (Annexure A-5), wrote to N.E.R., Gorakhpur referring to the applicant's representation stating that since the cut off date of cadre restructuring is 1.3.1993 and on that crucial date, she was on the strength of N.E.R., her representation may be considered and decision about her promotion as Senior Draftsman may be communicated to N.R. The General Manager (P), Gorakhpur communicated the order of promotion vide his letter dated 24.6.1996 (Annexure-6) of the applicant as Senior Draftsman (1400-2300) w.e.f. 1.3.1993. This communication also contained the direction of pay fixation of the applicant as per Rule 1313 read with FR 22(ii). Soon after the above order, the applicant made a representation dated 5.7.1996 to D.R.M., N.R., Allahabad requesting him to give effect to the applicant's promotion in the pay scale of Rs.1400-2300 in pursuance to N.E.R., Gorakhpur order dated 24.6.1996 (Annexure A-7). However, nothing was done. The General Manager (P), N.E.R. vide his letter dated 22.8.1997 (Annexure-9) issued the pay fixation order of the applicant in the pay scale of Rs.1400-2300.



Since the applicant was promoted under the restructuring scheme by the N.E.R. and her pay fixation order was also issued, as stated above, the applicant represented to D.R.M.(P), N.R., Allahabad vide her letter dated 28.8.1997 (Annexure A-10) for fixation of her pay in the scale of Rs.1400-2300 in pursuance of N.E.R., Gorakhpur letter dated 22.8.1997. However, D.R.M., Allahabad did not fix the pay and he sent a letter dated 12.9.1997 to General Manager (P), N.R., New Delhi stating that the applicant was allowed transfer (1200-2040) and cannot be allowed to stay at Allahabad in the promoted scale. It was also stated in that letter that she appeared in the written examination for the post of Senior Draftsman in the grade of Rs.1400-2300 along with others but she could not qualify the written test. Accordingly, it was not possible to give promotion in that Division in the grade of Rs.1400-2300 as her transfer was agreed on the ground that she accepted the bottom seniority in the grade of Rs.1200-2040. By her letter dated 17.9.1997, the applicant made representation to the General Manager, N. R., New Delhi in which she complained of gross injustice being caused to her by holding her legitimate promotion as Draftsman (1400-2300) in D.R.M's Office, Allahabad. She submitted that her promotion w.e.f. 1.3.1993 by N.E.R. should be given effect to N.R. Railway which was fully covered under the extant provisions of Rule 312(ii) and 154 (i) of the I.R.E.M. These provisions lay down clearly the transfer on own request even in the intermediate grade may also be accepted provided this grade has an element of direct recruitment, which was applicable in her case. C.P.O. Indian Railway passed the following order after considering entire matter including the complaint made by the D.R.M., Allahabad vide letter dated 12.9.1997 :-

"She can join ALD Division at the bottom seniority of recruitment grade. The grade would

Dfesw

be given from the date her orders were issued for grade 1400-2300 in NE Railway. She would be given bottom seniority in that grade subject to availability of the vacancies in that grade."

The General Manager (P), Northern Railway, New Delhi vide his letter dated 19.1.1998 (Annexure 12-A) communicated the aforesaid order, has accorded approval for transfer of applicant (1400-2300) from the date her orders were issued by NE Railway, promoting her in grade of Rs.1400-2300 with bottom seniority in the grade Rs.1400-2300 against direct recruitment quota.

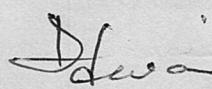
6. The applicant by a letter dated 27.4.1998 referring to General Manager, N.R. letter dated 19.1.1998, again requested D.R.M., N.R., Allahabad (now NCR Allahabad) to give effect to the promotion of applicant as per approval communicated by Northern Railway Hqrs. of the letter dated 19.1.1998. However, D.R.M., Allahabad vide his letter dated 23.4.1998 (Annexure-15), wrote to the General Manager (P), NER, Gorakhpur stating that the applicant was wrongly allowed promotion under cadre restructuring circular 27.1.1993 in view of clarification letter dated 18.3.1993 of the Railway Board. The G.M., NER, Gorakhpur vide his letter 18.6.1998 (Annexure A-16), informed the DRM, Allahabad that after reexamination of the matter, it has been found that the applicant was rightly promoted in 1400-2300 w.e.f. 1.3.1993 and the letter dated 18.3.1993 was not applicable in this case. Since the DRM, Allahabad did not implement the order contained in N.R. letter dated 19.1.98 or the letter dated 18.6.98 from N.E.R., Gorakhpur, the applicant represented the matter to General Manager, NCR Allahabad to look into the matter and direct the DRM, Allahabad to implement the order dated 19.1.98. She also represented to the Executive Director (Establishment), Railway Board. However, nothing has



been done by the DRM, Allahabad. Hence the present O.A. has been filed seeking implementation of the order dated 19.1.98 and allowing the applicant's posting and promotion in the scale of Rs.1400-2300 with bottom seniority from the date the applicant joined at Allahabad as also the payment of arrears of salary in the scale of Rs.1400-2300 with all consequential benefits.

7. The applicant has assailed the inaction on the part of respondent No.3 on various grounds mentioned in para 5 and its sub-paras of the O.A. However, we shall examine only those grounds which have been stressed during the course of the argument. It has been submitted that inaction of the Respondent No.3 is patently illegal, arbitrary and shows adamant attitude which is bound to cause prejudice to the applicant. It has also been submitted that denial of pay scale of Rs.1400-2300 to the applicant is wholly illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution. The applicant has further pleaded that the decision of the higher authorities is to be implemented by the lower authorities until or unless they are either modified by the further higher authority or by a court of law.

8. The respondents, on the other hand, have contested the O.A. by filing a detailed Counter Affidavit wherein they have contested each and every point, raised by the applicant in the pleadings. They have argued that in accordance with the Railway Board's circular dated 27.1.1993 read with clarificatory circular dated 18.3.1993 according to which filling up of vacancies, where no restructured posts are becoming available have to be done on the basis of positive act of selection and the prescribed percentage of Senior Draftsman was reduced from 30% to 20% w.e.f. 1.3.1993. As such, no post of Senior



Draftsman was available in the Northern Railway. On the other hand, N.E. Railway had allowed the applicant the benefit of modified selection procedure which was against the instructions of the Railway Board. As such, Allahabad Division was not in a position to appreciate her claim. It has been further submitted that a selection was held for the Senior Draftsman in which the applicant appeared along with others but unfortunately, she could not qualify the same. They have stated that applicant on her request was transferred from N.E. Railway in the grade of Rs.1200-2040 after the approval of the Competent Authority. Her claim for promotion in the grade of Senior Draftsman on the strength of the letter dated 19.1.1998 is not tenable as she had been permitted to join at Allahabad Division accepting the bottom seniority in the recruitment grade subject to availability of the vacancies. It has been submitted that she is still working as Draftsman in the grade of Rs.1200-2040 in this Division and, therefore, she is paid salary accordingly. On the representation, the applicant was duly replied by the department concerned that in case she wants her promotion under cadre restructuring, in that eventuality she will have to be repatriated to her parent organization i.e. N.E.R. Her salary was fixed on the basis of the instructions as circulated by Railway Board under Rule 1313 read with FR 22(ii) on the basis of her option so exercised. It has been argued that grant of benefit of modified procedure w.e.f. 1.3.1993 to the applicant, was ipso-facto not tenable in view of the position clarified by the Railway Board circular dated 18.3.1993 coupled with the fact that the applicant had been absorbed in the Allahabad Division on accepting the bottom seniority in the grade of Rs.1200-2040.

9. Respondents have further submitted that there was no vacancy for the post of Senior Draftsman



existing at the office of the D.R.M., Allahabad. Since the promotion order by the N.E.R., Gorakhpur was not in accordance with the instructions already on the subject and in this eventuality until or unless promotion is not allowed by the respective Division, the question of payment of salary or any other dues and benefits in the grade of Rs.1400-2300 for the post of Senior Draftsman does not arise at all. The claim of the applicant is, thus, devoid of any merit and is liable to be dismissed.

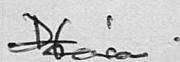
10. During the course of the hearing, Sri Sudhir Agrawal, learned counsel for the applicant relied on the decision of Full Bench of Lucknow Bench in the case of Tara Prasad Mishra vs. State of U.P. reported in (1990) 2 UPLBEC 905 wherein the question of issue of writ of mandamus for enforcement of a request addressed by a superior officer to a sub-ordinate officer, was discussed. He further relied on the two Division Bench orders in O.A. No.639/95 decided on 9th day of September, 2002 and the decision in O.A. No.754/97 decided on 6th January, 2004 to contend that the interpretation of the Respondents with regard to the clarificatory circular of Railway Board dated 18.3.1993 is misconceived and contrary to the decisions in these two O.As. of this Tribunal. Sri Agrawal emphatically argued that non-availability of the vacancies has been pleaded by the Respondents to deny the legitimate claim of the applicant. He has made a specific averment in his rejoinder affidavit and enclosed the letter dated 18.6.1996 from DRM, Allahabad which shows the number of vacancies to be four in the grade of Senior Draftsman against the direct recruitment quota. He also submitted to the court a photo copy of the note-sheet of Northern Railway which also indicates that there are four vacancies of senior Draftsman (Civil) in Allahabad Division against direct recruit quota. We propose to

D. Deo

take the photo copy of the said note-sheet on record. Sri Agrawal further emphatically stated that the entire controversy regarding the applicant's transfer on bottom seniority has been settled by the letter No.754-E/EO/XXVIII/Eibi (Loose) dated 19.1.98 (Annexure 12-A) wherein it has been stated that inter-Railway transfer of Smt. Kiran Gupta is now approved for grade Rs.1400-2300 from the date of her orders were issued by the N.E. Railway, promoting her in grade Rs.1400-2300 with bottom seniority in grade Rs.1400-2300 against direct recruitment quota.

11. Sri Prashant Mathur, learned counsel for the respondents reiterated the points from the counter affidavit of the Respondents. He hotly contested the points raised by the counsel for the applicant. He even doubted the veracity of the letter from Northern Railway dated 19.1.1998. However, he failed to justify his doubt about the above said letter.

12. Sri Shyam J. Das Kapoor, learned counsel for applicants in O.A. No.724/98 argued very forcefully and submitted that it would be improper if the seniority of the Respondent No.5 be allowed who failed in the departmental examination and who is at the bottom seniority in the cadre of lowest post of Draftsman. He submitted that her promotion in the N.E.R. was confined only to North Eastern Railway and she was informed by the Competent Authority of the Northern Railway that she would not get promotion post of Senior Draftsman in Northern Railway as a result of restructuring in North Eastern Railway. She was also informed that if she wanted to avail of promotion, she will have to go back to N.E. Railway, Gorakhpur. Despite this position, she chose to appear in departmental examination in July, 1996 thereby accepting the stand taken by Northern Railway. Thus, the principle of estoppels would apply in her case.



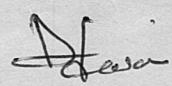
He has further submitted that G.M., Northern Railway letter of 19.1.1998, which is sought to be implemented, is in fact, not an order but is a part of correspondence between G.M., Northern Railway and D.R.M., Allahabad Division. He has relied on the decision of Supreme Court in the case of Shikha Chand Jain vs. Digambar Jain, 1974(1) SCC 675 wherein the Supreme Court has laid down as under :-

"It is open to the Court to take notice of the subsequent events if it is shown that (1) the relief claimed originally has become inappropriate; (2) it is necessary to take notice of subsequent events in order to shorten litigation; (3) it is necessary to do so in order to do complete justice between the parties".

Subsequent Development is that the Railway Board is seized of the matter and the decision of the Board is still awaited.

13. Sri D.C. Saxena, learned counsel for Respondents in O.A. No.724/98, who represented N.E.R., reiterated the points raised in the counter affidavit of N.E.R. He also submitted that the grant of promotion to the Respondent No.5 by the N.E.R. under the modified procedure was justified and the application of circular of Railway Board 18.3.1993 was not necessary.

14. We have heard counsel for the parties at length and given our anxious considerations to the rival submissions made. We have very carefully perused the pleadings on record. We have also perused the written arguments submitted by counsel for applicants in these two O.As. Despite opportunities, counsel for respondents could not submit their written arguments/brief notes.



15. From the discussions made above and the arguments of the counsel, three basic issues emerges which require adjudication. The first issue relates to availability of vacancies in the direct recruit quota at the relevant time in Allahabad Division of N.R. in the grade of Senior Draftsman (Rs.1400-2300). Annexure RA-1-2 filed in reply to CA clearly shows that DRM, Allahabad sought approval from the General Manager(P), N.R., New Delhi for filling in four vacancies of Senior Draftsman (Rs.1400-2300) against direct recruitment quota which was allowed by the General Manager(P), N.R., New Delhi. This is evident from the letter dated 18.6.96. In addition to this, the note-sheet of Northern Railway submitted to the Court by the counsel for applicant also shows that there were as many as four vacancies against the direct recruitment quota. Thus, the contention of the respondents that there was no vacancy for direct recruitment in the Allahabad Division cannot be accepted. The second crucial question is about the interpretation to be given to Railway Board circular dated 18.3.93. This question has been considered by this Bench in the case of V.S. Kushwaha, Draftsman and Sudhir Kumar Singh, cited supra. In the case of Sudhir Kumar Singh, this Court, vide para 5, has observed as under :

"5. Having given our thoughtful consideration to the submissions made across the bar, we veer around the view that all the 17 posts ought to be filled only be scrutiny of service records and confidential reports without holding any written test and viva-voce and not by the normal procedure of selection. This is clear by conjoint reading of paras 4 and 4.1 of the Railway Board's circular dated 27.1.1993 extracted herein above. Para-II of the R.B.E No.49/93 relied on by Sri Lalji Sinha, in our

Dhuria

opinion, has no application for that is attracted to a case where restructured posts in a cadre are not available as is clear from the heading of clause-II of circular No.49/93 which reads as under :

“जहाँ पुनर्संरचित पद उपलब्ध न हों वहाँ रिक्तियों को भरना

As indicated herein above 4 posts of Commercial Inspector Grade-III were existing as on 01.03.1993 and 13 others became available on chain/resultant promotions as a result of cadre restructuring. The case, in our opinion, was covered by clause 4.1 of the circular R.B.E. No.49/93 dated 27.01.1993.”

16. In view of the above and also the assertions made in the letter dated 18.6.98 from the General Manager (P) to DRM, Northern Railway that the Board's letter dated 18.3.93 is not applicable in the case of promotion order of the applicant along with 6 other staff to grade of Rs.1400-2300. This assertion has been made after reexamination of the entire case when it was referred back by the DRM, Allahabad by a letter dated 23.4.1998. We are not impressed by this argument of the Respondents. The third issue relates to the implementation of the order contained in Northern Railway's letter dated 19.1.98 which has been quoted in the previous paras. This letter clinches the entire controversy and sets at rest all the issues when it concludes that the inter-Railway transfer of the applicant promoting her in grade Rs.1400-2300 with bottom seniority in grade 1400-2300 against direct recruitment quota. The contention of the counsel for respondents in O.A. No.724/98 that the Railway Board is seized with the matter and their reply is awaited, cannot be accepted. He is perhaps, referring to the representation dated 4.7.98 by the applicant to the

D. Deo

Executive Director (Estt.) Railway Board, New Delhi and in reply in respect of this is perhaps awaited. The applicant made this representation to Executive Director, Railway Board much after the letter dated 19.1.98 was received from the Headquarters of Northern Railway. Since the DRM, Allahabad did not implement the order dated 19.1.98, the representation has been made. This does not mean that the earlier order of the higher authorities should not be implemented and be kept pending indefinitely. Thus, we are of the view that on this point also, the plea of the respondents cannot be accepted.

17. In view of the facts and circumstances mentioned above and the discussions made, O.A. No. 929/98 succeeds on merit and the respondent No. 3 is directed to take necessary action to give effect to the order dated 19.1.98 within a period of three months from the date of receipt of a copy of this order. It is, however, clarified that the applicant would be placed at bottom seniority in relation to not only those who were in position as Senior Draftsman on 12.4.1993 but also in relation to those, if any, (of NR/NCR) promoted under the scheme of restructuring retrospectively w.e.f. 1.3.1993. The O.A. No. 724/98 is accordingly devoid of merit and is being dismissed. There is no justification to quash the impugned orders of this O.A.

There will be no order as to costs.

Df
A.M.

RA
V.C.

Asthana/