

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

ORIGINAL APPLICATION NO.1391 OF 2001

ALLAHABAD THIS THE 23rd DAY OF May, 2006

HON'BLE MR. K. B. S. RAJAN, MEMBER-A
HON'BLE MR. A. K. SINGH, MEMBER-J

Radhey Mohan Lal Srivastava,
Son of Late Lalta Prasad Srivastava,
Village Banauli, Post Bhainsala,
District-Gorakhpur (U.P.)

.Applicant

By Applicant: Shri Shesh Kumar (Absent)

Versus

1. Union of India, through the Chairman Railway Board, New Delhi.
2. Chief Personnel Officer/General Manager (P), North East Railway, Gorakhpur.
3. Chief Signal & Telecom Engineer, N.E. Rly. Gorakhpur.

. Respondents

By Advocate: Shri Anil Kumar

O R D E R

By K.B. S. Rajan, Member-J

A rational and well justified provision as contained in para 11 of the order dated 27-01-1993 is the main crux of the matter. Once its import is known, the decision in the case would be clear and evident.

The said provision is extracted below:-

"The Ministry of Railways have had under review cadres of certain groups of C&D staff in consultation with the staff side in the Committee of the Departmental

Counsel of the JCM (Plys) for some time. The Ministry of Railways with the approval of the President have decided that the Group C&D categories of staff as indicated in the Annexure (Department wise) to this letter be restructuring in accordance with the revised percentage indicated therein

Employees who retire/resign in between the period from 1.3.1993 i.e. the date of effect of this restructuring to the date of actual implementation of these orders will be eligible for the fixation benefits and arrears under these orders w.e.f. 1.3.1993."

2. In view of the fact that it is only the above law point that is to be considered, coupled with the fact that the facts as contained in the OA are not denied, keeping in tune with the dictum of the Apex Court in **K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar, (1980) 1 SCC 630**, that *brevity is the soul of art, and justicing, including judgment-writing, must practise the art of brevity, especially where no great issue of legal moment compels long exposition, we mean to be brief to the bare bones, with a few facts here and a brief expression of law there, by adopting the technique which "is simply the perfect economy of means to an end"*.

3. The applicant was serving railways in the draftsman cadre in the scale of Rs 1200 - 2040 before his retirement in May, 1993. Just prior to

his retirement, there was a scheme of restructuring whereby certain adjustments of posts were made and consequently, certain posts carrying the scale of Rs 1200 - 2040 were upgraded to Rs 1,400 - 2300. The scheme though effective from 01-03-1993, could not be actually brought into existence till August, 1993 and during the intervening period the applicant superannuated. Had he continued in the employment, he would have been the beneficiary of the higher scale of pay from 01-03-1993 itself. Since he had retired, and since certain safeguards have been provided in para 11 of the restructuring order, as extracted above, he had claimed the same, which, however, has been denied to him by the railways. Hence, this OA.

4. Re-structuring is one of the periodical exercise being conducted by the Railways, which takes stock of the situation relating to the functional necessities on the one hand and the career aspiration on the other. Thus, in any hierarchy, there are certain variations in the complements and the posts are filled up by promoting the persons from the feeder grade instead of having direct recruitment (Clause 12 of the restructuring order refers). While so considering the promotion, the normal ordeal of facing written examination etc. is also obviated and a simplified test is conducted. This system has proved very effective during the past few restructuring that had taken place.

5. One such restructuring has taken place in 1993 and as per the versions of the respondents vide para 10, reproduced below, the in the post of Draftsman, in the grade of 1400 - 2300 (as then existed), four posts were available for filling up and were accordingly filled up in August, 1993. However, as the applicant had retired in May, 1993, he could not, obviously, be accommodated;-

"..... except the issuance of letter dated 11.8.1985 by the respondents same was correctly issued by the competent authority, Railway Board vide their letter dated 18.3.1993 clearly directed where percentage has been reduced, in lower grade and new post have become available as a result of restructuring in any such case vacancies existing as on 1.3.1993 should be filled up by due process of selection. Before restructuring there were 10 post of Draftsman (1400-2300) which has been reduced to 9 post due to restructuring. However, the number of posts in higher grade (1600-2660) was increased due to restructuring for from 7 post to 11 posts as such due to promotion in higher grade from the lower grade of (1400-2300) and vacating the post by the existing incumbent 4 (four) resultant vacancy were made available in 1400-2300 on or after 21.7.1993. Against these 4 post, 4 Assistant Draftsman from the pay scale of Rs. 1200-2040/- were promoted as Draftsman (1400-2300) w.e.f. 13.8.1993. As the applicant has been already retired on 31.5.1993 as such he cannot be promoted from 13.8.1993 accordingly the said order dated 11.8.1995 has been correctly passed by the competent authority.

6. The claim of the applicant is that his case is covered under the provisions of para 11 of the restructuring order dated 27-01-1993.

7. Now, what is the purpose of inserting para 11 Can it be rendered otiose which would be the case in case the contention of the respondents is accepted? Para 11 does mean that when the scheme for restructuring is effective from 01-03-1993 but due to certain administrative reasons, the same could not be implemented but effected after the scheduled date and meanwhile between 01-03-1993 till the date of effecting the restructuring order there happened to be certain superannuation of certain employees, such employees should not be made to lose their legitimate benefits of restructuring. In other words, had the scheme been implemented as on 01-03-1993, such employees would have certainly been the beneficiaries of the scheme. Since the delay in implementation is not due to the fault of such retired employees, they should not be made to suffer. It is trite law that no one should be permitted to encash his own mistake or lapse and no one should be made to suffer for no fault of his. See **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein it has been held "The mistake or delay on the part of the department

should not be permitted to recoil on the appellants."

8. It is not the case of the respondents that the applicant was not senior enough to be placed in the higher grade of Rs 1,400 - 2300/- All that they contend is that since the applicant had superannuated, he is not entitled to any benefits. Here exactly is the error committed by the respondents. Rather, since the applicant retired after 01-03-1993 and before the implementation of the restructuring, he becomes entitled to the benefit as conferred under para 11 of the restructuring order.

9. Hence, the OA is allowed. The respondents are directed to place the applicant in the scale of Rs. 1400-2300 as on 01-03-1993 and work out the average emoluments for as per law for the purpose of working out the terminal benefits, such as pension, family pension, gratuity, leave encashment etc., and pay the difference arising out of the same to the applicant. This drill shall be accomplished within a period of five months from the date of communication of this order. No cost.


MEMBER-A


MEMBER-J

GIRISH/-