

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1575 of 2001.

Allahabad this the 06 day of October 2004.

Hon'ble Mr. A.K. Bhatnagar, Member-J.
Hon'ble Mr. S.C. Chaube, Member-A.

B.R. Tripathi
aged about 60 years
S/o Late Shri Raghav Ram Tripathi,
R/o Village & Post- Sarhari,
District- Gorakhpur.

.....Applicant.

(By Advocate : Sri Rakesh Verma)

Versus.

1. Union of India through the
General Manager N.E.R. Gorakhpur.
2. The General Manager,
Northern Eastern Railway,
Gorakhpur.
3. The Chief Personnel Officer,
North Eastern Railway,
Gorakhpur.

.....Respondents.

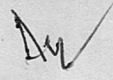
(By Advocate : Sri Anil Kumar)

O R D E R

(By Hon'ble Mr. A.K. Bhatnagar, J.M.)

By this O.A., the applicant has prayed for following
relief(s):

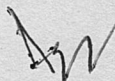
- "(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order passed by the respondent No.2 as communicated to the petitioner vide letter dated 26.02.2001 issued by the Chief Workshop Manager (P), North Eastern Railway, Gorakhpur denying the promotion/benefit of upgradation in the parent cadre with effect from 01.01.1984 placing at par with Shri P.N. Bhatt (Annexure A-1).
- (ii) To issue a writ, order or direction in the nature of Mandamus directing the respondent No.2 to accord benefit of upgradation with effect from 1.1.1984 placing him at par with Shri P.N. Bhatt under the upgradation scheme with all consequential benefits thereof within the period as may be stipulated by this Hon'ble Tribunal.
- (iii)



(iv)

2. The brief facts giving rise to this O.A. as per applicant are that the applicant was initially appointed as Trade Apprentice on 15.11.1951. He was posted as Fitter with effect from 15.11.1956 in regular and substantive capacity and thereafter was posted as Rate Fixer Mistry in the Production Control Organisation which was admittedly an ex-cadre post. While working in the Production Control Organisation, the applicant's lien and seniority was retained in the parent cadre (Workshop) for his further career advancement and promotion. He was promoted as Chargeman w.e.f. 01.12.1974 while working in Production Control Organisation under the upgradation scheme of the post, in the parent cadre, in the pay scale of Rs.425-700 by giving benefit of the aforesaid pay scale retrospectively w.e.f. 01.12.1974 i.e., the date when he was posted as Rate Fixer Mistry in grade of Rs.330-480. In the year 1984, there was upgradation of the cadre and the posts of Chargeman were upgraded in the pay scale of Rs.550-750 (Chargeman 'B') and Rs.700-900 (Chargeman 'A') w.e.f. 01.01.1984 in the parent department i.e. Workshop, Gorakhpur.

3. While persons junior to the applicant were given the benefit of the above upgradation by giving them the aforesaid higher pay scale with effect from 01.01.1984 in the parent cadre but since the applicant was working in the Production Control Organisation, he was not granted the above benefit and being aggrieved thereby, he filed a Civil Suit No.851/1984 before the Court of Munsif XIII, Gorakhpur which was dismissed against which the applicant filed appeal before District Judge, Gorakhpur, which was subsequently transferred to this Tribunal and was listed as T.A. No.1166/1986, Janardan Singh & Others Vs. Union of India & others in which the applicant is



xxx one of the appellants, which too was dismissed by this Tribunal vide judgment dated 15.04.1988. The above case was dismissed relying upon an affidavit filed by the respondents stating therein that nowhere juniors to the applicant was promoted in his parent department i.e. workshop and the applicant could not controvert the same as he was not having seniority list of his parent department, which he could get subsequently by which it was revealed that earlier the name of the applicant was omitted in the seniority list on account of which the applicant was over-looked for promotion under the upgradation scheme in the pay scale of Rs.550-750 and Rs.700-900. Subsequently his seniority list was revised on 16.07.1991 in which the name of the applicant was included and it was mentioned that the service of the applicant as Chargeman was regularised with effect from 01.07.1978 in his parent cadre (Annexure A-II). ~~It is claimed~~ ^{that that one Sri} P.N. Bhatt, who was regularised as Chargeman 'B' w.e.f. 02.11.1983 under the upgradation scheme ^{was junior to applicant.} It is claimed by the applicant that the person junior to the applicant was promoted and given the benefit of upgradation w.e.f. 01.01.984 ignoring the claim of the applicant. The applicant filed a Review Application No. 63-B-T/88 T.A. No.1166/1986 which was also dismissed with the following observation: -


"The subsequent developments cannot be taken note of reversing the judgment which has given earlier. If some subsequent act has been done it is for the applicant to approach the department and to claim the relief on this basis". (Annexure A-III)

4. In view of the above judgment, the applicant filed representation before the Department but no reply has been given. He filed O.A. No.659/1993, B.R. Tripathi Vs. Union of India before this Tribunal which was disposed of with a direction to the respondent No.2 to decide the pending representation by a reasoned order within a period

of three months from the date of a copy of the order (Annexure A-V). In compliance of the above order, respondents has passed the ~~xxxxxxx~~ order as communicated to the applicant vide letter dated 26.02.2001 which is impugned in this O.A., against which he filed this O.A.

5. Learned counsel for the applicant submitted that the applicant should have been given benefit of upgradation in the pay scale of Rs.700-900 at par with Shri P.N. Bhatt w.e.f. 01.01.1984 who is junior to the applicant of this ~~so xxx~~ the impugned order passed on 26.02.2001 is illegal. Learned counsel for the applicant further submitted that the applicant should have been given the benefit of upgradation in his parent cadre and the financial benefits should have been allowed to him when he was working in the borrowing cadre i.e. Production Control Organisation. He was entitled for upgradation with effect from 01.01.1984 and the respondents should have given the benefit of the aforesaid upgradation automatically. He further submitted that the Chargement is a non-selection post and Sri P.N. Bhatt who is junior to the applicant was called for selection and after selection, he was promoted to grade of Rs.700-900 from 07.04.1992 but the applicant was not called for the selection due to administrative errors. The applicant is entitled to get promotion to the grade of Rs.700-900 from the date his junior was promoted on 07.04.1992.

6. Resisting the claim of the applicant, respondents filed counter affidavit. Learned counsel for the respondents invited our attention on paras 4, 5, 8 and 10 of the counter affidavit and submitted that the respondent No.1 i.e., General Manager, N.E. Railway has considered the representation of the applicant dated 08.06.1992 very sympathetically as per direction of the Tribunal and same has been decided by a speaking and reasoned order



as per existing Railway Rules and there is no illegality in passing the same. Learned counsel for the respondents further submitted that the applicant wants the benefit of upgradation with effect from 01.01.1984 placing him at par with Sri P.N. Bhatt under the Upgradation Scheme with all consequential benefit. For that purpose applicant has filed a Civil Suit No.851/1984 before the Munsiff (XIII), Gorakhpur which was dismissed. Thereafter an appeal was preferred, which was transferred as T.A. No.1166/86, Janardan Singh & Ors. Vs. Union of India and the same was also dismissed by the Tribunal vide order dated 15.04.1988. A review was filed which was also decided on 26.02.1992 so the applicant has no right to further agitate the matter by means of the present O.A. It is further contended that the applicant was working as Rate Fixer Mistry in Production Control Organisation on an Ex-cadre post which was upgraded to the post of Chargeman- B in the pay scale of Rs.425-700 and the benefit of upgradation in higher grade of Chargeman-B was also provided to the applicant with retrospective effect i.e. 01.12.1974. It is further pointed out that the post of Chargeman-B in the applicant's parent cadre is a selection post for benefit of the same on regular measure, applicant had to face the selection in his parent cadre (Shop Floor) but he did not appear in the selection held for Chargeman-B as applicant was availing the benefit of certain perks and allowances in Production Control Organisation since a long time (1.12.1974). Under the circumstances the benefit which was applicable in the parent department could not be given to the applicant. The applicant was working as Chargeman-B in the Production Control Organisation and continued in the same post till his retirement on 31.08.93. It is also categorically argued that no one

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junior to the applicant was promoted to the higher grade in the P.C.O. thereafter till the retirement of the applicant. Sri P.N. Bhatta who is claimed to be junior by the applicant had never worked in the P.C.O., he was working in the Shop Floor and he was promoted as Chargeman 'B' (Rs.425-700) after qualifying the selection in his parent cadre while the applicant did not bother for qualifying the said selection as he was getting some extra perks and monetary benefits in P.C.O. It is further submitted that every incumbent working on Ex-cadre post could only be promoted, if he goes to parent cadre and face selection and suitability test etc. but applicant enjoyed the benefit of ex-cadre post w.e.f. 01.12.1974 to 31.08.1993, as such the claim of the applicant is liable to be rejected.

7. We find force in the arguments of the respondent's counsel. It is an admitted fact that the applicant filed a case before the Munsiff (XIII), Gorakhpur for the same benefit which was dismissed. He filed Civil Appeal against the judgment which was transferred as T.A. to the Tribunal which was also dismissed on 15.04.1988. Thereafter applicant filed a Review Application which was rejected on 26.02.1992 (Annexure A-3 to the O.A.) with the observation "If there is some subsequent development it is for the applicant to approach the department and to claim the relief on the basis, But the judgment passed by the Tribunal does not suffers from any error of law and there is no error apparent on the face of record". We have also gone through the impugned order dated 26.02.2001 which has been passed in compliance of the order dated 30.08.2000 in O.A. No.659/93, B.R. Tripathi Vs. Union of India and others. The order is a reasoned and very detail order which has been passed after considering and covering all the points raised by the applicant in his representation.

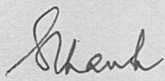
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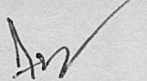
After going through this order, we find no illegality, infirmity which call for any intervention from the Tribunal.

8. Under the facts and circumstances and careful consideration of the submissions made by the learned counsel for the parties, we are of the view that the applicant has utterly failed in establishing his claim as prayed and we find no illegality in the order dated 26.02.2001 passed by respondents (Annexure A-1).

9. Accordingly, O.A. is dismissed being devoid of any merit.

No order as to costs.


Member-A.


Member-J.

Manish/-