

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 26th day of October 2004.

Original Application no. 1294 of 2001.

Hon'ble Mrs. Meera Chhibber, Member J  
Hon'ble Mrs. Roli Srivastava, Member A.

1. Ram Vishal Shukla, S/o Sri S. Shukla,  
presently Station Master, Balrajpur,  
Distt. Kanpur.
2. Jai Prakash Shriwas, S/o Sri Swami Din,  
Station Master, Gursahai Ganj,  
N.E. Railway,  
Kannauj.

... Applicants

By Adv : Sri G.C. Geharana

V E R S U S

1. Union of India through General Manager,  
N.E. Rly., Gorakhpur.
2. Divisional Railway Manager,  
N.E. Rly., Izzatnagar,  
Bareilly.
3. Divisional Railway Manager (Personnel),  
N.E. Rly., Izzatnagar,  
Bareilly.

... Respondents

By Adv : Sri Anil Kumar

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ORDER

By Mrs. Roli Srivastava, AM

By this OA the applicants have challenged the decision of the Divisional Railway Manager (Personnel) मंडल रेल प्रबंधक (क) (D.R.M. (P)), Izzatnagar, Bareilly conveyed to them through letter no. १०६ पत्राचार/ क्र० पी० क्र० ०३. ०१. २००१ द्य० ज००/ स्वेच्छा प्रक्रिया/ भास्त्र dated ०३. ०१. २००१ rejecting the claim of the applicants for all the benefits of promotion w.e.f. 11.4.1996 and reiterating their earlier stand that the benefits have correctly been given w.e.f. 13.3.2000. The applicants have also challenged office order no. 2556 dated 04.07.2000 of the D.R.M. (P), Izzatnagar, Bareilly to the extent it denies the benefit of pay before 13.3.2000. The applicants have claimed that all the promotional benefits should have been extended to them w.e.f. 11.04.1996, the date from which the benefits of promotion have been given to the other candidates who had cleared the requisite qualifying examination alongwith them. Accordingly, their pay should have been fixed at par with them. They have, therefore, prayed for the following reliefs :-

- i. to quash the impugned order dated 04.07.2000 to the extent it denies the benefit of difference of pay before 13.3.2000.
- ii. to issue an order in the nature of mandamus directing the respondents to pay the difference of salary in the grade between <sup>Rs</sup> 6500-10500 and Rs. 5500-9000 with effect from 11.4.1996 since when their juniors were paid.
- iii. to issue directions to the respondents to pay the consequential benefits of dearness allowance, overtime allowance, night duty allowance, travelling allowance, national holiday allowance which are admissible on the basis of grade of Rs 6500-10500 w.e.f. 11.4.1996.

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2. The facts in brief are that the applicant no. 1 joined service in the Railway Administration in 1987, and after serving in various capacities in Izzatnagar Division of N.E. Rly., was selected in May 1992 for training of Traffic Apprentice. Applicant no. 2 was selected through the Railway Service Commission for the post of Assistant Station Master (ASM) in the year 1987 and was also selected for training of Traffic Apprentice in May 1992. During the training period both the applicants were given the pay scale of Rs. 1600-2660 viz the scale of pay admissible to Station Masters. After completion of training in the year 1994 and declaration of training results in the year 1995 applicant no. 2 was posted as Station Master, Jasoda Railway Station on Kanpur-Fatehgarh Section and applicant no. 1 was posted as Station Master under N.E. Rly., Izzatnagar Division. They were given the pay scale of Rs 1600-2660 (revised to Rs 5500-9000). Consequent to restructuring, 22 posts of Station Masters were declared in the pay scale of Rs 2000-3200 and vide letter no. २५४/स्टेमा/परि/।। dated 31.5.1995 options were called from candidates to appear in a written examinations for the purpose. The names of the applicants appeared senioritywise in the list of candidates annexed to the said letter dated 31.5.1995 at sl nos 7 & 5 respectively. On successfully passing the written examination held on 17.06.1995 they appeared in the oral interview held on 20.12.1995. However, neither the result of the same were communicated to them nor any panel declared containing their names. They also did not receive any promotion orders. They, therefore, moved petitions to the D.R.M.(P), N.E. Railway, Izzatnagar. These were received in his office on 20.06.1997. In the said petitions they requested that they should be empanelled and promoted in the pay scale of Rs. 2000-3200 (revised to Rs. 6500-10500). The applicants vide Railway Administration's reply dated

28.6.1997, were informed that guidelines regarding the filling up of newly created posts of A.S.M. in the pay scale of Rs. 1600-2660, under the restructuring done on 01.03.1993, was awaited from headquarters. Hence, the selection made in 1995 for Station Masters in the pay scale of Rs. 2000-3200 has partially been kept pending. The applicants again represented on 31.10.1997 for expediting the matter.

Subsequently on their representations the applicants received a letter dated 14.12.1999 in which their names were declared for promotion for the post of Station Master in the pay scale of Rs. 6500-10500. Seniority position of the applicants was restored at sl nos. 5 & 3 respectively, as per merit, in the original panel of successful candidates which had been declared vide letter no. प्रसंका/२५४/८३/५ dated 01.02.1996 and notification on 09.09.1996. Vide order no. 2302 dated 13.3.2000 the applicants were posted as Station Masters in the pay scale of Rs. 6500-10500 and their initial pay was fixed at Rs. 6700/- as on 13.3.2000. Against the aforesaid fixation of initial pay of Rs. 6700/- the applicants again made representation on 31.3.2000 requesting fixation of pay of Rs. 7300/- as on February 2000. Vide office order no. 2556 dated 4.7.2000 the pay fixation was rectified but the actual benefits of regular promotion were given w.e.f. 13.3.2000 on which date the pay of the applicants was fixed at Rs 7100/- and as on 1.4.2004 at Rs. 7300/-. The applicants, therefore, made a representation dated 3.10.2000 stating that difference in pay has been given only from 13.3.2000 and that all the actual benefits of promotion should be given w.e.f. 11.4.1996, the date from which the benefits of promotion have been given to other candidates of the same selected panel. This claim was rejected vide Railway Administration's letter no. १०६/पत्रिकार/कै.पी.कौ.ख.७०/स्टेशन प्रबंधक/मास्टर/सॉडनर रेलवे

dated 03.01.2001 in which the earlier approval/reiterated. <sup>was</sup>

Aggrieved by the same the applicants have approached this Tribunal.

3. The submissions made by the applicants in this regard is that immediately on successful completion of training of Traffic Apprentice the applicants were posted as Station Masters in the pay scale of Rs 1600-2660. During the training period itself, which commenced in November 1992, they were given theforesaid pay scale. They were posted as Station Masters at Vilaspur Railway Station between Kathgodam-Rampur section and Jasoda Railway Station between Kanpur-Fatehgarh section respectively. They functioned continuously as such thereby rendering actual services as Station Masters. These facts were very much in the knowledge of the Railway Administration. The accompanying list to letter no. २५४/स्टेसा/धर्म/११ dated 31.5.1995 calling for options for appearing in the written examination to be held on 17.6.2005 for selection of Station Masters in the scale of Rs. 2000-3200 after restructuring, contained the names of the applicants at sl no. 7 & 5 respectively, also described/showed them posted as "STATION MASTERS" in the order of their seniority. They also cleared the written examination as well as the oral interview successfully for the post of Station Masters in the pay scale of Rs. 2000-3200.

3.1 In their representation, also made to the D.R.M. (P), which had been received in his office on 20.06.1997, they had requested him to declare the promotion panel of the applicants and promote them in the pay scale of Rs. 2000-3200 as they had fulfilled all the criteria viz they had been given the pay scale of Rs 1600-2660 since 1992 during their training as Traffic Apprentice : had been functioning

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continuously as Station Masters thereafter; this fact had been recognised in this list circulated alongwith letter dated 31.05.1995 wherein their seniority had been shown at sl nos 7 & 5 and they had been described as Station Masters; they had successfully passed the written examination held on 17.6.1995 and oral interview held thereafter for the said pay scale alongwith the other candidates. The applicants further contended that in respect of these candidates the panel had been declared on 01.02.1996 but they had been given the benefit of promotion thereafter. The reason given for rejecting their earlier representation viz :

"in absence of any guidelines for the post of Assistant Station Masters, created under restructuring, the decision of declaration of partial panel is pending."

was not at all applicable to them as they were already functioning as Station Masters.

3.2 The applicants further submitted that on consideration of these factors the Railway Administration declared their names for promotion to the post of Station Masters in the pay scale of Rs 2000-3200 and also restored the seniority position in the original panel declared on 01.02.1996 and also made their pay fixation w.e.f. 1.2.1996 but did not fix the pay at Rs 7300/- in February 2000 which denied them the regular promotion and actual benefits should have been extended w.e.f. 11.4.1996, the date from which the benefit have been given to other candidates of the same panel. They furthr contended that they had been fucntioning continuously as Station Masters and promotion to the higher scale had been delayed due to no lapse on their part.

4. The respondents, however, contended that the claim of actual benefits w.e.f. 11.4.1996 have rightly been rejected as the applicants had not been promoted in their due turn and

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under rules if an employee has not been promoted in his due turn, due to administrative reasons like dispute of fixing the seniority etc the employees can only be allowed proforma promotion, fixation of pay but cannot be allowed actual payment. "The administrative reasons" stated by the respondents is that in the mid of selection,

"recognised Railway Union interrupted for the seniority of applicants. As the matter of seniority of Traffic Apprentice was the matter of rules, hence the case was referred to the Headquarters office, selection was finalised and panel of 18 candidates was declared, rest of the posts were kept vacant till the finalisation of the seniority. In the year 1999, after the direction of the Headquarters, the seniority of the applicant was finalised and as such names of the applicants alongwith one more candidate was included in the previous panel dated 31.1.1996."

5. We have carefully perused the pleadings of the parties and have heard the arguments of the learned counsel for the parties.

6. There is no dispute about the facts that both the applicants were selected as Traffic Apprentices in the year 1992 and successfully completed their training after two years. Admittedly, as per relevant rules <sup>the 1/2</sup> as Traffic Apprentices who were declared passed could be posted as per merit in any of the categories, such as Traffic Inspectors in the pay scale of Rs. 1600-2660, Station Master in the pay scale of Rs. 1600-2660, as Assistant Yard Master in the pay scale of Rs. 1600-2660, controller Rs. 1400-2300. It is also not disputed that in the year 1995 the applicants were posted on the post and duties of Station Master in the pay scale of Rs. 1600-2660 and that they have actually rendered the services of Station Masters. The contention of the respondents contended

in para 1 (iv) of the counter affidavit that "Some persons" of the ASM cadre in the pay scale of Rs 1400-2300 were promoted in the existing cadre of ASM in the pay scale of Rs. 1600-2660 w.e.f. 01.03.1993 under restructuring is not convincing enough as "administrative reasons" in the context of applicants who were admittedly already posted as Station Masters. The other contention of the respondents in para 3 (vi) of the counter affidavit is that

"in mid of selection recognised Railway Union interrupted for seniority of applicants and as the matter of seniority was the matter of rules hence the case was referred to Headquarters." and therefore the delay was on account of "administrative actual benefits reasons" due to which /are not permissible under rules. Referral of the matter to the Headquarters on the basis of "interruption" by Railway Union, thereby leading to delay in "due turn" of promotion of applicants in our opinion is not sufficient reasons for attributing reasons for delay on account of the applicants, thereby denying them actual benefits for the same, as for the last 2 years the applicants had been posted as Station Masters in the pay scale of Rs. 1600-2660 and the seniority position had been reflected at sl no. 7 & 5 of the list circulated in the letter dated 31.1.1995 itself. Moreover, while replying to applicants under reply dated 28.10.1997, in response to their petition received on 20.06.1997, contrary reasons had been advanced for declaring only partial panel.

7. The respondents have also relied on the judgment of Hon'ble High Court of Judicature, Allahabad contained in the case of Charan Singh & Ors Vs. Union of India & others, 2002 (4) ESI (All) 273 wherein principles with regard to payment of arrears of salary as upheld by Hon'ble Supreme Court in the case of Paluru Ramkrishnaiah & Ors Vs. Union

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of India & Others, AIR 1990 SC 166 have been followed viz:

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted."

8. The applicants have relied on the judgment of Hon'ble Supreme Court in case of Narayan Yashwant Gora Vs Union of India & Others 1995 (71) FLR 478, wherein it has been held that in case of an applicant claiming same benefits as was granted to persons similarly situated benefit should be deemed to have been granted as such from the same date.

9. The very fact that the Department has given them proforma promotion w.e.f. 11.4.1996 shows that the respondents concede the fact that the applicants were eligible to be promoted with effect from that date. They had also passed the examination held for selection of Station Masters in the pay scale of Rs 2000-3200. The declaration of results in so far as the applicants are concerned was withheld for no fault of theirs. Subsequently the results and the panel were given effect to retrospectively by giving proforma promotion to the applicants w.e.f. 11.4.1996. It is also not disputed that the applicants have been working as Station Masters from much before this date. Since the applicants have been actually working and discharging the same duties attached to the post of Station Master as those in the grade of Rs. 2000-3200 they are entitled to regular promotion with effect from that date. Even in terms of the judgment of the Hon'ble High Court of Judicature of Allahabad in para 7 above, since they have actually been functioning as Station Masters, they can rightfully claim the scale of the post viz Rs 6500-10500 as

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they rendered actual service and not notional service .

10. In view of the aforesaid discussion the OA is allowed. The impugned order dated 4.7.2000 is quashed to the extent it denies the regular promotion and the actual benefits of difference of pay before 13.3.2000. The respondents are, therefore, directed to pay the difference of salary to the applicants in the grade of Rs.6500-10500/- and Rs.5500-9000/- w.e.f. 11.4.1996 since when their juniors were paid within a period of three months from the date of receipt of a copy of this judgment.

11. There shall be no order as to costs.

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Member A

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Member J

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