

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

(THIS THE 20th DAY OF May 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr.D.C.Lakha, Member (A)

Original Application No. 1165 of 2004
(U/s 19 Administrative Tribunal Act, 1985)

Udai Pratap aged about 46 years
Son of Shri Bhuteli, working as
Traffic Inspector, North Eastern
Railway, Varanasi Division,
R/O AT-Bharauli Bazar,
Sugar Mill Road,
District Deoria.

.....Applicant

Present for Applicant: Shri Sudama Ram, Advocate

Versus

1. Union of India through General Manager,
North Eastern Railway, Headquarter's
Office, Gorakhpur.
2. General Manager, North Eastern Railway
Headquarter Gorakhpur.
3. Chief Personnel Officer,
North eastern Railway,
Gorakhpur.
4. Chief Personnel Officer (Admn),
North Eastern Railway,
Gorakhpur.
5. Divisional Railway Manager,
North Eastern Railway,
Varanasi.
6. Secretary (Estt) RES Railway Board
Through Executive Director (E) RES
Railway Board, Rail Bhawan,
New Delhi.
7. Shri A.K. Mishra,
Traffic Inspector/CTC/
North Eastern Railway
(Varanasi Division),
Gorakhpur.

.....Respondents

 Present for Respondents: Shri K.P. Singh, Advocate

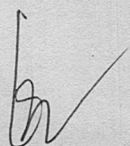
ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

The case of the Applicant: The applicant joined as Train Controller on 30.5.1989 and was transferred to perform duty as Train Controller at Gorakhpur on 21.7.1990. He was the lone reserved in the cadre of Traffic Controller. Respondent No.5 did not implement the roster point in Traffic Inspector Cadre and discriminated the applicant from getting higher grade promotions which were due to him on reserved roster point.

2. Order for re-structuring was issued dated 27.1.1993 effective from 1.3.1993. The applicant was posted as Train Controller in the higher grade and he joined on 21.8.1993 but was not given his due promotions as Traffic Inspector Grade 1600-2660 under the cadre re-structuring with effect from 1.3.1993. Hence, he represented for his promotion as Train Controller Grade Rs.2000-3200.

3. The applicant was again transferred and posted as Traffic Inspector on 22.3.1994. By an Office Order dated 12.4.1994 the Divisional Railway Manager (P) Varanasi posted the applicant as Traffic Inspector in the pay scale of Rs.1600-2660 and his pay was also fixed @ Rs.1750/- per month. It was also ordered that promotion of the applicant was due with effect from 1.3.1993. The pay of the applicant was fixed @ Rs.1850/- p.m on 1.1.1997 as Traffic Inspector in Grade Rs.1600-2660. vide office order dated 14.8.1997. (By this time a few general candidates were given their promotions in grade Rs.2000-3200 vide office order dated



14.8.1997. (By this time a few general candidates were given their promotions in grade Rs.2000-3200 vide office order dated 12.4.1994 on ad hoc basis subject to final out come of the Hon'ble Supreme Court's judgment.) The applicant's request for promotion to the grade of Rs 2000 - 3200 against the reserved vacancy was not acceded to by the respondents.

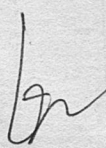
Rather, the applicant was called to appear in the suitability test by holding written examination for the post of Traffic Inspector Grade Rs.1600-2660/5500-9000 by DRM (P), Varanasi vide his letter dated 12.3.1999. On 18.3.1999 and 9.6.1999 the applicant represented to Sr.DOM/N.E.Railway/Varanasi, against the aforesaid direction of the DRM on the ground that the applicant had already been promoted in the pay scale of Rs.1600-2660/5500-9000 with effect from 1.3.1993 under the modified procedure of selection vide Office Order dated 12.4.1994.

5. According to the applicant, decision in M. Bhaskar's case resulted in availability of six vacancies in the grade of Traffic Inspectors on account of reversion of some Traffic Apprentices and the applicant was due to be promoted as Traffic Inspector in Grade Rs.1600-2660/5500-9000 (RSRP) much earlier to 1.3.1993 against the reserved roster point; however, the promotion of the applicant was made against the up-graded posts under re-structuring of the cadre w.e.f. 1.3.1993 and not as a consequence to the judgment of the Hon'ble Supreme Court. Thus, according to the applicant, he is not affected by the judgment of the Hon'ble Supreme Court but despite vacancies remaining to be filled in even against the

roster reserved points for SC/ST candidates, the applicant was reverted on the false plea of non existence of vacancies which was totally wrong and contrary to the Rules contained in Railway Board's circular circulated vide their letter No. 82-E (SCT) 15/5 dated 25.5.1982. The applicant was reverted to the lower grade arbitrarily without show cause notice despite the fact that vacancies were existing in the cadre and there was no justification to revert the applicant without giving opportunity of show cause notice.

6. As per Railway Board's policy if a Railway servant has been promoted even on ad-hoc basis and he has worked satisfactorily for more than 18 months, he cannot be reverted without invoking the provisions under the Discipline and Appeal Rules 1968. Besides it, the applicant should have been promoted in higher grade Rs.2000-3200 in terms of Para 228 and 316 of the IREM-Vol-1 in respect of his junior persons already promoted in higher grade ignoring the applicant.

7. The applicant represented vide his representation dated 23.7.1999 and Chief Personnel Officer, N.E.Railway, Gorakhpur vide his letter dated 7.9.1999 finally decided the matter against the order of DRM(P), and passed the orders that since the applicant after having been found suitable, had worked for more than 4 years and 8 months, there is no need to appear in the suitability test for promotion on the same grade. The Divisional Railway Manager (P), Varanasi passed orders vide his letter dated 8.3.2000 and office order dated 20.4.2000 in disobedience of the orders dated 7.9.1999 passed by Chief Personnel Officer, Gorakhpur. The



orders passed by the so-called competent authority vide letter dated 8.3.2000 was illegal, without jurisdiction, contrary to the rules as well as was an act of sheer insubordination. Review of ACRs for the above said promotion was not required as he was promoted in Grade Rs.1600-2660 w.e.f. 1.3.1993.

8. On 5.4.2000, against the decision of the DRM (P), N.E.Railway, Varanasi, dated 8.3.2000, General manager (P), N.E.Railway, Gorakhpur communicated the decision of the Chief Personnel Officer as well as Chief Operating Manager, vide letter dated 5.4.2000 communicated to DRM (P), N.E.Railway, Varanasi in which it was stressed by the CPO again that his order was clear and any change in that order was not in accordance with the rules. It was further observed by the CPO that the action of the Division was prejudicial and malafide. In view of the orders of the Chief Personnel Officer and Chief Operating Manager, the order passed by the DRM (P)/Varanasi dated 8.3.2000 became void and nullity. However, the General Manager (P) N.E.Railway, vide his letter dated 30.6.2000 again passed orders over-ruling the decisions of the C.P.O, N.E.Railway, Gorakhpur dated 20.4.2000. On 7.8.2000, the applicant represented to the General Manager (P), N.E.Railway, Gorakhpur. When no response was forthcoming, the applicant again represented to the General Manager, N.E.Railway, Gorakhpur dated 3.1.2002. The applicant came to know that the decision taken by the CPO/Administration vide his letter dated 7.5.2002 as well as 22.6.2004 was taken by feeding wrong information on the record of the file as well as concealing the facts of the case of the applicant on which earlier decisions of the CPO were communicated to the applicant.

9. According to the applicant, the order passed vide letter dated 7.5.2002 is non speaking, cryptic and without recording any reasons. It was not even mentioned as to why the orders passed earlier by the Chief Personnel Officer, N.E.Railway, Gorakhpur vide his letters dated 7.9.1999, 5.4.2000 and 30.6.2000 in accordance with the rules and communicated to the Respondent No.5 were not implemented by him since Sept. 1999 and in which manner the above said orders passed, were wrong and illegal. The applicant is entitled to get the benefits of the statutory provisions contained in paras 228 and 316 of the Indian Railway Establishment Manual Vol-1 (1989 ed) for his due higher promotions with all consequential benefits including arrears of pay, seniority from his due date of promotions in respect of Shri A.K. Mishra and others and 12% interest on delayed payment on arrears as due promotions of the applicant have been denied due to administrative lapse and arbitrariness.

10. Counsel for the respondent states that the present original application is not within the period of limitation as prescribed under Section 21 of Administrative Tribunal Act, 1985. Applicant was deputed as temporary controller under CTC/Gorakhpur. He was finally posted Assistant Station Master in pay scale of Rs.1400-2300 at Chhapra station. As per request of the applicant vide letter dated 17.5.1990 and vide office order No.186 endorsement ka/pari/210/11 T.C dated 17.5.1990 of Divisional Rail Manager (P), N.E./ Railway, Varanasi applicant was posted as Traffic Inspector in the grade of Rs.1400-2300. As per the judgment given by the Hon'ble Supreme Court, the promotion of

Traffic Inspector in the grade of Rs.1600-2660 was cancelled vide office order No.ka/pari/220/11/Tra.Ins./Bhag-2 dated 14.8.1997 and applicant's pay scale was regularized in the grade of Rs.1400-2300. The applicant was not promoted without seeing the roster point. Before the Hon'ble Supreme Court against the regularization of Traffic Inspector SLP was filed in the name of Sri Jai Prakash & Others Vs. union of India 7 Others. As per the judgment of Hon'ble Supreme Court in the said SLP seniors as well as applicant's promotion was cancelled vide office order No.230/96 dated 14.8.997. There is provision to fill the post of Traffic Inspector in the grade of Rs.1600-2660/5500-9000 under the seniority cum suitability as per A.V.C and accordingly applicant was called for seniority cum suitability. Application of the applicant dated 18.3.1999 was received in the office of DRM, vide General Manager (P) Gorakhpur letter No. K/210/4/1TI/Bhag-1/Bhag-6 (Dupli) dated 24.6.1999. The reply of the same was apprised to the Headquarter stating there in that seniors to the applicant have already been reverted in the pay scale of Rs.1400-2300 and applicant was junior most amongst the reverted employee as such applicant was also reverted as per rules. The applicant did not appear in the absentee examination held on 03.05.1999. In the said suitability examination total 5 employees of general category were promoted and 1 post could not be filled due to one employee was absent.

11. It was further contended that vide General Manager (P), Gorakhpur, letter No. ka/210/4/1/T1/Bhag-1/VI dated 07.9.1999 Direction was received to promote the applicant in the grade of Rs.1600-2660/5500-9000 without suitability test but as Major

DAR proceeding was pending against the applicant and Competent Authority has passed order that after seeing the confidential report of applicant of three years applicant is not fit to be promoted. Due to this applicant was not given benefit of promotion in the pay scale of Rs.1600-2660/5500-9000. The applicant was given benefit w.e.f. 18.4.1999 in comparison to his junior Shri Rajan Prasad & others and actual benefit w.e.f. 20.4.2000. The contents of para 4.10 of the OA are not correct hence denied. In reply it is submitted that because three senior employees were reverted in the lower pay scale so applicant was also reverted. The headquarter has also directed to promote the applicant in the pay scale of Rs. 5500-9000 without going into suitability test but as the Competent Authority has not found fit to be promoted after going through 3 years of confidential report, so the applicant was not considered for promotion. The applicant was given benefit of promotion as compare to his junior, promotion benefit w.e.f. 18.5.1999 and actual benefit w.e.f 20.4.2000.

12. The fact that the applicant had requested to be posted as Traffic Inspector for which he was selected had been admitted by the respondents and also the post of Traffic Inspector Grade Rs.1400-2300 underwent an upward revision after change of category in the administrative interest as per order of Station Supdt./Chhappa Kutchery dated 7.6.1990 (Annexure A-7). However, the contention that the promotion of Traffic Inspector in the grade Rs.1600-2660 was cancelled vide office order dated 14.8.1997 and applicant's pay was regularized in the grade of Rs.1400-2300 and that the applicant was not promoted without seeing the roster point, is totally wrong and misleading.

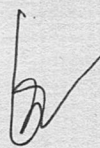
13. In this regard the applicant has stated as under:-

“The applicant was not a party to the court case filed in name of Jai Prakash and others Vs. Union of India and Others in which promotion of the applicant was cancelled in SLP. Name of the applicant was arbitrarily included in the office order No.230/1996 dated 14.8.1997 cancelling his promotion order issued vide office order no.86 dated 12.4.1994 which was done under re-structuring of cadre whereas he was due earlier for promotion to the post of Traffic Inspector Grade Rs.100-2660 in 1991 against existing vacancies in higher grades prior to 1.1.1993 on roster point as there was no Traffic Inspector of SC/ST community working in higher grade i.e. in whole cadre of Traffic Inspectors GradeRs.1600-2660/5500-9000 and Traffic Inspector Grade Rs.2000-3200/6500-10500.”

14. As regard to the private respondent No.7, Ashok Kumart Mishra, he had joined as Traffic Apprentice Grade Rs.1400-2300 after selection from RRB after undergoing the training course with the applicant on the same date i.e.7.8.1985 at Zonal training School, Muzaffarpur and after passing the training course, he joined Varanasi Division and posted as Traffic Inspector Grade Rs.1400-2300/5000-8000 on 3.10.1988. Shri A.K. Mishra was further given ad-hoc promotion s Traffic Inspector Grade Rs.1600-2660/5500-9000 on 4.11.1991 and again he was given promotion in higher grade Rs.2000-3200/6500-10500 on 1.3.1993 and Traffic Inspector Grade Rs. 7400-11500 on 15.6.2004 w.e.f. 1.11.2003 under restructuring cadre vide Notification dated 15.10.2004. It is surprising that the judgment of the Hon'ble Supreme court was not applied on him and he was given one promotion after another but the applicant being the only one scheduled caste candidate in the whole cadre of the Traffic Inspector was snot given his due promotion on roster point and it was falsely stated that the roster point was seen at the time of promotion. The principle applied in case of the applicant with

regard to reversion was not applied in case of Shri A.K. Mishra. Not only this, as a revengeful attitude, applicant was reverted to lower grade though he was not affected by the judgment of the Hon'ble Supreme Court in SLP. Moreover, applicant was entitled for similar benefits of promotion along with Shri A.K. Mishra Traffic Inspector Grade Rs.7400-11500 , if not given earlier promotion on roster point as the applicant was the only Traffic Inspector belonging to SC/ST communities. Respondents vide impugned order 22.6.2004 (Annexure A-2) have held that the reversion order of the applicant done vide order dated 14.8.1987 (Annexure A-9) is under the Rules and applicant is not even promoted in Traffic Inspector Grade Rs.1600-2660 either vacant posts on roster point since 1989 or under restructuring. No adverse ACR has been communicated to the applicant in order to debar him for any promotion by modified procedure of selection. There is an open discrimination of the applicant in respect of Shri A.K. Mishra as the applicant is entitled for preferential right in his promotions on roster point earlier to Shri A.K. Mishra Traffic Apprentice but the respondents discriminated the applicant in an arbitrary manner on the face of record. Reversion of the applicant was wrongly done as he was never given any benefit of pay scale of Rs.1600-2660 as per circular of the Railway Board dated 15.5.1987. There is no question of holding suitability test in 1999 for Traffic Inspector Grade Rsa.1600-2660 as he was already promoted in this grade w.e.f. 1.3.1993.

On a direction to the respondents, the roster register had also been

 made available.

15. Arguments were heard and documents perused. The following are to be adjudicated:

- (a) Whether the applicant's promotion to the grade of 1600 - 2660 was under the restructuring scheme whereby instead of normal selection procedure modified selection procedure had been adopted; if it is not under restructuring scheme, whether the rule that ad hoc promotees with more than 18 months experience is normally selected without much of rigours of the examination etc., is to be pressed into service.
- (b) Whether the applicant is entitled to further promotion to the grade of Rs 2000 - 3200 against any vacancy available for reserved candidates under the reserve points.

16. The decision in M. Bhaskar is on a different footing. Pre-1987 apprentices who were granted higher pay scale of 1600 - 2660 were not to be so given. That far and no further. In so far as the case of the applicant is concerned, his initial appointment was, no doubt during pre-1987 period and at that time, the pay scale was at Rs 1400 - 2300. By the time he was granted higher pay scale of Rs 1600 - 2660. he had put in at least four years of service after training for a few years. Thus, his pay scale was not increased on account of any of the orders of the CAT, which were upset by the Apex Court. It is pertinent to mention that restructuring took place w.e.f. 01-03-1993 consequent to which, certain posts were upgraded to Rs 1600 - 2660. It is from this date that the applicant was granted the higher grade, vide order dated 12-04-1994. This date of 01-03-1993 as the day from which


the applicant was fixed higher pay scale cannot be a mere coincidence with the date of re-structuring. **Thus, the respondents have erred in construing the promotion as one, which was to be reviewed due to the decision in Bhaskar's case.**

17. Perhaps, there could have been a possibility of reversion of the applicant to a lower scale as a matter of chain reaction. Some of the trade apprentices of pre 1987 who were granted higher pay scale and were further promoted to Rs 2000 - 3200 prior to Bhaskar judgment might have faced reversion from 2000 - 3200 to Rs 1600 - 2660 as on 01-03-1993, in which event as a chain reaction, the applicant might have to vacate his seat in the grade of Rs 1600 - 2660 to accommodate such reverted persons. If that were the case, there should have been detailed information in this regard in their order dated 14-08-1997 (Annexure A-8) or at least in their counter. Nowhere has there been a mention about the above situation and as such, **reversion of the applicant from 1600 - 2660 to Rs 1400 - 2300 without any pre notice and without any justification is therefore, bad in law.** It is thus to be declared that promotion of the applicant w.e.f. 01-03-1993 cannot be upset and he is entitled to the pay as fixed in the order dated 12-04-1994.

18. As regards his further promotion in the grade of Rs 2000 - 3200, the same depends upon the availability of vacancies in the reserved quota. In fact, his promotion is sought w.e.f. 01-03-1993, which cannot be granted for, in order to derive that promotion, first he was to be placed in the pay scale of Rs 1600 - 2660 which

itself took place only on 01-03-1993. Even if there be any vacancy due to restructuring, since at that time there was no reservation (vide the decision of the Apex Court in Sirothia, which decision had not been upset in the later decision of Pushpa Rani also) the applicant cannot derive any benefit out of upgradation save the one he had already got.

19. In view of the above, the **OA is partly allowed**. Impugned orders vide Annexure A-1 and A-2 are hereby quashed and set aside. **It is declared that the applicant was rightly placed in the higher grade of Rs 1600 - 2660 w.e.f. 01-03-1993 under restructuring scheme and he was not to sit for any examination for continuance in that post. His seniority in the said grade of Rs 1600 - 2660 would reckon from 01-03-1993 and his further promotion to the next grade of Rs 2000 - 3200 either under reserved category or otherwise as applicable to him would be based on that seniority.** Respondents shall accordingly consider his promotion reckoning his seniority in the grade of Rs 1600 - 2660 from 01-03-1993. **Needless to mention that the applicant is entitled to the arrears of pay and allowance arising out of such restoration of his placement in the grade of Rs 1600 - 2660.** As regards further promotion, if any one with comparable seniority had already been promoted, review DPC be held and subject to the applicant's being found suitable, his promotion in the higher grade of Rs 2000 - 3200 be made effective from the date his immediate junior had been promoted. Such a promotion would be notional from the date the junior had been promoted and actual from the date the applicant holds the higher responsibility. In case due to such promotion, any other



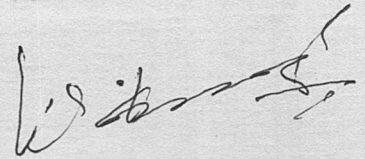
individual had to be reverted, attempt should be made to avoid such reversion by creation of supernumerary post. Driven to wall, if such a reversion of any of the individuals becomes necessary, the same should be done after due notice and in accordance with law.

20. This order shall be complied with, within a period of six months from the date of communication of this order.

No cost.



Member (A)



Member (J)

Uv/