

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1140 of 2005

Wednesday, this the 29th day of November 2006

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. M. Jayaraman, Member (A)**

1. Laliteshwar Prasad Singh, Aged about 50 years, son of Late Ram Japu Prasad Singh, Resident of 1205-C European Colony, EC Railway, Mughalsarai, District Chandauli.
2. Abdul Gaffar Khan, Sandhu Aged about 49 years, son of Sri Gulam Mohd. Khan, Resident of 886 European Colony, EC Railway, Mughalsarai, District Chandauli.
3. Ramashish Prasad, Aged about 50 years, Son of Late Bishram Mistry, Resident of 938-AB, Shastri Colony, EC Railway, Mughalsarai, District Chandauli.
4. Janardan Prasad Singh, Aged about 48 years, Son of Sri Thakur Prasad Singh, Resident of Quarter No. 873-AB, Shastri Colony, EC Railway, Mughalsarai, District Chandauli.

All the applicants are working as Senior Section Engineer of TRS EC Railway Mughalsarai, District Chandauli.

Applicants

By Advocate Shri S.K. Mishra

Versus

1. Union of India, Ministry of Railways, Through the General Manager, East Central Railway, Hajipur, Bihar.
2. The Chief Personnel Officer, East Central Railway, Hajipur, Bihar.
3. The Senior Divisional Electrical Engineer (TRS), East Central Railway, Mughalsarai, District Chandauli.

Respondents

By Advocate Shri B.P. Singh



ORDER

By M. Jayaraman, Member (A)

Heard, Shri S.K. Mishra, Counsel for the applicants.
None for the respondents.

2. The applicants through this O.A. has prayed to set aside the Order dated July 2005 passed by the Chief Personnel Officer, ECR/HJP (annexure-1) and to direct the respondents to treat the applicants having been appointed in the scale of Rs.700-900 since the date of their initial appointment. It has been further prayed to direct the respondents to give the applicants all consequential benefits alongwith 24% interest per annum according to law laid down by the Hon'ble Supreme Court in Civil Appeal No. 6609 of 1997 Rasheed Khan Vs. Union of India (dated 11.12.2003).

3. The brief facts giving rise to this O.A. are that on 07.08.1983, the Railway Service Commission, Patna invited applications for selection to the post of Assistant Electrical Foreman in the pay scale of Rs.550-750/-(RS). The applicants appeared in viva voce test held in between 23rd to 25th April 1984. On 22.12.1984 the applicants were sent for training as Apprentice Assistant Electrical Foreman for a period of one year. The applicants have successfully completed their apprentice training and got their posting order issued by Divisional Railway Manager, East Central Railway, Mughalsarai. It is stated by the applicants that on 01.05.1984 restructuring of certain Group "C" cadre posts took place and the post of Assistant Electrical Foreman was upgraded in the pay scale of Rs.700-900. Since the applicants were being paid in the pay scale of Rs.550-750/-, they made representations to the concerned authorities for the higher pay scale of Rs.700-900/-. The case of the applicants



was recommended by the Divisional Railway Manager, East Central Railway, Mughalsarai to the Chief Personnel Officer, the then Eastern Railway, Calcutta but the same was rejected by Order dated 11.09.1989. However, being aggrieved by the Order dated 11.09.1989, one of the concerned employees filed Original Application, which was rejected by Order dated 22.4.1996. One of the applicants in that O.A. namely Rasheed Khan filed Civil Appeal No.6609 of 1997 before the Hon'ble Supreme Court against the Order dated 22.04.1996 and same was allowed by setting aside the Order of the Tribunal with direction to the respondents to treat the applicant as has been appointed in the pay scale of Rs.700-900/- since the time of initial appointment. The Hon'ble Apex Court further directed the respondents to work out the consequential revision and difference in payment of emoluments, which shall be cleared, by the respondents within six months. The applicants on coming to know the law laid down by the Hon'ble Supreme Court in respect to similarly situated persons, approached the respondents vide their representation dated 04.11.2004. As respondents have not decided their representations, the applicants approached this Tribunal by filing Original Application No.145 of 2005. The Tribunal vide its Order dated 23.02.2005 directed the respondents to decide the applicants' representation by a reasoned order. In compliance of the direction of this Tribunal, the respondents have decided the representation of the applicants with the observation that the Judgment of Hon'ble Supreme Court is not a Judgment in rem but it is a Judgment in personam and, therefore, benefits cannot be extended to them. Being aggrieved by the rejection of their representation, the applicants have approached this Tribunal by means of the present Original Applicant with the aforementioned relief.



4. This case was first heard at admission stage on 26.09.2005 when notices were issued to the respondents returnable within six weeks but nothing was heard from them and on the next date i.e. 31.01.2006 nobody turned up on behalf of the respondents. However, on the next date i.e. 06.03.2006 Shri B.P. Singh, Counsel who filed power on behalf of the respondents, had sent illness slip for which the matter was adjourned. Thereafter, nobody appeared on behalf of the respondents on the following dates of hearing i.e. 13.03.2006, 03.05.2006, 05.06.2006 and on 07.08.2006 when the Bench noted that since a lot of time has been given and still no counter affidavit was filed, any counter affidavit will be allowed to be filed only on the payment of cost of Rs.500/- to the C.A.T. Bar Association. Copy of the Order was made available to both the counsel. None appeared for the respondents on the next date i.e. 15.09.2006 of hearing or on the next date i.e. 29.11.2006 today when the case was heard finally and no counter affidavit has been filed. In these circumstances, the Bench is constrained to proceed further in the matter on the basis of submissions on record.

5. The short prayer made by the four applicants in this O.A. is that the benefit of restructuring scheme as laid down in the Circular of Ministry of Railway dated 01.05.1984 should be given to them and their pay scale should be Rs.700-900/- instead of Rs.550-750/-. It is seen that in the first round of litigation, the applicants and also others had filed an Original Application No.179 of 1990, which was dismissed by the Division Bench of this Tribunal on 22.04.1996 as the Bench did not find any merit in the O.A. Aggrieved by the Order, one of the applicants namely Raseed Khan preferred an Appeal before the Hon'ble Apex Court vide Civil Appeal No. 6609 of 1997, which was decided by the Hon'ble Apex Court on 11.12.2003 allowing the Appeal. The operative portion of the Order is as follows:-



"From the provisions of the scheme quoted above there is no scope to think that the benefit of the scheme would be admissible to those who were already in service on 01.01.1984. Rather it is made clear that it would also be applicable to those who are in the panel approved on or before April 30, 1984. There is no denial of the fact that the applicant was empanelled as a selected candidate in the panel declared on April 30, 1984 and that he was appointed on a vacancy existing on 01.01.1984. That being the position his case is clearly covered under the provisions of clause 2 and clause 4.3 of the scheme."

On this basis the Hon'ble Supreme Court set aside the Order passed by the Tribunal and directed that the appellant in that case should be treated to have been appointed in the scale of Rs.700-900/- since the time of his initial appointment. The respondents were also directed to work out consequential revision and difference in payment of emoluments within 6 months.

6. From the records, we find that on coming to know of the above decision, the applicants in this O.A. approached the respondents for grant of similar benefit to them, which has been turned down by the respondents, which is not correct. Since the Hon'ble Court has decided the matter in principle that is whether similarly placed persons like the applicants in this O.A. who were not in service on the relevant date namely 01-01-1984 but who were appointed against clear vacancy on 01.01.1984 are entitled for the benefits. Accordingly, we are of the view that the Supreme Court's decision is squarely applicable to the present applicants as well. Respectfully following the ratio of the Order of Supreme Court cited above, we direct the respondents that the applicants in this O.A. should also be



treated to have been appointed in the scale of Rs.700-900/- since the time of their initial appointment. We also direct that the respondents should work out the consequential revision and difference of pay and emoluments and pay the applicants, within a period of 3 months from the date of receipt of a copy of this Order.

7. In the light of the above, the O.A. is allowed with no order as to costs.



Member (A)

/M.M/



Member (J)