

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 30th day of NOV 2010

Original Application No. 1280 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

*Malik Nasim Ahmad S/o Sri Abdul Hamid R/o T-42-D, North Colony
(Railway) Double Story near Manokamna Mandir, Moradabad U.P.
presently working as Chief Controller, Northern Railway Moradabad.*

By Adv. : **Shri R.C. Pathak**

..... **Applicant**

V E R S U S

1. *Union of India, through the General Manager Northern Railway,
Baroda House, New Delhi.*
2. *Divisional Railway Manager, Northern Railway, Moradabad.*
3. *Senior Divisional Personnel Officer, Northern Railway, Moradabad.*
4. *Senior Divisional Operating Manager, Northern Railway Moradabad.*

..... **Respondents**

By Adv. : **Shri P. Mathur**

O R D E R

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


The brief facts of the case are that :-

- (i) The applicant was appointed as Section Controller on 13th July, 1983. He was granted promotion as Deputy CHC on 11.11.1988. The Divisional Railway Manager Northern

Railway Moradabad issued a notification for selection to the post of Chief Controller Grade 2375-3500. A list of candidates was enclosed along with the notification wherein the name of the Applicant was placed at Sl. No.1, Annexure A-2 refers. The Applicant was asked to perform the duties as CHC on 26.12.1997, Annexure A-3 refers. The result of written test for the post of Chief Controller was declared by the Divisional Rail Manager on 26.08.1998, wherein the Applicant was placed at Sl. No.6 among successful candidates. For making ad hoc arrangement to fill up the post of Chief Controller Grade 7450-11500 certain participants called for vide Annexure A-5, dated 19.02.1999. In the seniority list of Deputy CHC the name of Applicant was placed at Sl. No.1 while one Shri H.B. Singh was at Sl.No.6. The Applicant was promoted as Chief Controller in Grade 7450-11500 on ad hoc basis, Annexure A-7 refers.

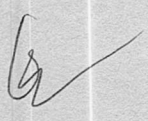
- (ii) The Headquarter Office, Baroda House New Delhi informed that C.P.O. has accorded *post facto* approval for Ad hoc promotion of Sri H.B. Singh Dy. CHC Grade 6500-10500 to the post of CHC Grade 7450-11500 for a period w.e.f. 14.04.2001 to 31.01.2003, Annexure A-8 refers. The Divisional Railway Manager granted *post facto* promotion to Shri H.B. Singh, vide Annexure A-9. The Applicant being senior to Shri H.B. Singh, who has qualified in the

test (while H.B. Singh failed in written test) submitted representation to Respondent No.2 that he should also be promoted since 27th December,1997 as CHC and is also entitled for pay allowances with arrears etc. till 27.07.2002 along with 18% Penal Interest, Annexure A-10 refers. The Applicant vide, Annexure A-11, letter dated 20.09.2004, sent reminder.

- (iii) The Divisional Railway Manager, Northern Railway, Moradabad issued a panel promoting the Applicant on CHC in terms of Railway Boards Instructions issued under NRPG 11466 of 1997 PC-V-179 and 183 on 21.09.2004, Annexure A-12, yet on the basis of Shri H.B. Singh *post facto* promotion Applicant is also able to *post facto* promotion since 27.12.1997 to 25.07.2002. The Respondent is not granting *post facto* promotion to Applicant discriminating with Shri H.B. Singh, who has junior to Applicant. Thus, the action of respondents is against the Article 14 and 16 of the Constitution of India. Central Administrative Tribunal, Allahabad delivered judgment on 29.10.2004 for deciding Applicant's representation dated 01.12.2003 by reasoned and speaking order with regards his promotion w.e.f. 27.12.1997 to 27.07.2002 as was given to his junior, Annexure A-14 refers. In view of the said order, the Respondent No.1 passed an order on 07.07.2005 on the
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representation of Applicant, granting promotion to the Applicant on the post of CHC w.e.f. 01.09.2001 in the pay scale of Rs.7450-11500, while the Applicant is entitled for promotion w.e.f. 27.12.1997 to 24.07.2002 as his junior was given with pay and allowances including arrears.

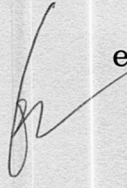
2. Respondents have contested the O.A. and stated that in the seniority list of the Dy. Chief Controller in the pay scale of Rs.6500-10500, issued on 06.08.2001, the applicant was inadvertently placed below Shri H.B. singh. Shri H.B. Singh, while working as Dy. Chief Controller, Moradabad in pay scale Rs.6500-10500, the scale of Rs.7450-11500 (after retirement) w.e.f. 14.04.2001 to 31.01.2003 was given by the Competent Authority on *post facto* approval of the Competent Authority i.e. Chief Personnel Officer, Baroda House, New Delhi. The claim of the Applicant has already been considered for promotion on regular basis in pay scale of Rs.7450-11500 under the restructuring w.e.f. 01.11.2003 and further, in pursuance of the order passed by this Hon'ble Tribunal in the matter, the Applicant has already been granted the necessary benefits at par with his immediate junior Sri H.B. Singh and further after receiving of the *post facto* sanction from the Divisional Authorities, the Applicant will be given benefit due to him and necessary fixation will be done by the Railway administration as a consequence of the orders passed by the Competent Authority in the matter.



3. Since, certain documents are necessary and orders have to be passed by the authorities as such, the matter was processed through various channels for taking necessary decision in this regard and accordingly, necessary order were passed in favour of Applicant. Nothing more is due to be administration has already decided the representation by extending the benefit due to the Applicant. The claim of the Applicant is thus devoid of any merits and is liable to be dismissed with costs.

4. Counsel for the Applicant has filed Rejoinder Affidavit, nothing new has been added therein and reiterating the same as mentioned in the Original Application.

5. We have heard counsel for the parties and perused the documents as well as written submission filed by them. Respondents have stated in their written statement that the name of the Applicant in the seniority list dated 06.08.2001 for the post of Deputy Chief Controller in the pay scale 6500-10500/- has inadvertently been placed below Sri H.B. Singh. As the *post facto* approval in respect of the Sri H.B. Singh was granted after his retirement and as such the benefit of such ad hoc promotion was also extended to the Applicant vide order dated 07.07.2005 and the case of the Applicant for regular promotion against restructuring w.e.f. 01.11.2003, has already been considered by the Railway Administration and as such the Applicant has no legal enforceable right to maintain the present Original Application.



6. The question is one that relates to benefit of promotion ad hoc or regular to junior without considering the case of the senior. The fact that the applicant has been given all the benefit as HB Singh was given goes to show that some vested right is available with the applicant for consideration prior to or simultaneously with Shri HB Singh. It is settled law, as laid down in the judgment of the Apex Court in *Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351* that *"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution"*

7. If the respondents could grant the benefit of promotion even after retirement of the said H.B. Singh, there is no reason as to why the same should be denied to the applicant. True, by virtue of restructuring, the benefit of promotion had been given to the applicant and further, vide CAI, ad hoc promotion w.e.f. 14-04-2001 onwards was also accorded. So far so good. However, the claim of the applicant is that he should have been given the promotion on ad hoc basis even during the period from 27-12-1997 to 25-07-2002 when such promotion was given to the junior Shri H.B. Singh, vide Annexure A-12. The applicant has given the details in this regard in para 4(xii) to which the reply is as under, vide para 13 of the counter:-

"... and further, in pursuance of the order passed by this Hon'ble Tribunal in the matter, the applicant has already been granted the necessary benefits at par with his immediate junior Shri H.B. Singh and further after receiving of the post facto sanction from the Divisional Authorities, the applicant will be given the benefit due to him and necessary fixation will be done by the Railway Administration as a consequence of the orders passed by the competent authority in the matter."

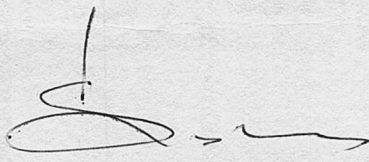
8. It is not exactly known, as to whether any further approval had been received or the above averment is with reference to what the applicant had already been afforded. It is made clear that when the authorities have accepted the claim of the applicant that he should be granted the same benefits as had been given to his junior Shri H.B.Singh, if the latter had been given ad hoc promotion for the period from December, 1997 to 25-07-2002, the applicant should be given the same benefits. It is not the case of the respondents that what ad hoc promotion had been given to the applicant vide order dated 07-07-2005 has been in lieu of the promotion for the period from December 1997 onwards upto July 2002. That cannot be in view of the fact that the period/duration of ad hoc promotion between the two does not tally.

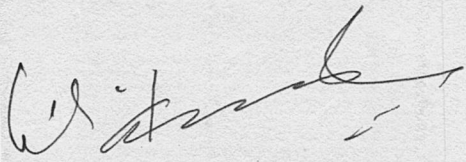
9. In view of the above the **OA is allowed** to the extent that the respondents shall treat that the applicant stood promoted to the higher grade as HB Singh for the period from 27-12-1997 to July 2002 as well and the notional fixation of pay be granted to him accordingly.

With the notional fixation of pay so granted, ~~the applicant's last pay~~

~~drawn should be re-worked and his pension and other terminal benefits be calculated. Revised PPO be also prepared and the applicant be paid the arrears arising out of the difference in pension and other terminal benefits within a period of six months from the date of receipt of certified copy of this order.~~

10. No costs.

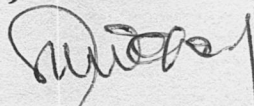

(S.N. Shukla)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil

X Deleted and order dated 29.2.2012 by
in separate application.

J. Chandra
29.2.12


29.2.12