

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad : Dated this 9th day of April, 1999

Original Application No.873 of 1988

District : Gorakhpur

CORAM :-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

1. Smt. Mukul Bose
W/o Late P.C. Bose
2. Pankaj Bose
S/o Late P.C. Bose
3. Piyush Kanti Bose
S/o Late P.C. Bose.

All R/o 35, Ravindra Palli,
P.O. Narain Nagar, Lucknow.

(Sri G.C. Gaherana, Advocate)

. Applicants

Versus

1. Union of India through
General Manager,
N.E. Rly, Gorakhpur.
2. Divisional Rail Manager,
N.E. Rly, Lucknow.
3. Sr. Divisional Mech Engineer,
N.E. Rly, Lucknow.
4. Shri G.P. Sharma,
Foreman (Maintenance),
Loco Shed, N.E. Rly,
Gorakhpur.
5. Shri Iwarika Prasad
Foreman (Maintenance)
N.E. Rly, Loco Shed,
Charbagh, Lucknow.

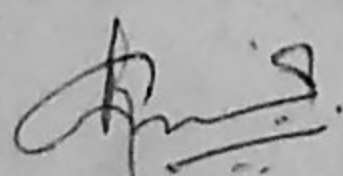
(Sri Amit Sthalekar, Advocate)

. Respondents

ORDER

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under Section 19 of the
Administrative Tribunals Act, 1985 filed by the applicant
for implementation of the order No. E/55/She-A/Seniority/87

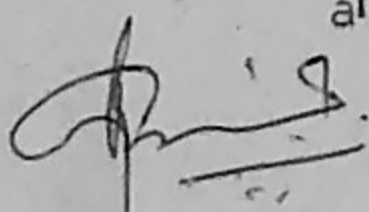


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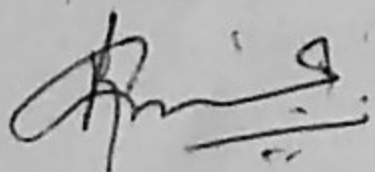
dated 15-7-1987 passed by DM(P) N.E. Rly, Lucknow. The reliefs prayed for in the application are as follows:-

- (i) This Hon'ble Tribunal may be pleased to direct the respondents to implement the seniority list dated 15-7-1987 (Annexure-8) strictly promoting him as Foreman(Mech) in the scale of Rs. 700-900 (new scale Rs. 2000-3200) w.e.f. 1-1-1984.
- (ii) The Hon'ble Tribunal may be further pleased to direct the respondents to modify the order dated 24-10-1985 including his name at Sl. No. 2 of the order.
- (iii) This Hon'ble Tribunal may be pleased to restrain the respondent from declaring the result of earlier selection dated 4-6-1988 and to promote any junior declaring the selection as null and void.
- (iv) This Tribunal may be pleased to direct the respondents to pay the pay and allowances w.e.f. 1-1-1984 in scale Rs. 700-990.
- (v) This Tribunal may be pleased to pass any order or further order which deem fit and proper in the facts and circumstances of the case.
- (vi) award the cost of the application.

2. Applicant states that the applicant became a Chargeman Grade 'B' on 2-9-1995 in scale of Rs. 425-700 and in a combined seniority list of the division as on 1-5-1981 published vide letter no. E/55/SM/Seniority/84 dated 27-10-1984, the applicant was shown at Ser. No. 1. In the year 1984 the Railway Board sanctioned restructuring of the Technical Supervisors of the Mechanical Department of the Indian Railway in which the Railway Board had also modified the selection rules for the purposes of upgradation and the selection would be based on scrutiny of service

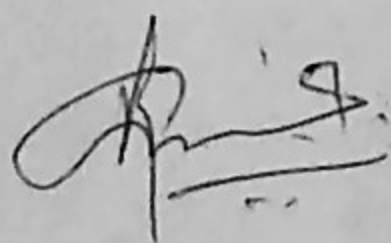


records seniority there being no written or viva voce tests. Under the above upgradation the applicant was promoted from the post of Chargeman Grade Rs. 425-700 to Chargeman Grade 'A' Scale Rs. 550-750 w.e.f. 1-1-1984 by an order dated 24-9-1984. Another order dated 25-3-1985 was issued by the respondents, of the same seniority group giving them promotion and fixation w.e.f. 1-1-1979 in terms of the Railway Board letter No. E-210/PC/III/83/3 dated 10-2-1979 and in this order dated 25-3-1985 the applicant's name was at Ser. No. 7 and the respondent nos. 4, and 5 were at Ser. No. 8, and 19 respectively (Annexure-5 to the O.A.). Respondent no. 2 had again ordered some promotions from Chargeman 'A' to Foreman (Maintenance) in Grade of Rs. 700-900 w.e.f. 1-1-1984 on the basis of effect given of Cadre restructuring from 1-1-1979 by an order dated 24-10-1985 when juniors to the applicants were promoted to the scale of Rs. 700-900 w.e.f. 1-1-1984 ignoring the applicant and without assigning any reason. The applicant's claim is that he is the seniormost for promotion to Grade 700-900 but he had been ignored. He represented to the respondents. One such representation was annexed as Annexure-9 to the O.A. The applicant further stated that he was awarded two adverse confidential reports, one, for the period ending 31-3-1985 and the other for the year ending 31-3-1986 which were intimated to him on 21-6-1985 and 23-12-1986 respectively. (Annexures-10 and 11). The applicant stated that these adverse entries had no concern with his promotion for the post of Foreman (Maintenance) Scale Rs. 700-900 because the scrutiny of service record was required prior to 1-4-1984. The applicant contended that as he had been in grade Rs. 550-700 w.e.f. 1-1-1979 as a result of restructuring, the applicant automatically became entitled for promotion for the post of Foreman (Maintenance)



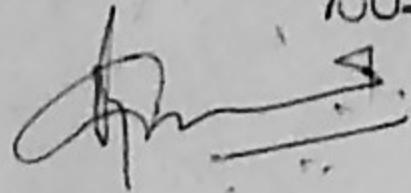
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grade Rs. 700-900 w.e.f. 1-1-1984, by modified procedure of selection. According to the applicant, the respondents decided to conduct selection for Rs. 700-900 vide order dated 27-3-1987 in utter violation of the guidelines of the circular dated 1-5-1984 and that in this selection the seniors did not participate because they were not required to undergo with this selection as they were entitled to be promoted in scale of Rs. 700-900 under restructuring scheme, and without conceding to their request the respondents finalised the panel and declared the result of the aforesaid selection. The applicant stated that against the said decision of the Railway Administration the aggrieved employees approached this Tribunal which was registered as OA No. 285 of 1987 - Arjun Kumar Vs. UOI & Ors, and the said petition was allowed by the Tribunal on 25-6-1987 declaring the said selection as null and void. According to the applicant, the respondents had notified a selection for Grade Rs. 2000-3200 vide their letter d dated 4-6-1988 (Annexure-A-13). The applicant further stated that the number of posts of Foreman (Maintenance) were increased from 4 to 13 and only 5 persons were promoted and thus, four posts left vacant were to be filled in. According to him, the previous or the present selection were only to fill up that short fall and thus this selection was illegal. According to the applicant, the present selection was being held to oust the seniors and to give undue advantage to the juniors in the name of selection. The applicant stated that he was entitled for promotion in grade Rs. 700-900 on the basis of his seniority position and as two of his juniors had already been promoted and this Tribunal had decided the case on



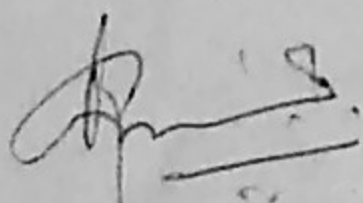
the same grounds, ~~xxx~~ hence this prayer.

3. The respondents filed counter affidavit and supplementary affidavit in which they resisted the claim of the applicant. Respondents admitted that the applicant was at No. 4 of the seniority list of Grade Rs. 425-700 as on 1-5-1981 and on 1-5-1984 he was at Ser No. 1. They also stated that the applicant was senior to respondent nos. 4 and 5 at that time. They submitted that the order dated 25-3-1985 had inadvertently been issued through the Office of DRM(P), Lucknow. According to the respondents as the post of Chargeman 'A' in the scale of Rs. 550-750 and above was controlled by the Headquarters as on 1-1-1979, and, therefore, the Office Order dated 25-3-1985 was cancelled by another Office Order dated 24-6-1986. They annexed a copy of this Office Order as Annexure-CA-1. The grade of Rs. 550-750 was decentralised and was made as divisional controlled post w.e.f. 1-1-1983. According to the respondents, Shri Arjun Kumar, Shri Lwarika Prasad, Shri G.P. Sharma and Shri S. Mukherjee, Chargeman 'B' (425-700), who were promoted to the post of Chargeman 'A' in the scale of Rs. 550-750 alongwith the applicant under restructuring w.e.f. 1-1-1984 as per Railway Board's letter No. FCIII/83/UPG/3 dated 1-5-1984 had inadvertently been promoted as Foreman 'M' in scale Rs. 700-900 w.e.f. 1-1-1984 vide Lucknow Division's Office Order No. E/210/SM/III/Chargeman dated 24-10-1985. Subsequently, the aforesaid Office Order was cancelled vide order No. E/210/SM/III/Chargeman dated 19-12-1986 as the posts of Foreman 'M' in scale 700-900 were controlled by the Headquarters as on 1-1-1984 and the Division had no power to promote a Chargeman 'A' Rs. (550-750) to the post of Foreman(M) in scale of Rs. 700-900. The post of Foreman(M) in scale Rs. 700-900 were decentralised to the division w.e.f.



1-4-1985 and was identified as selection post. Further it was stated that those who were promoted to grade Rs.550-750 w.e.f. 1-1-1984 were not eligible for promotion to Grade Rs.700-900 with effect from 1-1-1984 to Grade Rs.700-900 by modified selection procedure as laid down in paras 4.1 to 4.2 of the letter of restructuring dated 1-4-84 referred to above. After cancelling by the above order dated 19-12-1986, a selection for the post of Foreman(M) (Rs.700-900) was called as per rule alongwith the petitioner but Sri Arjun Kumar, Dwarika Prasad, G.P. Sharma and S. Mukherjee filed a petition O.A. No.285 of 1987 which was allowed by the Allahabad Bench of this Tribunal in favour of Sri Arjun Kumar, Dwarika Prasad, G.P. Sharma and S. Mukherjee and in compliance of the judgement, the abovenoted four Chargeman (A) were promoted w.e.f. 1-1-1984 vide Office Order dated 13-1-1989 and that it was not open to the applicant to raise objection against the said promotion at this stage by means of the present OA and the Division not being conferred with the power to make promotion to the post of Foreman 'M' grade Rs.700-900 on the relevant date, i.e. 1-1-1984, the question of promoting the applicant w.e.f. 1-1-1984 did not arise. Moreover, the applicant was undergoing punishment of withholding of increment w.e.f. 1-1-1985 to 31-1-1988, his increment could not be drawn during the period in the grade of Rs.550-750. The selection was conducted for the post of Foreman 'M' in scale of Rs.700-900 initiated by letter dated 4-6-1988 in which the applicant appeared but he failed to qualify and another selection had been processed and conducted vide letter dated 2-8-1989 and the applicant also appeared in the selection.

4. A supplementary reply was filed by the respondents in which it was stated that the applicant could not be promoted under the restructuring of Technical Supervisor



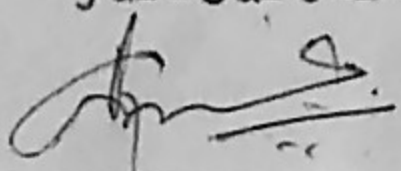
w.e.f. 1-1-1984 vide Office Order No. E/210/SM/111/Chargeman dated 24-10/85/4-11-1985 due to there being adverse remarks in his ACR as well as major penalty chargesheet pending against him. Further it was stated that the applicant appeared in the written test and viva voce for selection for the post of Foreman(M) grade Rs. 700-900/2000-3200 on 17-8-1991 and 26-9-1991 respectively but he was declared failed in the above selection.

5. During the pendency of the OA the applicant P.C. Bose died on 4-5-1993 and the legal heirs of the applicant, widow and two elder sons, Smt. Mukul Bose and S/Shri Pankaj Bose and Piyush Bose were substituted as applicants.

6. We have heard learned counsel for the parties and have given careful consideration to the rival pleadings and perused the records and the file pertaining to the period dealing with the said promotion. According to us, the issue to be decided by the Tribunal is whether the applicant is eligible for the benefit of the judgement of this Tribunal in OA No. 285 of 1987.

7. Learned counsel for the applicant relied on the judgement of the Hon'ble Supreme Court in Civil Appeal No. 2896 of 1989 delivered on 26-4-1995 between Narayan Yeshwant Gore and Union of India and Others (1995(73) FLR 478) in support of his claim for extending the benefit of the judgement of the Tribunal in OA No. 285 of 1987 to the applicant.

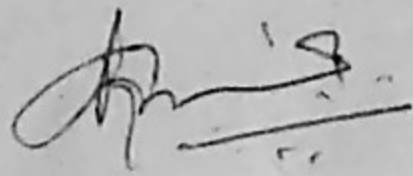
8. From the perusal of the file it was clear that the Division did not have any power to promote the Technical Supervisors to the grade of Rs. 550-750 and above on 1-1-1979 and did not have any power to promote Technical Supervisors to Grade Rs. 700-900 on 1-1-1984. However, Lucknow Division exceeded their jurisdiction and issued a promotion order against the



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restructured posts promoting some employees, viz; S/Shri Arjun Kumar, Dwarika Prasad, G.P. Sharma, and S. Mukherjee. At the time of promotion of these employees, from the office file, we note that the applicant was also considered. Against his name "unsuitable adverse entries and major memos also" is written. Subsequently, the promotion order issued to his juniors against the restructured posts was cancelled at the instance of the Headquarters, who intervened in the matter because the Division did not have the competency for promotion to the Grade Rs. 700-900. Accordingly, Railway Administration, Lucknow Division took action to cancel the promotion order issued earlier. The affected employees approached this Tribunal through an OA and this Tribunal taking into consideration similar pleas made by the respondents then held the cancellation as illegal and void. We are of considered view that the benefit of that judgement of this Tribunal in OA No. 285 of 1987 should be extended to the applicant as per the ratio of the judgement of the Supreme Court cited by the learned counsel for the applicant. Respondents have averred in the supplementary reply that the applicant could not be promoted due to there being adverse remarks in his CR as well as pendency of major penalty charge sheet. This is also borne out from the notings on the file as stated earlier. But is not clear as to which period the adverse remarks pertain to. Only the existence of adverse remarks for the period ending 31-3-1985 and 31-3-1986 have been brought out in the pleadings. However, the cadre restructuring was effective from 1-1-1984 and these adverse remarks may not be relevant. At the same time we hold that he should be considered for promotion on the same criteria as was applied to others.


9. In view of the foregoing this OA is disposed of with a direction to the respondent no. 2 to consider again the case of applicant for promotion to the grade of Rs. 700-900

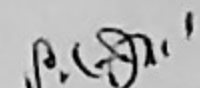


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w.e.f. 1-1-1984 on the same criteria as others within a period of two months from the date of receipt of the copy of this judgement and in case the applicant is found suitable for promotion to the said grade, from 1-1-1984, consequential payment of monetary and pensionary benefits should be made within a period of three months thereafter. The consideration should be made ignoring the results of the applicant in the selections notified under letter dated 4-6-1988 and subsequent years and should be advised to the applicants within three months from the date of receipt of the copy of this judgement.

10. No order as to costs.


Member (A)


Member (J)

Dube/